

Notice under Section 80 of the Code of Civil Procedure 1908: Needs a Thorough Reconsideration

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ABSTRACT

Section 80 of the Code of Civil Procedure, 1908 provides for sending a notice to the government or a public officer if one wants to institute a suit against the government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months. The notion behind section 80 is to provide an opportunity to the Government or public officer to consider the legal position and to settle the claim forwarded by the prospective plaintiff if it appears to be just and proper. This provision has been enacted as a measure of public policy and the underlying purpose is the advancement of justice and securing of public good by avoidance of unnecessary litigation. Further, it has been intended to alert the Government or a public officer to negotiate just claims and to settle them if well-founded without adopting an unreasonable attitude by inflicting wasteful expenditure on the public exchequer. But unfortunately the underlying object of Section 80 gets totally defeated when such notices remained unanswered and used only as a defense either that no notice has been served or that the notice given didn't consent to the necessities of the section. *In this article an attempt has been made to critically analyse Section 80 of CPC. A further attempt has been made to analysis the Land mark Judgements and Law Commision's Reports on this serious issue for consideration.*¹ *This Article also attempts to answer the question Whether serving of notice has some practical relevance or a mere impediment.*

Keywords: Notice, Section 80, Civil Procedure Code, Government, Public Officer

INTRODUCTION

Rights and obligations of the members of an organised society are meaningless unless enforced through court of Law. Law ably classifies itself into two; substantive law and procedural law. Substantive law basically determines the rights and liabilities of the parties and procedural law on the other hand, prescribes the practice, procedure and machinery for the enforcement or recognition of the legal rights and liabilities by a court of law. Procedural law always remained as subservient to substantive law. In India The Code of Civil Procedure, 1908 ((Hereinafter referred to as "CPC")) applies to all proceedings in a Court of civil judicature. Code of Civil Procedure, is an example of adjective law which forms an indispensable part of the legal mechanism. It operates as an essential tool for enforcing legal rights and claims, for redressing or preventing legal wrongs, for asserting legal defenses and also for the other ancillary purposes, with its inherent complexity and occasional technicalities

Under the Code of Civil Procedure, there are two kinds of suits- General and special. Procedure for General Suits is laid down in Section 9-35 B and Procedure for Special Suits is laid down in Section 79-93 of the CPC, There are eighteen kinds of suits which fall under the category of special suits. These suits have some special characteristics and hence owe their name as 'Special Suit'. Suit by or against the Government or Public Officers is one of the Special Suits under CPC.

The system of filing suits has long prevailed in Indian legal history. The institution of a civil suit is commonly preceded by the issuance of a legal notice. The legal notice is a document in which the other party is informed about the allegations that are being levied upon him, or whether he has failed to fulfill any obligation, or if he has been negligent. Order 6 Rule 11 of the Code of Civil Procedure, 1908 states that notice is basically a document where one communicates the material allegations against a person they are sending the notice to, which is usually the

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defendant. Generally, in suits between two individuals notice to defendants by plaintiff before institution of suit is not mandatory. But its mandatory in case of Suit by or against the Government or Public Officers. Section 80 of the CPC says that before institution of a suit against the government or against any public officer, in respect of any act *purporting to be done* by such public officer in his official capacity, until the expiration of two months next after the notice in writing has been delivered.

The condition to serve a notice is optional in a civil suit against a private individual, but, if one needs to file a suit against the Government or a public officer, then the process for the institution of suit and issuing of the notice is different. Suits by or against the government or public officials in their official capacity are special cases and the procedures which have to be observed while instituting a plaint vary from the usual procedures which are carried out in accordance with civil suits for private individuals. They are enumerated in The Code of Civil Procedure, 1908 u/s 79 to 82 and Order 27. Nonetheless, these provisions are concerned only with the procedural rights and liabilities that are enforceable against the government and public officers.

Depending upon the nature of civil suit the issuance of the notice may be a mandatory or merely optional, but in both cases, the purpose of the notice is to inform the recipient thereof, namely the addressee precisely and clearly of the intention of the sender.

A legal notice is intimation and thus carries the following information (i) Name, Description and Address (ii) Precise statement and facts relating to the grievance for which the action is to be taken.(iii) Alternatives/relief sought by the grieving party.(iv)A summary of facts (v)The way it can be solved.

