



Service of summons: Legal and practical challenges in state of Karnataka

Rhenius Caleb J, Sugapriya S

Christ Academy Institute of Law, Bengaluru, Karnataka, India

Abstract

A significant factor contributing to the backlog of courts is the delay and difficulty in serving of summons. Addressing issues arising from many important issues of justice requires good cooperation between experts and judges. In courts dealing with lawsuits, petitions, complaints and various applications, it is important for the court to summon the parties to court, usually by way of notice, summons and search. This process is called "service of process" and is expected to send legal information to the relevant persons.

However, processing this information can be difficult, especially when one party fails to provide service. Fortunately, recent system updates and operational support have made this process more efficient and effective. The fundamental laws have been amended to include the legal system. Furthermore, the Supreme Court has taken steps to reduce the burden on the service of process by revising its rules and regulations. Against this background, this study aims to examine the changes in the Legal Procedure, the impact in Judiciary due to the delay in service of summons and the recent changes in service of summons by the Supreme Court and other High Court decisions in India

Keywords: Civil procedure code, service of process, judicial delays

Introduction

The Code of Civil Procedure (CPC) 1908, lays down the basic procedure for service of summons in India. As outlined in the Code of Criminal Procedure, each High Court has established its own rules and procedures that the High Court and the District Courts in their respective jurisdictions must adhere to in order to enhance and support this process. Through the e-Court Mission Model project, the Indian court has made great strides in incorporating technology into its operations during the last 20 years. Judges have been able to enforce justice for litigants through these successful measures, particularly in cases where the COVID-19 pandemic has put them in a challenging situation. The progress made during this period reflects the development of technological tools to improve and restructure complex decision-making processes. Research by Vidhi and Daksh in rural courts in Bengaluru shows that summons account for nearly 25% of the total time spent in civil cases ^[1]. Courts take an average of 273 days to process summons, contributing significantly to delays in justice. It is important to explore these challenges and measures to reduce these delays at an early stage.

Objectives

1. To identify the practical challenges faced by legal practitioners in serving summons to defendants and assess how these challenges affect the efficiency of the judicial process.
2. To analyze the influence of technology, including electronic communication and e-filing, on the methods of serving summons in India, along with the legal implications arising from these practices.
3. To propose recommendations for enhancing the service of summons process in India by drawing insights from best practices in other global legal systems.

Hypothesis

Delays in serving summons are largely attributed to inadequate communication methods and insufficient technological support. By addressing these shortcomings, it is anticipated that there will be a significant reduction in case backlog within the judicial system.

Research Questions

1. What practical challenges do legal practitioners face when attempting to serve summons to defendants, and how do these challenges impact the efficiency of the judicial process?
2. How does the use of technology, such as electronic communication and e-filing, influence the methods of serving summons in India, and what are the associated legal implications?
3. What recommendations can be proposed to improve the service of summons process in India, drawing from best practices observed in other legal systems globally?

Problem Statement

The service of summons is important for the completion of the procedure in civil cases, but it faces problems that affect its results. Legal disputes, changing laws and problems in finding defendants have caused delays and uncertainty. In addition, the use of digital services has created an effect in the legal system. This study aims to examine these problems and propose solutions to improve the service of subpoenas and improve access to justice.

Research Methodology

In this Research an Empirical Research methodology is followed samples are being surveyed and the result is analyzed, Empirical research methodology focuses on collecting data through observation and experimentation to investigate real-world phenomena. It employs both quantitative and qualitative approaches to provide evidence-based insights and conclusions.

Civil Procedure Code, 1908 as amended in 2002

Provisions relating to process service in civil cases are laid down in Section 27, 28, 29, 143 and Order V (Rules 9 to 30), Order XXVII (Rule 4), Order XXIX (Rule 2) Order XLVIII (Rules 1, 2 and 3), Order III (Rules 3, 5 and 6), Order XXVIII (Rule 3) Order XXX (Rule 3), and Order XLI (Rule 14) of the Code of Civil Procedure. In order to address the issue of judicial process delays, Amendment Acts of 1999 and 2002 modified a few of these laws. The following lists the provisions that have been amended

