Subject Name: Civil Procedure Code
Topic Name: Suit by or against Government

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Introduction

Sections 79 to 82 and Order 27 of the Code provide the procedural framework for suits involving the Government or public officers. However, these provisions primarily address procedural aspects and mechanisms, rather than the substantive rights and liabilities that the Government may enforce or be subject to. The determination of substantive rights is guided by the provisions of the Constitution.

Section 80 of the Code establishes a procedural requirement stipulating that no suit can be initiated against the Government or a public officer until a statutory notice, as mandated by the section, is served.

This section delineates two categories of cases:
1. Suits against the Government.
2. Suits against public officers concerning acts performed or purported to be performed by them in their official capacity.

In cases falling under the first category, the notice is obligatory in all instances. However, concerning the second category, notice is only required if the suit pertains to an act purportedly executed by the public officer in the discharge of their duty, and not otherwise.

Statutory Notice in Government Suits

In typical civil suits, which involve disputes between individuals, the plaintiff is not required to provide prior notice to the defendant before initiating legal proceedings. However, Section 80 of the Code stipulates that no suit can be filed against the Government or a public officer for any action purportedly carried out in their official capacity until two months have elapsed following the delivery or submission of a written notice to the relevant authority.

In matters concerning railways, notice should be given to a Secretary appointed by the Government of the State of Jammu and Kashmir, or to the General Manager of the relevant railway.

In suits related to the Government of the State of Jammu and Kashmir, notice must be delivered to the Chief Secretary of the Government or to another authorised officer designated by the Government.

In suits against any other State Government, notice should be served to the Secretary of the respective Government or to the Collector of the district.

In cases involving public officers, notice must be given to the concerned public officer.

Object of Notice in Government Suits

The primary objective behind Section 80 is to provide the Government or a public officer with an opportunity to assess the legal merits of a claim and potentially settle it if it appears to be just and reasonable.

Unlike private parties, the Government is expected to objectively and impartially evaluate the matter, seek appropriate legal counsel, and make decisions in the public interest within the two-month period mandated by the section.

This serves to save both time and taxpayer money by preventing needless litigation. The legislative intent is to ensure that public funds are not squandered on unnecessary legal battles.

The provision of notice is intended to prompt the Government or public officer to engage in negotiations for a fair settlement or, at the very least, to explain to the potential plaintiff why their claim is being contested.

In the case of Bihari Chowdhary v. State of Bihar, the Supreme Court emphasised the purpose of the provision, stating that it is a measure of public policy aimed at allowing the Government or the relevant officer to scrutinise the proposed claim and, if deemed just, take prompt action to settle it, thereby avoiding protracted litigation and saving public resources.

The Government's obligation differs from that of private parties, as it is expected to objectively assess the claim, seek legal advice as necessary, and make decisions in the public interest within the stipulated two-month timeframe.

The overarching goal of this mandatory provision is to promote justice and the public good by minimising unnecessary legal disputes.

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Essentials of Section 80 CPC

A notice issued under Section 80 must include:

(i) The name, description, and place of residence of the person providing the notice.
(ii) A statement outlining the cause of action.
(iii) The relief sought by the plaintiff.

When determining whether the essential requirements of the section have been met, the court should consider the following questions:

(i) Has the notice provided adequate information to allow the authorities to identify the person issuing the notice?
(ii) Have the cause of action and the relief sought by the plaintiff been sufficiently detailed?
(iii) Has the written notice been delivered to or left at the office of the appropriate authority as specified in the section?
(iv) Has the suit been initiated after the expiration of two months following the delivery or submission of the notice, and does the plaint include a statement confirming that such notice has been provided as required?

A statutory notice holds significance beyond mere formality. Its purpose is to provide the Government or a public officer with an opportunity to reconsider the matter in light of established legal principles and make a decision in accordance with the law.

However, in practice, such notices have often become empty formalities. The administration frequently remains unresponsive and fails to even inform the aggrieved party why their claim has been rejected.

