

# Summons in the Digital Age: ICT Integration in the Service of Summons

**This report is an independent, non-commissioned study undertaken by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to make better laws and improve governance for the public good.**

# About the Authors

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This report is a publication of the JALDI (Justice, Access & Lowering Delays in India) initiative at Vidhi Centre for Legal Policy. JALDI is now working towards translating its research into actionable solutions through the JALDI Innovation Lab. This report on re-engineering summons is a first attempt in this direction, created in consultation with technology experts.

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# I. Background

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The COVID-19 pandemic has now more than ever, exemplified the need for the proper integration of technology in the Indian judiciary. In the last two decades, under eCourts Integrated Mission Mode Project (eCourts Project), the judiciary has undertaken several initiatives to integrate technology in the judicial processes. These initiatives and prompt adoption of technology has been instrumental in keeping the judicial system accessible during the pandemic.

eCourts Project was conceptualised by e-Committee of the Supreme Court of India in 2005 with an objective to integrate technology into the judiciary for its efficient functioning. Phase I of the eCourts Project achieved site readiness, hardware installation, and software deployment in District and Taluka courts across India.<sup>1</sup> Phase II of the project strengthened the technology infrastructure in the judiciary and has developed services for participants and stakeholders of the judiciary. These services include video conferencing facilities in courts, Central Filing Centres, information kiosks, etc.

As the judiciary proceed towards Phase III of the eCourts Project, there is a need to further harness true potential of the technology to make the judicial processes more efficient and transparent.<sup>2</sup> One such use of technology could be in addressing one of the predominant cause of delay in litigation proceedings, namely, the time taken for issuing summons and notices. During adjudication, a preliminary function of the court is to ensure the attendance of key parties to the dispute, such as defendants and witnesses. While the 'service of summons' appears to be simple and straightforward in theory, it is tedious in practice and contributes to a significant delay in the overall life-cycle of a case. To illustrate, in a study on Bengaluru Rural Courts, the data showed that the notice and summons stage accounts for 25 per cent of the life cycle of a civil case and 18 percent in a criminal case.<sup>3</sup> As per the study, courts spend 273 and 210 days on an average at this stage for civil and criminal cases respectively.<sup>4</sup> The process of serving summons, therefore, has tremendous scope for improvement, which in turn can substantially reduce the delay caused in adjudication of cases.

There are three sets of provisions governing the process of summons under the Code of Civil Procedure, 1908 (CPC) – Sections 27 to 32, Order V and Order XVI. While these provisions govern the summoning of defendants, the same provisions also govern the process of summoning witnesses.<sup>5</sup> Under the Code of Criminal Procedure, 1973 (CrPC), the process of summons is governed under Sections 61 to 69. These provisions provide for several modes of service of summons including service in person, service to an adult member of the house in case the person summoned is not found, and summons through affixture at the residence or place of work of the person summoned. Further, different High Courts through their practice rules, regulate the service of summons and different modes of service.

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<sup>1</sup> Department of Justice, 'Brief on eCourts Project- Phase I and Phase II' (2016) <[https://doj.gov.in/sites/default/files/Brief-on-eCourts-Project-\(Phase-I-%26-Phase-II\)-30.09.2015.pdf](https://doj.gov.in/sites/default/files/Brief-on-eCourts-Project-(Phase-I-%26-Phase-II)-30.09.2015.pdf)> accessed 15 June 2020

<sup>2</sup> Deepika Kinhal, Ameen Jauhar et al., 'Virtual Courts: A Strategy Paper' ( *Vidhi Centre for Legal Policy*, May 2020) <<https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/>> accessed 17 May 2020

<sup>3</sup> Deepika Kinhal, Shruthi Naik et al., 'Litigation Landscape of Bengaluru' ( *Vidhi Centre for Legal Policy and DAKSH*, 2019) 56 <[https://drive.google.com/file/d/1-W8nqz5D4z5qHL5uyT95tgU6l\\_1z5C4H/view?ts=5d5e42aa](https://drive.google.com/file/d/1-W8nqz5D4z5qHL5uyT95tgU6l_1z5C4H/view?ts=5d5e42aa)> accessed 19 May 2020

<sup>4</sup> *ibid* at 57

<sup>5</sup> Code of Civil Procedure 1908, order XVI r 8

While the aforementioned data suggests otherwise, there have been some, albeit few, attempts to improve the efficiency at the summons stage. Phase II of the eCourts Project undertook strengthening the system of serving notices and summons as one of its initiatives. It was in this phase that efforts were made to deliver summons electronically. This was achieved through the creation of a dedicated system for the delivery of summons called the National Service and Tracking of Electronic Processes (NSTEP).<sup>6</sup> The system allocates 'processes'<sup>7</sup> to bailiffs and process servers and provides for uploading onscreen signatures and photographs of person or locked premises while serving processes.

Phase II also saw the creation of Case Information System (CIS) templates, which were developed for the electronic generation of processes and sending them via email.<sup>8</sup> Additionally, it also introduced several support infrastructure to aid the summons process. This included setting up information kiosks, a Central Filing Centre, providing orders and cause lists in PDF formats, and enabling litigants and advocates to check cases statuses under the eCourts and various High Court websites.<sup>9</sup>

Despite these efforts, the implementation of NSTEP and the electronic generation of summons across the country has remained a concern. Even though there have been attempts to serve summons through emails or messaging applications such as WhatsApp, the complete integration of such technologies into the system is yet to be achieved. This position has however change in parts on account of the COVID-19 induced pandemic, which provided impetus to courts to allow the service of summons through digital mediums.<sup>10</sup>

This paper looks at why the adoption of an electronic delivery of summons has been abysmal. It proposes a fresh perspective on process reengineering and technology integration at the stage of summons and broadly addresses concerns regarding accountability and corruption amongst process servers and the need to expedite delivery of summons.

Chapter II identifies the different processes adopted by the courts in Karnataka for issuing and delivering summons. Chapter III studies the causes for delay and chapter IV conducts an analysis of the solutions recommended so far. Together, they build the foundations of chapter V and VI, which proposes tech-oriented solutions and recommendations, and gives a clear roadmap and a list of action points that the judiciary can adopt respectively. To further solidify this framework, this paper also includes a model set of summons rules that can be adopted by courts across India. Since these rules have been drafted while being cognizant of the rules adopted by the different High Courts, a supplementary explanation and comparison chart has also been included.

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<sup>6</sup> Deepika Kinhal, Shruthi Naik et al., 'Litigation Landscape of Bengaluru' (n 3) 33

<sup>7</sup> Process refers to a summons, writ, mandate or command to appear or to bring a person or thing in court. See CK Thakker 'Takwani', *Takwani Criminal Procedure* (LexisNexis Butterworths Wadhwa 2011) 17.

<sup>8</sup> Ibid

<sup>9</sup> eCommittee, Supreme Court of India, 'Objectives Accomplishment Report as per Policy Action Plan Document Phase II' (*Supreme Court of India*, 2019) 8

<[https://ecourts.gov.in/ecourts\\_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf](https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf)> accessed 15 June 2020

<sup>10</sup> Suo Moto Writ Petition (C) No. 3/2020 In Re Cognizance for Extension of Limitation. <[https://main.sci.gov.in/supremecourt/2020/10787/10787\\_2020\\_31\\_19\\_22757\\_Order\\_10-Jul-2020.pdf](https://main.sci.gov.in/supremecourt/2020/10787/10787_2020_31_19_22757_Order_10-Jul-2020.pdf)>. Also see, Covid-19 impact: SC allows summons, notices to be served through digital medium (Mint, 10 July 2020) <<https://www.livemint.com/news/india/covid-19-impact-sc-allows-summons-notices-to-be-served-through-digital-medium-11594390079508.html>> accessed 26 September 2020

# II. Process of Serving Summons in Karnataka

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## Process under the Code of Civil Procedure, 1908

Under the CPC, once a suit has been instituted, the court issues summons to the defendant to answer the claim and file a written statement in her defence.<sup>11</sup> Every such summons issued must be signed by the presiding judge or, such officer as she appoints, and requires the seal of the Court.<sup>12</sup> In case the defendants do not reside in the same jurisdiction as the court that is serving them, a summons is sent for service to the required state and is governed by the latter's practice rules.<sup>13</sup> In some cases, the party could also be from a foreign country, following which the summons will be served in accordance with the Hague Convention.<sup>14</sup> There are also cases in which the parties cannot be found, or (intentionally) refuse to accept the summons. In such cases, where the court is simply unable to serve the defendants, they often use the method of substituted service of summons by affixture of summons on court premises and residence of the defendant or through newspaper publication. Finally, if the defendant fails to attend court after receiving the summons, the case is decided *ex-parte* by the court.

To map and understand the process of issuing and serving the summons, we have conducted consultations with the process servers, practicing advocates, and the administrative staff in the Karnataka High Court, Delhi High Court, District Court, Saket, Delhi, and the City Civil Court, Bengaluru. Based on these consultations, the key stages of the process were mapped and organised in a flowchart. The flowcharts below depict the overall process of issuing and servicing summons within the state of Karnataka.

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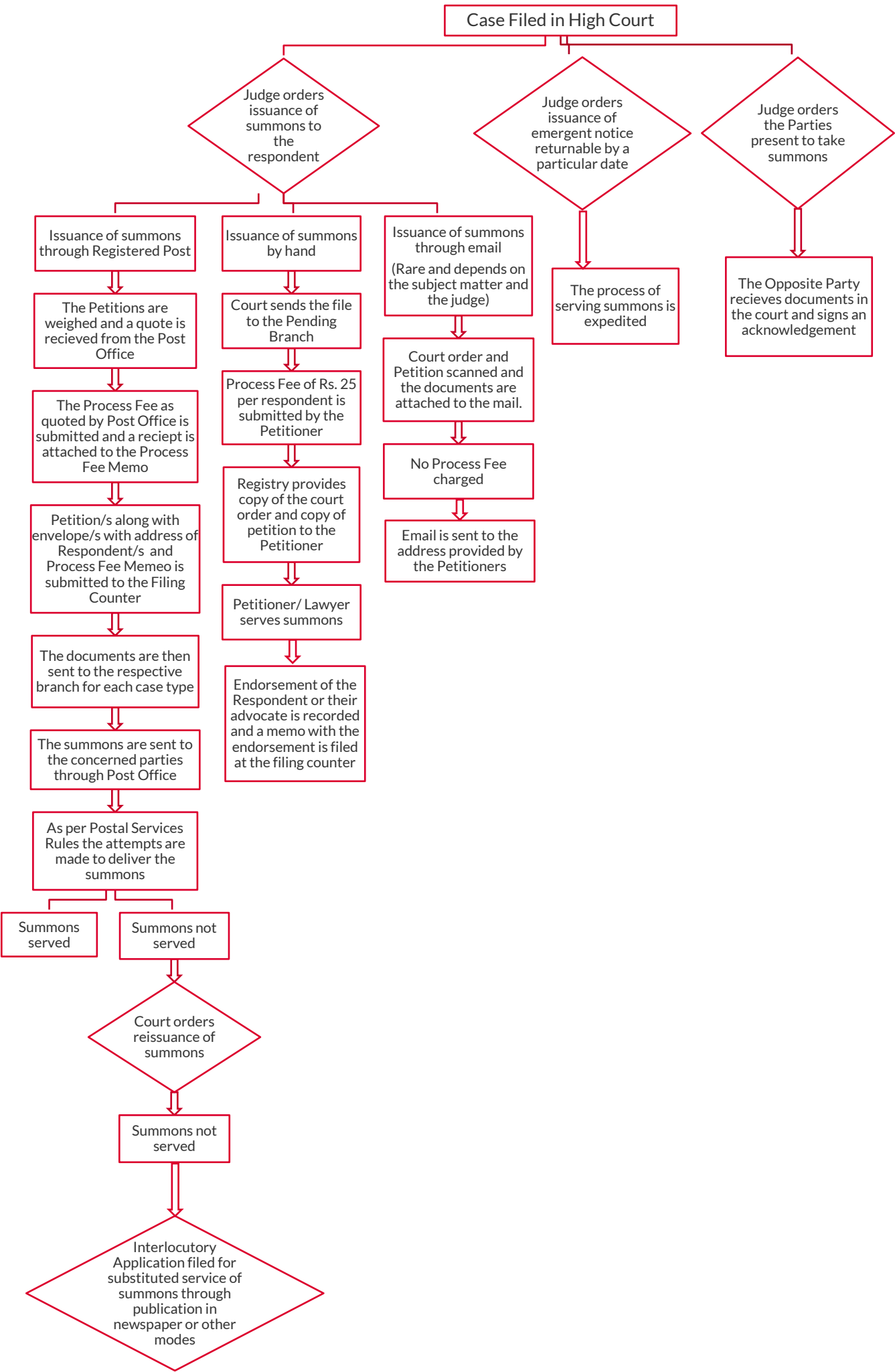
<sup>11</sup> Code of Civil Procedure 1908, s 27, order V r 1

<sup>12</sup> Code of Civil Procedure 1908, order V r 1(3)

