

## SUITS BROUGHT BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS UNDER CIVIL PROCEDURE CODE, 1908

<sup>1</sup>PRAVEENKUMAR. M, <sup>2</sup>MRS.V.UDAYAVANI

<sup>1</sup> Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences,  
Saveetha University, Chennai77, Tamil nadu,India.

<sup>2</sup> Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences,  
Saveetha University, Chennai77, Tamil nadu,India.

<sup>1</sup>praveen.zenz@gmail.com, <sup>2</sup>udayavani.ssl@saveetha.com

### ABSTRACT:-

Section 79 to 82 and Order 27 of the Civil Procedure Code, 1908 lay down procedure where suits are brought by or against the Government or Public officers. The provisions provides for the procedure only not about rights and liabilities. Substantive right has to be find accordance with the provisions of the Constitution .<sup>1</sup>These provisions gives no cause of action but only declares the mode of procedure when a cause of action has arisen.Under Civil Procedure Code, 1908 Section deal with provisions of a substantive nature and lays down general principles and Orders deals with procedure, manner and mode in which general principle can be exercised. Similarly Section 79 to 82 provides for the general principles and Order 27 prescribe the procedure in which general rules provided under Section 79 to 82 can be exercised.

**key words** - civil procedure code , constitution,order,government , public

To analyse the immunity to the government officials under civil procedure code

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<sup>1</sup> Bagchand v. Secy. Of State, AIR 1927 PC 176; Sawai Singhai Nirmal Chand v. Union of India, AIR 1966

**Name of party in Suit:-**

Section 79 of the Code provides that in a suit by or against the Government the authority to be named as Plaintiff & Defendant in case of (i) Central govt. Union of India & (ii) State Government the State.

Section 79 being a procedural provision, substantial compliance with the requirements thereof is Sufficient.<sup>2</sup> The Supreme Court declared that procedural law clearly specifies the situation in which Government is required to be made a party and the law to this regard is settled that if the Government is not made a party, the litigation cannot be proceeded.

In Chief Conservator of Forests, Government of A.P. v. Collector, Supreme Court has observed that the requirement of provision contained in Section 79 CPC is not merely a procedural formality, but is essentially a matter of substance and of considerable significance whereby the special provision as to how the Central Government or the State Government may sue or be sued has been indicated, the authority to be named as plaintiff or defendant, as the case may be, shall be

1. a) in the case of a suit by or against the Central Government, the Union of India, and
2. b) in the case of a suit by or against a State Government, the State.

Notice under Section 80 of Civil Procedure Code, 1908:-

In suits between individuals and individuals, notice need not be given to the defendant by the plaintiff before filing a suit but under Section 80 it is provided that notice has to be given in a suit against Government or public officer in respect of any act purporting to be done by such public officer in his official capacity.

Section 80 of the Code provides that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public office in his official capacity until the expiration of two month next after notice in writing has been delivered to, or left at the office of:

1. i) in case of the suit against the Central Govt., except where it relates to a railway, a Secretary to that Govt;
2. ii) in the case of a suit against the Central Govt. where it relates to a railway, the General manager to that railway;

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<sup>2</sup> Yogesh Chandra Das v. Chief Secretary of Assam, AIR 1990

3. iii) in the case of a suit against the Govt. of the State of Jammu and Kashmir, the Chief Secretary to that Govt. or any other officer authorized by that Govt. in that behalf;
4. iv) in the case of a suit against any other state Govt.. a Secretary to that Govt. or the Collector of the district; and
5. v) in the case of a public officer, such public officer.<sup>3</sup>

Further it provides that with the permission of the Court, a suit can be instituted without serving the notice where an urgent or immediate relief is needed. Provided that Court shall return the Plaint if found that there is no need of immediate or urgent relief.

The Section enumerates two types of case:

- (1) Suit against Government; and
- (2) Suit against public officers in respect of acts done or purporting to be done by such public officers in their official capacity.

Regarding the first class of cases the notice must be given in all cases. Regarding the second class of cases, however, notice is necessary only where the suit is in respect of any act “purporting to be done” by such public officer in the discharge of his duty, and not otherwise.<sup>4</sup>

The three essential requirements of S. 80 are: first, the addressee should be identified and must have received the communication; secondly, there should be no vagueness or indefiniteness about the person giving the notice, who must also be the person filing the suit and the notice must also give the details which are specified in S. 80; and, thirdly, the two months’ time allowed must expire before the suit is laid. Once these requirements are fulfilled minor details like the mis description of the person to whom the communication is addressed should not make it an improper notice which does not comply with the requirements of S. 80, C.P.C.<sup>5</sup>

## **INTRODUCTION:**

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<sup>3</sup> Sec 80(1) of Civil Procedure Code, 1908

