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# E- Summons in India

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## ABSTRACT

*One of the major reasons of the very low disposal rate of Indian Judiciary is the lack of adherence to the procedural time and lack of infrastructure. The electronic methods are the way forward. The paper traces the development of accepting the different mode of summoning from SMS to FAX to email and then to WhatsApp and then developing the electronic Application. The paper would also try to extract the principles on which the courts have allowed the e summons in India and abroad and its recent developments in the country looking through the state of Tamil Nadu, Rajasthan. The paper would also try to shed some light on validity of e-summons in the background of international treaties. The paper tries to discuss the shortcomings and the pitfalls of e-summons in India in light of the huge socio-economic gap in India.*

## I. INTRODUCTION

The paper traces the development of accepting the different mode of summoning from SMS to FAX to email and then to WhatsApp and then developing the electronic Application. The paper would also try to extract the principles on which the courts have allowed the e summons in India and the recent developments in the country. The paper tries to points out the loophole that exists if served through electronic mode and sees possible alternative that fill those gaps.

Electronic summons in India are served validly under Rule 9 (2) and Rule 9 (3) of Order V of the Code of Civil Procedure, 1908 (herein referred as Code) which empowers the court to serve summons in any transmission as it deems fit.<sup>2</sup> Also, the Information Technology Act, 2000 recognises sending of electronic records for various purposes, including legal notices, if certain conditions are satisfied.

E summon is could address the issue of pile of pending cases and the slow case disposal rates of the Indian Judiciary. The immensity and enormity of Indian judiciary's backlog can be brought to the spot light by a 2015 Bloomberg Businessweek *which stated that "if the nation's judges attacked their backlog nonstop with no breaks for eating or sleeping and closed 100*

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<sup>2</sup> The Code of Civil Procedure, 1908 ORDER V ULE 9(2) AND (3).

cases every hour, it would take more than 35 years to catch up”.<sup>3</sup> The Law commission Reports have pointed towards the infrastructural deficits as one of the major reason for the backlog of the judicial matters but non-adherence to the procedural time frames is another significant factor.<sup>4</sup>The e summons will be significant addition towards this comprehensive approach, making the system more efficient, by having an instant mode for summoning; and check on misuse of power and corruption and case postponement by having a systematic record. Systematic record system provides for a comprehensive approach for judiciary to uphold the rights of individual and dispense justice in the society at large.<sup>5</sup> WhatsApp IDs and email addresses are more constant, making it difficult for individual to evade the digital notice. The posts can get unduly delayed or the individual can be absconding but in the digital era it would be difficult to escape notice through your electronic address. <sup>6</sup>The pendency reforms could contribute significantly in restoring the faith and confidence in judiciary. The government of Delhi has legislated on the electronic summons. The ‘Delhi Courts Service of Processes by Courier, Far and Electronic Mail Service (Civil roceedings) Rules’ ,2010, section 15 lays down that sending e summons witness is guided by the same principle has mentioned for sending documents email or fax. The court has to satisfy itself the party is acting in a bona fide manner and thus requests it to submit the receipt and affidavit in case of fax and regarding serving through an electronic mail affidavit has to be filed that email address is right to the best of his knowledge. However, section 18 lays down that it is the inherent power of the court to allow the parties and parties do not have a right to claim these rights specifically in case of fax. It also lays down that these Rules are subverent to the Code. The filing of an affidavit makes the party legally binding to best of his knowledge.

The courts have tried to use e summons in India when it is convinced that the Defendants are purposely dodging the physical summons for example in 2G Case the courts had enough proof that defendants were staying in Dubai and thus allowed the serving through SMS.<sup>7</sup>The developments in the states the Supreme Court laid down certain guidelines in a three judge

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<sup>3</sup> Tom Lasseter, “India’s Stagnant Courts Resist Reform,” Bloomberg.com, January 8, 2015, <http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases>.