It is, no doubt, true that a notice under S. 80 is not a pleading as per order VI of CPC and need not be a copy of the plaint and that no particular or technical form is prescribed for such a notice, still having regard to the object for which S. 80 has been enacted the details which it contains should be sufficient to inform the party on whom it is served of the nature and basis of the claim and the relief sought.

Suits by or Against Government: Section 79

This Section is a replica of Article 300 of the Indian Constitution. It defines the concept of suits when brought by or against the government. If a case is filed against or by the government in any matter, the plaintiff and the defendant will be termed as follows-

- Whenever legal proceedings are instituted by or against the Central Government, the Union of India will be represented or required to act as the plaintiff or defendant.
- Whenever legal proceedings are instituted by or against the State government, the State government will be represented or required to act as the plaintiff or the defendant.

The Supreme Court in *Chief Conservator of Forests, Government of A.P. v. Collector*,² ruled that the requirements listed in Section 79 and Order 27, Rule 1 of CPC are not just procedural formalities, but are matters of substance as well as substantial magnitude wherein special provisions have been laid regarding how the Central/State Government can sue or be sued.

Provision of Notice under Section 80 of CPC,1908

Section 80 contains a rule of procedure and makes it mandatory to serve a notice before institution of a suit against the Government or against a public officer.

Thus, this section describes two types of cases:

1. Suit against the 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.
- 3.

In *State of Maharashtra v. Chander Kant*³ it was observed that notice must be given in all cases regarding the first class of cases. However, regarding second class cases, 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. Similarly in *State of Madras v. Chitturi Venkata Durga Parasad Rao*⁴ it was observed that the expression *act purporting to be done* according to one interpretation which is strictly grammatical, takes in part acts as well as future acts. The other interpretation based upon an idiomatic interpretation of the language is that it would be restricted to part acts.

As per section 80(1) of CPC, which reads as save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a

² AIR 2003 SC 1805

³ (1977) 1 SCC 257

⁴ AIR 1957 AP 675

public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after notice in writing has been delivered to or left in the office of-

(a) In the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) In the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway.

(bb) In the case of a suit against the Government of the State of Jammu and Kashmir the Chief Secretary to that Government or any other officer authorized by that Government on this behalf.

(c) In the case of a suit against [any other State Government], a Secretary to that Government or the Collector of the district; and in the case of a public officer, delivered to him or left at this 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.

So far as the expression “any act to be done by such public officer in his official capacity” is concerned takes within its sweep acts as also illegal omission. All acts done or which could have been done under the color or guise by an officer in the ordinary course of his official duties would be included therein.⁵ If the allegations in the plaint relate to an act which was purported to be done by a public officer in his official capacity means that the said act must be such that it could be done ordinarily by a person in the ordinary course of his official duties. It does not cover acts outside the sphere of his duties.⁶ There must be something in the very nature of the act complained of which attaches to the official character of the person doing it.⁷ The test to be applied in these cases is whether the officer can reasonably claim protection for the acts that he commits or that it was performed by him purely in his private or individual capacity. In the case of him claiming protection notice under Section 80 is necessary, and in case it was performed by him purely in his private or individual capacity it is not.⁸

A notice under section 80 of the CPC must be given to, or left at the office of, the appropriate authority specified under the Code.⁹ As per the language of the section, it must be given to the secretary of the department or the collector of the district. Under this section, personal delivery of the notice is not necessary, thus making the words “left at the office” redundant. The section, however, does not prohibit the personal delivery of the notice. It further allows the notice to be sent through registered post.

In the year 1976 section 80 was extensively amended. Through Amendment, subsection (2) and (3) were introduced in the Code. Sub Section 2 is exception to the sub section 1 of Section 80. It specifies that only after seeking the Court’s permission, a suit can be instituted without serving the notice but only in cases where urgent or immediate relief is required. The Court shall return the plaint if it finds that the relief is not urgent and the matter will be dealt as per the procedure and requirements laid down in this section. A bare perusal of sub-section (2) of S. 80, C.P.C. reveals clearly that the grant of leave is left to the judicial discretion of the trial court. The proviso to sub-section (2) clearly states that the court shall, if it is satisfied, after hearing the parties that no urgent or immediate relief need be granted in the suit return the plaint for presentation to it after complying with the requirements of sub-section (1). Where the court considers that there is no such urgency existing or immediate relief cannot be granted, it is within its powers to decline to grant the leave.

