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I. INTRODUCTION

A. Background

The vision document prepared by the Ministry of Law and Justice on judicial reforms states that an efficient legal and judicial system which delivers quick and quality justice reinforces confidence of people in the rule of law, facilitates investment and production of wealth, enables better distributive justice, promotes basic human rights and enhances accountability and democratic governance.

To realise the objectives set out in the vision document, National Mission for Justice Delivery and Legal Reforms has been set up by the government to achieve the twin goals of (1) increasing access to justice by reducing delays and arrears; and (2) enhancing accountability through structural changes and by setting performance standards and improving capacities. The Mission has adopted a coordinated approach for phased liquidation of arrears and pendency in judicial administration by providing support for better court infrastructure including computerization, encouraging increase in the strength of subordinate judiciary, recommending policy and legislative measures in the areas prone to excessive litigation and suggesting re-engineering of court procedures for quick disposal of cases.

B. Brief Overview of the Problem

Among several causes for pendency of court cases one important factor has been delay and complexities in service of process. The challenges posed by huge backlog and pendency of cases in our judicial system cannot be met without active cooperation between the bar and the bench. During the course of court proceedings in relation to law suits, petitions, complaints and many other applications require the court interventions by calling upon the parties to appear in the court by way of notices, summons, warrants etc. This procedure is known as "Process Service". To call the person to court, it is mandatory to serve the legal papers and judicial documents. It is quite a challenging task to deal with people who avoid service of

process. Earlier this task was more cumbersome when there was no reliable technical support, but gradually due to reforms in procedures and technical support this task can now be done faster and effectively. Much of the delay in process service now occurs where the provisions of Civil Procedure Code and Criminal Procedure Code are not properly observed.

To address the existing bottlenecks and introduce reforms in the rules and procedures relating to process service, important legislative changes have been introduced in the procedural laws. Further, high courts have also adopted practical steps to address the problems of delay caused due to process service by introducing changes in rules and policies.

In this backdrop this research paper seeks to provide an overview of the changes introduced in process service by way of amendments to procedural laws, judicial pronouncements and High Court Rules .

II. LEGISLATIVE PROVISIONS

A. 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. Some of these provisions have been amended by Amendment Acts in 1999 and 2002 to tackle the problem of delays in court processes. The provisions that have undergone amendments are mentioned below:

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. Order V Rule 1 which also deals with service of summons has been amended and states that no service of summons is necessary in case where the defendant has appeared at the time of presentation of the plaint and admitted the petitioners claim. Amendment has further added a proviso that the defendant has to file his written statement within thirty days from the date of service of summons and if the defendant fails to file the same within the

prescribed period, the court may extend the time but not more than ninety days for the reasons to be recorded in writing.

3. Rule 9 Order V deals with delivery of summons by court. This Rule as amended in 2002, mandates delivery has to be either through proper officer or by post acknowledgment due or by speed post or through an approved courier, fax, email.
4. Rule 9- A provides service could also be done by plaintiff by taking delivery of summons from the court and tendering the same to the defendant personally or by Fax, courier, email etc.
5. Rule 9 Sub Rule 4 provides service of summons on a defendant residing outside the territorial jurisdiction of that court through any one of the courier services approved by it. An improvement over the 1999 Act insofar as the local court has now got power to approve the courier service, whereas earlier only the high courts had the power to do so. The decentralization would speed up the process of service.
6. Order IX Rule 2 provides dismissal of suit where summons are not served in consequence of plaintiff's failure to pay costs. Where on the day fixed for hearing it is found that on the failure of the plaintiff to file process fee or pay court fee or any other reason attributable to the plaintiff, service has not been affected on the defendant, the court may dismiss the suit.

B. Criminal Procedure Code, 1973

Similarly, in criminal cases service of process is required for seeking production of the accused, witnesses or related parties whenever needed. If the accused is found guilty at the conclusion of the trial, he must be present in person to receive the sentence. Also, his presence is necessary if imprisonment is to be enforced. For this reason, Chapter VI (Sections 61 to 90) of Code of Criminal Procedure (Cr.P.C) provides three ways for compelling the appearance of any person who is required to be present in the court:

1. Summons,
2. Warrant, and
3. Proclamation for person absconding

While summons is an order of the court to the person to appear before it, warrant is an order of the court given to a third person (normally a police officer) to bring the person who is required to be present in the court. It is at the discretion of the judicial officer to decide which method to be used in a particular situation, who is guided by the provisions of this code. The third method is used when the person has absconded or is in any other way avoiding arrest, in which case the court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publication of such proclamation.