<sup>13</sup> Code of Civil Procedure 1908, s 28

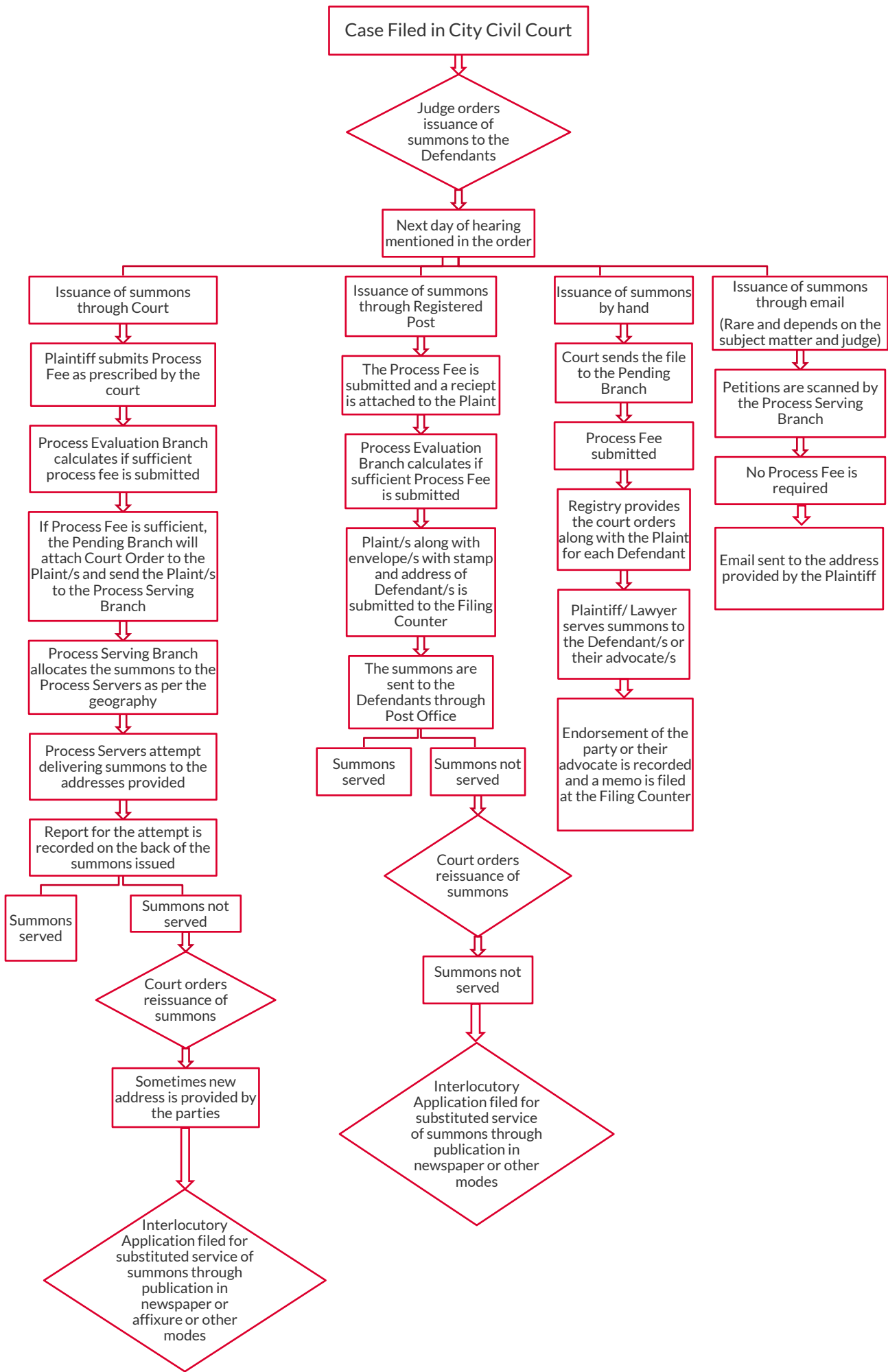
<sup>14</sup> Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Disputes (opened for signature 15 November 1965) 658 UNTS 163 ('Convention on the Service Abroad') <[https://drive.google.com/file/d/1-W8nqz5D4z5qHL5uyT95tgU6l\\_1z5C4H/view?ts=5d5e42aa](https://drive.google.com/file/d/1-W8nqz5D4z5qHL5uyT95tgU6l_1z5C4H/view?ts=5d5e42aa)> accessed 19 May 2020

# Process followed at the Karnataka High Court





# Process followed at Bengaluru City Civil Courts



# III. Causes for Delay

There are several causes for the delay in processing summons that occur at various stages of this complex process. The table provided below identifies delays at five stages – the issuance of summons by the court; internal processes of the registry and their interaction with the parties; the procedural issues of serving summons; the practical issues governing process servers; and other practical issues. In addition to tabulating the complicated process of serving summons, the issues below have been identified through interviews with process servers and registry members across the High Courts at Delhi and Karnataka, and the City Civil Court at Bengaluru, and the Saket District Court at New Delhi.

Stage	Issues	Description
Issuance of summons by the court	Inadequacy of rules, regulations, or notifications to govern the procedure	The CPC equips High Courts with the power to formulate rules regarding their practice and procedure. However, the rules notified by High Courts seems to be inadequate to regulate and clarify the process of serving summons. For example, the Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005 does not lay out a clear procedure in situations where the summons is returned unserved. Further, the rules does not specify the terms and conditions of service for the process servers. Consequently, the lack of a clear rule framework leads to arbitrary decision-making and adoption of inconsistent practices.
	Lack of clear mandate to provide next date of hearing	Knowing the date of hearing in advance allows litigants to prepare for the hearing and allows the court to develop a clear timeline to enable the appearance of the party being served. While the courts in Delhi and the City Civil Courts, Bengaluru provide these dates, the Karnataka High Court does not. This leads to arbitrariness in allocating the next date of hearing, which in turn, diminishes the oversight of the court in the summons process.
	Delay in submission of process fee	Delay in submission of process fee is a problem faced across all courts. For example, at the Delhi High Court, it is common practice to accept the process fee up to 10 days before the next date of hearing – even if the next date of hearing is a couple of months later. While the Karnataka High Court prescribes that the process fee has to be paid within 7 days from the issuance of summons, it is uncertain as to how stringently this is adopted. <sup>15</sup> A delay in submission of the fee reduces the amount of time available with process servers to serve summons that, in turn,

<sup>15</sup> Karnataka (Case Flow Management in Subordinate Courts) Rules 2005, r 4(4)

		overburdens the process servers and results in inefficient service.
<b>Internal processes of the registry and interaction with the parties<sup>16</sup></b>	Multiplicity of stages and participants	Issuance of summons through registered post or the court involves multiple steps and different branches from the issuance of summons to its service. The failure of having a streamlined process and a multiplicity of actors often increases the chances of duplication of processes and eventually delays the service of summons.
	Lack of intermediate correspondence between the court and the petitioner	The lack of correspondence and regular progress updates between the Registry and the serving party leads to delays. Information in the case of an insufficient process fee payment or possible changes in the address of the party being served is only exchanged during court hearings. There is no provision for a systematic intermediate communication between the serving party and her advocate with the registry even for procedural issues that do not require court intervention.
	Failure or incomplete recording of email id and phone number of the party being served	Incorrect or insufficient submission of contact information with the Registry leads to a failed or redundant service of process. For example, interviews with the Delhi High Court process servers indicated that in some cases, only localities were mentioned without any house numbers, making the process of serving summons impossible. Such delays are caused due to insufficient information provided by parties as well as the lack of any internal processes through which the registry can remedy these inadequacies on its own.
<b>Procedural issues of serving summons</b>	Serving summons to outstation parties	When summons are served to outstation parties - the rules of the destination state are to be complied with, the language of the summons might have to be translated, and the recording of the proceedings is required to be sent from one court to another. <sup>17</sup> Delays for such service persist across most courts - criminal courts, labour courts and motor accident claims courts <sup>18</sup> , and have even been recognised by the Supreme Court <sup>19</sup> as a contributing cause of delay in the service of summons.
	Delay in serving foreign summons	The process of serving summons is even more complicated across foreign jurisdictions, with varying CPC rules governing different factual scenarios <sup>20</sup> and differing practices followed by countries

<sup>16</sup> Karnataka (Case Flow Management in Subordinate Courts) Rules 2005, r 4(4)

<sup>17</sup> Code of Civil Procedure 1908, s 28

<sup>18</sup> Arunav Kaul, Gaurav Banerjee et. al., 'Zero Pendency Courts Project' (Daksh 2019) at 56, 59 & 61

<[https://dakshindia.org/wp-content/uploads/2019/05/PublicNotice\\_3MRRIN3QTHN.pdf](https://dakshindia.org/wp-content/uploads/2019/05/PublicNotice_3MRRIN3QTHN.pdf)> accessed 29 June 2020

<sup>19</sup> *Salem Advocate Bar Association, Tamil Nadu v Union of India* (2005) 6 SCC 344

<sup>20</sup> Code of Civil Procedure 1908, order V rr 25, 26 and 26-A

		signatory to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial documents in Civil and Commercial Matters <sup>21</sup> . For example, Canada and Australia charge fees for serving summons while other countries do not. <sup>22</sup> Further, there are additional requirements such as the summons must be written in English, cannot be served via mail, must be served in India indirectly via proper authority, etc. In fact, the Ministry of External Affairs on its official website notes that in total, one would need to plan for about 4-5 months for effecting service of summons in a foreign country. <sup>23</sup>
	Problems in situations where the party being served refuses summons, or cannot be found	In the event that the party being served (or her agents) simply choose not to accept summons or sign the acknowledgement, re-serving of summons becomes another futile exercise and only adds to the amount of judicial time that has to be spent. In such cases, to procedurally conclude the service process, a copy of the summons has to be prominently affixed on the house/office <sup>24</sup> and then, ideally, also be published in a widely circulated newspaper. <sup>25</sup> Though well intended, in such a situation, these requirements become procedural compliances that add to the delay rather than actually achieving the purpose of serving summons.
<b>Practical issues involving process servers</b>	Lack of right incentives for process servers	Structurally, there are no incentives for process servers to serve summons in an expedited and efficient fashion. They are poorly paid, with research suggesting that, in Karnataka, they are paid a meagre Rs. 300 per month for travel expenses. <sup>26</sup> Interviews highlight the acute shortage in their numbers, as a result, a significant number of process servers at the Delhi High Court are on deputation from the district courts. There is no equal distribution of work between servers, while some process servers are assigned jurisdictions around 50km from the High Court, others might be within the 10km radius.
	Inadequate training	There is a common perception that despite having adequate time, process servers do not put in the desired effort for service of summons <sup>27</sup> There are, however, no systems or training in place to

<sup>21</sup> India has been a signatory to the Hague Convention on Service Abroad since 01 August 2007, See Convention on the Service Abroad (n 14)

<sup>22</sup> Ministry of External Affairs. 'Service of Summons Abroad' <[www.mea.gov.in/service-of-summons-abroad.htm](http://www.mea.gov.in/service-of-summons-abroad.htm)> accessed 10 February 2020> accessed 10 February 2020

<sup>23</sup> Ministry of External Affairs (n 21)

<sup>24</sup> Code of Civil Procedure 1908, order V r 20(1)

<sup>25</sup> Code of Civil Procedure 1908, order V r 20(1A)

<sup>26</sup> Deepika Kinhal, Shruti Naik et al., 'Litigation Landscape of Bengaluru' (n 3) 46

<sup>27</sup> BS Mehandiratta, 'Module of Training for the Ministerial Staff Attached to Courts' (Chandigarh Judicial Academy) 1 <<http://cja.gov.in/Download/Ministerial%20Staff%20Training/Process%20Serving%20Establishment.pdf>> accessed 10 May 2020

	of process servers	sensitise them or educate them on procedures and the significance of their work. Therefore, servers might be driven by external conflicting interests, ultimately contributing to delays.
	Duplication of work for process servers	The court's reliance on paper for all official communications often leads to process servers having to duplicate the work that is done digitally. This deters servers to rely on the technological interventions that are being introduced with the goal of increasing efficiency and streamlining processes.
	Lack of detailed reporting by process servers	There are different practices on recording information on attempts at service. Detailed information such as date and time of service of summons, number of attempts made, name and phone number of the person accepting summons, and other details are not mandatorily and methodically recorded. This precludes the automated generation of compiled reports and limits the scrutiny of process servers.
<b>Other practical issues in serving summons</b>	Out-dated address and directories of panel advocates	In government litigation, especially where the summons is to be served by hand on short notice, it can be difficult to track the panel advocates of the concerned government body. While the Court has a directory of advocates, this directory is generally outdated. Therefore, instead of expediting the process, it leads to further delays.
	Lack of utilization of pre-existent technological interventions	Even though National Service and Tracking of Electronic Processes (NSTEP) was developed under the eCourts Project to electronically serve summons, it is yet to be adopted by courts across India. Even ICT interventions such as service of summons via email or messaging applications such as WhatsApp, though recognised by the Supreme Court, are sparsely utilised. Thus, methods intended to streamline and expedite service have not been adequately utilised to provide respite from prolonged delays.

## IV. Solutions Attempted so far

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This section identifies the key solutions that have been attempted by the courts to address delays in summons. It primarily examines the use of technologies like e-mail and messaging applications to service summons by some courts in India.

### A. Special rules regarding summons

As technology keeps innovating rapidly, the law is often left to play catch up. However, the CPC foresees such an eventuality with Part X and Order V, Rule 9, thereby enabling High Courts to make rules and regulations regarding their own procedure and the procedure for the Civil Courts that lie within their jurisdiction.<sup>28</sup> Utilising this, the Delhi High Court has made rules regarding the service of summons. It has formulated the *Delhi Court's Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010*, which, as titled, provides the modalities of service of summons.<sup>29</sup> Chapter 4 (Rules 12, 13 and 14) notes that the service can be effected by the other parties by electronic mail in civil proceedings. However, the full potential of this provision has not been utilised and no further rules have been promulgated in this regard.

The Karnataka High Court on the other hand, through its *Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005* has formulated some rules regarding summons. Interestingly, it imposes an onus on the petitioner to provide the correct postal address, failing which service shall not be attempted. It also imposes a deadline of 7 days for the payment of process fee and addresses service through registered post. However, these provisions have largely remained on paper.

### B. Judicial recognition for summons through email

The Supreme Court has also recognized that arrears have kept mounting on account of the delay in process serving. It is for this reason that in 2010, the court in *Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd*<sup>30</sup> permitted email notice to be served along with the ordinary mode of serving notice. The court ruled that this practice should be followed in commercial litigations and in cases where urgent interim relief is sought in the Supreme Court. In such cases, the advocate-on-record filing appeal/petition should furnish the email address of the respondent company along with a soft copy of petition/appeal in portable document format (PDF). The notices served in such matter should then be sent through email along with the ordinary mode of service.