The main objective of this subsection is to prevent any failure or miscarriage of justice in urgent cases. It is the urgency and immediate relief which would weigh with the court while dealing with a prayer to dispense with the requirement of notice and not the merits of the case.¹⁰ Subsection (2) however, is enacted in such a way that in this type of case, the court will not have any authority to grant relief, interim or otherwise, unless a reasonable opportunity has been given to the government to show cause in respect of the relief prayed for in the suit.

The Subsection 3 to section 80 gives a lot of clarity on a suit filed against the government if there is a defect in the notice served. In Subsection 3 to section 80 it has been explicitly stated that no suit against the government has been dismissed merely on the ground of defective notice. It also adds that in such a case the name, residence or the residence of the plaintiff is specified in the notice, allowing for the identification of the plaintiff in the notice delivered or left at the authority or public officer and the cause of action and the relief claimed by the plaintiff had been substantially indicated therein. This means that if the notice contained basic details, it would be sufficient. This amendment to the Code was made with the intention that justice is not denied to the aggravated parties on the

⁵ *Samanthalal Koti v. Pothuri Subbiah* AIR 1918 Mad 62

⁶ *Ibid.*

⁷ *State of Maharastra v. Chander Kant* (1977) 1 SCC 257 at p.260

⁸ *Amalgamated Electricity co.(Belagaum) Ltd. v Municipal committee Ajmer* AIR 1969 SC 227

⁹ *State of A.P V. Gundugola Venkata*, AIR 1965 SC 11

¹⁰ C.K .Takwani, *Code of Civil Procedure*, 7th edn., Eastern Book Company, Lucknow

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.

Scope and Basic Object of the Notice

After examining the scheme of the section it becomes clear 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 scrutinise 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 basic object of section 80 is to provide an opportunity to the Government or public officer to consider the legal position and to settle the claim forwarded by the prospective plaintiff if it appears to be just and proper. It is expected from the government unlike private parties to consider the matter objectively and make an appropriate decision in two months after obtaining proper legal advice. It saves public money and time and is in public interest. The section guides the Government or a public officer to negotiate just claims and to settle them if well-founded without adopting an unreasonable attitude by inflicting wasteful expenditure on public exchequer. 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.

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. Section 80, C.P.C. is express and explicit and admits of no implications or exceptions, and it imposes statutory and unqualified obligation on the court to see that its terms are strictly complied with.

In order to understand the objective and concept of Section 80 of the Code of Civil Procedure, 1908, i.e. serving the Government or a Public Servant with a legal notice before instituting a suit against them, it is prudent to discuss the land mark judgement of the Hon'ble Supreme Court in *Bihari Chowdhary V. State Of Bihar*¹¹. In this case the appellants filed a suit for declaration of title and possession of the immovable property. One of the parties against which the suit was instituted was the state government. Antecedent to the institution of the suit, the appellants issued a notice to the State Government under Section 80 of the Code of Civil Procedure, 1908. The appellants/plaintiffs then, without waiting for the statutory period which is given in the provision to end, filed the suit in the Court before the expiry of the time period of 2 months. The representative for the State Government argued that the above-mentioned filed suit was not maintainable in the court of law as the filing of the above-mentioned suit was done before the expiration statutory period of 2 months as given in Section 80 of the Code of Civil Procedure, 1908. The State Government argued that the filing of such a suit is in contravention of the law stated in the Code of Civil Procedure, 1908. The State Government, through its representative persistently stated that as per the law, after the governing bodies have been provided any legal notice under Section 80, 2 months must elapse from the date of the notice before the institution of the suit and the suit was filed before the expiry period of the 2 months and thus the suit is not maintainable and shall be dismissed accordingly. The trial court after listening to the contesting arguments of the State Government through its representative dismissed the suit on the ground that the suit is not maintainable as the suit is filed in contravention to the governing provision. The appellants then approached the appellate court where their appeal was dismissed. Then the appellants also approached the Second Appellate Court, which was the High Court. The High Court also dismissed the appeal filed by the appellants stating that their suit is filed in contravention of the law and thus it is not maintainable. The appellants then approached the Supreme Court with the appeal regarding the maintainability of the suit. The Supreme Court also dismissed the mentioned appeal giving various reasons which are explained below¹²:

1. A suit against the government or a public officer that is subject to the requirement of a prior notice under Section 80 Code of Civil Procedure, 1908 cannot be validly instituted until the expiration of the two-month period following the delivery of the notice in writing to the authorities concerned in the manner prescribed in the said section, and if filed before the expiration of that period, the suit must be dismissed as the following suit is not maintainable as per the law.