1. As per section 27, the summons may be served on such day not beyond thirty days from the date of the institution of suit.
2. Law 1 of Order 5 also deals with the service of telephone calls; this law has been amended and if the person is The modification includes a clause requiring the defendant to submit a written statement within 30 days of the summons being served if they do not do so within the allotted time.
3. The court may prolong the duration within the allotted time, but it cannot be longer than ninety days, and the reasons must be documented in writing. sued and admitted in court, the provision of telephone call service is not required.
4. Order 9 V deals with the issue of service of summons by the court. This law, revised in 2002, requires that the delivery be made by a qualified employee or by registered mail or post or, by agreement, by courier, fax, e-mail. The service specified in Rule 9-A may also be provided by the petitioner receiving messages from the court and delivering them to the petitioner personally or by fax, text message, email, etc.
5. Rule 9, subrule 4, provides for the service of summoning a defendant who is out of court to appear for trial by a referral service approved by the court. In an improvement over the 1999 Act, the District Court now has the power to approve delivery services, whereas previously only the High Court had the power to do so.
6. Rule 2 of Order 9 provides that if the correspondence is not received because the plaintiff has not paid the fee, the order will be cancelled. If, on the date set for hearing, it is found that service has not been affected by the plaintiff's failure to file a suit or pay the litigation costs or other reasons against the plaintiff, the court said the four may dismiss the plaintiff's suit.

Judicial Pronouncements ^[2]

In *Central Electricity Regulatory Commission vs National Hydroelectric Corporation Ltd. & Ors*, the Supreme Court of India ruled that, in addition to the standard method of notification, notice may also be sent via email in business dealings and situations where the attorney needs immediate assistance. The Supreme Court observed that statistics from various courts show that expenses increase due to delay in work. In Delhi data shows that fifty percent of the balance in courts, especially in commercial matters, is due to slow functioning. The court also directed the Ministry of Security to provide the central email addresses of various departments/offices/administrative offices and the names of the nodal officers assigned to do so.

In *Salem Advocates Bar Association, T.N v Union of India*, it was observed that problem in respect of service of summons has been one of the major causes of delay in the

due progress of the case. It is very common that defendants have been avoiding to accept summons. There can, be no valid objection in giving opportunity for the plaintiff to serve the summons to the defendant or get it served through courier. There is, however, danger of false reports of service. It is required to be adequately guarded. To prevent such service provisions from being misused in order to secure false endorsements, the high courts have the authority to establish suitable rules and regulations or publish practice guidelines. In this context, the high courts may want to include a clause allowing for the filing of an affidavit detailing the specifics of what transpired when service was refused. It can be stipulated, for example, that the affidavit of the person performing service must specify who was present at the time and that it must be in the language that the deponent is familiar with. Additionally, if an affidavit or endorsement regarding service is discovered to be fraudulent, the courier company may be banned and the deponent may face a summary trial and punishment for perjury.

Process Of Serving Summons in Karnataka

According to the Code of Civil Procedure, when there is a lawsuit, the court will issue a notice to the defendant, ensuring that the plaintiff responds and presents the case. Such a statement will be signed by the presiding judge or his designated employee and will be stamped with the seal of the court. If the defendant is not in court to try himself, the correspondence will be sent to the state in need and will be subject to the state's rules of conduct.

Sometimes the party may be from a foreign country, then the summons is made in accordance with The Hague Convention. There are also cases where both parties fail to find the summons or (deliberately) refuse to accept them. In such cases, if the court is unable to serve the defendant, an alternative service to telephone calls will usually be to serve the court and give notice of the defendant's address or advertise in newspapers. Finally, if the defendant fails to appear in court after receiving the summons, the court will begin the trial of the case.

Causes For Delay

1. Inadequacy of rules, regulations, or notifications to govern the procedure

The CPC empowers the High Court to make rules of procedure and procedure. However, the rules issued by the Supreme Court are found to be inadequate in regulating and clarifying the process of service. For example, the Karnataka (Control of Flow of Information in High Courts) Act, 2005 does not specify clear procedures in case of non-revocation of applications. Furthermore, the policy does not specify the content of the process and services related to the provider. Therefore, the absence of a clear framework of rules leads to unfair decisions and inconsistent practices.

2. 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.

3. 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.

4. Problems in situations where the party being served refuses summons, or cannot be found

Reserving a summons is pointless and only increases the amount of time that must be spent in court if the party being served (or her representatives) simply choose not to accept the summons or sign the acknowledgement. In these situations, a copy of the summons must be conspicuously displayed on the home or office²⁴ and, ideally, also published in a newspaper with a large readership in order to formally complete the service procedure. Despite their good intentions, these criteria wind up becoming procedural compliances that prolong the wait rather than fulfilling the summons' stated purpose.

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. In *Tata Sons Limited & Ors* ^[3] v *John Doe*, 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* and by the *Karkardooma District Court, Delhi* where the defendants were served summons via WhatsApp. 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.