In order to implement this practice with respect to government offices, the court also directed the Cabinet Secretariat to furnish centralised e-mail addresses of all the

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<sup>28</sup> Code of Civil Procedure 1908, s 122

<sup>29</sup> Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules 2010 <[http://www.delhihighcourt.nic.in/library/acts\\_bills\\_rules\\_regulations/New%20Folder/Delhi%20Courts%20services%20of%20processes%20by%20courier,%20fax%20and%20electronic%20mail%20service%20\(civil%20proceedings\)%20rules,%202010.pdf](http://www.delhihighcourt.nic.in/library/acts_bills_rules_regulations/New%20Folder/Delhi%20Courts%20services%20of%20processes%20by%20courier,%20fax%20and%20electronic%20mail%20service%20(civil%20proceedings)%20rules,%202010.pdf)> accessed 10 February 2020; See also Delhi High Court Rules and Orders, ch 7 <[http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile\\_IKIU3M6D.PDF](http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_IKIU3M6D.PDF)> accessed 10 February 2020

<sup>30</sup> *Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd* (2010) 10 SCC 280

Ministries/Departments/Regulatory Authorities along with names of Nodal Officers where such officers have been appointed. The Bombay High Court in *Ksl and Industries Ltd v Mannalal Khandelwal and the State of Maharashtra* had also recognised the importance of service of summons through email.<sup>31</sup> The court noted that it was:

*“a matter of common experience that enormous time is spent in service of summons on the accused for a variety of reasons and the most important reason is the accused's tendency of avoiding service. Therefore, the Court must adopt all pragmatic methods of services on the accused. Repeated summons be sent by employing all methods, including email, to ensure service of summons.”*

In 2014, the position was once again reiterated by the Supreme Court in the context of issuing summons in cases involving Section 138 of the Negotiable Instruments Act, 1881 in *Indian Bank Association v Union of India*.<sup>32</sup> As a result of this judgment, it is now a common practice of banks to send notices for violation of Section 138 via email. In fact, HDFC Bank reportedly got 214 court summonses served through WhatsApp and email in just two months. These were served through courts in Tamil Nadu, Gujarat, Punjab, Haryana, West Bengal, Rajasthan, Assam, Uttar Pradesh, and others.<sup>33</sup> Even though service through messaging applications has been recognised as a means of serving summons, one of the limitations often being cited has been the lack of proof of delivery of service. To ensure that this method is used widely across courts, this limitation will have to be remedied.

## C. Judicial recognition for summons through messaging applications

Apart from serving notice through email, the courts have also begun acknowledging the utility of services like WhatsApp for service of court notice.<sup>34</sup> In *Tata Sons Limited & Ors v John Doe*<sup>35</sup>, the Delhi High Court permitted the right to serve summons to the defendant via WhatsApp, texts as well as by emails to a defendant. A similar position was taken by - the Bombay High Court in *Kross Television India Pvt Ltd v Vikhyat Chitra Production*<sup>36</sup> and by the Karkardooma District Court, Delhi where the defendants were served summons via WhatsApp.<sup>37</sup> While these methods indicate the movement towards electronic methods of serving summons, there continue to be limitations. Just as it is with email, it is difficult to obtain proper proof of delivery of service in such cases as well.

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<sup>31</sup> *Ksl and Industries Ltd v Mannalal Khandelwal and the State of Maharashtra* 2005 CriLJ 1201

<sup>32</sup> *Indian Bank Association v Union of India* (2014) 5 SCC 590

<sup>33</sup> Raghav Ohri, 'Banks serving summons to defaulters through WhatsApp, emails' *Economic Times* (01 September 2018) <<https://economictimes.indiatimes.com/industry/banking/finance/banking/banks-serving-summons-to-defaulters-through-whatsapp-emails/articleshow/65630866.cms?from=mdr>> accessed 10 February 2020

<sup>34</sup> Vijay Pal Dalmia and Rajat Jain, 'India: Service Of Court Notice Through WhatApp Is A New Dynamic Norm Of Service Of Court Notice' (*Mondaq*, 11 May 2017) <<http://www.mondaq.com/india/x/592636/court+procedure/Service+Of+Court+Notice+Through+WhatApp+Is+A+New+Dynamic+Norm+Of+Service+Of+Court+Notice>> accessed 10 February 2020

<sup>35</sup> *Tata Sons Limited & Ors v John Doe* 2017 SCC OnLine Del 8335

<sup>36</sup> *Kross Television India Pvt Ltd v Vikhyat Chitra Production* 2017 SCC OnLine Bom 1433

<sup>37</sup> Akansha Jain, 'Delhi Court Allows Service Of Summons Through WhatsApp, SMS, E-Mail In Domestic Violence Case' (*Live Law*, 23 March 2018) <<https://www.livelaw.in/delhi-court-allows-woman-serve-summons-estranged-husband-australia-whatsapp-sms-e-mail-read-order/>> accessed 10 February 2020



When a message is delivered on WhatsApp, a double-tick is shown to the sender. These double ticks get converted to blue-ticks once the person reads the message. It could be argued that a blue double-tick may be a valid delivery of summons. This reasoning was verbally acknowledged by the Apex Court while delivering the order which recognised service through messaging applications..<sup>38</sup> However, such an understanding has its limitations. The blue ticks can be disabled by the receiver, following which the proof of summons cannot be ascertained. Additionally, there is currently no procedure mentioned if the party to whom the summons is issued has changed her WhatsApp number and someone else receives the summons instead. In certain sensitive cases, there may also be additional privacy concerns if summons end up being served to an unintended party. It is probably because of such limitations that courts across the board do not seem to accept summons through WhatsApp.

Apart from difficulties in obtaining proof of service, the courts have also expressed their concerns over the lack of capacity and infrastructure. In *Bhim Rathke v RK Sharma*<sup>39</sup>, a Special Judge of Patiala House Courts, New Delhi dismissed the application of complainant who had sought the usage of email and WhatsApp for serving summons. It rejected the service of summons via WhatsApp since there was no facility available with the court system to effect service through electronic mode.

## **D. Proper training and constant vigilance of process servers**

The above section has noted the delay on account of the poor performance of process servers. The Chandigarh Judicial Academy has come up with a primer on how to train process servers to ensure a faster service of summons.<sup>40</sup> It delves into requirements of maintaining proper registers, having a clear chain of command, and provides the formats for affidavits that process servers need to fill, among others. To avoid delays at the service stage, it notes the steps that should be followed while serving summons. The recommendations are akin to the steps listed out under Order V. These include steps like serving family members/ agents only when service to the party being served has failed. It also includes requirements like trying to serve the party multiple times before undertaking substituted service.

## **E. Introduction of N-STEP**

Given that huge amount of delays can be associated with the process of summons, the Supreme Court eCommittee has introduced National Service and Tracking of Electronic Processes (NSTEP) to handle the problem. NSTEP is an Android OS application developed for service and delivery of Court Processes.<sup>41</sup> This application is intended to be used by the bailiffs of the courts for delivery of processes. It utilises the CIS system (Case Information System) that has already been deployed across all the courts in India. The bailiff utilises the application to document the delivery of summons. The application includes a feature to record the GPS co-ordinates at the time of delivery of summons and enables recording picture and on-screen signature of the person who has been served.

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<sup>38</sup> PTI, 'SC allows email, fax, instant messaging apps like 'WhatsApp' for service of notices, summons (The New Indian Express, 10 July 2020) <<https://www.newindianexpress.com/nation/2020/jul/10/sc-allows-email-fax-instant-messaging-apps-like-whatsapp-for-service-of-notices-summons-2168073.html>> accessed 26 September 2020

<sup>39</sup> *Bhim Rathke v RK Sharma* Cr Revision No. 16/2018 decided on 22 February 2018 <<https://indiankanoon.org/doc/186269913/>> accessed 10 February 2020

<sup>40</sup> BS Mehendiratta (n 27)

<sup>41</sup> eCommittee, Supreme Court of India, 'National Service and Tracking of Electronic Processes User Manual (*Supreme Court of India*, 2018) <[https://ecourts.gov.in/ecourts\\_home/static/manuals/NSTEP-User%20manual.pdf](https://ecourts.gov.in/ecourts_home/static/manuals/NSTEP-User%20manual.pdf)> accessed 10 February 2020



NSTEP is a clear example that technology can be introduced to streamline the process of service of summons. It is a useful tool to monitor the service of summons and address the issue of accountability of the process servers. However, such a process fails to undo other problems that are entrenched and contingent on human behaviour such as change of addresses and wilful disobedience on the part of the party being served in accepting summons. Hence, while NSTEP is an essential tool to streamline service and increase accountability, it does not address the need for an overall process reengineering to improve the efficiency and efficacy of the process.

## **F. Auto-generation of summons**

Moving towards digitalisation of the process of serving summons, the eCourts mission, under its latest module for Case Information System, CIS 3.0, provides for auto generation of summons.<sup>42</sup> The system provides a template to be filled with the required case details such as case number, addressee's name and address along with their email id and phone number. Based on such details summons are auto generated by the system.

The auto-generated summons is then sent automatically to the email id entered in the CIS template.<sup>43</sup> Auto generated summons can then be printed for the service of summons. Further, the system also provides for a process of monitoring the service through process status, which include the name of bailiff or process messenger, delivery date, whether the process is served or unserved, and reasons for non-service of summons.

## **Need for Process Reengineering**

The aforementioned measures and solutions attempted the use of ICT to eliminate the bottlenecks in the process of serving summons. However, these measures are often fragmented and was insufficient to check the inefficiency at the stage of serving summons. Therefore, a wide scale process reengineering is required to streamline the whole process and address the problems of inefficiency and delays at this stage.

Process reengineering should provide for synergetic use of ICT innovation to improve the efficiency and efficacy of the entire process, from the generation of summons to identifying the suitable mode of service and ascertaining the proof of service of summons. A holistic reform will not only improve efficiency, but also address accountability concerns. The following sections attempt to identify some ways in which this can be done.

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<sup>42</sup> R Arhulmozhiselvi, 'Case Management through CIS 3.0' (*eCommittee, Supreme Court of India*, 2018) 141 <[https://doj.gov.in/sites/default/files/CIS%203.0%20final\\_0.pdf](https://doj.gov.in/sites/default/files/CIS%203.0%20final_0.pdf)> accessed 19 May 2020

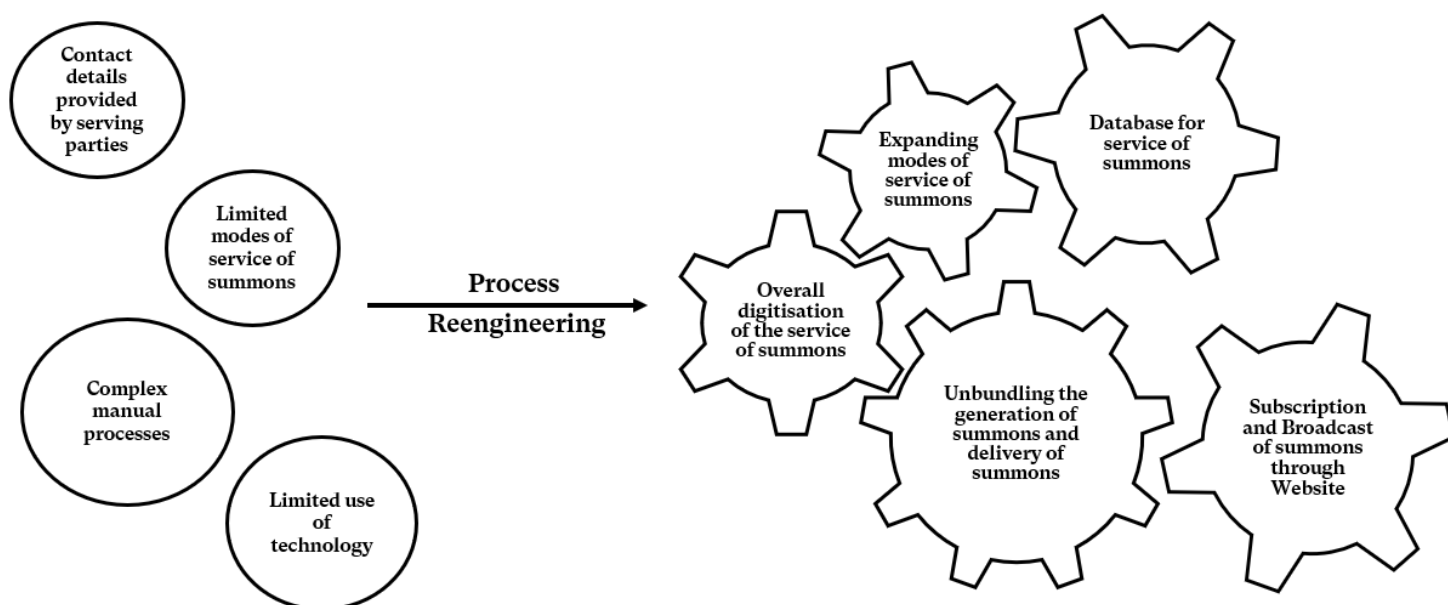
<sup>43</sup> eCommittee, Supreme Court of India, 'Objectives Accomplishment Report' (n 9) at 33

# V. Process Re-engineering and Solutions

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There are multiple stages and causes of delays in the process of serving summons, as detailed in the previous sections. While some measures have been adopted in the past, these standalone technology innovations often lead to the duplication of work, especially at the level of the Registry. This section highlights some of the key concepts and changes that can be introduced to holistically re-engineer for efficient service of summons. Three stages have been identified for these interventions. At each of these stage accountability measures for stakeholders can be built in to ensure efficient functioning.

- a) **Diversifying methods of collecting information about parties** – The courts at present solely rely on the party serving the summons to provide the address and contact details of the party being served. Re-visiting this process, we must endeavour to reduce this reliance on the party serving summons and to instead establish systems within the court to maintain databases of panel advocates and to access government databases to ascertain contact details of the party being served.
- b) **Re-engineering internal processes of generation and storage of summons** – Though auto generation of summons was introduced under the eCourts Project, documentation continues to be maintained on paper. With the increased use of technology, efforts should be made to unbundle generation & hosting from delivery of summons. Since summons will have to be hosted electronically, a robust system to authenticate documentation and information will have to be developed.
- c) **Expanding modes of communication of service** – Currently, standalone departments within the Registry attempt service primarily through post, courier, and process servers. Some have attempted service through WhatsApp and email. Attempts should be made to expand the modes for service to include contemporary and emerging technologies. These ICT integrations will increase the efficiency and efficacy of the service of summons. Further, the integration of the NSTEP and the development of other technology tools will increase accountability in the process.



