

LAW OF
NOTICE U/S 80 CPC
[Sec. 80 r/w. Or. 27 CPC]

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1. **Object of notice u/s. 80 CPC**---- The object of the notice contemplated by Sec. 80 CPC is to give to the concerned Governments 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 Officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. The provisions in Sec. 80 are not intended to be used as boobytraps against ignorant and illiterate persons. See---

1. **Vithalbhai (P) Ltd. vs. Union Bank of India, (2005) 4 SCC 315**
2. **Raghunath Das vs. Union of India, AIR 1969 SC 674**
3. **B.R. Sinha vs. State of M.P., AIR 1969 SC 1256 (Three-Judge Bench)**
4. **The State of A.P. vs. G.V. Suryanarayana, AIR 1965 SC 11**

5. **Gaja vs. Dasa Koeri, AIR 1964 All 471**

2. **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. See---

1. **B.R. Sinha vs. State of M.P., AIR 1969 SC 1256 (Three Judge Bench)**
2. **The State of A.P. vs. G.V. Suryanarayana, AIR 1965 SC 11**
3. **Dominion of India vs. Purshottam Das, AIR 1961 All 176**

3. **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. See--- **Islamia Junior High School vs. State of U.P., AIR 1986 All 92**

4. **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. See---

1. **Qamaruddin vs. Union of India, AIR 1982 All 169**
2. **B.R. Sinha vs. State of M.P., AIR 1969 SC 1256 (Three Judge Bench)**
3. **The State of A.P. vs. G.V. Suryanarayana, AIR 1965 SC 11**
4. **Amar Nath Dogra vs. Union of India, AIR 1963 SC 424 (Five Judge Bench)**

5. **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. See--- **The State of A.P. vs. G.V. Suryanarayana, AIR 1965 SC 11**

6. **Mode of interpretation of notice u/s. 80 CPC---** Though the terms of Sec. 80 CPC are to be strictly complied with, it does not mean that the terms of the notice should be scrutinized in a pedantic manner or in a

manner completely divorced from common sense. A little common sense must be imported in the notices u/s. 80 CPC. See---

1. **State of Madras vs. C.P. Agencies, AIR 1960 SC 1309**

2. **Dhian Singh Sobha Singh vs. Union of India, AIR 1958 SC 274**

7. **Suit for compensation against Railway administration & Sec. 80**

CPC--- Interpreting the provisions of Sec. 79 & Sec. 80 CPC, it has been held by Supreme Court that in a suit for compensation against railway administration, Union of India deserves to be impleaded as a necessary party and the provisions of Sec. 80 CPC are then applicable to such suits. See--- **State of Kerala vs. G.M., Southern Railway, Madras, (1977) 1 SCR 419**

8. **Non-impleadment of state and consequences thereof**--- Where a suit by the daughters of a Bhoomidhar for declaration that the orders passed by the authorities were illegal, it has been held by the Supreme court that the suit was not maintainable for want of impleadment of state as party and notice u/s. 80 CPC. See--- **Sooraj vs. S.D.O., AIR 1995 SC 872**

9. **Public Officer**--- According to Sec. 2(17) CPC, “public officer” means a person falling under any of the following descriptions, namely---

- (a) every Judge;
- (b) every member of an All India Service;
- (c) every commissioned or gazetted officer in the military, naval air forces of the Union, while serving under the Government;
- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in

the Court, and every person especially authorized by a Court of Justice to perform any of such duties;

- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- (f) every officer of the Government whose duty it is as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- (g) every officer whose duty it is, as such officer, to take, receive, keep or expand any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
- (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty.

Interpreting the provisions of Sec. 2(17)(h) of the CPC, it has been held by the Supreme Court that the Coal Mines Provident Fund Commissioner is a public officer and suit filed against such officer without notice u/s. 80 CPC is not maintainable. See--- **Coal Mines Fund Commissioner vs. Ramesh Chandra Jha, AIR 1990 SC 648**

10. Government Pleader (Sec. 2(7) r/w. Or. 27, r. 8-B CPC---
“Government Pleader” includes any officer appointed by the State

Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.

11. Notice to Govt. Pleader (DGC) of the application u/s. 80(2) CPC seeking exemption from two months prior notice--- Before disposing of the application moved u/s. 80(2) CPC seeking extension from two months prior notice, the court must issue notice to DGC (Civil) for objections and hearing upon the application moved by plaintiff u/s. 80(2) of the CPC. Before according permission u/s. 80(2) CPC to the plaintiff to institute suit against the Union of India or the State observance of the principles of natural justice i.e. ‘audi alteram partem’ is necessary. The DGC (Civil) representing the Union of India or the State cannot be deprived of his valuable right of objection and hearing on the application of the plaintiff moved u/s. 80(2) CPC for exemption from two months prior notice. Non issue of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God “where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat”. See--- **Suresh Chandra Nanhorya vs. Rajendra Rajak, 2006 (65) ALR 323 (SC)**