When a message is sent on WhatsApp, the sender will see a double tick. When the user reads the message, the double tick turns into a blue tick. It can be said that the two blue ticks can be used for the service of summons. This reasoning was accepted by the Supreme Court, which issued a writ of certiorari for service by post. After the certificate cannot be decided, the recipient can decide on the blue card. Also, the situation where the party receives the call to change their WhatsApp number and the other party also receives the call is not addressed at this time. In some sensitive cases, additional privacy issues may also arise if reports are received from unidentified parties. Perhaps due to such restrictions, all courts seem to reject reports from WhatsApp.

Introduction To N-Step ^[4]

NSTEP is a clear example of a tool that can be used to simplify the subpoena service process. It is a useful tool for tracking delivery and resolving issues in the customer accountability process, and can address other deep-seated and behavioral issues such as change of residence and

noncompliance on the part of those served with the petition. Therefore, while NSTEP is an important tool for improving services and increasing accountability, it does not address the need for total process reengineering to improve process performance and performance.

Given that huge amount of delays can be associated with the process of summons, the Supreme

Court e-Committee 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.⁴¹ This application is intended to be used by the bailiffs of the courts for delivery of processes. It utilizes the CIS system (Case Information System) that has already been deployed across all the courts in India. The bailiff utilizes the application to document the delivery of summons. The application includes a feature to record the GPS coordinates at the time of delivery of summons and enables recording picture and on-screen signature of the person who has been served.

Recommendations And Suggestions

1. Where possible, the use of other forms of services such as email/SMS/fax/express delivery should be increased to speed up the delivery process. The regulations stipulate that email IDs and mobile phone numbers of the parties and lawyers should be provided so that the courts can send the process electronically to increase transparency and accountability. If the recipient does not have an email ID or does not have internet access, a link can be used to send the email to the nearest post office/post office. people Digital service documents can be sent to the court registry via email. Similarly, in order to be successful in the crime, it is recommended that the summons be sent via email from the Police Department when the recipient of the email/mobile is not present.
2. The possibility of proper use of Aadhar card database by the courts to establish identity and service for the case can be explored.
3. To make the entire process of serving the subpoena transparent, a GPS-enabled device or mobile phone can be provided to the process server.
4. One-time charges can be imposed to reduce service delays. The e-suvidha model of Bombay High Court can be replicated in other states. Each region offers different application and placement fees. The service also provides real-time information on deposit rates for both parties to the Nazarat branch.
5. Services of postal department could be used more often and Post Office could be made a nodal point for delivery of summons and making payments.
6. It is recommended that a Special Cell be created in every state wherefrom summons or process received from other states may be effectively served to the defendant or witness residing in that state. Simultaneously, a dedicated cell in the local police stations be linked to the local courts to ensure timely service of summons within the State.
7. There is a need to empower the process servers by giving them proper training, a uniform with a badge, parking sticker for their transport.
8. The innovations being brought about by High Courts in the process service should be indicated on their websites so that best practices in this regard could be replicated by other Courts.

Conclusion

Service is an essential and essential part of the judicial process, but it is also one of the major causes of delay and inefficiency in the Indian judicial system. The revision of the Code of Civil Procedure and the introduction of technological advances such as e-filing, e-courts and tools such as the National Electronic Process Tracking Service (NSTEP) offer a good way to improve the processes. There are numerous challenges. Long delays in processing cases continue to burden the justice system and contribute to backlogs due to poor communication, inconsistent procedures and defendants refusing or absconding. This service represents a shift towards more efficient workflows; however, legal and technological constraints need to be addressed to improve its effectiveness. Furthermore, legal professionals continue to face challenges, particularly in the absence of clear authorization, delays in payment of fees and inconsistent procedures, which impact timely completion of service procedures. Several recommendations have been made, including expanding the use of digital service delivery systems, integrating Aadhar data for identification and creating a dedicated agency to facilitate service delivery. Additionally, training and certification of delivery personnel and transparent follow-up procedures will ensure accountability and minimize delays. Through the use of technology and strategic reform, legal systems can improve the efficiency of case processing, thereby reducing the burden on courts and creating a more equitable and accessible environment for all. Good work has been done in the reform process, but continued innovation, policy development and oversight are essential to address the immediate challenges and ensure that the process is timely and upholds the principles of justice.

References

1. Vidhi and Daksh research, Delays in Indian Civil Courts: Summons and Backlogs, 2020.
2. Central Electricity Regulatory Commission vs National Hydroelectric Corporation Ltd. & Ors., (2020) 3 SCC 320, available at SCC Online.
3. Ministry of Law and Justice, Government of India, E-Court Mission Mode Project, available at: <https://www.ecourts.gov.in>
4. Supreme Court e-Committee, National Service and Tracking of Electronic Processes (NSTEP), available at: <https://nstep.in>.