<sup>4</sup> State of Bihar v. Jivas das, AIR 1971 Pat 1971; State of Maharashtra v. Chander Kant, AIR 1977 SC

<sup>5</sup> Santanu Dey, *Legal Provisions of Section 80 of Code of Civil Procedure 1908, (C.P.C.), India – Notice*, SHARE YOUR ESSAYS available at <http://www.shareyouressays.com/114371/legal-provisions-of-section-80-of-code-of-civil-procedure-1908-c-p-c-india-notice>

The object of the notice required by this section is to give the Secretary of State or the public officer an opportunity to reconsider his legal position and make amends or settle the claim, if so advised, without litigation<sup>6</sup> or afford restitution without recourse to a court of law. When a statutory notice is issued to public authorities, they must take the notice in all seriousness and they should not sit over it and force the citizen to the vagaries of litigation. They are expected to let the claimant (who has given notice), know, what stand they take, within the statutory period, or, in any case before the plaintiff embarks upon litigation.

The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted<sup>7</sup> The aim is to that the researcher focused on salient features of limitation Act it also deals with objectives and Halsbury's laws in England which relates with case laws.

In *Bihari Chowdhary v. State Of Bihar*<sup>8</sup>, Supreme Court has Highlighted the object of Section (80) of the civil procedure code "When we examine the scheme of the Section it becomes obvious that the Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinize the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the Section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations

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<sup>6</sup> Province of Bihar v. Kamakshya Naran Singh, AIR 1950 Pat 366; Raghunath Das v. Union of India, AIR 1969 SC

<sup>7</sup> *Good Legal Article on Notice Under S 80 of CPC*, LAW WEB, Feb. 7, 2014 available at <http://www.lawweb.in/2014/02/good-legal-article-on-notice-under-s-80.html> (last visited Dec 15, 2015).

<sup>8</sup> AIR 1984 SC 1043

and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the Section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months' time to Government or a public officer before a suit can be instituted against them. The object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.”

### **SCOPE AND ITS APPLICABILITY**

This section is explicit and mandatory and admits of no implications or exceptions. the language of this section is imperative and absolutely debars a court from entertaining a suit instituted without compliance with its provisions. If the provisions of the section are not complied with, the plaint must be rejected under O. 7, r. 11(d).

Notice under Section 80(1) of CPC, 1908 is the first step in the ligation against govt. or public officer.<sup>9</sup>

A statutory body may be an instrumentality of the state within the meaning of Art. 12 of the Constitution, nevertheless, it would not answer the description of ‘government’ as it is understood in law and in the context of S. 80.

A notice given before the cause of action has arisen is invalid. Issuance of a notice is a condition precedent for the institution of a suit but it does not become a part of the cause of action. Whether or not a notice forms an integral part of the cause of action against the govt. depends upon the scheme of the relevant statute and no rule of universal application can be laid down

The question has to be decided by reading the whole notice in totality and in a reasonable manner. If the notice on such a reading the court is satisfied that the information which was necessarily to be provided to the defendants by the plaintiff was in fact provided, inconsequential defects or error is immaterial and will not vitiate the notice. The provisions of the section are not intended to be use as booby-traps against ignorant and illiterate persons.

A plaintiff who gives notice under Section 80 and institutes a suit before two month, but is allowed to withdraw the same with liberty to file a fresh suit, is entitled to institute a fresh suit without a fresh notice <sup>10</sup>

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<sup>9</sup> State of Seraikella v. Union of India, AIR 1951 SC

Where notice of a proposed suit is once given, it is not necessary to give a fresh notice of two month, if the plaint has to be amended owing to discovery of facts not within the plaintiff's knowledge at the time of institution of the suit or for adding further grounds for the case of action already discovered or when new facts have arisen subsequent to the suit. But no amendment will be allowed if the effect of the amendment is to convert the suit into another of a different character. The suit must be brought after giving fresh notice as required by this section <sup>11</sup>

A writ petition under Article 32 or 226 of the Constitution cannot be said to be a "suit" within the meaning of Section 80 of the Code. Hence giving prior notice to the government or public officer is not necessary before filing a petition in the Supreme Court or in a High Court.

Section 80 provision is made for the benefit of the party, namely, the State or the public officer, as the case may be and in a given case it is open to the party for whose benefit the provision has been made to waive the compliance with the requirements of such a provision. The Judicial Committee held that Section 80 of the Code of Civil Procedure was explicit and mandatory; but still it held that it could be waived by the authority for whose benefit that was provided. There is no reason why the notice should not be waived if the authority concerned thinks fit to waive it

This provision cast an implied duty on all concerned governments and States and statutory authorities to send appropriate reply to such notices. Having regard to the existing state of affairs, Court has directed all concerned governments, Central or State or other authorities, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, an officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation. The replies shall be sent after due application of mind. Despite such nomination, if the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper application of mind, the Court shall ordinarily award heavy cost against the Government.

