

A TAPESTRY OF EVOLUTION OF THE CONCEPT OF NOTICE UNDER SECTION 80: A CRITICAL AND JUDICIAL ANALYSIS

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ABSTRACT

This paper undertakes a critical exploration of Section 80 of the Code of Civil Procedure, 1908 (CPC), in India, specifically focusing on the mandatory two-month notice period required before initiating a suit against the government or a public officer. It examines the underlying rationale of this provision, namely, fostering amicable settlement and reducing litigation burden, and juxtaposes it against the potential hurdles for aggrieved citizens seeking timely justice. Through a close examination of judicial pronouncements, the paper deconstructs the evolution of Section 80, highlighting key landmarks in its interpretation. It sheds light on the ongoing judicial debate regarding the scope and applicability of the section, particularly in contexts where expeditious remedies are crucial, such as human rights violations or environmental degradation. Building upon this analysis, the paper delves into the practical challenges that the two-month notice period presents. These include the potential for administrative delays, difficulties in determining the correct authority to serve the notice, and the possible misuse of the provision by the government to stall legitimate claims. Finally, the paper proposes nuanced considerations for reforming Section 80 to achieve a delicate balance between facilitating amicable settlements and safeguarding the right to swift judicial redressal. It explores alternative mechanisms, such as mandatory mediation or pre-litigation conferences, that could potentially expedite resolution while upholding principles of fairness and accountability. This paper, in conclusion, aims to serve as a comprehensive and critical examination of Section 80 of the CPC, offering valuable insights into its historical context, judicial nuances, and practical implications. It seeks to contribute to the ongoing discourse on balancing the interests of the State with the fundamental right to access to justice, thereby paving the way for a more streamlined and equitable legal framework in India.

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INTRODUCTION

The Indian legal system is a complex web of customs and laws, and one of the main pillars is the civil suit system, which is used to file lawsuits and seek compensation for wrongs. Order 6 Rule 11 of the Code of Civil Procedure, 1908 requires that legal notices be sent to the respondent, usually the defendant, in order to formally communicate any allegations, obligations, or carelessness. This is a crucial step in the process. But the procedure for filing a lawsuit against the government or a public official deviates from this accepted standard. A unique requirement is introduced by Section 80 of the Code of Civil Procedure, 1908: the plaintiff must give a legal notice at least two months in advance of launching a lawsuit against the government or a public official. In contrast to lawsuits brought against private parties, this notice period is required, not just suggested. This deviation from the norm raises important concerns about the legal system that oversees lawsuits involving the government and its officials.

As a procedural safeguard, Section 80's mandated notice time supposedly gives the government or public officials a chance to consider the accusations made against them and look into out-of-court resolution options. But this need also places a heavy burden on prospective litigants, requiring them to follow rigorous deadlines and procedural requirements to the letter. Furthermore, it is important to carefully consider the actual effects of this notice time, especially when dealing with urgent or pressing issues. In addition, there are more general concerns about procedural fairness and access to justice regarding the mandatory notice requirement. This requirement, which is meant to speed up the legal process and enable pre-litigation resolution, could unintentionally impede the administration of justice, especially for underprivileged or marginalised people who might not have the means or legal knowledge to understand and comply with the many procedural requirements. Furthermore, a thorough analysis of the notice period's effectiveness in reaching its stated goals—such as encouraging settlement and lowering the backlog in court cases—is warranted.

Given these factors, it is necessary to conduct a thorough examination of the legal system governing lawsuits involving the government and its officials, with a focus on the difficulties and practical ramifications associated with Section 80's mandatory notice requirement. This study aims to clarify important questions at the nexus of administrative law, procedural fairness, and access to justice by critically analysing the reasoning behind, practical implementation of, and effects of this rule. Furthermore, through pinpointing areas in need of

change and offering policy suggestions, it hopes to support continuous endeavours to improve the effectiveness and equity of the legal system controlling lawsuits against the government. This study aims to investigate the legal framework governing litigation involving the government and its officers in light of the unique features delineated in Sections 79-82 of the Code of Civil Procedure, 1908. This study has several goals. These include a thorough analysis of these legal provisions, a look at their theoretical underpinnings and historical development, an evaluation of their practical implications and difficulties in the practice of law, and a discussion of potential reforms and policy recommendations to improve the effectiveness and equity of this legal system.