12. 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. See--- **Bishan Dayal vs. State of Orissa, (2001) 1 SCC 555**

13. Agent for Government to receive process (Or. 27, r. 4 CPC)----

The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

14. Second notice u/s. 80 CPC not required after withdrawal of first suit u/o. 23, r. 1 CPC--- Where the suit was filed against Government after notice duly issued u/s. 80 CPC and thereafter the same was withdrawn by the plaintiff u/o. 23, r. 1 CPC with the permission of court to file fresh suit based on the same cause of action, it has been held by the Supreme Court that fresh notice u/s. 80 CPC before the institution of the second suit was not necessary. See--- **Amar Nath Dogra vs. Union of India, AIR 1963 SC 424 (Five Judge Bench)**

15. Waiver of notice u/s. 80 CPC---- Notice u/s. 80 CPC can be waived by the authorities concerned. Waiver can be inferred even from non appearance and absence of written statement. See---

1. **Bishandayal vs. State of Orissa, (2001) 1 SCC 555**
2. **Gaja vs. Dasa Koeri, AIR 1964 All 471**

16. Third party cannot object about notice u/s. 80 CPC ----If a notice u/s. 80 CPC has been waived by the authorities concerned, it is not open to any other party to the suit to urge want of notice u/s. 80 CPC against the maintainability of the suit. See--- **Gaja vs. Dasa Koeri, AIR 1964 All 471**

17. Impleadment of state during pendency of suit and notice u/s. 80 CPC--- Where suit by plaintiff against auction purchaser of land from Gaon Sabha was filed for possession and injunction but the State Govt. was not impleaded as party though it was a necessary party and notice u/s. 80 CPC

was not issued to State Govt. and no exemption from notice was obtained, it has been held that suit was not maintainable for want of notice u/s. 80 CPC. See--- **Sri Ram vs. Smt. Mullo, 1979 ALR (5) 374 (All)**

18. 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. See—**Ghanshyam Dass vs. Dominion of India, AIR 1984 SC 1004**

19. 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. See--- **U.R. Agarwal vs. Brahm Singh, AIR 1976 All 243**

20. Notice u/s. 80 CPC to state alone and not to the public officer-- not fatal--- Where the plaintiff had filed suit against state for injunction claiming possession over the disputed land and two months prior notice u/s. 80 CPC was given only to the state and not to the public officer (Block Development Officer) against whose interference the injunction was sought, it has been held by the Supreme Court that the suit against public

officer/BDO cannot be dismissed for want of notice u/s. 80 CPC to him.
See--- **Ghulam Rasool vs. State of J & K, AIR 1983 SC 1188**

21. Representative suit and notice u/s. 80 CPC--- There is nothing in Sec. 80 or O. 1, r. 8 CPC which requires that a person who seeks to institute a suit in a representative capacity must establish that he had obtained sanction of the persons interested on whose behalf the suit is proposed to be instituted, and when it is to be instituted against the Government or against a public officer, before serving the notice he must, besides obtaining the authority from all the persons so interested, set out in the notice the names, descriptions and places of residence of all the persons sought to be represented by him. **To enable a person to file a suit in a representative capacity for and on behalf of numerous persons where they have the same interest, the only condition is the permission of the Court.** There is nothing in Sec. 80 CPC also that notice of a proposed suit in a representative capacity may be served only after expressly obtaining the authority of persons whom he seeks to represent. Sec. 80 CPC requires that the name, description and place of residence of the plaintiff must be set out in the notice and not of persons whom he seeks to represent. A suit filed with permission to sue for and on behalf of numerous persons having the same interest under O. 1, r. 8 CPC is still a suit filed by the person who is permitted to sue as the plaintiff, the persons represented by him do not in virtue of the permission become plaintiffs in the suit. Such other persons would be bound by the decree in the suit, but that is because they are represented by the plaintiff, not because they are parties to the suit unless by express order of the court they are permitted to be impleaded. See--- **The State of A.P. vs. G.V. Suryanarayana, AIR 1965 SC 11**

22. 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. See--- **Bihari Chowdhary vs. State of Bihar, (1984) 2 SCC 627**

23. Resjudicata and notice u/s. 80 CPC--- Where the plaintiff's cause of action is against a Government and the plaint does not show that notice u/s. 80 CPC claiming relief was served in terms of the said section, it would be the duty of the Court to **reject the plaint** recording an order to that effect with reasons for the order. In such a case the Court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presenting a **fresh plaint in respect of the same cause of action**. But, where the plaint on the face of it does not show that any relief envisaged by Sec. 80 CPC is being claimed, it is the duty of the Court to go into all the issues which may arise on the pleadings including the question as to whether notice u/s. 80 was necessary. If the Court decides the various issues raised on the pleadings, the adjudication of the rights of the parties, apart from the question as to the applicability of Sec. 80 of the CPC and absence of notice thereunder **operates as resjudicata** in subsequent suit where the identical questions arise for determination between the same parties. See--- **Gangappa Gurupadappa Gugwad vs. Rachawwa, AIR 1971 SC 442**