<sup>4</sup>BrajeshRanjan, ‘Supreme Court and the Jurisprudence of Delay’ (2016) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2830898](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2830898)> accessed on 1st October 2019

<sup>5</sup>Wan Satirah Wan MohdSaman and AbrarHaider , ‘Electronic Court Records Management: A Case Study’ *IBIMA Journal of e-Government Studies and Best Practices* (2012) DOI: 10.5171/2012.925115<<http://www.ibimapublishing.com/journals/JEGSBP/jegsbp.html>>

<sup>6</sup> RaghavOhri, ‘Banks serving summons to defaulters through WhatsApp and email’ *Economic Times* (september 1 2018.) <[http://economictimes.indiatimes.com/articleshow/65630866.cms?from=mdr&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/65630866.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)>

<sup>7</sup>2G case: Court issues fresh summons against Ruias&Khaitans for February 22’ *Economic Times* (January 28, 2012) <<https://economictimes.indiatimes.com/industry/telecom/2g-case-court-issues-fresh-summons-against-ruias-khaitans-for-february-22/articleshow/11650955.cms?from=mdr>>

bench case of *Central Electricity Regulatory Commission v. National Hydroelectric Power Corporation Ltd.*<sup>8</sup>The court looked into the matter because of high statistical data that displayed mounting of cases because the summons was not served. The court laid down certain guidelines to address the issue such as requirement of centralized e-mails of various ministries departments for the purpose of service.<sup>9</sup> The burden is also shared on the advocates appearing for the company to file an email id on which the company could be served. The courts have opined that all pragmatic approach should be taken which includes emails so that the accused does not abuse the system by continuing evading the service of summons. It is to be noted that e summons are always seen as additional supplemental to the ordinary mode of postal service. However this view is seen to be shifting in India with the recent developments in the state of Tamil Nadu and Rajasthan and a more main stream approach is taken by the states. The states have taken due consideration to ensure that the technology comes at hand to reduce the backlog of the judiciary due to delay in services of summons. The developments are made keeping in mind to assist the requirement of the population and thus is developed in local language.

## **II. DEVELOPMENTS IN THE STATE OF TAMIL NADU.**<sup>10</sup>

Tamil Nadu state police have launched a new facility in January 2018 where the summons details of a case can be sent to witnesses via SMS, for them to appear in court. Chief Minister Edappadi Palaniswami aims at faster completion of trials and has launched this facility in the regional language to make it more comfortable for the witness. The SMS will contain details, including the name of the police station, name of the court where the witness has to appear, the date and time, besides case details and contact numbers of the police station to get further assistance, the report states. This new facility would avoid logistical issue of witness out of station can be avoided. All details of the witness, including the phone number, would be saved in the Crime and Criminal Tracking Network System this is more a comprehensive approach and provides a better record in the system.

## **III. DEVELOPMENTS IN THE STATE OF RAJASTHAN.**

On 27 September 2019 the High Court of Rajasthan launched two apps, National Service and Tracking of Electronic Processes (NSTEP) for e summons and notices of subordinate courts and 'Rajasthan High Court E services' which in large gave the public access to the cases that

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<sup>8</sup>(2010) 10 SCC 280

<sup>9</sup>'Validity Of Electronic Legal Notices And Processes In India Through E-Mails' (November 1, 2013) <<http://ptlb.in/iips/?p=299>>

<sup>10</sup>Now, court summons through SMS as TN police starts new initiative.' (News Minute January 8 2018) <<https://www.thenewsminute.com/article/now-get-court-summons-through-sms-tn-police-start-new-initiative-74270>>accessed on 27<sup>th</sup> September 2019.

are going on. The former is the concern of the paper. The NSTEP application developed allows an immediate launch of the summon which records the GPS location, thumb print for signature and picture to be uploaded of the recipient when the summon is served and sends an immediate update of the matter.<sup>11</sup> This saves time in two directions the physical postage and then the required time for the update on the report of summons. This could speed up the process to a great extent. The app has been launched in the regional language, Hindi to make it more accommodating. This approach sends out a very positive step towards other high courts in the state and encourages state to reduce the time in the long proceedings. This does not require any modification or interpretation of law but a very small step that could affect the speeding process of the cases.