A few key ICT innovations and the changes required in the process of serving summons to implement such process reengineering are listed below.

## A. Diversifying methods of collecting information

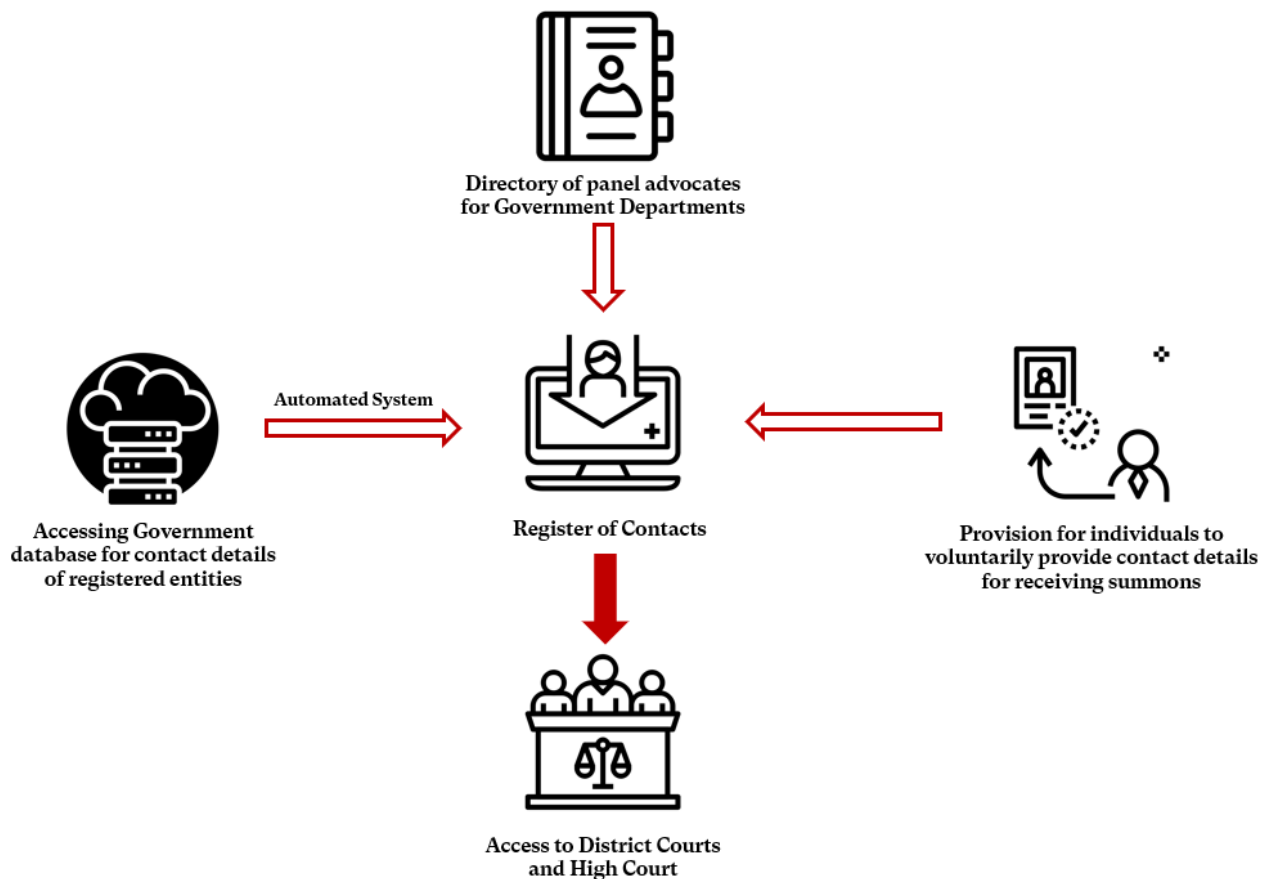
One of the key causes for delays at summons stage, as mentioned previously, is the lack of proper information about the party being served. Most of the information that is utilised for communication is contingent on the details provided by the serving party to the Registry. The Registry can remedy this problem in three ways:

1. **Collaborate with other government departments to access databases:** Each High Court, in collaboration with other government departments, can develop an application that allows access to their independent databases of contact information. For instance, the Ministry of Corporate Affairs maintains updated information on the list of companies registered with the Registrar of Companies (RoC) in India. This information is regularly required to be updated by companies and is a live database of information. Land revenue departments under State Governments maintain similar databases of information that can be used to contact parties who have rights in any registered property.<sup>44</sup> It is important to note that this database may not be hosted or maintained by the High Court, instead the High Court Registry can be provided access to the various databases that currently exist.
2. **Solicit information from public through subscription:** Another method for the High Court to obtain information is to solicit it from the public through a subscription model. High Courts can allow individuals to subscribe to their website to receive eSummons issued against their name. In order to prevent misuse of this system, a complex captcha can be utilised to access the issued summons. Such a subscription model, though seemingly similar, is contradistinct from caveats

<sup>44</sup> 'Indraprastha Bhu-Lek' (*Delhi Land Record Information*) <<https://dlrc.delhigovt.nic.in/ror.aspx>> accessed 18 May 2020

lodged under Section 148A of the Code of Civil Procedure, 1908. The intent of filing caveats is to ensure that the court does not take substantive action, such as issuing an urgent interim relief or notice, on the matter without representation from the caveator. Therefore, a caveat protects the right of representation from the first date of hearing. Hence, caveats precede the issuance of notice and summons by the court. On the other hand, summons under the subscription model are only delivered after the court has found some merit in hearing the matter and thereby issued notice and summons in the case.

3. **Register of panel advocates:** State Governments and Departments in the Central Government have panel advocates at every High Court. In collaboration with the Central Agency, the High Court Registry can maintain a regularly updated register of the contact information of such individuals.



## B. Re-engineering internal processes of storage and generation

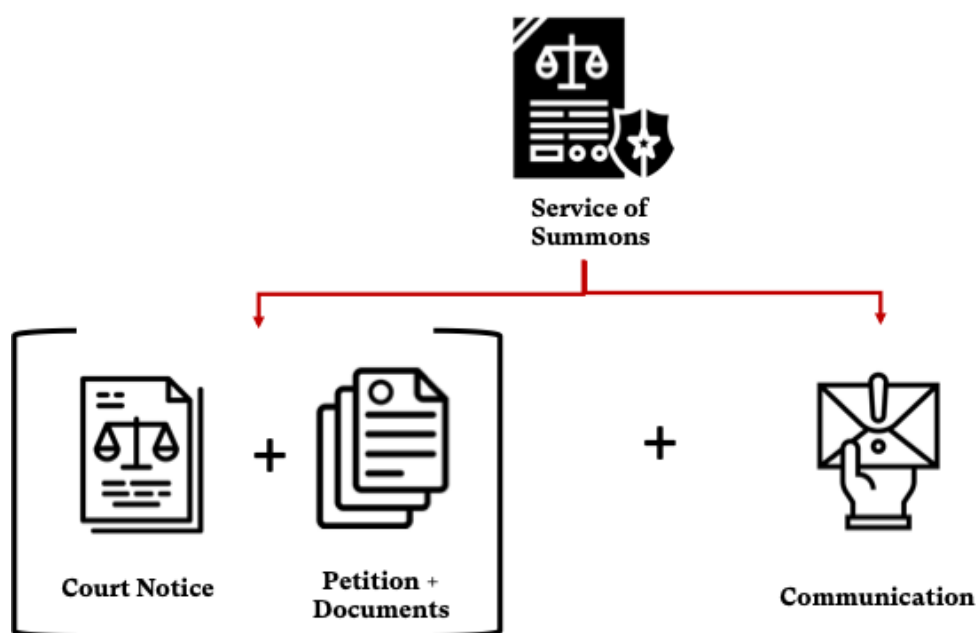
### 1. Process re-engineering through unbundling

Unbundling refers to the process of extracting features of an existing system and creating a new experience by expanding the capabilities of such features beyond the constraints that exist in its

current usage.<sup>45</sup> It resolves the issues in the system through small sachets of solutions, which can be combined with other solutions to expand the capability of the system.<sup>46</sup> In the context of summons, since the internal processes are complex, they can be broken down into smaller 'sachets' and individual unique solutions can be developed. Post the collection of contact information; summons can be classified into three stages:

1. generation of summons,
2. storage of summons and
3. delivery of summons

Since the process of generation and storage of summons are interlinked, they are addressed together in this section. Delivery of summons is addressed in part C.



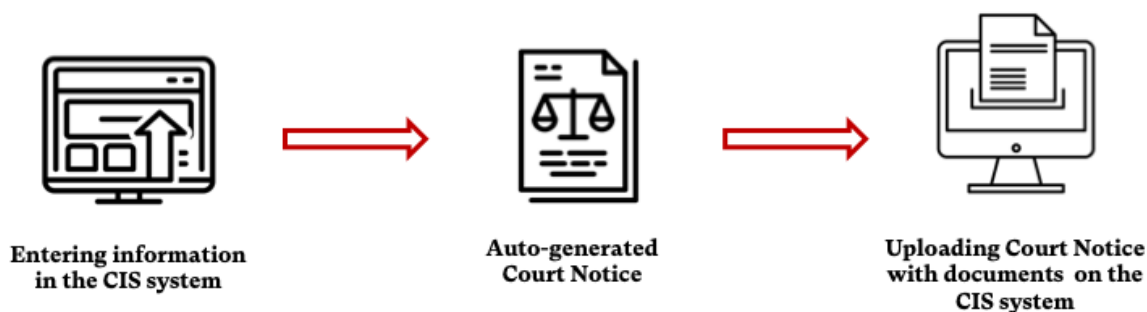
## 2. Auto-generation and hosting of summons

One of the primary methods of ensuring further digitisation of the summons process is by the wider implementation of auto generated summons through the CIS. CIS can be further updated to minimize human intervention and enable a completely digitised process to generate summons.

These electronically generated summons can also be hosted on the High Court website, regardless of the method being used to deliver them. Generating summons and hosting it on a singular source will also allow for a comparison of the results arrived from different methods through which service is attempted. This will also allow for the creation of a streamlined mechanism to determine the best mode of service for a particular case type. Hosting it on the High Court server will also help maintain the authenticity and security of the documents.

<sup>45</sup> Sarika Joglekar, 'Bundle and Unbundle: Transition states of digital applications' (*Medium*, 26 February 2017) <<https://medium.com/@sarahj2305/bundle-and-unbundle-transition-states-of-digital-applications-b27c7e87aade>> accessed 15 July 2020

<sup>46</sup> Himshi Bachchas, 'Role of Technology in Core Principles of Societal Platform Thinking' (*Societal Platform*) <<https://societalplatform.org/role-of-technology-in-core-principles-of-societal-platform-thinking/>> accessed 15 July 2020



### 3. *Unique codes and authentication of documents*

During the unbundling of the service of summons, necessary provisions should be introduced to ensure the authenticity of the summons. Every summons generated through this process should mandatorily include a unique process ID and QR code. The unique ID and QR code generated by CIS should also be printed in the summons published in newspapers as substitutive service. They will act as a link through which the party to whom the summons is served may access the digital copy of summons, case details, and other documents stored with the court servers or cloud storage. The unique ID will also help in indexing the generated summons and streamlining the process across the judiciary. Further, the summons generated through this process must be signed digitally by the judicial officer to ascertain its authenticity and check any possibility of counterfeit. The provisions for the unique ID and QR code for are available for summons generated under CIS 3.0 (Case Information System 3.0).<sup>47</sup>

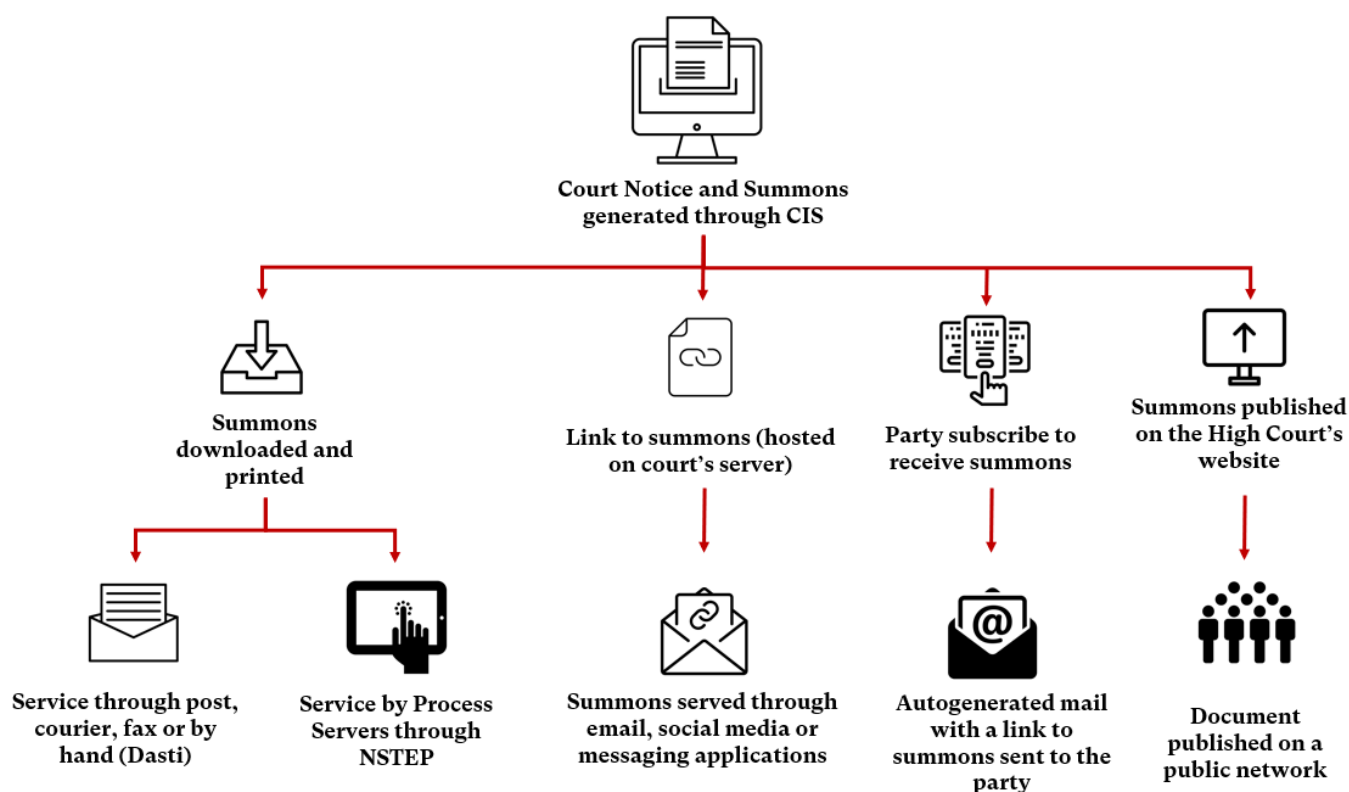
### C. *Expanding methods of communication of service*

Once generated and hosted, these summonses can then further be delivered and disseminated through various methods.