24. Court to award heavy cost against state in case of non reply to notice u/s. 80 CPC--- All Government officers are bound to ensure proper reply to notice u/s. 80 CPC within two months. In case of default of the said duty of reply to notice, courts should ordinarily award **heavy costs** against the Government. See--- **Salem Advocates Bar Association vs. Union of India, (2005) 6 SCC 344 (Three Judge Bench)**

25. Courts to direct for appropriate action against the officers defaulting in reply to the notice u/s. 80 CPC--- In case of non reply by the

officers of the government to the notice u/s. 80 CPC within two months, the courts must direct the government to take appropriate action against the officer concerned. Deprecating the conduct of defaulting officers of the government in non sending of the reply to the notice u/s. 80 CPC, the Supreme Court has issued directions to the Central and State Governments to take appropriate action against the defaulting government officers. See--- **Salem Advocates Bar Association vs. Union of India, (2005) 6 SCC 344 (Three Judge Bench)**

26. Person issuing notice and person filing the suit must be the same----- Person issuing notice to Government u/s. 80 CPC and the person who files the suit must be the same. But if the person issuing the notice is well identifiable with the person filing the suit (as in the case of proprietor of a firm and the firm itself as plaintiff), then the notice issued by the proprietor in the name of the firm will not be defective or invalid. See---

1. **Ghanshyam Das vs. Dominion of India, (1984) 3 SCC 46**
2. **Raghunath Das vs. Union of India, AIR 1969 SC 674**
3. **B.R. Sinha vs. State of M.P., AIR 1969 SC 1256 (Three Judge Bench)**
4. **Dominion of India vs. Purshottam Das, AIR 1961 All 176**
5. **S.N. Dutt vs. Union of India, AIR 1961 SC 1449**
6. **Registrar Cooperative Societies, Lucknow vs. Beni Prasad Halwasia, 1990 (1) ARC 451 (All—L.B.)**

27. 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. See--- **State of A.P. vs. M/s. Pioneer Builders, 2006 (65) ALR 630 (SC)**

28. Stages of raising objection regarding validity of notice u/s. 80 CPC--- Where plea regarding lack of validity of notice u/s. 80 CPC was taken in original W.S. and the plaint was subsequently amended but no further plea regarding notice u/s. 80 CPC was taken in amended W.S., it has been held that not taking up the plea in amended W.S. regarding notice u/s. 80 CPC did not amount to waiver of the requirement of a valid notice u/s. 80 CPC. See--- **Bishandayal vs. State of Orissa, (2001) 1 SCC 555**

29. Revision against refusal of leave u/s. 80(2) CPC---- Revision against an order passed u/s. 80(2) CPC refusing permission to file suit is maintainable. See--- **M/s. Bajaj Hindustan Sugar & Industries Ltd. vs. Balrampur Chini Mill Ltd., AIR 2007 SC 1906**

30. Infructuous revision against non-issue of notice u/s. 80 CPC--- Where the revisional court (High Court) u/s. 115 CPC had decided the revision against non issue of notice u/s. 80 CPC on its merits though the suit was dismissed during the pendency of revision, the Supreme Court has held that the revisional court (High Court) committed error in deciding the revision. See--**Ram Kumar vs. State of Rajasthan, AIR 2009 SC 4**

31. Corporations & necessity of notice u/s. 80 CPC--- Corporations like U.P. State Handloom Corporation, Electricity Board or Food Corporation of India or any other statutory corporation are instrumentality of government for purposes of 'State' within the meaning of Article 12 of the Constitution. It nevertheless would not answer description of 'government' as understood in law. Thus U.P. State Handloom Corporation Ltd. not being the state government within the meaning of Sec. 80 CPC, issuance of notice u/s. 80

CPC would not be mandatory. See--- **U.P. State Handloom Corporation Ltd. vs. Prem Sagar Jaiswal, 2008 (6) ALJ 150 (All)(L.B.)**

32. Electricity Board & necessity of notice u/s. 80 CPC--- Corporations like U.P. State Handloom Corporation, Electricity Board or Food Corporation of India or any other statutory corporation are instrumentality of government for purposes of 'State' within the meaning of Article 12 of the Constitution. It nevertheless would not answer description of 'government' as understood in law. Thus U.P. State Handloom Corporation Ltd. not being the state government within the meaning of Sec. 80 CPC, issuance of notice u/s. 80 CPC would not be mandatory. See--- **U.P. State Handloom Corporation Ltd. vs. Prem Sagar Jaiswal, 2008 (6) ALJ 150 (All—L.B.)**

33. Notice u/s 80 CPC to municipal council not required before filing suit : Notice u/s 80 CPC to municipal council is not required before filing a suit against it as the same is not a public officer. See : **City Municipal Council, Bhalki Vs. Gurappa, (2016) 2 SCC 200.**

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