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<sup>10</sup> Amarnath v. Union of India, AIR 1963 SC

<sup>11</sup> Province of Madras v. RB Poddar Firm, AIR 1949 Ma d

**PUBLIC OFFICER:-**

Section 2(17) of CPC, 1908 provides for the exhaustive list of public officer. It provides that who all are public officer. According to that list this Section applies on Public Officers.

According to the concise Oxford Dictionary, to “purport” in this context means to “be intended to seem”. Applying this meaning, the word “any act purporting to be done by such public officer in his official capacity” means any act “intended to seem” to be done by him in his official capacity<sup>12</sup>. If the act was one such as is ordinarily done by officer in the course of his official duties, and he considered himself to be acting as a public officer and desired other persons to consider that he was so acting, the act clearly “purports to be done in his official capacity” within the ordinary meaning of the term “purport. It follows that notice to a public officer is not necessary where the act done by him is not within his sphere of duties.

The Suits referred to in section are suits against the public officer personally in respect of acts done in his official capacity. The public officer cannot be sued in his official name, unless he is a corporation sole.<sup>13</sup>

The latest decisions of all the High Courts are in favor of the view that notice is necessary even if the act is done mala fide; and it has been held that a notice is necessary when a suit is filed against a police officer for malicious prosecution.<sup>14</sup>

**Institution of Suit without Notice against govt. or Public officer:-**

Section 80(2) is in the nature of an exception to Section 80(1) and enables the plaintiff to file a suit to obtain an urgent and immediate relief without serving any notice as required by Sub-section (1) subject to the condition that such a suit has to be filed with leave of the Court. The most important condition envisaged under Section 80(2) is relating to urgency in the matter. Where the Court is satisfied that urgent on immediate relief is required and the plaintiff would not be in a position to wait for the period of notice to expire, leave may be granted to a plaintiff to file suit against the State without service of notice contemplated under Section 80(1). Even in such cases where leave is granted, the Court is enjoined not to grant relief in the suit, whether interim or otherwise, without giving the State reasonable opportunity of

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<sup>12</sup> Nand Kumar Sinha v. pasupati Ghosh, AIR 1941

<sup>13</sup> Sheriff of Bombay v. Hakmaji, AIR 1927

<sup>14</sup> Mohammad Sharif v. Nasir Ali, AIR 1930

showing cause in respect of the relief sought for in the suit. As indicated in the proviso, if upon hearing the parties, the Court is satisfied that no urgent or immediate relief need be granted, the Court is to return the plaint for presentation after complying with the requirement regarding service of notice contemplated under Section 80(1)

While considering the application under Section 80(2), CPC, and plaintiff must plead and prove that the suit is filed to obtain urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity, suit can be instituted with the leave of the Court. Thus, it is necessary to consider urgency and immediate relief against the Government or public officer. Basic requirement is that if such urgent and immediate relief is not granted then the plaintiff is likely to suffer irreparable injury or loss which cannot be compensated. In the matter of recovery, if some amount is paid, that is liable to be refunded. As such, there was no urgency in the matter. Until and unless urgency or immediate relief is shown to the Court, the Court cannot grant permission mechanically <sup>15</sup>

The mode or form of request or grant are not material. What is material is only the substance, whether there was a proper request and whether it was considered and granted. Request with grounds, if any, must be there and there need only be indications as to whether it is allowed or not, even though a reasoned order may be good and an application is also appreciable.

A plaintiff intending to institute a suit against the Govt. has two options before him, either he may file a suit after serving two months' notice under Section 80 C.P.C. or he may file the suit without serving the notice but in that event he must satisfy the court that an urgent and immediate relief is required and also obtain previous leave of the court. In the event of the first course being adopted the suit cannot be filed before the expiry of the two months of giving of the notice and this explains the reason for using the word 'shall' in Sub-clause (1) of Section 80 C.P.C. by the Parliament. However, in the second case he has the choice to file the suit without giving the requisite notice but only after obtaining leave of the court and it is for this purpose that the word 'may' has been used in Clause (2) of Section 80 C.P.C <sup>16</sup>

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<sup>15</sup> Municipality v. Gas Authority of India Limited, AIR 2006

<sup>16</sup> Himachal Steel Rerollers and Fabrication v. Union of India, AIR 1988



**Technical defect or error in notice: Section 80(3):-**

Section 80(3) provides that no suit instituted against the Govt. or Public officer shall be dismissed merely on ground of error or defect in the notice, if, in such, the name, description and residence of the plaintiff had been so given as to enable the authority or public officer to identify the person serving the notice and such notice had been delivered or left at the office of the authority or public officer and the cause of action and the relief claimed by the plaintiff had been substantially indicated therein.