- a) **Traditional Methods:** In the traditional methods, summons may be printed from CIS and then sent through post or courier services. The summons served through such means should be printed with the unique ID and QR code.
- b) **Digital Methods:** Summons can also be served digitally through messaging applications such as WhatsApp, SMS, email, etc. by providing a link to access the summons. Unique ID and QR Code may act as such a link for the parties to access summons and case documents stored in the server maintained by the court.
- c) **Subscription:** If parties have provided their contact information on the High Court website and subscribed to eSummons [as mentioned in part A of this chapter] to receive information about summons being issued against them, the summons can be auto-delivered through their preferred mode of communication.
- d) **Broadcast:** Summons can also be broadcasted on the High Court website and visible to all members of the public.

The following graphic notes all these methods of delivery. A more detailed explanation of some of the methods, which are a novel introduction, follows the graphic.

<sup>47</sup> eCommittee, Supreme Court of India, 'Objectives Accomplishment Report' (n 9) 33



## 1. Summons through social media

Social media has become an important part of our lives. With the increasing use of social media, it is argued to be one of the best ways to send summons and an actual notice to the party. Social media provides for an opportunity to evaluate the activity of the account to understand the likelihood of a successful delivery.

Considering these benefits, countries like Australia, Canada, and New Zealand have adopted the service of summons through social media. In 2008, a court in Australia ordered service through a private message on Facebook after the failure of service through personal service and publication.<sup>48</sup> Similarly, in 2009, the New Zealand High Court allowed service of summons through social media in the absence of personal contact details and failure of service through publication.<sup>49</sup> In 2012, the High Court in the United Kingdom allowed service of summons through social media in commercial cases when it is difficult to locate the whereabouts of the parties.<sup>50</sup>

Social media has percolated across the geography in India with around 400 million social media users.<sup>51</sup> India is the largest audience country for Facebook and the number of Facebook users in India

<sup>48</sup> Kelly Knapp, '#serviceofprocess @socialmedia: Accepting Social Media for Service of Process in the 21st Century' (2014) 2 LLR 547

<sup>49</sup> *ibid*

<sup>50</sup> Katherine Rushton, 'Legal claims can be served via Facebook, High Court judge rules' ( *The Telegraph*, 21 February 2012) <<https://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/9095489/Legal-claims-can-be-served-via-Facebook-High-Court-judge-rules.html>> accessed 15 May 2020

<sup>51</sup> Simon Kemp, 'Digital 2020: Global Digital Yearbook' ( *Datareportal*, 30 January 2020) <<https://datareportal.com/reports/digital-2020-global-digital-yearbook>> accessed 15 May 2020

is estimated to reach 444.2 million by 2020.<sup>52</sup> Service of summons through social media has huge potential in India and will certainly assist the court in service of summons where the location of the party is unknown. The extent to which it can be adopted with immediacy is, however, uncertain given the host of privacy and security concerns that can arise.

## 2. Digitally expanding direct methods of delivery

While the various courts have, on multiple occasions, identified that summons can be served through messaging applications like WhatsApp or email, it is yet to become the norm. To facilitate this, courts should be able to obtain valid proof of delivery of service.

There are two methods to obtain the said proof of delivery.

- a. The “read receipts” and “delivery receipts” provide the recipient an option to decide whether they would like to inform the sender that they have received the email. It is a facility provided by several service providers including Outlook<sup>53</sup> and Gmail<sup>54</sup>. The option also allows the recipient to opt out of sending such a read receipt.
- b. Communication-tracking technology allows the sender to obtain information on whether emails or the links sent through messaging applications such as WhatsApp or SMS have been opened by the intended recipient. This technology has emerged in the context of emails over the last couple of decades and is commonly known as ‘pixel tracking’.<sup>55</sup> It has primarily been used by private businesses to track the promotional emails that are being sent out to customers or future customers.

The aforementioned pixel tracking technology raises three major privacy issues of consent, transparency, and the amount of information recorded. This technology has the potential to enable the sender to record other information such as the time when the email was opened, the number of times it was opened, whether the email has been forwarded to others, and the location of the recipient.<sup>56</sup> Further, the tracking pixels are often hidden and do not account for the consent of the recipient before processing such data. The European Union, General Data Protection Regulation restricts such data processing without consent of the person in the case of private bodies.<sup>57</sup> However, processing such personal data is considered lawful when necessary for the performance of a contract or for legal compliance.<sup>58</sup>

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<sup>52</sup> Anupa Kunjur, ‘DATA STORY | Facebook is experiencing exodus of young users in US. Is India following suit?’ (*Money Control*, 13 March 2019) <<https://www.moneycontrol.com/news/technology/data-story-facebook-is-experiencing-exodus-of-young-users-in-us-is-india-following-suit-3636731.html>> accessed 15 May 2020

<sup>53</sup> ‘Add and request read receipts and delivery notifications’ (*Microsoft*) <<https://support.office.com/en-us/article/add-and-request-read-receipts-and-delivery-notifications-a34bf70a-4c2c-4461-b2a1-12e4a7a92141>> accessed 19 May 2020

<sup>54</sup> ‘Request and return a read receipt’ (*Gmail Help*) <<https://support.google.com/mail/answer/9413651?hl=en>> accessed 19 May 2020

<sup>55</sup> Brian Merchant, ‘How Email Open Tracking Quietly Took Over the Web’ (*Wired*, 12 November 2017) <<https://www.wired.com/story/how-email-open-tracking-quietly-took-over-the-web/>> accessed 19 May 2020

<sup>56</sup> Articles 29 Working Paper, ‘Opinion 2/2006 on privacy issues related to the provision of email screening services’ (WP 118, 21 February 2006) 9 <[https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2006/wp118\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2006/wp118_en.pdf)> accessed 19 May 2020

<sup>57</sup> Council Regulation (EC) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ 2016 L 119/1, art 6, 7

<sup>58</sup> *Ibid.*



Thus, while such communication tracking can function to provide instant proof of delivery of service, courts have to reconcile the privacy concerns that are highlighted above. Courts should, therefore, ensure that the process stores minimum required data, restricted to whether the summons have been delivered and read by the party. The emails that are being sent across should also clearly disclose that the court is recording such information. Further, it should be ensured that no third party is allowed to record, maintain, or process any data regarding such service. In order to ensure further transparency, the courts can also hold an open consultation with civil society experts to obtain information on how to best use such technology and enable constant innovation. Following such consultations, the courts may amend the rules to include such features in the process of serving summons through email, SMS, or messaging applications such as WhatsApp.

The simultaneous utilisation of both these technologies will, therefore, be sufficient proof of delivery of service. Further, by designing specialised software, the court can also automatically identify if the summons has to be served again and, if so, the frequency at which it has to be served. Such information regarding service of summons may then be forwarded to the plaintiff to make them aware of the success or failure of service. It will also provide them an opportunity to provide alternative contact details if delivery of summons has failed.

### **3. Broadcast of summons on court's websites**

One of the other methods of serving summons that has not been explored is the broadcast and discovery of summons on the High Court website. Order V, Rule 20 of Code of Civil Procedure, 1908 provides for publication of summons issued by the court against an individual in the newspaper and for the summons to be affixed to the place of residence of the party and the court premises. Therefore, publishing summons is an important procedure for substituted service of summons when the party is avoiding summons, or when the location of the party cannot be traced. To increase the efficiency of the substitutive service, summons can be published and broadcasted on the respective court's website. To ensure ease of access, summons issued at the district courts will be available on both the website of the High Court and the website of the respective district court – preferably in regional language. In order to further protect the rights of individuals, such summons should be destroyed within a certain time limit of the person filing an appearance in the court or the date when the suit is decreed *ex parte*, whichever is earlier.

One might argue that publicly providing such information might infringe the right to privacy which has been recognised as a fundamental right by the Supreme Court in *KS Puttaswamy v Union of India*.<sup>59</sup> However, the right to privacy has a competing interest in the principle of open court and the right to know. For example, Section 153 of the CPC recognises this right by allowing for hearing of civil suits in open courts. This principle ensures judicial accountability and transparency of the process.<sup>60</sup> Over the years, the Supreme Court has interpreted the right to speech and expression under Article 19(1)(a) to include the right to know the functioning of the state.<sup>61</sup> Further, in *R Rajagopal v State of Tamil Nadu*,<sup>62</sup> the Supreme Court held that the court records are public records and hence, the right to privacy no

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<sup>59</sup> *KS Puttaswamy v Union of India* (2017) 10 SCC 1

<sup>60</sup> Prashant T Reddy, Tarika Jain et al., 'Open Courts in the Digital Age: A Prescription for an Open Data Policy' (Vidhi Centre for Legal Policy, 2019) 9 <[https://vidhilegalpolicy.in/wp-content/uploads/2019/11/OpenCourts\\_digital16dec.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2019/11/OpenCourts_digital16dec.pdf)> accessed 15 May 2020

<sup>61</sup> *Swapnil Tripathi v Union of India* (2018) 10 SCC 639; *SP Gupta v President of India* (1981) Supp SCC 87

<sup>62</sup> *R Rajagopal v State of Tamil Nadu* AIR 1995 SC 264

longer subsists unless an exemption is carved under Article 19(2) of the Constitution. Examining the right to privacy in light of the competing right of open courts allows for publication of summons on the websites of the High Court.

## **Governance Framework**

The process-reengineering framework introduces some novel technological innovations. Therefore, it only follows that these innovations be supported with a strong governance framework that can protect the confidentiality and security of the data recorded and privacy of the individuals involved. Pre-existing laws in the form of the Information Technology Act, 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 already place obligations on the usage of personal and sensitive information. Additionally, personal data is also protected through common law, the principles of equity and standards laid down under *K.S. Puttaswamy v Union of India*.<sup>63</sup> Further, even though a comprehensive data protection framework does not exist for India as yet, the parliament is in the process of enacting Personal Data Protection Bill (PDP). Apart from these frameworks, the new technological innovations can benefit from technology, design principles and governance structures. Some of the key elements that can be contained in the governance framework are highlighted below.

### **1. Restrictive use of communication tracking technology**

This paper recommends expanding the modes of delivery to include electronic modes of communication and consequently expanding the use of technology to ascertain the proof of delivery of service. Communication tracking technology, which is already being used by several email applications, can be immensely helpful to provide proof of delivery for electronic communication. Such tracking technology allows for a plethora of information to be collected – information on whether the email was delivered, whether it was clicked on, whether it was opened, the time at which it was opened, the location at the recipient etc. Since this information is being sought only for the purposes of obtaining a proof of delivery of service, a restrictive use of such technology is recommended. Additionally, it is recommended that the court adopt a robust privacy and confidentiality standard while incorporating such technology tools into the process. To this end, the courts can conduct consultations with technology experts to formulate extensive rules on the use of communication tracking technology.

### **2. Storage and destruction of data**

With the use of mechanisms such as communication tracking technology, NSETP and summons through subscription will likely result in the collection of large amounts of contact information and data. In order to ensure that only the judiciary uses this information, all contact information should be maintained in secure servers. Such information should be stored for a fixed time period and the processing of such data should be restricted.

### **3. Measures to prevent the download of meta data by third party applications**

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<sup>63</sup> *KS Puttaswamy*(n 59)

Through the process of broadcasting of summons on the respective High Court website, information regarding pending proceeding against parties will be made available online. Such information can be used by private entities to develop systems such as credit rating system, which may harm the parties to the dispute. To prevent such use of information, it is important to introduce measures to prevent the retrieval and processing of data from High Court websites. Features such as Completely Automated Public Turing test to tell Computers and Humans Apart (CAPTCHA) and other technologies should be used to prevent the access and processing of such data by computer systems.

#### ***4. Interoperability of databases between government departments***

The paper recommends co-ordination between different government departments to enable a sharing of contact information. To this end, rather than creating a mutual database, the government departments should allow readable access to records, such as land records, register of companies to the judiciary for the purpose of serving summons. In order to ensure a seamless adoption of this feature it is important that the interfaces used by the various departments and courts are interoperable.

#### ***5. Introducing accountability measures for individuals processing private information***

To ensure that there are no data leakages in the process of serving summons, measures can be introduced to hold individuals accountable for data breaches. The court should identify the personnel and their function to enable an efficient use of capacity to obtain contact information of the individuals. These functions should be accompanied with obligations and supervision to ensure safe and efficient access to government databases and contact information of the parties. Penalties can be placed on the individual in case of breach of trust and obligation imposed on them. Such measures can address the need of confidentiality of sensitive cases and put essential checks and scrutiny over the powers of the administrative officers.