¹¹ AIR 1984 SC1043

¹² <https://www.latestlaws.com/latest-caselaw/1984/march/1984-latest-caselaw-66-sc/> (accessed on 25.2..2022)

2. Prior to its amendment by Act 104 of 1976, the effect of Section 80 Code of Civil Procedure, 1908 was to expressly preclude the institution of a suit against the Government or a public person in respect of any act purportedly done by him in his official capacity until two months had passed after notice had been issued. This required requirement is plainly intended to serve the interest of the public.
3. The scheme of the Section reveals that it was enacted as a public policy measure with the goal of ensuring that before a suit is filed against the Government or a public officer, the Government or the public officer intimately involved is given an opportunity to critically analyse the claim in question and, if it is found to be a just claim, to take decisive action, thereby avoiding unnecessary litigation and wasting taxpayers' money.
4. When the wording employed in the statute is clear and unambiguous, it is the Court's straightforward obligation to give lasting effect to it, and hardship will not be a legitimate reason for not faithfully carrying out the legislature's constitutional obligation.

Notice under Section 80 of CPC: A Formality or Is Mandatory?

The serving of notice to the government or the public officer is not merely an empty formality but its mandatory. The sole purpose of serving the notice is to afford a chance to the government or a public officer to take the matter in reconsideration and make amends to the situation if possible. This is done to avoid unnecessary litigation. Such a notice however has become just a formality these days. The administration is often unresponsive and shows no courtesy to intimate the aggrieved party why his claim is not being accepted. In *State of Punjab v. Geeta Iron and Brass Works Ltd.*,¹³ Krishna Iyer J. had stated that, "We like to emphasize that Governments must be made accountable by Parliamentary social audit for wasteful litigation expenditure inflicted on the community by inaction. A statutory notice of the proposed action under S. 80 C.P.C. is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now S. 80 has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing s. 80 in the Code despite the Central Law Commission's recommendations for its deletion." Thus, the Courts should award heavy cost against the Government if no replies or evasive replies are given despite nomination. Appropriate action should be taken against the nominated officer. In *State of A.P. v. Gundugola Venkata*¹⁴, the Supreme Court had observed that, "The section is imperative and must undoubtedly be strictly construed: failure to serve a notice complying with the requirements of the statute will entail dismissal of suit."

In the case of *State of Maharashtra v. Chander Kant*,¹⁵ it was held by the Supreme Court that, "the notice has to be given compulsorily in all the cases regarding the first class of cases." The section needs to be strictly complied with. It is explicit in its meaning and does not admit of any exceptions. The language of the section is imperative and debars a court from entertaining a suit without compliance with its provisions. As already stated, it is not merely a procedural provision but also a substantive one.

Similarly in *State of A.P. v. Pioneer Builders, A.P.*,¹⁶ the Supreme Court held that service of notice under Section 80 is a condition precedent for the institution of a suit against the Government. The Supreme Court further observed that the object of Section 80 is the advancement of justice for securing public good by avoidance of unnecessary litigation.

In the year 2013, again the Supreme Court in *State of Kerala v. Sudhir Kumar Sharma*,¹⁷ observed that a suit filed without compliance of Section 80(1) of the Code of Civil Procedure cannot be regularized by simply filing an application under Section 80(2) of the Code of Civil Procedure. It was also held in *Jaideep Dhillon v. State of Punjab*¹⁸ that : "The rights under Section 80 of the Code are not merely procedural in nature but are substantive as well." The sole purpose of this section is to bring an end to the litigation process or afford restitution without recourse to a court of law. When a notice has been issued to the government or the public officer, they should take up the notice with utmost seriousness. 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."