The code broadly classifies all criminal cases into summons cases and warrant cases. However, when a summons is not productive in making a person appear before the court, the court may issue a warrant to a police officer or any other person to forcibly produce the required person before the court. When a request in appropriate format is made to the court for compelling the appearance for a person, the court either rejects the request or issues a summons.

1. As per Section 61, every summons issued by a court under this code shall be in writing and in duplicate. It must be signed by the presiding officer of the court or by such other officer as the high court may, from time to time, by rule direct. It must also bear the seal of the court. A person who is summoned is legally bound to appear before the court on the given date and time. Willful disobedience is liable to be punished under Section 174 of Indian Penal Code (IPC). It is a ground for contempt of court.
2. Section 204 of Cr.P.C empowers magistrate taking cognizance of an offence to issue a summons if there is sufficient ground for proceeding in a summons case. If it is a warrants case, he may issue a warrant or a summons as he thinks fit.
3. The summons should contain adequate particulars such as the date, time, and place, of the offence charged. It should also contain the date, time, and

place where the summoned person is supposed to appear. The standard format of a summons is given in Form 1 of second schedule.

4. Section 62 describes the procedure for serving a summons on a person as follows –
 - (i) Every summons shall be served by a police officer, or subject to such rules as the state government may make in this behalf, by an officer of the court issuing it or other public servant.
 - (ii) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the copies of the summons.
 - (iii) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt thereof on the back of the other copy.
3. Section 65 lays down the procedure for service of summons by way of affixation and Section 69 states that the service of summons on a witness can also be done by post in addition to other modes of service.
4. However, Section 87 empowers a magistrate to issue a warrant even if the case is a summons case if he has reason to believe that the summons will be disobeyed. He must record his reasons for this action.
5. Section 202 of Cr.P.C deals with postponement of issue of process. Many a times false complaints are filed against persons residing at far off places simply to harass them which also leads to clogging of frivolous litigation. In order to see that innocent persons are not harassed by unscrupulous persons, this section was amended in 2005 to make it obligatory upon the magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or any other person he thinks fit for finding out whether there is sufficient ground for proceeding against the accused.
6. Section 105 provides for reciprocal arrangements to be made by Central Government with the foreign governments with regard to the service of summons / warrants/ judicial processes. Ministry of Home Affairs have issued

comprehensive guidelines for service of summons/notices/judicial process on the persons residing abroad¹.

III. LOOPHOLES IN THE EXISTING SYSTEM

Although legislative changes have been initiated to expedite the delivery of process service however same have not fully succeeded in resolving problems. The new provisions have not been adequately implemented. The present system of service of process or summons is not properly followed which results in delay in justice. After filing the plaint, the process fee is not paid for long time so that the summons to the defendant is not served in time. Due to this delay in payment of necessary fees, it takes three to four months to issue summons or process to defendant or witness. Further the advocate for defendant seeks repeated adjournments to file written statement.

Under the present procedural system, the process server is an important person without being responsible for his failure to serve summons in time. Summons is frequently returned with endorsement of 'party not found, 'address not known', and most of the endorsements are not genuine. Summons is also returned for some technical reason e.g. initial of the defendant's father does not tally, the house number or the road numbers differ etc. The work of the process servers is also not properly monitored and there is no system of accountability for the court registry and court staff for delay in service. These delays ultimately result in the delay in conclusion of the proceedings of the case.

Delay in disposal of civil suits may often be due to inability of Presiding Officers to pay personal attention to matters connected with the issue and service of processes due to heavy workload. The discretionary power under Order V Rule 20 (1) C.P.C relating to publication in newspaper is frequently exercised by courts. But in many cases this method is quite unsuitable. When, for example, the defendant is illiterate or belongs to marginalized section of society such notice is not of much use. Delay also results from non-service of summons to the parties residing beyond the

¹ Comprehensive guidelines regarding service of summons/notices/Judicial process on the persons residing abroad; No. 25016/17/2007-Legal Cell GOI,MHA, 11th Feb. 2009

jurisdiction of the court; failure of service due to law and order situation; accused could not be traced; and delay in filing of the reports of service of summons and warrant.