#### IV. DEVELOPMENT OF SENDING SUMMONS THROUGH WHATSAPP

*In Tata Sons Limited & Ors vs John Does*<sup>12</sup> the Delhi High court allowed the summons to be served through emails and WhatsApp. It has also allowed e summons when it is absolutely convinced that the defendants belong to a certain category and have easy access to the e services and serving through the medium would not be disadvantaged to the party in any way. As the courts have allowed the HDFC banks to serve to different defendants through email and pushed the process to great speed. Since most of the cases were of cheque bounces a certain minimum accessibility to the e services can be assumed. This allowed the courts to move at much higher pace. HDFC Bank has already got 214 court summonses served through WhatsApp and email in the last two months, according to officials. These were served through courts in Tamil Nadu, Gujarat, Punjab, Haryana, West Bengal, Rajasthan, Assam, Uttar Pradesh and others. The first one to send summons by WhatsApp is Financial Commissioner (FC) Court in Haryana, a quasi-judicial body. In April 2017, Senior IAS officer Ashok Khema ordered that summons in a partition suit be served via WhatsApp.<sup>13</sup>

Justice Patel, of the Bombay High Court in the same month, set out a precedent allowing serving of summons through WhatsApp in a copyright infringement case.<sup>14</sup> The court opined that our procedures can't be so rigid and ancient that it is unable to use the benefits of the technology. Also, it seems that the mode is irrelevant as long as alternative method is shown

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<sup>11</sup> Rajasthan HC launches mobile app for electronic service of Summons' (*Live Law* September 27, 2019) <<https://www.livelaw.in/news-updates/rajasthan-hc-launches-mobile-app-for-electronic-service-of-summons--148526>> accessed on 2<sup>nd</sup> October 201

<sup>12</sup> CS(COMM) 1445/2016 & I.A. 13197/2016

<sup>13</sup> Ajay Sura, 'In a first, court to send summons via WhatsApp' *Times of India* (April 8 2017 ) <<https://timesofindia.indiatimes.com/city/chandigarh/in-a-first-court-to-send-summons-via-whatsapp/articleshow/58074835.cms>>

<sup>14</sup> Kross Television India Pvt Ltd & Another vs Vikhyat Chitra Production & Others, 2017

to be effected and acknowledged by the defendants. The objective of serving a notice should be in consonance with the principle of *audi alteram partem*, for dispense of justice. Principle of bringing it to the notice of defendants and the actions of court does not prejudice one party is abided by then defendants cannot claim that the Defendants had 'no notice.' The same reasoning was applied in Rohini Civil court, Delhi when the court *accepted the blue double tick sign in a WhatsApp message as valid proof that a case related notice had been seen by the message's recipients. He then took the color printout of the sent message with the blue double tick, which indicates that the message has been read - visible in it.* The court concluded based on the proof that the Defendants had acquired the knowledge of the scheduled hearing. Therefore, WhatsApp is only incidental and supplemental in nature, relying on social media such as WhatsApp has its own loophole wherein with the help of different applications and hacked versions one could easily hide delivery message. It is to be understood that the country as a whole has to take steps to develop the IT structure of the judiciary for a more quicker and efficient application of e measures to deliver the summons and consequently for speedy trials.

## V. ELECTRONIC SUMMONS TO A PERSON RESIDING ABROAD

Hague Service Convention allows judicial ad extrajudicial documents to be transferred among its signatories.<sup>15</sup> One of the main purposes of Hague Convention, 1965 is to establish a minimum standard of uniformity of serving the summons to speed up the trial and bring to the addressee's notice in sufficient time. Given the huge impact of the internet the addition of e summons would only facilitate the purpose of the Hague Convention. India has signed the convention in a limited manner by restricting itself to accepting the summons only via Law of Ministry and no other mode.<sup>16</sup> Unlike India, US has made it 'mandatory' to abide by the regulations of Hague Convention and reading it in the widest way possible. It has allowed e summons to be filed under Hague Convention by reading its FRCP and the convention together.<sup>17</sup> They have read the electronic summons under 'postal channel' and under Hague Convention as long as the State of destination does not have an issue the mode is reliable and allowed under the convention.<sup>18</sup> Therefore it is important for India to expand its horizon and change according to the required need of the hour. The treaty was signed in 1965 with no or rather very limited

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<sup>15</sup>Shambu Sharan and Gunjan Chabbra, 'Process Of Service Of Summons In India Under The Hague Convention (October 8 2015) <<http://www.mondaq.com/india/x/433154/International+Courts+Tribunals/Process+Of+Service+Of+Summons+In+India+Under+The+Hague+Convention>> accessed on 2th September 2019