This research has ramifications for policymakers and legal practitioners, making it significant outside of the legal academic community. This study aims to deepen our grasp of this area of law by offering a comprehensive analysis of the intricacies involved in cases brought by or against the government. Furthermore, it seeks to provide guidance for upcoming legislative and policy efforts that support the rule of law and guarantee access to justice by highlighting important issues and areas for improvement.

SCOPE AND LIMITATIONS

The research paper is concerned with critically examining Section 80 of the Code of Civil Procedure, 1908, in relation to Indian government and official litigation. The purpose of Section 80, its practical ramifications, and the judicial interpretations around its implementation are all explored in depth in this article. It looks at a number of scenarios, including those in which notice is required, some in which notice is not required, and those in which the government is added to the dispute by the court *Suo moto*. The article also highlights the necessity of flexibility and pragmatism in the application of procedural norms, discussing the waiver of protection under Section 80 and its ramifications for plaintiffs. In order to give readers a thorough grasp of the legal framework guiding lawsuits against the government, it examines case law and judicial precedents.

The paper's main weakness, though, is that it focuses mostly on the legal features of Section 80 rather than emphasising empirical evidence or real-world case studies to show how the provision actually affects people. Furthermore, although while it touches on a few themes related to access to justice and procedural fairness, a deeper examination of these topics—

including the perspectives of marginalised or poor litigants—has been kept outside the scope and within the limitations of the paper.

THE LEGISLATIVE INTENT BEHIND SECTION 80

The legislative intent behind the enunciation of Section 80 can be understood by understanding the case of *Bihari Choudhary v. State of Bihar*¹ in which the honourable supreme court has laid down that “*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 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.*” The following judgement of the honourable Supreme Court can be understood as that the excerpt from the judgment highlights the underlying purpose and rationale behind the enactment of Section 80 of the Code of Civil Procedure, 1908.² It emphasizes that the provision has been enacted as a measure of public policy to ensure that before a suit is initiated against the Government or a public officer, they are allowed to scrutinize the claim and take immediate action if it is found to be just, thereby avoiding unnecessary litigation and saving public time and resources. The Government is expected to consider the claim objectively, obtain legal advice as necessary, and make a decision in the public interest within the two-month period

¹ AIR 1984 SC 1043

² *ibid*

allowed by the Section. The ultimate goal is to promote justice, secure public good, and minimize unnecessary litigation by facilitating negotiations and settlements where appropriate. Thus, the mandatory notice requirement serves a public purpose and aims to advance the principles of justice and efficiency in legal proceedings involving the Government.

A fair and easily accessible judicial system is essential to the functioning of any democracy. There is an important system in place to help resolve disputes between residents and public authorities in an expedient and equitable manner without going straight to court. The statutory notice is a tool that enables citizens to formally notify the relevant public office of prospective claims. This initiates a clearly defined response process. The statutory notice does more than just alerting the relevant public authorities to a possible claim. It acts as a trigger for proactive participation and reconsideration.³ Through the official start of the notice period, the citizen extends an invitation to the public authority to reevaluate its legal position. This enables the authority to find and fix any possible mistakes, stopping additional damage and possibly saving money by averting needless legal action.⁴ The notice also provides for the option of negotiating a settlement or making a restitution offer to resolve the claim. This can be especially helpful in cases where the objective is not only monetary compensation but also the restoration of opportunities or rights that the actions of the public body may have violated.⁵

The responsible and prompt response of the public authority is a crucial principle that determines the efficiency of this mechanism. Not only is it improper to disregard the notice, but it also defeats the intent behind the procedure. In order to show openness and a dedication to following the law, public officials must interact with the claimant and resolve any issues brought up within the allotted period. This entails taking an active role in conveying their position so that the claimant is aware of the authority's planned course of action. When responding to statutory notices, the government is held to a greater standard than private organisations.⁶ This is because it is inherently its responsibility to protect the public interest. The welfare of its citizens is a duty of the government, even when private organisations are primarily focused on their own interests. As a result, it is expected that the government will handle the claim with the highest neutrality and, if needed, legal guidance to ensure a thorough assessment. The government must decide definitively, putting the public interest first, within the time range set by law. Prioritising a prompt and economical resolution through negotiation

³ Ghanshyam Das v. Union of India, (1984) 3 SCC 46.

