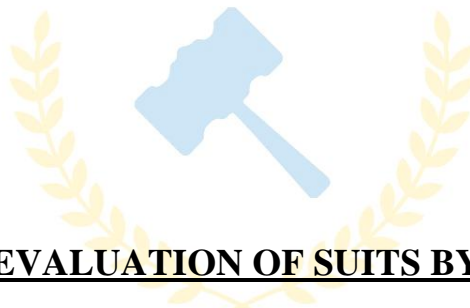


DE JURE NEXUS LAW JOURNAL

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**A CRITICAL EVALUATION OF SUITS BY OR AGAINST
GOVERNMENT AND STATE OFFICERS IN THEIR OFFICIAL
CAPACITY ROLES IN INDIA**

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ABSTRACT

In a democratic form of governance, the state's function is broad and involves many facets of individual life. As a result, it's possible that there will be disagreements between the people and government and their officers, with the government either suing or being sued. The Civil Procedure Code of 1908 included unique provisions from Sections 79-82, as well as Order XXVII, to reflect the scope of State responsibilities and its due protocols. Through understanding of the relevant statutes, this study paper aims to investigate the notion of litigation suits initiated by or against police authorities in their official positions. By developing a comprehensive understanding of the relevant laws and the procedural aspect, along with the exemptions, an attempt has been made to divulge explicitly to get an all-round viewpoint. In democracy, individuals have the legal right to obtain retribution against state or any public officials in order to protect their interests. These clauses are imperative to understand as the claims against government and public officials have become frequent in

contemporary world, and implementing them will secure that it does not face any hurdles due to lacuna of laws. Potential solutions for the path ahead have been provided in accordance with equity and justice, with benefits noted and drawbacks rigorously evaluated.

Keywords: Government, Public Official, Official Capacity, Order, Suit.

INTRODUCTION

The Government of India is served by some government officers, who are referred to as public officials in the general way. The Civil Procedure Code has set particular procedural and substantive procedures for actions in which the state or a public official is a party to the context because government officials work for the public benefit and welfare maximisation. The Law Commission of India was first rejected permission to incorporate such a provision inside the Code, foreseeing the problems that persons would encounter if emergency relief was to be provided, but it was eventually granted owing to widespread public demand. It was justified on the basis of the following logic, the government is such a gigantic organisation with so many officers working for it, it is well-equipped with large sums of money, which will undoubtedly compensate for their close and consistent lawsuits with third parties. On the other hand, private groups or citizens have severely limited financial resources. The Law Commission of India objected the inclusion of this clause in the Law, citing the hardship that persons would confront if emergency assistance were sought, as well as the fact that most notifications were unaddressed. The rule was eventually authorised to exist in the "interest of the public" by the Joint Parliamentary committee. This was done to avoid the filing of malpractice suits against the state, ensuring that resources are not wasted or misused. Sections 79 to 82 of the Code of Civil Procedure, as well as Order 27 of the Code of Civil Procedure, handle the situation. The Supreme Court found that procedural law clearly outlines the situations in which the government must be made a party, and that the law is fixed in this regard that the lawsuit would not proceed unless the government is appointed a party. The Constitution¹ stipulates that substantive rights must be in conformity with it. Order XXVII lays forth the steps for launching a lawsuit against the government or a public person, whereas Sections 79 to 82² lay out the underlying concepts. Even though it is a procedural requirement, substantial fulfilment is adhered to³. The Supreme Court ruled that procedural law clearly defines the circumstances

¹ Constitution of India, 1949.

² Code of Civil Procedure 1908, Sections 79 to 82.

³ Yogesh Chandra Das v. Chief Secretary of Assam, AIR 1990 1990 Gau 74.

whereby the state must be made a party, but that the law is fixed in this sense that if the administration is not declared a party, to the suit, the lawsuit shouldn't be continued.