# VI. Recommendations and Actionable Tasks

Category of solution	Actionable Tasks	Actors to implement recommended changes
Setting up of a regulatory framework	(i) Formulate comprehensive rules specifically to address the service of summons to govern the High Court and the district courts within its jurisdiction. Further, issue regular notifications and amendments to adapt to technological changes.	High Court
Provide clear timelines	(ii) Provide the party being served with the next date of hearing while serving summons.	High Court
	(iii) Allow for one time payment of process fees and streamline the process of payment. Identify and expedite timelines within which process fee should be paid at the Registry by litigants and advocates.	High Court
Providing information to the Registry	(iv) Ensuring compliance with e-filing norms across all courts and setting up the infrastructure to allow for further technological integration with the judiciary. Incrementally, reduce reliance on paper and encourage submission of digital copy of the plaint.	High Court and Registry
Obtaining and updating contact information	(v) Maintain a regularly updated directory of panel advocates for the various Government Departments and centralised e-mail addresses of all Ministries, Departments, and regulatory authorities.	Registry
	(vi) Collaborate with the Government Departments to access contact details of registered entities from Government databases.	High Court in coordination with various Government Department

	(vii) Provide facility for individuals and industries to provide their contact details and subscribe to receive summons served to them through their preferred mode.	High Court Registry
	(viii) Internal procedure to rectify the contact details between court hearings with better correspondence between the process servers, the Registry, and the serving party.	Registry
<b>Generation and storage of summons</b>	(ix) Adopt a well-developed system for auto-generation of summons and hosting summons on the High Court server. Additionally, unbundling the service of summons from the hosting and storage stage.	Registry
	(x) Adding a unique ID and QR code to the summons on all forms of delivery and ensuring authentication of all documents being uploaded on the High Court website.	Registry
	(xi) Generating digitally certifiable seals for the High Court for utilisation in all official documentation and communication.	High Court
<b>Expand modes of delivery of service</b>	(xii) Expand the direct methods of delivery of summons by enabling the service of summons through messaging applications, SMS, and email. Enable automated service of summons by these modes of communication.	High Court
	(xiii) Mandate service of summons through email for Government offices, corporate bodies, and societies.	High Court
	(xiv) Endeavour to utilise communication tracking technology to identify whether the summons is served.	Registry
	(xv) In the event that communication tracking technology is adopted, provide a standard disclaimer on email, SMS, or messaging applications that serve the summons, that the receipt of the message is being tracked by the High Court. This will ensure transparency and ensure better monitoring of service.	Registry
	(xvi) Expand the use of NSTEP and geo-location by the process servers and ensure compliance.	Process servers and the Registrar
	(xvii) Provide facility to broadcast summons on the websites of the High Courts.	High Court
<b>Automating follow up</b>	(xviii) Establish an evaluation system to identify the optimal method of service for a particular type of	High Court

<b>processes</b>	case and automating the frequency with which attempt of serving summons should be repeated after the first attempt has failed.	
	(xix) Creating software to automate serving summons if through electronic modes of service. The software should also determine whether another attempt is required and the frequency of such attempts.	High Court and Registry
	(xx) Provide interoperability between systems at various High Courts and district courts to simplify service of summons to parties residing in different Districts/State.	High Courts and Department of Justice
<b>Increasing accountability and providing incentives</b>	(xxi) Conduct training of process servers to sensitise them to the importance of the job and educate them on procedures.	Registry
	(xxii) Maintain parity of work between all the process servers keeping in mind the geographical localities that they have been assigned.	Registry
	(xxiii) Ensuring compliance with delivery status reports for all forms of service of summons. Auto-generation of delivery status report for summons served through electronic means.	Registry

# **Model Service of Summons Rules, 2020**

## NOTIFICATION

[Date]

In exercise of powers given under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and Order V, Rule 9 of the Code of Civil Procedure, 1908 and other powers enabling it in this behalf, the [concerned High Court], hereby makes the following Rules:-

### The [concerned High Court] Service of Summons Rules, 2020

## CHAPTER I

### GENERAL

#### 1. Short title, extent and commencement

- (a) These Rules may be called the [concerned High Court's] Service of Summons Rules, 2020.
- (b) The Rules extend to all the courts covered under the jurisdiction of the [concerned High Court].
- (c) The Rules shall come into effect from the date of their notification.

#### 2. Application

These Rules shall apply to all civil proceedings instituted or pending before the [concerned High Court] or any Subordinate Court or Tribunal covered under its jurisdiction.

#### 3. Definitions

- (a) 'Approved courier service' means the courier service that has been approved from the panel of courier services;
- (b) 'Bounce back' means an email that was returned back to the original sender either because the email address was incorrectly inputted or was invalid;
- (c) 'Chief Justice' means the Chief Justice or the Acting Chief Justice of the [concerned High Court];
- (d) 'Code' means the Code of Civil Procedure, 1908;
- (e) 'Courier service' means a proprietorship concern, a firm, a company, or a body corporate engaged in the business of delivering postal articles;
- (f) 'Delivery status report' means a document that records the results of the service that was attempted and is either completely auto-generated or manually inputted into the High Court system, accompanied by an affidavit that the information provided is true to the best of the knowledge of the person attempting service and is as provided in Form A appended to these Rules;



- (g) 'District Judge' means a District and Sessions Judge in [the concerned State];
- (h) 'Email' or 'electronic mail' means a system of sending written messages electronically from one identity document (ID) to another identity document (ID) via the internet;
- (i) 'Fax' means a telephone transmission of scanned-in printed material, which contains text and/or image(s), to a telephone number with a printer or any other output device;
- (j) 'High Court' means the [concerned High Court];
- (k) 'Messaging applications' means applications like WhatsApp and similar modes of communication that allow users to send and receive messages, including links to websites using internet protocol (IP);
- (l) 'Proof of delivery' means a delivery status report indicating that the service was successfully completed;
- (m) 'QR Code' (Quick Response Code) means a two-dimensional barcode that is easily readable by the device equipped with a barcode reader;
- (n) 'Registrar General' means the Registrar General of the [concerned High Court];
- (o) 'Serving party' means the party seeking to serve the summons;
- (p) 'SMS' (Short Message Service) means short messaging, which allows users to send messages over a cellular network.

## **CHAPTER II**

### **PAYMENT OF PROCESS FEE AND OBTAINING CONTACT INFORMATION**

#### **4. Payment of process fee to the Registry**

- (a) After notice is issued by the court, the serving party shall pay the requisite court fee and process fee to the Registry, calculated on the basis of the modes in which the service is to be completed.
- (b) The timeline followed for the payment of process fee shall be as follows:
  - (i) In the case that where the returnable date of summons is fixed at less than four weeks, within three days of the order; and
  - (ii) In other cases, within seven days from the order directing such summons; or
  - (iii) Within such further time as may be allowed for the purpose by the Registrar.

#### **5. Submission of contact information to the Registry**

- (a) Depending on the method of serving summons, the serving party shall necessarily provide detailed contact information of the party being served to the Registry. Such information may include the complete address, phone number, numbers known to have been used with messaging applications, fax number and email address of the party being served.
- (b) The serving party shall provide as many of the above details as available to enable the successful delivery of summons.

- (c) In case the serving party is seeking to serve summons through email, SMS, or other messaging applications, the serving party shall also provide the Registry a digital copy of the petition and all relevant documents.
- (d) The submission of contact details to the Registry shall be accompanied by an affidavit stating that the details provided are correct to the best of their knowledge.

#### **6. Obtaining contact information through summons subscription**

- (a) The High Court shall enable the creation of a subscription portal for summons, where individuals or entities, foreseeing the possibility of a summons being issued against them, can subscribe to receive a notification in the event that a summons is issued against them.
- (b) The High Court shall utilize this information and give access to this database to the District Court solely for the purposes of serving notice, summons, and other court processes.

#### **7. Obtaining contact information from publicly available records in collaboration with other government departments and bodies**

- (a) The High Court, in collaboration with other government departments, shall endeavour to create a digital database that collates live information from publicly available records registered with different government departments and bodies.
- (b) The High Court shall only be provided access to and shall not be the host of the database created under this provision.
- (c) The contact information collated through such a database shall be restricted to be used only for the service of summons, notice, and other court processes.

### **CHAPTER III**

#### **SERVICE THROUGH COURIER**

#### **8. Procedure for selecting an approved courier service**

- (a) The High Court shall invite tenders from the courier services who desire to be selected as an approved courier service on the terms and conditions laid down in the Rules and other directions and instructions issued by the High Court from time to time through a notification.
- (b) The Chief Justice shall constitute a 'Recommendation Committee' that shall select a list of approved courier services from the list of tender applications.
- (c) The 'Recommendation Committee' shall consist of:
  - (i) A sitting Judge of the [concerned High Court], who will head the Committee;
  - (ii) The Registrar General, who will head the Committee;
  - (iii) One officer, not below the rank of a Joint Registrar; and
  - (iv) One officer of [concerned state] Higher Judicial Service.
- (d) The Recommendation Committee, after preparing the proposed panel, will place it before the Administrative Judges Committee (ADM) for consideration and approval of

the panel of approved couriers. The ADM shall issue appropriate directions notifying the final panel of selected Approved Couriers.

#### **9. Criteria for selection of approved courier service**

- (a) The Recommendation Committee shall prepare a panel of all the approved courier services, taking into consideration the following criteria:
  - (i) Reputation of the courier service;
  - (ii) Past record and experience of the courier service;
  - (iii) Geographical network and financial capacity to service across areas; and
  - (iv) Willingness to abide by the terms and conditions laid down in the Rules and conditions laid down by the High Court.

#### **10. Agreement and undertaking by the approved courier service**

- (a) The approved courier service shall enter into an agreement with such variation and modification as may be found necessary and shall also file an undertaking before the Registrar General, stating that:
  - (i) The approved courier service is not a party to any litigation pending before any of the courts in [concerned state].
  - (ii) Provided that if there is any pending litigation or if litigation proceedings are initiated in the future, the approved courier service shall be required to make a full and complete disclosure of the same.
  - (iii) The approved courier service will be solely responsible for the safety and security of the documents to be delivered by it.
  - (iv) The documents handed over to the approved courier service will be handled only by its regular employees, who shall possess a reasonable knowledge of English and the local language.
- (b) The time period of the agreement entered with the approved courier service shall not be more than two years. The agreement may be extended after two years, after taking into consideration the revised terms and conditions laid down by the High Court.

#### **11. Procedure for removing the courier service from the panel of approved courier services**

- (a) The name of the approved courier service will be liable to be removed from the panel if:
  - (i) It is found that the approved courier service has made a false statement in the application.
  - (ii) The court, which has issued the summons or on whose behalf the summons have been issued, finds *prima facie* that the person entrusted to deliver the courier has filed a false affidavit or given a false delivery status report, as the case may be.
  - (iii) It is found that the approved courier service has been rendering deficient service.

- (b) If the Registrar General has reason(s) to believe that an approved courier service has acted in violation of the Rules, he/she will make an inquiry in this respect or depute anyone to make an inquiry in this respect. Upon such inquiry, the Registrar General shall call for an explanation by the approved courier service as to why it should not be removed on record.
- (c) The Administrative Judges Committee, after going through the reasoning provided by the Registrar General and the reply of the approved courier service, may approve of the recommendations of the Registrar General for the removal of the approved courier service or pass such orders or give such directions, as appropriate.

## **12. Service through courier service**

- (a) Any attempt at service will be recorded in a delivery status report.
- (b) In the event that the summons is successfully served, the approved courier service shall furnish the proof of delivery with signatures of the recipient. The delivery status report shall act as successful proof of delivery of service.
- (c) In the event that the summons is not served, the approved courier service shall return the envelope with a delivery status report back to the Registry.
- (d) In the event that a person refuses the summons, the details of the person, including their relationship with the addressee, shall be clearly mentioned in the report back to the Registry.

## **CHAPTER IV**

### **SERVICE THROUGH REGISTERED POST**

## **13. Service by RPAD**

Service of summons by post will be done through registered post with acknowledgement due (RPAD).

## **14. Registry to fill out delivery status report**

The section of the Registry dealing with service through registered post shall fill out a delivery status report at the time of dispatching the registered post and at the time of receipt of the acknowledgement slip.

## **CHAPTER V**

### **SERVICE THROUGH PROCESS SERVING OFFICERS**

## **15. Service of summons by serving officers**

The process serving officer shall serve all the summons entrusted to them after due enquiry about the identity of the person(s) on whom or the house or the property where the same is to be served.

#### **16. Serving officer to fill out delivery status report**

- (a) After every attempt made at delivery of summons, the process serving officer shall duly fill a status report.
- (b) In the event of a failure to complete service, the process serving officer shall detail the reasons for the same.
- (c) The process serving officer shall note the date, hour and exact place of service at each attempt of service.
- (d) If the summons is addressed to more than one person, the report shall describe the manner of service on each person and also the sequence in which the summons is served on different persons.

#### **17. Serving officer may seek assistance**

- (a) Whenever required while serving summons, the process serving officer may seek assistance of a respectable person of the locality to identify such person, or place of residence of the person, on whom summons is to be served.

Provided, the process serving officer shall obtain, on the delivery status report an endorsement by signature or thumb-impression of such respectable person of the locality identifying the person, or place of residence of the person, on whom summons is served.

- (b) In the event that it comes to the knowledge of the serving officer that the address provided is incorrect or outdated and where an alternative address is provided on a publicly available resource such as the website of a body corporate or organisation, the service officer may attempt service at the updated address.

Provided, the serving officer shall duly fill such details in the delivery status report.

#### **18. Identifier to accompany serving officer**

- (a) If it appears to the Registrar General, or a person deputed by the Registrar General in the case of the High Court or the concerned Judge in all other cases, that sufficient information cannot be given as to the person and place of residence of the person to whom the summons is to be served, or if the Registrar is satisfied from the affidavit of the process serving officer that the person or the place of residence of the person cannot be identified after due diligence and enquiry, they may ask the serving party concerned to provide an identifier to accompany the process serving officer for service of summons.
- (b) In the event that the summons is served, the process serving officer shall obtain, on the delivery status report, the endorsement by signature or thumb impression of the identifier provided by the serving party.

## **19. Court to use electronic monitoring service of summons**

- (a) The court shall endeavour to adopt and implement an electronic application for monitoring the service of summons through process serving officers.
- (b) The application shall be able to identify the location at which service is attempted.
- (c) The application shall provide the serving party a real-time status of the service of summons through SMS or automated email.
- (d) The electronic application shall be implemented as per the guidelines issued by the court from time to time.