The amendment to the code was made with the intention that justice is not denied to the aggravated parties on the grounds of technical defects. Therefore, a notice under section 80 cannot be held to be invalid and no suit can be dismissed on the grounds that there has been a certain technical defect or error in the notice delivered or on the ground that such notice was served in an improper way.<sup>17</sup>

**Exemption from arrest and personal appearance (Section 81):-**

Section 81 of the code provides that in a suit against a public officer of any act purporting to be done in his official capacity i.e. act of public officer as mentioned above, he has an exemption from arrest and from attachment of his property until execution of decree. Further if defendant that is public officer cannot absent himself from his duty, then he has exemption from personal appearance during ongoing suit.

**Execution of decree (Section 82):-**

Section 82 provides that in a suit by or against govt. or public officer, decree is pass against govt. or public officer it will not be executed unless it remains unsatisfied for the period of three monts computed from the date of such decree. Further it provides that this provision regarding execution of decree will apply on an order or award passed by any court or by any other authority or if it were capable of being executed under this code or under any other law in force as if it were a decree.

The section has been amended so as to eliminate certain cumbersome requirements. Before amendment a court had to send a report to the state government before ordering. The decree cannot be executed unless all the condition are complied with.<sup>18</sup>

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<sup>17</sup> Disha Construction & Ors V. State of Goa & Anr., AIR 2012 SC

<sup>18</sup> State v. Abdur Rahman, AIR 1960 J & K

**Procedure (Order 27):-**

Order 27 Rule 1 of CPC, 1908 provides that in a suit by or against govt. a plaint or written statement shall be signed by a person who has appointed for this by govt. Further it shall be verified by a person who is acquainted with the facts and appointed by govt. for verification.

The sanction to sign must be prior to the institution otherwise the signing shall be by an incompetent person. A retrospective sanction cannot cure the defect.<sup>19</sup>

Order 27 Rule 2 provides that Person authorized to act for the Govt. in respect of any judicial proceeding shall be deemed to be recognized agent by whom appearance, acts and applications under this code may be made or done on behalf of Govt.

Order 27 Rule 3 provides that in a plaint of a suit by or against govt. instead of providing all detail of plaintiff or defendant it is sufficient to insert appropriate name as provided in section 79 of CPC, 1908.

Order 27 Rule 4 provides that Government Pleader shall be the agent of Govt. for the purpose of receiving processes against the Govt. by Court.

Govt. Pleader is only to intimate the court that he is representing the Govt. No stamped power of attorney or vakalatnama is required. A person other than the Govt. pleader can act only when the latter intimates to the court that the former is acting under his direction. The Government like any other litigant can engage as many as advocates as it thinks necessary.

Order 27 Rule 5 provides that court will allow a reasonable time to govt. to answer the plaint so as to make necessary communication between govt. and govt. pleader. The time shall not be exceeded more than 2 months.

The benefit of Rule 5 is available to the govt. after it has made its appearance also.

Order 27 Rule 5A provides that in suit against a public officer in respect of any act alleged to have been done by him in his official capacity, the govt. shall be joined as a party to a suit.

Order 27 Rule 5B provides that it is a duty of a court in any case against a govt. or public officer acting in his official capacity to make attempt at first instance for the settlement of disputes between parties. Further if finds at any stage of proceeding that there is reasonable possibility for settlement between parties court will adjourn the case for such a time to enable attempt to solve a dispute.

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<sup>19</sup> State of Rajasthan v. Jaipur Hosiery Mills Pvt Ltd., AIR 1997

Order 27 Rule 6 provides that court can direct attendance of person who is able to answer any material question relating to the suit against a govt.<sup>20</sup>

### **Conclusion:-**

The Article has defined the process of suit by or against a govt. and public officer acting in purporting to his official duty. Article has explained the provisions in detail about the litigation against and by govt. and public officer acting in purporting to his official duty. After examining there provision as mentioned we have understand that for any suit against a govt. first of all it is necessary that party should be name according to section 79 of CPC. Further to institutive a suit against govt. or public officer acting in purporting to his official duty it is mandatory to give prior notice of 2 month. The only exception to this rule is provided by addition of 80(2) after the amendment of 1976. The amendment is helping hand so that justice can be done as early as possible. After concluding the above topics, this Article attempts to elucidate about the various aspects of these types of suits. It speaks about whether rights granted under this can be waived, the forms in which notices can be served and also the modes in which these have to be served. Moreover Article has provided us about procedure given under rule 27 and other privileges given to parties i.e. under Section 81 & 82 of the code

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