PROVISIONS OF THE CODE

Section 79

This section defines the concepts and rules relevant to the procedures involved in exceptional cases involving "Suits by or against the government or public authorities in their official manner." This section is highly limited in scope and only prescribes the method of operation available in any given situation; it has no authority to provide for any civil claim taken in the pursuit of any goal. Depending on the details, the state government may be represented as the plaintiff or defendant in any litigation filed by or against the state government⁴. It does not specify a specific claim for damages, but it does specify the method to be performed if and when such a situation develops.⁵

The above clause has no influence on the extent of claims or liabilities that the administration may be held liable for. For the '*Necessary Party*,' involved, it is necessary to make the State a party to the litigation under Order I Rule 9 and Rule 27. The suit will be deemed non-maintainable due to if there is an absence of a required party.⁶ In light of the provisions of Sec. 79 and Order 1 Rule 9 and 27 of the Code, it is a well-established principle that wherever remedy is sought it against State or Union of India and the State or Union of India has not been impleaded as a required party, the suit will be dismissed⁷. In *Dominion of India v. RCKC Nath*⁸, the court clarified the role of civil courts in cases involving the government or public authorities. The court determined that any lawsuit initiated by or against the government must be filed in the court that has jurisdiction over the territory where the cause of action arose.

Section 80

A legal entity, if an artificial person, has the ability to sue or be challenged in his or her individual name in a court of law. A suit involving different parties in which the plaintiffs is

⁴ Shantha Gir Chela and Ors. v. Basudevanand, AIR 1930 All 225.

⁵ Code of Civil Procedure 1908, Order 27.

⁶ Sawai Singhai Nirmal Chand v. Union of India, AIR 1966 SC 1068

⁷ Bihari Choudhary v. State of Bihar, (1984) 2 SCC 627: AIR 1984 SC 1043.

⁸ Dominion of India v. RCKC Nath and Co. , AIR 1950 Cal 207.

not required to give mention to the defendants before bringing a suit, as a usual rule. Nonetheless, this rules require that no litigation be filed against the public or a public servant before two months has passed since a mandatory notice has been given. However, Section 80 of the Act is the unique exception to the general norm.

As a result, no lawsuit can be initiated against the government or a public figure until a pre-requisite is met 2 months before the lawsuit is filed, the Official must all be served with a document in person. This clause only applies to actions made by a public official while dressed in his official costume. That is, a pubic person is not compelled to file a notice if he engages in activities that are unrelated to his professional functions ⁹.

There are certain pre-requisites pertaining to this clause which consist of :-

- ⇒ In situations where The Railways is the defendant, the legal notice must be issued and duly served on the General Manager of the Railways.
- ⇒ In situations where The State Government is the defendant, the legal notice must be issued and duly served on the Secretary to that Government or the Respective District Collector of the State.
- ⇒ When a Public Officer is named as the defendant, a legal notice must be issued and served on him.
- ⇒ Well before promulgation of the Jammu and Kashmir Re - organisation Act, 2019, all scenarios where its Gov't of Jammu & Kashmir was alluded to as the defendant, the legal notice had to be written and correctly served to the Secretary of the Government of India.

The following items must be included in legal notices issued under Section 80:-Name :-

- ⇒ **Name :-** It is the most imperative element as it acts as a medium to identify the petitioner.
- ⇒ **Description :-** The feature allows the court and the other party to gain a better understanding of the plaintiff.
- ⇒ **Residence :-** In addition to providing a clear identity of the plaintiff, this aspect also aids the court and the other party in locating the plaintiff in order to serve additional documents or legal notification.

⁹ Pukhraj v. State of Rajasthan, (1973) 2 SCC 701

⇒ **Cause of Action :-** This section emphasises the plaintiff's concerns in the due process and the appropriate reasons for obtaining relief⁹, as well as data about when and where the alleged act occurred.

⇒ **Prayer :-** The plaintiff's relief requests are addressed in this section.

In cases related to government, the formal response must be written and signed by the gov't's appointed officer and to include the grounds on which the written letter was first functioned, because as notice is deemed to be of utmost important and must be represented compulsorily and authoritatively, not just implicitly. As established in the landmark case of *State of A.P. v. Gundugola Venkata*, failure to conform to the idea of legal notice may result in the rejection of the counterclaim.¹⁰ There is no need for a warning if the conduct is not being performed in the officer's official capacity.