⁴ *ibid*

⁵ New India Assurance Co. Ltd v. DDA, AIR 1991 Del 298

⁶ *ibid*

or settlement is crucial if the claim has substance. On the other hand, the government needs to be ready to defend its position in court if the claim is unfounded.

The fundamental purpose of the notice-giving duty outlined in this section is to provide the Secretary of State or the designated public officer with a chance to consider their legal position. After giving it some thought, they might decide to look into ways to settle out of court or provide compensation in order to avoid going through with formal legal proceedings. Different from the procedures that commercial organisations follow, the government is held to a higher standard, which calls for a thorough and unbiased investigation of the issue at hand. This review process include consulting legal counsel where appropriate and reaching a conclusion within the two-month time range specified by the relevant clause. In order to make a choice, it is necessary to carefully consider whether the claim being made is fair and just. The government must next choose the best course of action, balancing the advantages of quick talks and settlement to avoid litigation against the difficulty of defending against any pending litigation should the claimant decide to take legal action.

The object was also enunciated in the landmark case of *Raghunath Das v. Union of India*⁷ in which the Supreme Court has held 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 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 s. 80, Civil Procedure Code are not intended to be used as booby traps against ignorant and illiterate persons. In this case, we are concerned with a narrow question. Has the person mentioned in the notice as the plaintiff brought the present suit or is he someone else? This question has to be decided by reading the notice as a whole in a reasonable manner.*” So, the primary object that we are talking about here is that the money of the public should not be wasted on frivolous suits where the government is that of a welfare state.⁸ The state in these cases should come forward and settle the claims where the state feels that the claims are genuine. This is in consonance also to the fact that the majority of the cases pending in the courts today are the cases in which centre is involved.

⁷ AIR 1969 SC 674

⁸ Siddharam Satlingappa Mhetre v. State Of Maharashtra 2011 SCC 1 694

This provision does not provide for any opportunity for interpretation or exceptions; it is clear and binding. Its language is strong, clearly prohibiting a court from taking a case that is filed without following its standards. If the terms specified in this section are not followed, Order 7, Rule 11(d) of the Code of Civil Procedure (CPC) requires the plaint to be dismissed. For this reason, the notification required by Section 80(1) of the CPC, 1908 is the first and most important step in filing a lawsuit against the government or a public official. Its significance cannot be emphasised since it guarantees procedural justice in matters involving public officials or governmental bodies and lays the groundwork for any later judicial proceedings.⁹

The court in the case of *Dhian Singh v. Union of India*¹⁰ has observed that common sense must prevail over the pedantic use of the section. The Apex court also laid down that although the usage of the section is mandatory, common sense must prevail. The court went on to observe that, “*The Privy Council no doubt laid down in Bhagchand Dagadusa vs Secretary of State*¹¹ that the terms of section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinised in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock, C. B., in *Jones vs Nicholls*¹², “we must import a little commonsense into notices of this kind.” Beaumont, C. J., also observed in *Chandu Lal Vadilal vs Government of Bombay*¹³, “One must construe Section 80 with some regard to common-sense and to the object with which it appears to have been passed.”

The Supreme Court in the landmark case of *Sangram Singh v. Election Tribunal*¹⁴ has opined that, “Section 80 of the Code is but a part of the Procedure Code passed to provide the regulation and machinery, by means of which the Courts may do justice between the parties. It is therefore merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it.”¹⁵

⁹ State of Kerala vs Union of India, AIR 1951 SC

¹⁰ AIR 1958 SC 274 at p. 281

¹¹ AIR 1927 PC 176

¹² (1844) 13 M&W 361, 153 ER 149

¹³ AIR 1943 Bom 138

¹⁴ AIR 1955 SC 425

¹⁵ ibid

CONDITION WHERE THE NOTICE IS A SINE QUA NON

A plain reading of Section 80 gives us a fair idea of where the notice is a sine qua non and no suit can be instituted against a government without such notice. The same was explained in the case of *State A.P. v. Associate Builders*¹⁶ where the court inter alia held that, “From a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the Court. Leave of the Court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity to show cause in respect of relief prayed for in the suit.....Having regard to the legislative intent noticed above, it needs little emphasis that the power conferred in the Court under sub-section (2) is to avoid genuine hardship and is, therefore, coupled with a duty to grant leave to institute a suit without complying with the requirements of sub-section (1) thereof, bearing in mind only the urgency of the relief prayed for and not the merits of the case.”

