

Handling of litigation against Government

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- ☀ Two stages
- Pre litigation stage
- Post litigation stage

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Pre litigation stage

- ☀ Demand of justice / notice u/s 80 cpc
- ☀ As per section 80 of cpc :- no suits shall be instituted against the Govt. or against the Public Officer in respect of any act purporting to be done by such police officer in his official capacity until the expiration of two months next after notice in writing has been delivered or left the office of –
- ☀ (a) In case of Central Govt. , A Secretary to the Govt.

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- ☀ (b) In case of Railways , the G.M. of that railways
- ☀ (c) In case of against State Govt. , A Secretary to the Govt. or the Collector of that District.
- ☀ (d) In case of public officer , to him or left at his office.

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- ☀ A suit to obtain an urgent or immediate relief against the Govt. / Public officer may be instituted with the leave of the court without serving any notice.
- ☀ The court shall not grant relief except after giving the Govt. / Public officer reasonable opportunity of showing cause in respect of the relief prayed

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Object for enactment

- ☀ Section 80 cpc has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against Govt. / Public officer, the Govt. / Officer concerned is afforded an opportunity to scrutinize the claim
- ☀ If found to be just to take immediate action and their by avoid unnecessary litigation and save public time & money.

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- The Govt. , unlike private parties, is expected to consider the matter covered in the notice in a most objective manner after obtaining legal advice and take a decision in public interest within the period of two months.

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Procedure after receipt of notice

- Provisions are given in chapter –xii of the Rajasthan law & legal affairs department manual 1999.

Notice

(Some responsible officer in the concern office should be deputed by Secretary / Collector / HOD)

endorse there on the date / manner of delivery

Shall inform his superior officer (HOD/HOO) within 10 days & shall prepare a detailed report and line of defense if not HOD

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Submit to HOD in next 10 days

to the administrative department within 10 days

High power committee consist of representative of FD/LD/AD will decide within 10 days

Whether claim is justified Arbitration Settled amicably

- In case the matter has to be contested a suitable reply be sent by the officer competent well within time.

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- When notice relates to suit against Central Govt. , the officer receiving it shall inform the party that the notice is not accordance with the provision of 80 CPC and shall also inform the law department.

Duties of Officer entrusted with examination of notice

- Detail report containing a clean chronological statement of fact in narrative form with documentary evidence .
- Statement answering serially all points raised in notice
- Copies of all document to the case.

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Effect of absence of notice

- Where State has not been impleaded no notice has been given to the Govt. the suit in itself is not maintainable and is liable to be dismissed.

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Post Litigation Stage

- Order 27 cpc :- Suits by or against the Govt. / Public officer in their official capacity .
 1. Suit by or against the Govt. :- In any suit by or against the Govt. the plaint or written statement shall be signed by such person as a Govt. may by general or special order appoint in this behalf.
 - Shall be verified by any person whom the Govt. may so appoint and who is acquainted with the facts of the case.
 2. Persons authorized to act for Govt. :- Persons being authorized to act for the Govt. in respect of any judicial proceeding shall be deemed to be recognized agents.

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3. Plaints in suits by or against Govt.

- In suit by or against the Govt. instead of inserting in the plaint the name and description of plaintiff or defendant it shall be sufficient to insert the appropriate Govt. name
- i. e.
- In case of the Central Govt. – The Union of India
- In case of State Govt. – The State

4. Agent for Govt. to receive process – The Govt. pleader

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Engagement of Govt. Pleader

- In Honorable Supreme Court → Law and legal affairs department
- In Honorable High Court → Law and legal affairs department / HOD.
- In District Courts → Law and legal affairs department / Collector
- Government pleader appointed by law and legal affairs deptt can be contacted by OIC even without formal orders provided that govt. pleader shall assist & appear in a case only when State of Rajasthan has been made party / Govt interest is involved / the date of hearing is very near.

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Appointment of officer in charge of case

- As per procedure given in chapter xxii clause 232 of The Rajasthan Law and Legal affairs Department Manual , 1999 and power conferred under order 27 rule 1 & 2 CPC Officer In charge is appointed .
- Under rule 12(2) of the Rajasthan Rules of Business the HOD is authorized to appoint officer in charge
- For the cases in High Court & Supreme Court & in other Courts where valuation of subject matter is more than Rs. 20 Thousand , the OIC shall be appointed by the Govt. in Administrative Department.

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- As far as possible the officer who is well conversant with the facts of the case & dealt with the matter should be appointed.
- OIC should be appointed by virtue of officers post & not by his name so that in the event of his transfer , his successor may automatically become OIC.
- OIC will be provided copy of writ / plaint, parawise factual report , concern record of subject matter.
- OIC to be recognized agent and shall sign & verify the written statement.

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Duties of O.I.C

- Make such inquiries into the fact as necessary
- Collect all relevant files, rules, notifications, orders ,documents
- Prepare a report parawise & giving additional information which likely to help counsel.
- Contact the counsel with F.R. & documents
- Get the reply prepared by the counsel dully signed to get it vetted
- Assist the counsel & always keep himself aware of date fixed , its stage & progress
- Inform Department as & when order / judgment passed
- In case of his transfer shall & over the files to the successor

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Preparing Factual Report

- Synopsis → date wise event / happening
- Question of Law / Point of dispute
- Law / Rule / Provision regarding this / notification
- Precedent if any
- Point wise clear report

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Important Points Respecting The Conduct of Suits

- No averment should be made in a plaint or written statement unless it can be proved from the evidence, which is or which may be available.
- The evidence, whether oral or documentary on which it is intended to rely should be carefully scrutinized
- All the witnesses, on behalf of State, should be kept ready in the court on hearing day to avoid adjournment. Prolong litigation may give opportunity for fabrication of false evidence.
- The documents filed or disclosed by the opponent party should be carefully examined in order to raise objections as to their admissibility. They should also be compared with original Govt. records.
- It is important that for any negligence or dereliction of duty OIC shall be liable for disciplinary action.

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Procedure when two or more departments are jointly concerned in a suit.

- If two or more department are sued jointly & two different OIC have been appointed, they should immediately communicate with each other for common line of defence. When the stand of deptt is conflicting each prepared report shall be forwarded to law deptt through their respective administrative department for advice. The law deptt will decide as which stand is just & legal & thereafter issue instructions.

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Suits instituted by Government

- No suit on behalf of Govt. shall be instituted without the sanction of Govt.
- Whenever it appears to any officer of Govt that a suit should be instituted on behalf of Govt, he shall submit a complete report the HOD.
- The HOD shall obtained, through secretary to Govt, orders from law and legal affairs department.

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THANKS

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