As a result, before Section 80 can be used in a lawsuit against a public official, it must be proven that the lawsuit is based on an alleged 'act' performed by him in his official role. According to the General Clauses Act's provisions, the term "act" now includes unlawful omissions. As a result, the provision would not apply if the complaint did not include any "act" or "criminal conduct" purportedly done by a public officer in his executive capacity.

Effect of non-adherence/ compliance

Failure to comply with the provisions of this Section, or any mandatory exclusion in the plaint, shall entail in the plaint becoming dismissed under Order 7, Rule 11. The plaint is really not dismissed if a lawsuit is brought against a public official and just a private individual without providing notice to the public officer; rather, the litigation is continued with the public arrest report crossed down.

Waiver of Notice

This notice under Section 80 may be canceled, and the individual for whose benefit it is aimed may waive it. The purposeful relinquishing of a recognised entitlement is known as a waiver. It could be implicit. There seem to be two exceptions: (i) a group might confer authority beyond a court that does not have it, and (ii) in circumstances of public good, a warn cannot be waived.

¹⁰ State of A.P. v. Gundugola Venkata 1965 AIR 11

Two-Month Time Frame

It is forbidden to launch a lawsuit until two months have passed since the notice was served. The Court appears to lack the authority and jurisdiction to hear this case. As a consequence, it is widely established that a lawsuit brought against the government during the duration of a Section 80 is unsustainable and must be rejected.

Section 82

A decree issued against the authority or a civil employee acting in his official position will not be carried out unless the same criteria, as determined by the Court, exist three months after the decree was issued. This applies to any order or award made against the Union or a State by a Court or other authority, which can be carried out as a decree under the Civil Procedure Act and regulations in existence.



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ORDER XXVII

Order XXVII of the Code of Civil Procedure¹¹ Actions taken by just against the ministry or a political figure in his or her official role are the focus of this section. If a civil action is brought against a public official and indeed the cause of case is an act allegedly committed in his official position, the govt must be joined as a parties to the context.¹² If a lawsuit has been filed against a government employee, the employee should be given a fair amount of time to refer the case to the state.¹³ Rule 3 enacts the procurement for name and description of the plaintiff and respondent and would involve the name as presented under Sec. 79 in suits by or against the Government because the Indian supreme Court is a juristic person and it will be impossible to predicate the address of the same within the Union's limits. The formalities, meanwhile, must only involve the government and not to any inducement or agency as defined in Article 12 of the Constitution under the term "State."

LAW COMMISSION REPORT

The Law Commission studies offer important insights and understanding into the study and analysis of these parts. In its 14th Report, the Judiciary took a strong and resolute stance against Section 80 of the Code, recommending that it be repealed or omitted entirely because it has created numerous significant problems in types of cases where urgent relief in the form of an

In the year 1976, the 1908 Code of Civil Procedure was revised. Section 80 was one of the adjustments that was made. Prior to the change, the clause was exceedingly mechanical and rigorous, and failure to comply with it resulted in the claim being dismissed.¹⁴ The regulation was enacted prior to independence, when individual rights and liberties were almost non-existent. Individual rights were frequently sacrificed in favour of the government's interests and protection. Individual rights have been given emphasis and acknowledgment in India since it earned independence and became a Democratic Republic. 'Justice Delayed is Justice Denied' is a well-established legal principle. The same concept, however, was violated by Section 80

¹¹ Code of Civil Procedure 1908, Order XXVII.

¹² Code of Civil Procedure 1908, Order 27, Rule 5A.

¹³ Code of Civil Procedure 1908, Order 27, Rule 7.

¹⁴ Amar Nath Dogra v. Union of India, AIR 1963 SC 424.

of the Act. injunction could not be obtained in the court of law and justice redressal was facing troubles.