<sup>16</sup>*Ibid* 12

<sup>17</sup>Jeremy A Colby, 'You've Got Mail: The Modern Trend towards Universal Electronic Service of Process' (2003) 51 Buff L Rev 337

<sup>18</sup>Frank Conley, 'Service with a Smiley: The Effect of E-Mail and Other Electronic Communications on Service of Process' (1997) 11 Temp Int'l & Comp LJ 407

role of internet, but now when Hague Convention, 1965 neither explicitly or implicitly includes nor excludes the practice of e summons the Indian courts should consider reading it in expansive manner. This approach would only reduce the time involved between the parties but could also save a lot of human resources. Given the circumstances that India still wants to respect the treaty politically and would like to be part of it along with its other members.

## **VI. SHORTCOMINGS AND PITFALLS OF E SUMMONS IN INDIA**

Firstly, India being such a diverse country socially and economically it would not be fair to ignore the logistical problem of the courts. The high court has the power to regulate on the matter and it has already established that is the discretion of the court to allow the summons to served in e format and not a right based discourse for the party. Now for example despite the ruling of Supreme Court as e summons as an acceptable form of summons the Punjab High Courts has ruled that due to lack of resources it won't be able to accept e summons sent through email and WhatsApp as legitimate form of summoning.<sup>19</sup>In a country where majority of population is uneducated the courts should lay down certain pecuniary limits or allow only in certain type of a cases summons to be served electronically given the huge socio-economic diversity in India. This huge gap also restricts the role of e summons to only additional and supplemental in nature. Following the principle of latin maxim *actus curiae neminem gravabit* that the act of court shall not prejudice the other party or the court of court should not be detrimental to the other party in any way has to be kept in mind. Therefore, e summons or summons served electronically has to be understood as only additional and supplemental to the existing modes. There still exists a loophole in the technology that it cannot confirm that recipient is not trying to evade the service of summons in case of email. Like any other system, this too has its share of imperfections. For instance, in the case of corporate entities, if the contract does not clearly spell out to which email the summons is to be served, the service will remain a matter of dispute. The other possibility that it could go to its trash box or the recipient may be in a place that the network failed to deliver the email. However the blue tick of the WhatsApp has solved the problem to much extent. But again, what if the recipient has changed his number or has disabled its 'read only recipients' However, it is essentially important to understand that the electronic means, least of all WhatsApp, are not going to replace the "regular models". They are meant for those exceptional cases where the Defendants are hiding and evading their appearance in Courts. This can be a complete success in a system which is fully digital. Another major issue that could develop over time is authentication and forging of

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<sup>19</sup>Lokesh Vyas, 'Admissibility of Summons through WhatsApp in Legal Proceedings.' (May 20, 2018) <<https://blog.ipleaders.in/summons-whatsapp-legal-proceedings/>> accessed on 24 September 2019

documents. In case where the court accepted the print out as a valid proof the documents could easily be photo-shopped. But this could be easily countered by accepting only electronic mode as proof such as screen recording the blue tick but again the courts have to improve their infrastructural competence. Taking cue from Australia, Canada and New Zealand and New York Country Case of *Baidoo v. Blood-Dzraku* it would not be farfetched to say now after WhatsApp if the courts start serving summon through Facebook as the same principles can apply and it is also easy to check the user's activity on social media and thus one can keep track of whether the notice is being ignored or not. There can be a virtually 100% success rate if social media platforms are used.<sup>20</sup> Embracing a process of electronic notice delivery would save a lot of time of courts on an administrative level. With the required technology already in place, the integration of minimalism into the process will be made much easier.

Secondly, electronic modes of service lack corroboration and cannot be adduced as evidence in a court of law. Order V, Rule 9(3) explicitly states that modes of service ought to be mentioned in the specific rules made by every High Court. This has been restated by the bench of Supreme Court in an issue of concession Agreement between South Delhi Municipal Corporation and a consortium comprising A2Z Infraservices and another as the messages can be easily forged and fabricated.<sup>21</sup> Text message and Whatsapp are not fossilised in any of the rules made by any high court yet. This has several implications on the use of powers by judges in civil courts. They are bestowed with certain discretionary powers, but, introducing new methods of service at the Trial Court level is questionable even on the grounds of Section 151. The Indian Evidence Act, requires a 'digital signature' for considering a document of evidentiary value. None of the HC orders mentioned above had directed the plaintiff to obtain signatures and thus these decisions can be overturned easily by the defendants on the grounds that these were not valid proof of service. Text messaging and Whatsapp can be considered as electronic documents having the same weightage as that of a paper document. However, without a signature from an authorized individual would render it equivalent to an 'unsigned' document. In order to be of value at the evidentiary stage, it ought to have a '65B certificate', and if not, might be assumed to be an improper issuance of summons which can be easily challenged by the defendants. A Section 65B certificate is just like that of a digital signature. A digital signature is a consolidation of the representation of the signatory and the contents of