¹³ (1978) 1 SCC 68 ,(Special Leave Petition (Civil), No. 1781 of 1977)

¹⁴ AIR 1965 SC11

¹⁵ 1977 AIR 148, 1977 SCR (1) 993

¹⁶ (2006) 12 SCC 119

¹⁷ (2013) 10 SCC 178

¹⁸ CWP No.6575 of 2016 ,2016(4)SCT632

Very recently on 4th June 2021, a single member bench consisting of *Hon'ble Mr. Justice J.R. Midha* while adjudicating the case of *Juhi Chawla & Ors. V. Science and Engineering Research Board & Ors.*¹⁹ dealt with section 80(1) of the CPC. The Court said that the notice under Section 80(1) of the Code of Civil Procedure to the Government is mandatory before institution of the suit against the Government. The object of the notice under Section 80(1) is to give an opportunity to the Government to reconsider the matter and to make amends and settle the claim out of Court. Section 80 was enacted for the advancement of justice for securing public good by avoidance of unnecessary litigation.

Non Compliance with the Provisions of Sec.80: Effect

As stated above that the notion of Section 80 of CPC is to provide the Government or the public officer a time to understand the problem or the grievance and act upon it instead of directly getting sued. There is no denying the fact that the courts exist such that all individuals may receive justice, but the courts are overburdened with cases. So, in that case, if providing the Government or the public officer some time to rectify the grievance helps in lowering the burden of the court, then, in that case, Section 80 of the Code of Civil Procedure, 1908, that talks about legal notices to the Government and public officer is a really helpful accessory in order to get the needful done by the Government or public officer without the interference of long and monotonous legal proceedings. But unfortunately the underlying object of section 80 of Civil Procedure Code, 1908 gets totally defeated when such notices remained unanswered. In reality there may not be much instances where the Union or State Government or public Officer as the case may be cared to consider the notice in its spirit, acknowledge its receipt and tried to settle the dispute amicably²⁰. Gross inaction from the State /Union concerned was subjected to harsh criticism by Hon'ble Supreme Court in umpteen numbers of cases²¹:

“ Government must be made accountable by the Parliamentary Social Audit for wasteful legislative expenditure inflicted on the community by inaction. A statutory notice under Sec.80 is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Sec.80 now has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing Sec.80 in the Code, despite the Central Law Commission's recommendations for its deletion.²² A litigative policy for the State involves settlement of Governmental disputes with citizens in a sense of conciliation, rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officers to take steps to compose disputes rather than to continue them in court. Much of the litigation in which Governments are involved adds to the case load accumulation in courts, for which there is public criticism.....”²³

The Hon'ble Justice **C.K.Takwani** in his book Code of Civil Procedure published by Eastern book Company has specifically mentioned that by and large Governments have not utilised the chance to settle the claims and in most of the cases they used this provision only as a defense either that no notice has been served or that the notice given didn't consent to the necessities of the section.

Sec.80 of CPC is based on colonial comfort, wherein the King, the Supreme infallible cannot be sued without notice, how glaring the injustice is. We continued with the same legacy with the very same mindset. No State /public officer will respond to the so called 'statutory notice' nor will amend or settle the disputes out of court, and will merrily waste the public money, suffer the plight and “discharges his official duty” duly and diligently unless and until his accountability is fixed. Sec.80 of CPC needs a through consideration. An effective mechanism which guarantees the effect of compliance and non compliance with the provisions of Sec.80 should be provided. The State /public officer shall be made answerable to the notice without fail. Apart from the question of compliance, the true account of amends transpired in furtherance of the notice also shall form part of the records. The State / public officer shall be answerable for the non-settlement of the dispute within the statutory period of two months or at least the reasons for such inability should come out. It is not harsh but necessary that the pleadings of the State / public officer at fault have to be struck off.. No suit shall fail for want of Sec.80 CPC notice, if the grievance is prima-facie found to be genuine. A majority of civil disputes with the State / public officer is the outcome of absence of due amends or conciliation. If the provisions of Sec.80 are made effective, it would definitely bring better results.