## **20. Procedure where the person refuses to accept service or cannot be found**

- (a) Where the person to be served, or their agent, refuses to sign the acknowledgement or where the process serving officer cannot find the person to be served or any agent empowered to accept summons on their behalf, the process serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the person ordinarily resides or carries on business or personally works for gain.
- (b) The process serving officer shall return the original summons to the court along with a delivery status report.
- (c) The delivery status report shall contain:
  - (i) The circumstances under which the affixation was done;
  - (ii) The name, address and signature of the person by whom the house was identified and in whose presence the copy was affixed;
  - (iii) The number of times, the dates, and the hours at which the service was attempted; and
  - (iv) An explanation as to whether the process serving officer had any reason to believe that such person was within the house or in the neighbourhood, or endeavouring to evade service.
- (d) The procedure under this provision shall be followed only after directions from the Registrar General in the case of the High Court and the concerned Judge in the case of other courts, to pursue this method of service.
- (e) When the summons is served in the manner provided in sub-rule (a), (b), (c), and (d) of these Rules, a copy of the summons shall be affixed in some conspicuous place in the courthouse and uploaded on the court website in the manner provided under Rule 37.

## **CHAPTER VI**

### **SERVICE THROUGH EMAIL, SMS AND MESSAGING APPLICATIONS**

## **21. Court to set up infrastructure**

- (a) The court shall set up a registered email address, a registered phone number, and registered business or verified accounts, if available, on messaging applications that shall be used for all forms of communication on behalf of the court.

- (b) The court shall endeavour to establish an automated system to auto-generate summons and to serve summons to the parties through SMS, email and other messaging applications.
- (c) The court shall designate process serving officers, with the necessary skills to address bugs in delivery, to oversee the service of summons through the modes of communications referred to under this chapter.

## **22. Format in which summons is to be served through email, SMS or messaging applications**

- (a) Upon the approval of the Registry the delegated process serving officer or the auto-generating system shall send a message or email to the desired phone number or email address using a pre-designed template customised to that specific communication method and shall contain the following:
  - (i) An abridged version of the summons stating that the recipient of the message is being served, along with the name of the serving party and the next date of hearing.
  - (ii) Embedded in the message will be a weblink, hosted on the server of the High Court, which shall provide further details regarding the summons. The format followed in the webpage will be in line with the templates provided in Appendix B of the Code.
- (b) Every email delivering the summons shall be sent accompanied by an option of “read receipt”, which provides the recipient of the email with the choice to intimate the sender of the email that the email has been delivered and read by the recipient.
- (c) Every message sent through SMS or any messaging application shall be accompanied by a direction to the recipient of the message to acknowledge the delivery of the message.
- (d) The process serving officer may also enable and deploy a communication tracking system to assess the progress of the service of summons.

Provided, the email or message delivering the summons clearly mentions that the information regarding the tracking of the mode of communication is being recorded by the court.

Provided, the information obtained by such tracking shall be destroyed by the court within three days of:

- (i) The appearance being filed by the recipient of the summons; or
- (ii) An order of the court to move *ex parte* with the proceedings when the final delivery status report is in the possession of the court; or
- (iii) An order of the court that states that the summons is deemed to have been served after the final delivery status report is in possession of the court.

### **23. Auto-generation of delivery status report and repeating attempts at service**

- (a) The auto-generating system for summons shall produce a delivery status report after every attempt is made for the delivery of the summons and directly transmitted to the Registry for further record keeping.
- (b) Summons under this chapter shall be attempted and auto-generated on the frequency predetermined by the Registry and on different days and times during the week.
- (c) On completion of the predetermined time period, the final delivery status report shall be presented to the Registry to take further actions.

### **24. When summons is deemed to have been served in the case of service through email**

- (a) Sending summons via email from the court's registered email address shall not be deemed as a valid proof of delivery of service.
- (b) Summons is deemed to have been served when the receipt, acknowledging that the email has been received, is reverted to the court's registered email address.
- (c) In the event that the email has bounced back on account of incorrect or invalid email address, the attempt at service of summons is deemed to have failed.
- (d) In the event that communication tracking technology is enabled, the opening of the email shall constitute a valid proof of delivery of service.

### **25. When summons is deemed to be have been served in the case of service through SMS and messaging applications**

- (a) The feature of WhatsApp and other messaging applications that allows the sender to know if the message was delivered or read by using visual identifiers such as, though not limited to, double ticks or blue ticks or communication tracking shall not be considered as sufficient proof of delivery of summons.
- (b) The acknowledgement of the receipt of the message shall serve as proof of delivery of service.
- (c) In the event that messaging applications have a feature to indicate the non-delivery of message using visual identifiers, the attempt at delivery of service shall be deemed to have failed.

## **CHAPTER VII**

### **SERVICE THROUGH FAX**

#### **26. Summons to bear number of pages faxed**

When documents are served through the process of fax, the number of pages shall be clearly mentioned.

#### **27. Party may voluntarily apply to be served by fax**



- (a) During the trial of the case, any of the parties to the suit or interlocutory proceedings may file an application in writing, giving their fax number, with the request that they may be served with the notices of the court and any other communication under the Code, at the fax number as furnished. Any summons sent on the said fax number will constitute valid service of such summons on such party.
- (b) When any party to the civil suit has voluntarily submitted their fax number as contact detail for service of summons under Rule 6, summons sent on the said fax number will constitute valid service of such notice or the communication on such party.

## **28. Generation of delivery status report**

- (a) The High Court shall endeavour to introduce technology that can lead to the auto-generation of summons.
- (b) In case of failure to utilise technology mentioned under Rule 28(a), the process serving officers attempting delivery under this chapter shall fill the delivery status report on attempts made at delivery.

## **CHAPTER VIII**

### **SERVICE IN CASE OF A BODY CORPORATE AND GOVERNMENT BODY**

## **29. Service in case of a body corporate**

- (a) In the case of delivery of summons by fax, email, or through a serving officer, where the other party is a company, partnership, body corporate, or other legal entity required by the law to register such details with the Ministry of Corporate Affairs, such an entity shall be required to accept the service of summons to the above contact details.
- (b) Notwithstanding anything contained in Chapter 7, service of summons to the address, email address, or fax number of the bodies referred to under this provision shall be considered as sufficient proof of delivery.

## **30. Service in case of government bodies**

- (a) Notwithstanding anything contained in Chapter 7, in the case of a government body, service of summons to the standing counsel of the government body registered by the court shall be deemed to be a successful delivery of service.
- (b) Signature of the government counsel or persons accepting it on their behalf would constitute as proof of delivery of service.
- (c) The Registry shall maintain an online register of all of the government counsels for the various government bodies and it shall be updated periodically.

## **CHAPTER IX**

### **SERVICE THROUGH PUBLICATION IN NEWSPAPER**

### **31. Service through publication in newspaper**

- (a) The power granted to the Court under Order V, Rule 20, Sub-rule 1A of the Code to serve summons through the publication of a notice calling parties to appear before the court shall only be adopted as a last resort after the best endeavours are made to discover the residence of the party being served or when the Court is satisfied that the party is evading the summons in the ordinary way.
- (b) The service of summons through publication in a newspaper shall be exercised only after considering the suitability and effectiveness of the summons for the concerned party.
- (c) Service through this mode shall only be on clear directions of the Registrar General in the case of the High Court and the concerned judge in the case of all other courts.
- (d) Whenever summons is served as per Sub-rule (a) and (b) of this Rule, a copy of the summons shall be uploaded in the Court website in the manner provided under Rule 36.

### **32. Publication to be in an approved newspaper only**

- (a) Whenever the summons is served through publication in a newspaper, the same shall be published only in the newspapers approved by the High Court.
- (b) High Court shall make a district-wise list of approved newspapers for publication of summons. The list shall be circulated to Subordinate Courts periodically.
- (c) Notwithstanding anything in Sub-rule (a) and (b), the Court may order in writing the publication of summons in a newspaper not on the approved list, upon an application made by the serving parties, providing specific reasons for selecting such newspaper.

### **33. Selection of newspaper**

- (a) The selection of the newspapers for publication of summons shall be made by the Registrar General in the case of the High Court and the concerned judge in the case of all other courts, based on the circulation of the paper and likelihood that the publication will reach the party to whom the summons is to be served.
- (b) During the selection of the newspaper for publication of summons, preference shall be given to the newspapers published in the district or the nearest district where the party is last known to be actually and voluntarily residing, carrying on business, and personally working for gain.

### **34. Summons to be published in abridged form**

The summons shall be published in an abridged form with a link or a QR Code to the website containing details of such notice.

### **35. Process of publication**

- (a) A letter shall be sent to the selected newspaper by the Registrar for publication of summons; the newspaper shall further arrange for publication of the summons.
- (b) The court and newspaper shall endeavour to make all payments through digital means whenever possible.
- (c) The serving party shall bear the cost of publication of summons through publication in the newspaper.

## **CHAPTER X**

### **SERVICE THROUGH PUBLICATION ON COURT WEBSITE**

### **36. Summons through publication on High Court website**

- (a) The Court shall create a dedicated link on the High Court website to publish the summons issued by the Court.
- (b) Summons served through substitutive service as per Order V, Rule 20 of the Code shall be uploaded on an online platform in the manner as provided under Appendix B of the Code.
- (c) Summons for the proceedings, in which the party served has filed Vakalatnama or have made an appearance before the Court, shall be deleted from the online platform within three days of the filing of Vakalatnama or an appearance by the party served or if an order of the court to move *ex parte* with the proceedings is passed or an order which states that the summons is deemed to have been served is passed by the court.

## **CHAPTER XI**

### **REGISTRAR GENERAL TO INQUIRE ON DELIVERY OF SUMMONS**

### **37. Registrar General to hold inquiry in case service has not been completed**

- (a) The Registrar General, shall in all cases, where the Vakalatnama has not been filed one day before the day of the hearing, hold an inquiry as to the sufficiency of serving of summons.
- (b) In such an event, the case shall not be listed before the court, but instead be listed before the Registrar General to conduct the inquiry.
- (c) Such inquiry may be adjourned, if necessary, from time to time.

- (d) During such inquiry, the Registrar General may also order submission of affidavits and adduce evidence by taking *viva voce* at such inquiry.
- (e) No matter shall be placed before the court unless the Registrar General is satisfied that the party being served has been duly served; and wherever the party being served has been so served, but does not appear on the date appointed and the Registrar General, after holding an inquiry aforesaid, is satisfied that the party being served has been duly served, shall report the matter to the court and the court shall pass such orders as it deems fit.

## CHAPTER XII

### MISCELLANEOUS

#### **38. Summons to witnesses**

The provisions of these Rules shall apply to summons to give evidence or to produce documents or other material objects.

#### **39. Notices or other communication during the proceedings**

The court may direct that a notice or any other communication to any of the parties to the suit, or any interlocutory proceedings before it, may be sent by any of the methods mentioned in the Rules in the manner and in the format that it may consider appropriate.

#### **40. Saving of the powers of the Court**

Nothing in these Rules shall be deemed to limit or otherwise affect the power of the Court relating to service of summons or notices or other communications as given in the Code or any other law for the time being in force.

**FORM A**  
**DELIVERY STATUS REPORT**

[NAME OF THE COURT]

Preliminary details

1. Name of the Process Serving Officer:
2. Method of serving the summons: Post/courier/email/messaging applications/process server officer
3. Date of issuance of summons by the Court:
4. Next date of hearing:

Details of the current attempt at delivery of service

5. Name of the party being served:
6. Contact details at which service was attempted:
7. Date on which service was attempted:
8. Time at which service was attempted:
9. Whether contact details were identified based on a publicly available source?  
If yes, the name of the source:

Details of the previous attempts at service

10. Is this the first time that service was attempted: Yes/No
11. If yes, further details of service:-
  - a. Date of earlier attempts:
  - b. Time of earlier attempts:
  - c. Detailed reasons for previous unsuccessful service:

**Acknowledgement**

In case service is attempted by process serving officer:

1. Name:
2. Relationship with the party being served:
3. Date:
4. Time:
5. Signature:
6. Additional remarks:

*Endorsement by the court approved identifier (if any)*

1. Name:
2. Age:
3. Residential Address:
4. Signature/ Thumb Print:
5. Additional remarks:

In case service is attempted by messaging applications or email

1. Date on which receipt of email/messaging application was acknowledged:
2. Time at which receipt of email/messaging application was acknowledged:
3. Attach a copy of the acknowledgment:
4. Additional remarks:

In case service is attempted by fax

1. Date of delivery confirmation:
2. Time of delivery confirmation:
3. Attach a copy of the fax confirmation page:
4. Additional remarks:

In case service is attempted by courier or post

1. Date of acknowledgment of delivery:
2. Person receiving service:
3. Relationship with the party being served:

Oath: I affirm that the information provided in this document is true and correct to the best of my knowledge.

Signature of the person attempting service

# **Model Service of Summons Rules, 2020: Explanation of Provisions**

# ANNEXURE

## EXPLANATION OF PROVISIONS

This table contains a comparison of provisions that currently feature in Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010, along with practice directions issued by the Delhi High Court and Bombay High Court Service of Processes by Electronic Mail Service (Civil Proceeding) Rules, 2017, along with Bombay High Court (Empanelment of Couriers for Service of Process in Civil Proceedings) Rules, 2014, and Bombay High Court Service of Processes by Courier Service (Civil Proceedings) Rules, 2013. We have identified a few shortcomings in the provisions against each of the subject matters and attempted to rectify the same in the draft Rules.