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<sup>20</sup> 'Modifying the Summon Process' (January 26, 2017) <<https://medium.com/@arpit.ratan/modifying-the-summons-process-f3e5abe633ec>> accessed on 27<sup>th</sup> September 2019.

<sup>21</sup> Dhananjay Mahapatra WhatsApp messages have no evidential value: Supreme Court (June 15 2021) <<https://timesofindia.indiatimes.com/india/whatsapp-messages-have-no-evidential-value-supreme-court/articleshow/84426237.cms>> accessed on 15th June 2021.



the document. Similarly, a Section 65B certificate is unique in nature as it certifies electronic evidence produced by a party not in possession of the device. Thus, in order to make way for such modes of service, the judiciary will have to undertake expenditure to provide infrastructure capable of assigning such certificates with every summon. Additionally, there has to be qualified professionals to carry out such tasks.<sup>22</sup>

Thirdly, the Apex court has established right to privacy as a fundamental right in the Puttaswamy judgment forces us to question does the ability to access the information infringes the individual's right to privacy. It is important to realize that the importance of privacy rights increases day by day with world getting smaller day by day. The information which would be practically impossible to assemble in a paper environment is now easily accessed through a click away. Certain benefits such as scholarships, insurance or employment benefits could be jeopardized with such easy accessibility.<sup>23</sup> What if there is some inaccuracy in the result and the data base fails to distinguish between individuals with the same. Rights of privacy and access to information may overlap so the courts and legislature should legislate and lay down the guidelines keeping in the mind the interest of the parties and their privacy rights.

Lastly, there is a lack of uniform rules or guidelines that binds the country. This lack of uniformity allows the state some autonomy to run on its own infrastructural development. The concept of E-courts is playing vital role in judiciary and is making efforts for computerization of all courts in India.<sup>24</sup> But, information technology and notices is not being properly used by all the courts in service of summons because the court system does not have the facility to effect the service through electronic mode. But I would argue that legislature should lay down certain rules so that the High Courts across country are guided by same principle. The Apex court would address the issue only when such specific issue comes before it but in this era where social media is a powerful tool the legislature should come forward as it is important to address the matter in urgency. This regulation by legislature could also answer the excuse deficit of infrastructural development, has the courts would have rights to avail those infrastructural development. The uniform principle would also allow the time bound manner in which the parties have to file the response.

The paper has tried to follow the implementation of e summons by Judiciary in India and its

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<sup>22</sup>Anamika Kundu, 'Examining the Legality and Limitations of Serving Summons via Text Messaging.' (September 14, 2018) <<https://lawandotherthings.com/2018/09/examining-the-legality-and-limitations-of-servin-g-summons-via-text-messaging/>> accessed on 2<sup>nd</sup> October 2019

<sup>23</sup>James E. McMillan, J. Douglas Walker and Lawrence P. Webster, 'A Guide book for Electronic Filing' (Copyright 1998) West Group, Inc. ISBN 0-314-23340-7Pg. 121-128 <[https://www.srln.org/system/files/attachments/A\\_Guidebook\\_for\\_Electronic\\_Court\\_Filing.pdf](https://www.srln.org/system/files/attachments/A_Guidebook_for_Electronic_Court_Filing.pdf)>

<sup>24</sup>'Legal Enablement Of ICT Systems In India' <<http://www.electroniccourts.in/>> accessed on 5<sup>th</sup> October 2019

implementation keeping in mind the huge socio-economic gap in India. The question of legal validity of serving electronically has also been addressed. The paper has pointed out certain shortcomings and pitfalls of serving through electronic means and has tried to point out possible means to address the deficiency.

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