Hence we see that under Section 80 clause 1 is the rule, and the only exception that lies is under subsection 2 which accepts the notice in the case of an urgent relief. This is not a rule but only an exception. Before filing a lawsuit against organisations like the Central Government, Railway, or State Government, it is imperative that a notice be served under Section 80(1) of the CPC, as demonstrated by the case of *Abhimanyu Nayak and Others v. Basanta Mohanty and Others*¹⁷. This rule does have an exception, though: the suit may be filed without serving the required notice if it requests urgent or immediate relief against the State Government or any public official regarding an alleged action taken in their official capacity¹⁸, but only with the consent of the court. This exception is significant and underscores how necessary the clause under Section 80(1) of the CPC is.

¹⁶ AIR 2007 SC 113

¹⁷ HIGH COURT OF ORISSA: CUTTACK, W.P.(C) No.15161 of 2008

¹⁸ State of Maharashtra v. Shri Chander Kant, AIR 1977 SC

SITUATION WHERE THE PLAINT HAS BEEN AMENDED

Now, we undertake a situation where in an ongoing suit, the plaintiff seeks to amend his plaint¹⁹ which has the tendencies to affect the rights and liabilities of the government, so a pertinent question arises that whether a fresh notice is to be sought in the cases of amendment of a plaint where the interests of the government are being affected?

It is hereby submitted that the need for a fresh notice is contingent on the fact of whether or not a new cause of action has been arisen or not. If the new cause of action has arisen out of the said amendment then SUO fresh notice shall be mandatory. Hence when the amendments were merely formal in nature, which expanded upon the existing cause of action, no separate notice was necessary.

The court in the case of *Maninder Chandra Nandi v. Secretary of State for India*²⁰ has held that “where a new cause of action is sought to be introduced in addition to a cause of action specified in the plaint against the Government, notice under Section 80 is a pre-requisite.” The court again was asked upon the question where a motion to add a new paragraph to the plaint was approved by the trial court in *Province of Madras v. R.B. Poddar Firm*²¹. But the Collector, acting on behalf of the Provincial Government, tried to overturn this ruling. They maintained that the proposed amendment created a new cause of action and that, as a result, serving a notice in accordance with Section 80 of the CPC was now required. The Court concluded that the proposed change did, in fact, create a new cause of action because it went beyond the initial parameters of the lawsuit and refuted earlier claims. As a result, it was decided that the trial court erred in approving the change since the required notification to the Government of the new cause of action had not been given beforehand.²² In a different case, the plaintiff filed a complaint on behalf of the villagers, requesting a declaration of customary rights over a plot of land. In opposition to the plaintiff's claim, defendants 1 and 2 argued that they were entitled to the same land. Following the trial court's decision against the plaintiff, the Additional District Judge in Bhadrak heard an appeal. The plaintiffs requested the State of Odisha to be included as a defendant in an application under Order 6 Rule 17 of the CPC throughout this appeal procedure. The Additional District Judge granted the application against the defendants' objections and sent the matter to the trial court for a new trial. Defendant No. 1 then challenged

¹⁹ Order VI, Rule 17, Civil Procedure Code, 1908

²⁰ 34 Cal 257

²¹ AIR (34) 1949 Madras 214

²² *ibid*

the remand ruling in an appeal to the High Court. The High Court remanded the case for another hearing after overturning the appellate court's ruling. The State of Odisha was named as a party defendant by the lower appellate court after it accepted the plea after the remand. The High Court underlined the necessity of the clause, declaring that the claim would be dismissed if notice was not served in accordance with Section 80(1) of the CPC.

The Court further underlined that the notice's objective is to give the relevant government or public official the opportunity to reevaluate the law and maybe resolve the dispute without going to court. This rule was enacted with the intention of preventing the waste of time and public funds on pointless court disputes. Similar to this, two petitions were filed under Order 6 Rule 17 of the CPC to join the State of Orissa as a party in another matter where the plaintiff sought a declaration and other consequential reliefs against the other party. Both of the applications were turned down. On behalf of the plaintiff, it was contended that the Collector, Puri, had received notice in accordance with Section 80 of the CPC. It was discovered, meanwhile, that the notice was sent following the suit's institution rather than beforehand. The judge determined that if the State had complied with Section 80 CPC before submitting the amended petition, it might have been added as a party by making the proper application.