Subject Matter	Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010 along with practice directions issued by the Delhi High Court	Bombay High Court Service of Processes by Electronic Mail Service (Civil Proceeding) Rules, 2017 along with Bombay High Court (Empanelment of Couriers for Service of Process in Civil Proceedings) Rules, 2014 and Bombay High Court Service of Processes by Courier Service (Civil Proceedings) Rules, 2013	Objections/Suggestions	Rule no. in the draft Summons Rules
PRELIMINARY				
Information to be submitted by the serving party	1. The full address of persons to whom the process is to be served shall be provided by the parties along with name, father's name, and other particulars to assist identification.	--	1. To streamline the payment of process fees, all payments are to be made together at the first instance with the Registry. 2. The timeline prescribed by the Delhi High Court for the payment of process fee has been adopted.	Rules 4 and 5



	<p>2. Process fees for the issue of summons, notice, or other process and costs of advertisements shall be furnished to the Registrar. (a) In case where the returnable date fixed is less than four weeks within three days of the order; and (b) In other cases within seven days from the order directing such summons; or (c) Within such further time as may be allowed for the purpose by the Registrar.</p>		<p>3. Based on the method chosen to serve parties, the information is to be submitted by the serving party. It should include all possible details including number, email address, fax number, and postal address to assist service of summons.</p> <p>4. To enable technological intervention, the parties are also required to provide digital copies of the petition that can be further transferred to the parties.</p>	
Obtaining Contact Information	--	--	<p>To enable efficient service of summons, the High Court shall create a subscription portal for persons and entities to subscribe to receive summons through the information provided for such subscription.</p> <p>The High Court shall further endeavour to obtain access to the existing public database with government departments and utilise the same for the service of summons.</p>	Rule 6 and 7

Delivery status report	<ol style="list-style-type: none"> <li>1. Process server, immediately after completion of duty connected to service of process, shall record upon the original process the manner of execution or the causes that prevented the same.</li> <li>2. Summons served through courier shall also furnish 'proof of delivery' in the format approved by the Registrar General.</li> </ol>	The Nazrat Branch of the concerned court is required to maintain a record of the process sent through email. The Registrar is the authority that shall provide a format for the proof of delivery.	While the different High Court Rules have some provisions listing down the requirement of proof of delivery of service, there is no streamlined procedure relating to the different modes. Therefore, templates customised to the method of communication have been created. The templates contain all the mandatory requirements to provide details regarding date and time of service of summons, location of the service, previous attempts and relationship of the recipient with the party being served.	Rule 14, 16, 23 and 28 and Form A
<b>SERVICE THROUGH COURIER</b>				
Recommendation Committee	<p>The committee created by the Chief Justice for selection of approved courier shall consist of:</p> <ol style="list-style-type: none"> <li>1. Registrar General, who will head the Committee;</li> <li>2. One officer not below the rank of a Joint Registrar; and</li> <li>3. One officer of Delhi Higher Judicial Service.</li> </ol>	<p>The committee created by the Chief Justice for selection of approved courier shall consist of:</p> <ol style="list-style-type: none"> <li>1. A sitting Judge of the High Court of Judicature at Bombay, who will head the Committee;</li> <li>2. Registrar General;</li> <li>3. Registrar (Judicial);</li> <li>4. Principal Judge of the Bombay City Civil Court/ Court of Small Causes at Mumbai.</li> <li>5. (v) Registrar (O.S.)/Prothonotary and</li> </ol>	<p>The 'Recommendation Committee' should consist of:</p> <ol style="list-style-type: none"> <li>1. A sitting Judge of the concerned High Court who will head the Committee;</li> <li>2. Registrar General, who will head the Committee;</li> <li>3. One officer not below the rank of a Joint Registrar; and</li> <li>4. One officer of concerned court's Higher Judicial Service.</li> </ol> <p>A combination of the composition of the committee as per Delhi and the Bombay</p>	Rule 8

		Senior Master.	High Court Rules is ideal to enable representation of the High Court and Subordinate Courts.	
Procedure for selection of approved courier service	The Recommendation Committee, after preparing the proposed panel, will place it before the Chief Justice for consideration and approval of the panel of Approved Couriers. The Chief Justice issues appropriate directions notifying the final panel of selected approved courier services.	The Recommendation Committee, after preparing the proposed panel, will place it before the Administrative Judges Committee (ADM) for consideration and approval. The ADM issues appropriate directions notifying the final panel of selected approved courier services.	Procedure identified by the Bombay High Court has been followed. The decision is an administrative decision by the court and hence would require the assent of the ADM.	Rule 8
Criteria for selection of approved courier service	The Recommendation Committee takes into consideration:- (i) reputation of the courier; (ii) past record of the courier; (iii) structure of the organization and its network including the financial capacity and standing; (iv) the experience and capacity of the courier to provide the desired service;	The Recommendation Committee takes into consideration:- (i) reputation of the courier; (ii) past record of the courier; (iii) structure of the organization of the courier and its network including the financial capacity and standing; (iv) the experience and capacity of the courier to provide the desired service; (v) willingness to abide by the terms and conditions as laid down in these rules; and (vi) readiness to fulfil the criterion	The procedure followed by the both the High Courts has been generally adopted. Greater emphasis has been provided to the geographical network. Past record and experience have been merged into one clause.	Rule 9

	<p>(v) willingness to abide by the terms and conditions as laid down in these rules; and</p> <p>(vi) readiness to fulfil the criterion laid down by the High Court.</p>	laid down by the High Court.		
Agreement and undertaking by the courier service	<ol style="list-style-type: none"> <li>1. Approved courier service should not be a part of any legal proceedings before the Courts in Delhi.</li> <li>2. Postal articles, including summons should be handed by regular employees having reasonable knowledge of English.</li> <li>3. Courier service should design its 'proof of delivery' in a format approved by the Registrar General.</li> </ol> <p>Courier service should produce the proof of delivery and a report of unserved processes within 30 days.</p>	<ol style="list-style-type: none"> <li>1. Approved courier service should not be a part of any legal proceedings before the Courts in Maharashtra and they are required to inform the Registrar General of any case instituted post-empanelment.</li> <li>2. Postal articles to be handled only by the registered employee with knowledge of English and local language.</li> </ol> <p>Courier service should design its 'proof of delivery' in a format approved by the Registrar General.</p> <p>Courier service should produce the proof of delivery and a report of unserved processes within 30 days.</p>	<p>In case there exists prior litigation against the courier service, the approved courier service shall make full and complete disclosure of the same to the Registrar General. Instead of an automatic disqualification, it should be a criterion that the recommendation committee can take under consideration.</p> <p>Considering the rapid advancement in technology, the time period for the agreement should not be more than two years, after which the agreement may be extended based on revised terms and conditions.</p>	Rule 10

Approval and replacement of approved courier service	Chief Justice of the High Court decides matters regarding approval/replacement of the approved courier based on the inquiry and recommendation by the Registrar General.	Administrative Committee (ADM) decides matters regarding approval/replacement of the approved courier based on the inquiry and recommendation by the Registrar General.	Judges decide matters regarding approval/replacement of the approved courier based on the inquiry and recommendation by the Registrar General.	Procedure followed by the Bombay High Court has been followed. Since the power of selection has been granted to the ADM, the power of removal has been given to them as well.	Rule 11
<b>PROCEDURE TO SERVE THROUGH COURIER AND REGISTERED POST</b>					
Procedure explained	For courier services, the proof of delivery or refusal shall be supported by an affidavit of the person delivering the postal article. There are no rules regarding postal delivery.	No procedure has been explicitly provided. The rules merely state that the approved courier shall design its 'proof of delivery' in a format approved by the Registrar General.		The procedure has been clearly laid out for both courier services and post and the requirement to fill a delivery status report has been mandated.	Rules 12, 13 and 14
<b>SERVICE THROUGH PROCESS SERVING OFFICERS</b>					
Identification of the person to whom summons are to be served	The Registrar may ask the serving party concerned to provide an identifier to accompany the process serving officer for service of summons.	--		<ol style="list-style-type: none"> <li>1. The process serving officer shall also attempt identification of the party through assistance of a respectable person of the locality, website or portal, and other means of publicly available information.</li> <li>2. The authority to depute an identifier has been provided to the Registrar General to reduce the burden on the High Court.</li> </ol>	Rules 17, 18

Monitoring and digital records of service of summons	--	--	The monitoring of and maintaining digital records of service of summons increases accountability and transparency in the process of delivery of summons. Such technological interventions, on the lines of National Service and Tracking of Electronic Processes (NSTEP) should be adopted by the court. The provision also leaves room for further types of technology that might supersede NSTEP.	Rule 19
Service through affixture of summons	When the process serving officer is not able to find the person or his agent entitled to receive summons, the process serving officer may affix a copy of the summons on the outer door or some other conspicuous part of the house in which the person ordinarily resides or carries out business.	No rule provided, probably because it is covered by the CPC.	<ol style="list-style-type: none"> <li>1. Service of summons through affixture of summons should be adopted only after considering all other modes for service of summons.</li> <li>2. Power to direct affixation has been provided to the Registrar General in the case of the High Court.</li> </ol>	Rule 20
<b>SERVICE THROUGH EMAIL, SMS AND MESSAGING APPLICATIONS</b>				
Digital copy of the documents	The documents are scanned by the court.	Party desirous of serving summons through email should submit all the documents in PDF format or the court fee should be paid for the scanning of the documents.	The party desirous of service of summons through email shall provide a digital copy of the petition and other relevant documents.	Rule. 5(c)

Registry to set up infrastructure	--	--	<ol style="list-style-type: none"> <li>1. In order to digitise the delivery of summons, the High Court has to designate official phone numbers, email ID and business accounts of messaging applications.</li> <li>2. The court shall also develop software that allows for the auto-generation of summons.</li> <li>3. To supervise and address bugs in the delivery of digital summons, the Registry should designate process serving officers that have experience in addressing technical bugs.</li> </ol>	Rule 21
Customised format for summons based on the method of communication	The process should be digitally signed by the Presiding Officer of the Court or any other authorised officer and should be as per the pre-designed template in accordance with Code of Civil Procedure, 1908 with the scanned copy of the document attached.	<p>The court clerk should generate summons through the Case Information System using required credentials.</p> <p>The subject and content of the mail should be as per the protocol under the rules.</p>	A customised format has been mentioned for the delivery of summons. They are accompanied by tools that can be utilised to obtain delivery status reports. Specifically, the rules provide for the use of communication tracking technology after mitigating the privacy concerns for the same.	Rule 22
Auto generation of delivery status report and repeating attempts in case of failure of	--	--	To maximise the digitisation of the process the court should set up an auto generating system to produce delivery status reports and attempt repeated service after a particular interval as decided by the registry.	Rule 23

service				
Summons when considered as served on email	The bouncing back of the email will not be considered valid service.	--	Summons shall be considered as served only when an intimation is received by the court that the email is delivered and read by the recipient.	Rule 24
Summons when considered as served on SMS and messaging applications	--	--	<ol style="list-style-type: none"> <li>1. Blue ticks are not considered valid proof of delivery of service as the message could have been received by the not-intended recipient.</li> <li>2. Acknowledgement is considered valid proof of delivery of service</li> </ol>	Rule 25
Summons when considered as served on the use of communication tracking technology			In the event that the court decides to use communication tracking technology, opening the message should be considered a valid proof of service for all the methods of communication that utilise such technology.	Rule 24 and 25
<b>SERVICE THROUGH FAX</b>				
Summons through fax	Party desirous of sending the summons through fax shall provide the fax number of defendant/ opposite party.	--	Party may also voluntarily apply for the summons to be served through fax.	Rule. 27
Summons to bear number of pages faxed	When documents are being sent along with summons through fax, the number of pages shall be mentioned	--	When documents are being sent along with summons through fax, the number of pages shall be mentioned.	Rule 26



Generation of delivery status report	--	--	The High Court shall endeavour to allow for the auto-generation of the delivery status report. On failure, the process serving officer shall fill such report.	Rule 28
<b>SERVICE IN CASE OF A BODY CORPORATE AND GOVERNMENT BODY</b>				
Service in the case of a body corporate	--	--	Since information is provided to the Ministry as valid addresses, they are considered enough to complete service. Parties failing to update these addresses with the Ministry are in violation of the laws.	Rule 29
Service in the case of a government body	--	--	The government bodies across the High Courts have standing counsels. If the Registry is mandated to maintain a register, then the process of serving the government bodies will be further streamlined and save considerable time of the court.	Rule 28
<b>SERVICE THROUGH NEWSPAPER</b>				
Publication in approved newspaper only	Publication of the summons shall be only in newspapers approved by the High Court. However, the court may publish summons in a newspaper not on the approved list when any objections are proposed by the serving party.	No provision mentioned supposedly because it is covered by the CPC.	The High Court should provide a district-wise list of approved newspapers, taking into consideration the geographic and linguistic reach of the newspapers.	Rule 32

Process of selection of newspaper	The Presiding Officer shall select the newspaper in which the summon shall be published. Preference shall be given to vernacular newspapers unless there is reason to believe that the defendant/ opposite party reads English newspaper(s). Preference shall be given to the newspaper printed in the district where the defendant/ opposite party resides.	--	The Registrar of the High Court or concerned judge of the district court shall decide the newspaper.  Preference should be given to the newspaper printed in the district where the party being served resides.	Rule 33
Process of publication	The court shall send a Governing letter to require the manager of the newspaper to publish the summons and to send a copy of the newspaper containing the summons to the court as proof of compliance.	--	1. The summons shall be published in an abridged form with a link or QR Code to the relevant documents. 2. Digital payments have been enabled.	Rules 34 and 35
<b>SERVICE THROUGH PUBLICATION ON COURT WEBSITE</b>				
Service through publication on the High Court website	--	--	Summons served through substitutive service should be published online for its wider reach.  Summons published online should be deleted after the Vakalatnama is filed or the party appears before the court or	Rule 36

			when court proceeds with <i>ex parte</i> proceedings or when summons is deemed to be served.	
<b>REGISTRAR GENERAL TO INQUIRE ON DELIVERY OF SUMMONS</b>				
Power with the Registrar General	The Registrar shall, in all cases where the process has been returned, and in which an appearance has not been entered on the day appointed therefor, hold an inquiry as to the sufficiency of service of process. If there is any dispute regarding sufficiency of service and the Registrar is unable to decide the same due to any reason, the Registrar shall expeditiously place the matter before the court.	--	<ol style="list-style-type: none"> <li>1. The scope of the powers given to the Registrar General in the case of the High Court has been expanded to include more administrative functions such as determining the sufficiency of service. For this reason, cases where service has not been completed are heard before the Registrar and not placed before the court.</li> <li>2. The powers to ask questions and demand affidavits has also been provided.</li> </ol>	Rule 37
<b>MISCELLANEOUS</b>				
All provisions	--	Provisions on summons to witnesses, or communication during proceedings and saving powers of the court given	Bombay High Court provisions adopted	Rules 38, 39 and 40