Opinion of the Law Commission of India

Initially the Law Commission was not in favour of this provision. The reason behind this unsatisfaction were the hardships involved in a large number of cases where an urgent relief was needed. There was evidence which

19 CS(OS) 262/2021 & I.A. Nos.6904/2021, 6906/2021, 6907/2021, 6908/2021

²⁰ Law Commission of India Report 1988,

²¹ 1978 AIR 1608, 1979 SCR (1) 746

²² Law Commission of India 14th Report P.475; 27th Report Pp.21-22

²³ *Ibid*

revealed that in a number of cases the Government or the public officer made no use of the opportunity provided to them. In Law Commission's 14th Report, on page numbers 475-476, in various cases, public officers or the Government has utilized this provision as a technical defence in a number of cases, this objection has been upheld by the court defeating the just claims of the citizens. The notices also go unanswered. The matter was again considered by the Third Law Commission in the 27th Report where it was duly noted that it was unable to find a parallel provision in any other country which is governed by the Anglo-Saxon system of law. Para 3.7 of the Law Commission's 126th Report, 1988 mention that:

“it is almost a universally accepted view that notice under section 80 has become a trap for the unwary.²⁴ The constitutional validity of section 80 was upheld on the ground that Government is a class by itself. But the criticism against the misuse of section 80 had become so pungent at the hands of court that an amendment was introduced to section 80 in the year 1976 to the effect that a suit to obtain an 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 may be instituted with the leave of the court without serving any notice as required by sub-section (1) of section 80.

This amendment was necessitated by the unsavoury practice hereinabove referred to. To what ridiculous length the defence based on section 80 can be carried can be illustrated by pointing out that a suitor served notice under section 80, CPC for the intended suit but on the last day of the expiry of the notice he died and his heirs and legal representatives brought the suit basing the claim on the same notice. The Union of India contended that as the plaintiff and legal representatives themselves had not served the notice under section 80, the suit is not maintainable.

And unfortunately, this contention found favour with the High Court. Reversing the decision, the Supreme Court pointed out that the whole object of the notice contemplated by section 80 is to give to the concerned Government and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised, without litigation.

The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and the Government and the public officer should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigation. The purpose of law is advancement of justice,²⁵ In spite of this, this contention is vigorously pursued. The court was compelled to point out that as far as possible no proceedings in a court of law should be allowed to be defeated on mere technicalities.²⁶

The court, after referring to the recommendation of the Law Commission²⁷ for deletion of section 80 on the ground that it has practically outlived its utility and, instead of advancing justice, has become a trap for the unwary, reiterated the view that the section requires to be deleted.²⁸ Having reviewed all this case law, the Law Commission again recalled and reiterated its earlier recommendation to delete section 80.”²⁹

Para 3.11 and 3.13 further says that “ if section 80 of CPC is still to retain its place in the statute book, the approach to the notice on behalf of the Government, public officer or public sector undertaking has to undergo a total and basic change. On the receipt of the notice, the party serving the notice must forthwith be informed that the point raised by him is under consideration and a decision will be taken as early as possible”.

“When a defence is taken that the statutory notice is not served or that the notice is defective in form, the court should inquire into the conduct of the concerned department and the concerned officer to ascertain what steps they took before the initiation of the legal action to avoid the litigation. If it is contended that the suit is bad for want of notice, which comprehends that the notice given is invalid, before non-suiting the suitor by upholding the defence, a detailed inquiry be made that if the defective notice was shown to have been served, what steps were taken by the Government to remedy them.”

CONCLUSION

The basic object behind serving a notice under Section 80 of CPC is to afford the Government: Central or State, an opportunity to reconsider the legal position, and to settle the claim without litigation, if so advised, or to afford restitution without recourse to a court of law. The section is explicit and mandatory and admits of no exceptions.

²⁴ *State of Punjab v. Gita Iron & Brass Works Ltd.*, (1978) 1 SCC 68.

²⁵ *Raghunath Das v. Union of India*, AIR 1969 SC 674.

²⁶ *Ghanshyam Dass v. Dominion of India*, (1984) 3 SCC 46.

²⁷ Law Commission of India 54th Report on the Code of Civil Procedure, 1908.