Settling the issue between the different high courts, the Apex court in the case of *Bishandayal and Sons v. State of Orissa*²³, held inter alia that, “*There can be no dispute to the proposition that a notice under Section 80 can be waived. But the question is whether merely because in the amended written statement such a plea is not taken it amounts to waiver. This contention was argued before the appellate court. Even otherwise, we find that in the suit itself Issue No.4 had been raised as to whether or not there was a valid and appropriate notice under Section 80. Such a point having been taken in the original written statement and an issue having been raised, it was not necessary that in the amended written statement such a plea be again taken. On behalf of the respondents, reliance has been placed on the case of Gangappa Gurupadappa Gugwad vs. Rachawwa*²⁴ and others, wherein it has been held that where the plaintiff’s cause of action is against a Government and the plaint does not show that notice under Section 80 was served, it would be duty of the Court to reject the plaint. In this case the original notice was only in respect of a claim under the plaint as it originally stood. That claim was on the basis that there was a concluded contract and that the appellants had already acquired rights in the mill and the lands. As has been fairly conceded those reliefs were not maintainable and

²³ (2001) 1 Supreme Court Cases 55

²⁴ AIR 1971 SC 442

were given up before the appellate court. The amended plaint was on an entirely new cause of action. It was based on facts and events which took place after the filing of the original plaint. It was a fresh case. Now the claim was for specific performance of the agreement alleged to have been entered into on 29-12-1978. Admittedly no notice under Section 80 CPC was given for this case. As there was an issue pertaining to notice under Section 80, the trial court should have dealt with this aspect. The trial court failed to do so. It was then pressed before the appellate court. In our view, the finding in the impugned judgment that the suit based on this claim was not maintainable is correct and requires no interference.”

Hence, when a new cause of action is not added or found out, the notice shall not be mandatory. Whereas when there is the origin of a new cause of action the mandatory notice shall prevail. It is not a formality but a mandate of the court and has to be followed, not following which the particular cause of action was liable to be rejected.

CASE WHEN SUO-MOTO COGNIZANCE TAKEN BY THE COURT

Now we shall look at the condition when the court on its own accord adds the government as a party to the dispute under Order I of the code. Any individual may be added as a party at any point throughout the proceedings under O1 R10 of the CPC if the court determines that their participation is required in order for it to properly decide and resolve all of the issues raised in the lawsuit. The plaintiff in a lawsuit is generally in charge of locating the persons they have complaints against and adding them as defendants in the lawsuit seeking relief, according to a well-established legal concept. It is not permissible to force the plaintiff to file a lawsuit with somebody they have no complaints against. In order to safeguard their interests, a third party may, nevertheless, request to be added as a party if they anticipate suffering any harm as a result of the lawsuit's verdict. When it comes to adding parties, the doctrine of dominus litus²⁵ which holds that the plaintiff is the master of the action—should not be too stretched. It is the court's responsibility to make sure all parties involved are included in order to settle the disagreement successfully. Rejecting an application to include someone does not automatically make sense merely because the plaintiff decides not to include them. Order 1 Rule 10(2) of the CPC gives the court the authority to order the inclusion of any party, as a plaintiff or defendant, that is thought necessary for a thorough resolution of the problems at hand in the lawsuit. Furthermore, the court may use this authority even in the absence of a written request for

²⁵ Kasturi v. Iyyamperumal And Others 2005 SCC 6 733

inclusion. In order to clearly ascertain whether the fresh notice is mandatory when the court suo moto adds government as a party, we need to dive into the mind of the legislators and see the motive and object²⁶ behind the same.

