

# Notice Under Section 80 CPC

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# Introduction

In India, A person can sue the government and its officials on infringement of his right. Generally, for suing a person, there is no need of giving a notice prior to suit. But According to section 80 of Civil Procedure Code (CPC), 1908, it is mandatory to give a notice before filling a case against government or public officer to claim relief from mishaps caused by the government or public officer in its official capacity. Section 80 of CPC mandates that only after the expiration of two months of sending notice to the government or public official, one can sue it. The duration of two months provides time to the official for responding to the notice served to it. Thus, this section is an attempt by the law makers to settle the matters in amicable and timely manner.

# SECTION 80 OF CIVIL PROCEDURE CODE (CPC), 1908

The serving of notice under Section 80 of the CPC before suing the government or public officer is mandatory and describes two types of cases:

- (i) Suit against the government and
- (ii) Suit against public officers in respect of acts done or purporting to be done by such public officers in their official capacity.

This section is explicit and mandatory and admits of no 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) of CPC. So the notice under Section 80(1) of CPC, 1908 is the first step in the litigation against government or public officer.

# Section 80(1) of CPC, 1908

Section 80(1) of CPC, 1908 provides -

- a.) In the case of a suit against the Central Government the notice should be delivered to, or left at the office of *secretary to that government* except in the case against railways.
- b.) In the case of a suit against the Central Government where it relates to railways, the notice must be delivered to, or left at the office *General Manager of that railways*:
- c.) in the case of Jammu and Kashmir, to the office of the **chief secretary** to that government or any other officer authorized by that government in this behalf.
- d.) If the suit is against any other government, to the office of a *secretary* to that government or the collector of the district.

In the case of public officer, delivery to him at his office, stating the cause of action, the name, description, and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

# Section 80(2) And 80(3) of CPC, 1908

**Section 80(2) of CPC, 1908** provides exception to the sub-section (1), It exempt the court to entertain a suit dealing with urgent or immediate relief against the government on reasonable opportunity of show cause that the matter needs immediate attention. If on hearing the court is unsatisfied with the ground that urgent or immediate relief need be granted in the suit, it should return the plaint for the later presentation after satisfying the compliance needed in sub-section (1).

**Section 80(3) of CPC, 1908** deals with the basic requirement of notice. If those requirements are satisfied, then the suit cannot be set aside merely on the ground of any error or defect in the notice. Those basic requirements of notice are:

- a.) The name, description, and the residence of the plaintiff in such vivid way that it clearly allows to identify the person serving the notice.
- b.) Such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1)
- c.) The cause of action and the relief claimed by the plaintiff had been substantially indicated.

# Object of Notice and Legislative Intent Behind Serving Notice

The underlying motive and object behind adding section 80 in CPC is:

- a.) In case of reasonable and just reason for filling suit, a prior notice will provide an opportunity to the government or public officer to correct or accept the demand put forward by the plaintiff. It leads to speedy settlement of the grievances.
- b.) In case of reasonable complaint government or public officer will get enough time of two months to settle it down or to negotiate on the issue. Which might take years if it will decide in court.
- c.) By giving a chance to negotiate and settle down the dispute this section is inserted for saving the money and time of plaintiff. It will help in avoiding money wastage in long process of litigation.

# Contents or Requisites of notice u/s. 80 CPC

The essential contents or requisites of a notice u/s. 80 CPC are as under---

- (1) whether the name, description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice;
- (2) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity;
- (3) whether a notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section; and

- (4) whether the suit is instituted after the expiration of two months next after notice has been served, and the plaint contains a statement that such a notice has been so delivered or left. In construing the notice the Court cannot ignore the object of the legislature, viz. to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position. If on a reasonable reading of the notice the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or irregularities should be ignored.



**Sec. 80 CPC is mandatory-** Provisions u/s. 80 CPC are mandatory and failure to serve two months prior notice will entail the dismissal of the suit. (B.R. Sinha vs. State of M.P., AIR 1969 SC 1256 )

**Urgency of the matter to be relevant consideration for grant of leave u/s. 80 CPC-** Court is competent to consider whether or not there is in existence the urgency or likelihood of immediate relief being granted to the plaintiff. If the court is of the opinion that there is no such urgency existing or immediate relief cannot be granted, the court may refuse leave u/s. 80(2) of the CPC.(Islamia Junior High School vs. State of U.P., AIR 1986 All 92

**Errors or defects in notice u/s. 80 CPC- when not fatal?-** Every venial error or defect in notice u/s. 80 CPC is not fatal and such venial error or defects cannot be permitted to defeat a just claim if on a reasonable reading but not so as to make undue assumptions, the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or errors may be ignored. (The State of A.P. vs. G.V. Suryanarayana, AIR 1965 SC 11)

**Introduction of new cause of action through amendment and notice u/s. 80 CPC-** If by amendment of plaint, a new cause of action is brought, then a fresh notice u/s. 80 CPC is mandatory. (Bishan Dayal vs. State of Orissa, (2001) 1 SCC 555)

**Death of plaintiff after issue of notice u/s. 80 CPC and before institution of suit---** Where notice u/s. 80 CPC by plaintiff's father was issued to the Government but before the expiration of next two months and institution of suit, the plaintiff's father died and the suit was then filed by the son without giving fresh notice u/s. 80 CPC, it has been held by the Supreme Court that the notice u/s. 80 CPC already issued is sufficient and fresh notice is not necessary. **(Ghanshyam Dass vs. Dominion of India, AIR 1984 SC 1004)**

**Sec. 80 CPC to apply only in respect of acts of public officers done in their official capacity-** Where interim injunction u/o. 39, r. 1 CPC was sought by the plaintiff in a suit for permanent injunction in respect of acts done by the public officer in his official capacity but no notice u/s. 80 CPC was given, it has been held that the suit was hit by Sec. 80 CPC and interim injunction could not have been granted.(U.R. Agarwal vs. Brahm Singh, AIR 1976 All 243)

**Suit filed before expiration of two months next after notice u/s. 80 CPC not maintainable-** A suit preferred before expiration of two months next after notice u/s. 80 CPC is not maintainable.(Bihari Chowdhary vs. State of Bihar, (1984) 2 SCC 627)

**Order granting leave u/s. 80(2) CPC to be speaking-** Order granting leave u/s. 80(2) CPC must indicate the grounds pleaded and the application of mind thereon. (State of A.P. vs. M/s. Pioneer Builders, 2006 (65) ALR 630 (SC))

# CONCLUSION

Section 80 of CPC mandates an individual to send notice to the authority concerned for its grievances and allow person to sue only after completion of 2 months after the notice. It is inserted in CPC for providing speedy justice by saving valuable time and money of the plaintiff. The period of 2 months is there for the purpose of providing an opportunity to the concerned authority for addressing the issue and saving time of both, the accused government or public officer and the plaintiff. There is not much scrutiny have done on the success rate of this section in CPC. But the findings of Law Commission in reports point outs that this tool is not being utilised as an opportunity to resolve dispute, instead it is misused as a technical defence for delaying the justice. Legislature or Judiciary should attempt to preserve the intent of this legislation. Like the judiciary can impose exemplary damages in the cases where the authority is at fault, and it could correct its action within 2 months after receiving the notice. These steps can make this section more meaningful and pragmatic which can be ultimately proved helpful in reducing the giant heap of clogged cases in Indian Judicial system.

Thank You.