The Law Commission's 27th Report reaffirmed the same position, stating that a division between the government or offices and the general public, i.e., citizens, is not admissible nor present in any Anglo-Saxon legal system. The Parliament, on the other hand, disagreed²⁶ with the Law Commission's assessment that the federal statutes of Civil Procedure (Amendment) Act, 1976 served the nation's welfare and betterment.

CRITICAL ANALYSIS

Section 80 has been written in a straightforward and unambiguous manner, allowing it to be comprehended using the rule of interpretations. It necessitates strict adherence and is a necessity for any type of legal action. The Supreme Court further emphasised the necessity of the clause, saying, "The section is mandatory and must be rigorously followed; failure to serve a notice in accordance with the Act's provisions would result in the claim being terminated." The court went on to say that Sections 79 and 80 were procedural in nature, and that simply following them in spirit¹⁵ would suffice.

The government, for the most part, does not acknowledge receipt of such notices.¹⁶ The clause has harmed public policy and the avoidance of useless activity. The irony is that this exact notification is now being brought as a matter of contention in criminal proceedings, prolonging the length of a case even further¹⁷. Furthermore, the government and its staff have routinely misused their authority to reject claims based on minor inconsistencies.

The process for filing lawsuits against or for the government are quite detailed, and they provide a thorough comprehension of the various concepts involved. There is a lot of prejudice associated with government trials in India, and it's often considered that those same cases involve a lot of delays in the proceedings, resulting in the complainant obtaining delayed sentencing.

¹⁵ State of A.P v Gundugola Venkata, AIR 1965 SC 11.

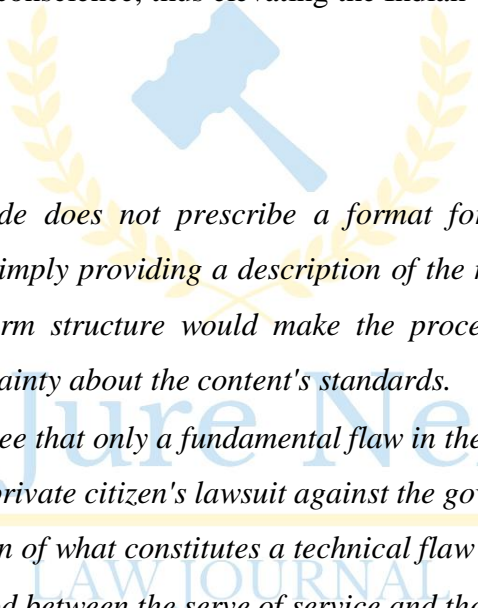
¹⁶ State of Orissa v. Chintadu ILR 1966.

¹⁷ Chaman Lal v. State of Punjab, (2014) 15 SCC 715.

CONCLUSION

All clauses pertaining to lawsuits brought by or against the government or a public official in their official capacity have been examined. Because it is based on legitimate grounds, the unique status granted to these claims is regarded equitable and fair. The fact that no other nations supports such legislation does not negate our country's regulations. However, there is always room for improvement, and some sections must be introduced to accelerate the proceedings so that the citizen does not become destitute and the government is placed on a stronger footing; proper balance may be guaranteed with future changes. These provisions will supplement the petitioner the right to obtain the redress he seeks in consistent with the norms of justice, equity, and good conscience, thus elevating the Indian Constitution's goals.

SUGGESTIONS

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- ⇒ *The established Code does not prescribe a format for the note, which leads to misunderstanding. Simply providing a description of the notice's essential contents is insufficient. A uniform structure would make the process run more smoothly and eliminate any uncertainty about the content's standards.*
 - ⇒ *Courts must guarantee that only a fundamental flaw in the notice, not a clerical error, is used to dismiss a private citizen's lawsuit against the government or its officials. The Court's interpretation of what constitutes a technical flaw should be broad.*
 - ⇒ *The legislature period between the serve of service and the filing of the plaint is far too long, that if it is not shortened, it will obstruct the proper rule of law, and justice delayed is justice rejected.*
 - ⇒ *The federal and local authorities often abuse and abuse the same clause in order to discredit litigation on legitimate basis.*