Before the advent of the Civil Procedure Code of 1908, Section 443 of the Civil Procedure Code of 1882 had similar provisions which were interpreted in the case of *Secretary of State for India v. Perumal Pillai*²⁷ in which Madras High Court opined that, “... *object of the notice required by section 424, Civil Procedure Code, is to give the defendant an opportunity of settling the claim, if so advised, without litigation.*”²⁸ With reference to the new code of 1908 the object and reasons were further elaborated and reconsidered in the case of *Secretary of State for India v. Gulam Rasul Gyasudin Kuwari*²⁹ in which the Bombay High Court stated that, “... *the object of section 80 is to enable the Secretary of State, who necessarily acts usually through agents, time and opportunity to reconsider his legal position when that position is challenged by persons alleging that some official order has been illegally made to their prejudice.*”

After considering the intent of the legislature, we understand that the court when adding a party Suo moto and that party is the government then the following two approaches can be adopted.

A. Approach One:

In this approach Order I Rule 10(2) grants the court the power to add a party in the case even in the event that the plaintiff objects, as long as the party is considered essential to a comprehensive settlement of the disagreement. Additionally, the terms of inclusion may be decided by the court at its discretion, guaranteeing procedural fairness. First, the court determines if the government's intervention is required or suitable. In the event that the answer is in the positive, the court orders the plaintiff to send a formal notice to the government, giving it two months to respond. The government is added to the case by the court after this notice period has ended. The court then directs the plaintiff to ensure openness and compliance with procedural standards by revising the complaint, serving a summons, and updating the case title. In the case of *Kamdaz v. Board of Revenue*³⁰ the court made a remarks to this extent. The honourable court opined that in the event where the government was not impleaded as a party

²⁶ Supra at 7

²⁷ (1900) ILR 24 (Mad.) 271

²⁸ ibid

²⁹ (1916) ILR XL (Bom.) 392

³⁰ 1967 R.D 224

initially but the court had Suo moto impleaded such party, then the non-compliance to Section 80 requirements shall not pose as a fatal defect so as to consequently vitiate the suit.

B. Approach Two:

It is well understood that the court has the power to include a party in accordance with its assessment of what is reasonable and fair. It is important to remember that formal notice of a lawsuit may be waived under Section 80(2) of the CPC if it is an urgent or emergency case (such as one involving an injunction). Therefore, if the issue is urgent, the court has the authority to file a lawsuit against the government even without giving them advance warning. For example, in a non-urgent case such as a declaration of civil death, the plaintiff's omission of the government as a party precludes the court from requiring their participation absent a formal notice from the plaintiff.

WAIVER OF PROTECTION UNDER SECTION 80

The protections granted under Section 80 is at the disposal of the person so protected. If there comes a situation when the person protected does not warrant the protection then he can get the protection waived for which can be inferred from the judgement of Supreme Court in the case of *Dhirendra Nath Gorai and Sabal Chandra Shaw and others vs Sudhir Chandra Ghosh and others*³¹ where the court was deciding on a Pari Materia section which is Section 35 of the Bengal Money Lenders Act of 1940 and the court went on to hold that the protection was waivable. Another situation where a similar provision was under scrutiny was the case of *Vasant Ambadas Pandit v. Bombay Municipal Corporation*³² where the Bombay High Court had the opportunity to discuss at length Section 527 of the BMC Act, 1888. The court held that, “*The giving of the notice is a condition precedent to the exercise of jurisdiction. But, this being a mere procedural requirement, the same does not go to the root of jurisdiction in a true sense of the term. The same is capable of being waived by the defendants and on such waiver, the Court gets jurisdiction to entertain and try the suit.*”

The Supreme Court has on umpteen instances held that the notice provision under Section 80 is for the benefit of one authority and it is up to that authority to waive it.³³ This has been a

³¹ AIR 1964 SC 1300

³² AIR 1981 Bombay 394

³³ Amar Nath Dogra vs Union of India 1963 (1) SCR 657

trend in the Supreme Court judgements³⁴ where in the court has repeatedly held that the provision is waivable.³⁵ The same applies to various other provisions of the same or similar nature. The apex court again while citing and quoting the above-mentioned judgements and ratios in the case of *Vasant Ambadas Pandit*³⁶ of the Bombay HC the supreme court opined the waivable nature of Section 80. Section 80 CPC clearly states that giving notice is required and leaves no room for interpretation or exceptions. But it's crucial to apply some common sense when interpreting Section 80 and keep in mind the motivation for its establishment. Our procedural regulations are based on the idea that wherever possible, legal actions shouldn't be stopped purely on procedural grounds.³⁷ A private individual cannot argue that Section 80 was not followed because of the intent underlying the Act and the relevant party's power to waive it. This is so because the government and its representatives stand to gain the most from the requirement.