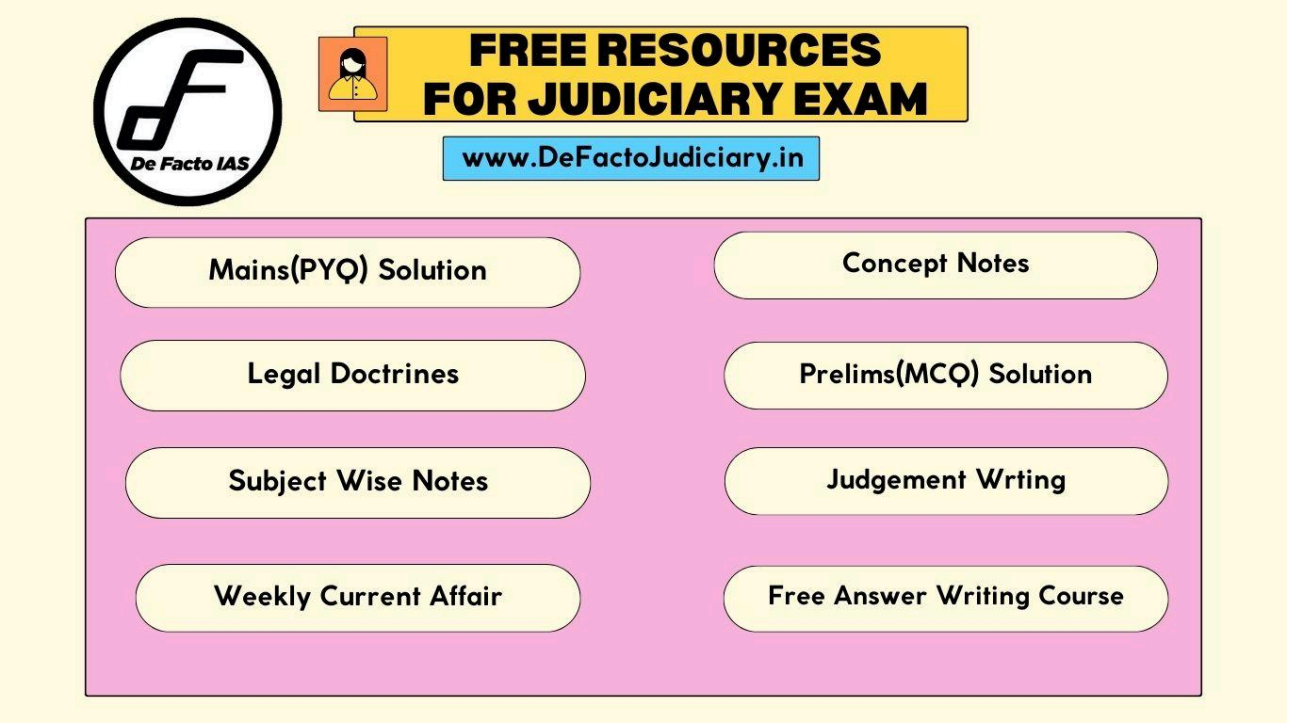
In the case of ***State of Punjab v. Geeta Iron & Brass Works Ltd***., Justice Krishna Iyer emphasised the need for accountability of Governments regarding wasteful litigation expenses

borne by the community due to governmental inaction. He highlighted that the statutory notice under Section 80 of the CPC is meant to prompt the State to negotiate a fair settlement or, at the very least, to explain to the affected party why their claim is being resisted.

However, Section 80 has become more of a ritual due to the administration's lack of responsiveness, despite recommendations from the Central Law Commission for its removal from the Code.

Justice Krishna Iyer further noted that opportunities for dispute resolution through arbitration are often missed due to governmental inaction. He advocated for a litigative policy that prioritises conciliation over confrontation, suggesting that it should be a directive for the State to empower its legal officers to resolve disputes rather than prolonging them in court.

These observations are made in light of the criticism faced by Governments for contributing to the accumulation of cases in courts, leading to wastage of public funds and delaying the resolution of cases deserving attention. It is hoped that a more responsive approach to governmental litigation will help avoid unnecessary expenditure and expedite the judicial process for cases that warrant prompt attention.



Waiver of Notice

While the issuance of a notice under Section 80 is obligatory and serves as a prerequisite for initiating a suit, it's important to note that this provision is procedural rather than substantive. It does not impact the jurisdiction of the court. The notice requirement exists primarily for the benefit of the Government or public officer involved.

Consequently, it is within the discretion of the Government or public officer to waive this requirement. Whether such waiver has occurred in a particular case depends on the specific circumstances and would be subject to examination by the court if raised during proceedings.

Act purporting to be done in Official Capacity

The phrase "any act purporting to be done by such a public officer in his official capacity" encompasses both actions and omissions, including those that are illegal. It applies to both past and future actions, as well as those that could have been performed under the guise of official duties. If the allegations in the plaint involve an action purportedly undertaken by a public officer, regardless of the relief sought, Section 80 mandates the issuance of a notice.

Furthermore, an "act" doesn't necessarily refer to a specific, isolated action but can encompass a series of actions. Additionally, the term "acts purporting to be done" encompasses both misfeasance and nonfeasance, meaning both wrongful actions and failures to act.

However, these acts must be carried out in good faith and be related to the officer's official duties. The phrase implies that the act should fall within the scope of duties ordinarily performed by the officer. It does not cover actions outside the realm of these duties. There must be a connection between the nature of the act and the official role of the person performing it.

The determining factor is whether the officer can reasonably argue that the act was carried out within the scope of their official duties. If so, a notice under Section 80 is required; if not, it is not necessary.

Procedure in Government Suits

In suits involving the Government, the plaint or written statement must be signed by an individual appointed by the Government who possesses knowledge of the case's facts. Those authorised to act on behalf of the Government are recognized as agents under the Code. A Government Pleader is authorised to accept summons on behalf of the Government.

Additionally, a counsel representing the State is not required to file a vakalatnama. The Government should be granted reasonable time for submitting a written statement. Moreover, in all suits against the Government or public officers, the court is obligated to facilitate settlement negotiations.

It's important to note that the procedural rules outlined in Order 27 pertain specifically to the Government and do not extend to instrumentalities or agencies considered part of the "State" under Article 12 of the Constitution of India.

Order 27-A mandates that in suits or appeals involving substantial questions of law related to the interpretation of the Constitution, the court must notify the Attorney General for India if the issue pertains to the Central Government, and the Advocate General of the State if it involves the State Government.

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