²⁸ *D.R. Jerry v. Union of India*, AIR 1974, SC 130 (135-136)

²⁹ Law Commission of India 100th Report, Chapter II, para. 2.15

Unfortunately, it is generally observed that not taking this notice seriously has become a common norm and practice in government offices. The notice under section 80 has become, for the plaintiff, only a matter of legal formality and for the government, its absence a legal lacuna, for raising preliminary objection for the rejection of the suit. The underlying object of section 80 of Civil Procedure Code, 1908 gets totally defeated when the official department does not avail this opportunity to either redress the grievance of the prospective plaintiff, if the same is genuine, or give suitable reply explaining the government's stand so as to make that person examine his claim again. If timely and suitable reply is given then majority of unnecessary litigation can be avoided or area of dispute and controversy can be restricted. But the apathetic and indifferent attitude of government and its functionaries to the objective of this provision has not only increased the pendency of avoidable litigation wasting courts' valuable time and public exchequers money but adds to the vows of the public in search of justice and relief. Due to the frustration caused by delay in delivery of justice, the public eventually loses faith and trust in the system in particular and concept of State in general. Therefore, it is now high time that the government and its functionaries be made to realize the importance and value of this salutary provision.

If section 80 of CPC is still to retain its place in the statute book, the approach to the notice on behalf of the Government, public officer or public sector undertaking has to undergo a total and basic change. On the receipt of the notice, the party serving the notice must forthwith be informed that the point raised by him is under consideration and a decision will be taken as early as possible. This should be done keeping in view the injunction of the Supreme Court that: 'the legislative intention behind that section, in our opinion, is that public money and time should not be wasted on unnecessary litigation and the Government and the public officer should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigation. The purpose of law is advancement of justice. The provisions in section 80, Civil Procedure Code, are not intended to be used as booby traps against the ignorant and illiterate persons.' If this warning is not heeded, the fate that might befall section 80 is not in doubt.³⁰

There is no denial to the fact that by number of cases, union government, state governments and various government statutory bodies are, collectively, the largest litigant in the Indian courts. Are these really the unavoidable cases that needed adjudication in the court of law? Answer is emphatic "No". In majority of the cases, either filed by or against government or statutory bodies, the matter in issue could have been settled at pre-litigation stage, had the officer-in-charge acted timely in order to resolve the controversy leading to the litigation. No one in the government or statutory body is interested to take this responsibility. Unfortunately, we have reached the situation where one is not answerable for omission to act but is always answerable for the action one takes. Besides, the indifferent and lackadaisical approach of the courts towards the cases involving government or statutory authority also causes delay in disposal of the case thereby adding to the high pendency and backlog in the courts.³¹ The Hon'ble Supreme Court, in its celebrated case *Salem Advocate Bar Association v. Union of India*³² has dealt with this issue. The apex court observed as under:

".....The two months period has been provided for so that the Government shall examine the claim put up in the notice and has sufficient time to send a suitable reply. The underlying object is to curtail the litigation. The object also is to curtail the area of dispute and controversy.

.....Wherever the statutory provision requires service of notice as a condition precedent for filing of suit and prescribed period therefore, it is not only necessary for the governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice.

.....Judicial notice can be taken of the fact that in large number of cases either the notice is not replied or in few cases where reply is sent, it is generally vague and evasive..... It not only gives rise to avoidable litigation but also results in heavy expense and cost to the exchequer as well. Proper reply can result in reduction of litigation between State and the citizens.....

There is no accountability of the Government, Central or State or the statutory authorities in violating the spirit and object of Section 80. These provisions 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, we direct all concerned governments, Central or State or other authorities..... to nominate, within a period of three months, 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 legislationif the Court finds that either the

³⁰ 126th Report of Law Commission of India, 1988 Para 3.11

³¹ Vivek B. Sharma, Government Cases: The Speed Breakers on Road to Success,

https://ujala.uk.gov.in/files/Article_1.pdf

³² (2005) 6 SCC 344



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 and direct it to take appropriate action against the concerned officer including recovery of costs from him.”

In view of the direction of the Apex court in *Salem Advocates Bar Association case*, now it is legal duty of every court to examine this point of non-reply or evasive-reply and pass appropriate order of exemplary costs and appropriate action against the concerned officer so that message of accountability is permeated to all levels. Utmost importance and care must be taken to ensure that the government or public officials are brought up to task if they have committed any wrongdoing. By doing so, nobody will be held above the law.