The Bombay HC Division Bench in the case of *Hirachand Himatlal Marwari vs Kashinath Thakurji Jadhav*³⁸ opined that first off, defendant 3 isn't the right person to voice this kind of issue. Furthermore, we think that the recipients have to be deemed to have forfeited their right to notice. It is within the power of the party protected by Section 80 to waive its rights, and this waiver extends to all other parties. It is difficult to explain how a party without the right to notice might challenge a lawsuit on the grounds that the only party entitled to notice was not given, given that only that party has the ability to waive notice. As a result, we determine that defendant number three is not entitled to use this defence.

A concurrent view was taken in the case of *Kanakku v. Neelacanta*³⁹ in which the Kerala High Court held that the pleading could not be made by the private persons that there was no notice, it was up to the protected party to make such pleadings. The Allahabad High Court in the case of *Ishtiyah Hussain Abbas Hussain v. Zafrul Islam Afzal Hussain and Others*⁴⁰ has also held a similar view when the court opined that, "*It appears to me that the plea of want of notice is open only to the Government and the officers mentioned in Section 80 and it is not open to a*

³⁴ State of Punjab vs Geeta Iron and Brass Works Ltd. 1978 (1) SCC 68

³⁵ Ghanshyam Dass vs Dominion of India 1984 (3) SCC 46

³⁶ Supra at 27

³⁷ Supra at 28,29,30

³⁸ AIR (29) 1942 Bombay 339

³⁹ AIR 1969 (Kerala) 280

⁴⁰ AIR 1969 All 161

private individual. In this particular case the State Government did not even put in appearance. The notice, therefore, must be deemed to have been waived by it."⁴¹

In a recent judgement of the Madhya Pradesh High Court the bench comprising Justice G.S. Alhuwalia stated that, *"Thus, it is clear that the basic purpose of the notice under Section 80 of CPC is to give an opportunity to the State and its functionaries to resolve the dispute thereby saving the valuable time and money of the State. However, it is a procedural law. Although, provision of Section 80 of CPC is mandatory but it can be waived by the defendants. If the written statement filed by the defendants is considered, then it is clear that no objection was raised before the Trial Court. Even, the said objection has been raised for the first time during the course of arguments only. ...Since the requirement of Section 80 of CPC can be waived by the defendants and by not having raised the same in the written statement, this Court is of the considered opinion that once the defendants have waived the requirement of Section 80 of CPC, the respondents cannot be non-suited on the ground of premature nature of suit.*"⁴²

CONCLUSION

In summary, Section 80 of the Code of Civil Procedure, 1908, is important as a procedural protection, but it may also have drawbacks when it comes to advancing justice and efficiency in government-related legal processes. Section 80 was intended to minimise needless litigation and save public time and money by giving the government and public officials a chance to review claims and possibly settle disputes out of court. This goal has been clarified by a number of court decisions that have addressed the legislative intent behind the statute. But the stringent enforcement of Section 80's notice requirement calls into question procedural justice and access, especially for those who do not have the means or legal expertise to follow its rules. Although the government may waive notice, it is the protected party's responsibility to raise this defence, making private citizens susceptible to legal traps. Furthermore, the way Section 80 is interpreted when the government is added as a party by the court *Suo moto* emphasises the necessity of exercising flexibility and pragmatism when interpreting procedural regulations. The discretion of the court in such cases emphasises how crucial it is to strike a

⁴¹ Ibid at para 4

⁴² *Managing Director Corporation Lamta Project Balaghat v. Bhejnallal (since deceased) & Ors* 2023 LiveLaw (MP) 35

balance between the primary objective of attaining substantive justice and procedural obligations.

In the end, this study emphasises how important it is to have a sophisticated grasp of Section 80 and how it relates to cases involving public officials and the government. Although the rule is essential for expediting court cases and promoting pre-litigation settlement, its strict implementation could unintentionally prevent people from accessing the justice system. In order to maintain the legal system's accessibility and equity for all, legislators and legal professionals must work to find a balance between procedural efficiency and the defence of plaintiffs' rights going forward.