The Delhi High Court constituted a committee² in 2009 to review the system of process service in courts under its jurisdiction. The committee in its report submitted to the court pointed out several shortcomings as indicated below in the current system, including lack of proper training and accountability of the court staff.

1. There is a lack of sensitization amongst civil nazirs/naib nazirs as well as process servers about important role played by the nazarat branch in the overall system of administration of justice.
2. The entries in the registers are not properly maintained in as much as no track is kept of the processes which are not received back even upto the date of hearing fixed in the court.
3. Urgent processes are dealt with in routine manner with no sense of urgency shown towards their execution.
4. The system as regards dasti process is easily manipulated.
5. Proper system is not in place as regards the outstation processes and few such processes are received back.
6. The accountability for the Civil Nazirs/Naib Nazirs and also the process servers does not exist .

In criminal cases, summons and warrants are not properly served and the police machinery is found indifferent in its approach towards service of summons and warrants. Reports of service of summons and warrants are not filed on the fixed date. In proceedings under Section 138 of Negotiable Instruments Act, summons and warrants are not diligently served by police. There is a lack of accountability of the court registry and court staff in getting service affected and for delay in service.

According to the report of **Committee on Reforms of Criminal Justice System**³, one of the causes for delay even in the commencement of trial of criminal case is

² Report Regarding Service of Summons in Criminal Matters, Committee constituted vide order no. 4860/104094-119/F1 (3)/Gaz./09 dt. 24/11/2009

³ Report of **Committee on Reforms of Criminal Justice System**, Govt. of India, Ministry of Home Affairs, Report, Volume 1, March 2003

delay in service of summons on accused. The Code of Criminal Procedure provides for various modes of service. Section 62 of the code provides that summons shall be served by a police officer, or subject to such rules being framed by the state government, by any officer of the court or other public servant. Unfortunately, rules have not been framed by many state governments to enable service other than through police officers.

In March 2012, the Law Commission of India submitted its report⁴ on Expedious Investigation and Trial of Criminal Cases against Influential Public Personalities to the Supreme Court of India in the case of **Virender Kumar Ohri Vs. Union of India & Others**. The report stated that one of the main causes for delay in the progress of criminal cases in trial courts is absence of some or all the accused or non-production of undertrial prisoners at the stage of framing of charges and during trial. Earnest efforts are not being made by the police in apprehending and producing the absconding accused. In large number of cases, the delays on this account have become a routine feature. If the accused persons are residing outside the district or the state, it compounds the problem further. The report further states that police fails to ensure that prosecution witnesses turn up in time and quite often, even investigating officers are defaulters. Trial cases are adjourned quite often for non-attendance of official witnesses. The commission stressed the need for ear-marked police personnel for court duties. According to the Law Commission, the most conspicuous reason for the delays in the progress of trial is non-execution of warrants by the police. Police plead their inability to apprehend the accused (against whom Non-Bailable Warrants and Proclamation orders have been issued) for good and bad reasons. The fact remains that police do not consider it as a priority item and they act in a casual and routine manner. There are innumerable instances in which the police officer concerned does not even send a report to the court as to the stage of NBW and the specific reason for non-apprehension of the accused.

In order to understand the practical difficulties with regard to the service of processes, members of the research team went on to study the functioning of the

⁴ 239th Report of Law Commission of India titled **Expedious Investigation and Trial of Criminal Cases against Influential Public Personalities**

different Nazarat branches in four districts of Delhi at Rohini and Saket and also had interaction with the civil nazirs, nayab nazirs, process servers and judicial officers. The team circulated a questionnaire (Annexure- I) to all the judicial officers and administrative staff to obtain their views as regards the existing system and the proposed changes which can be suggested for the improvement of the system as a whole.

Following are some of the problems shared by the process servers:

1. One of the major concerns related to shortage of manpower for service of summons. As the manpower is not adequate therefore same person is dealing with the urgent summonses and also the ordinary summonses. There is no separate provision for service of urgent processes. This results in lot of delay.
2. Transport is also major cause of concern for the process servers. They have to use their own vehicle as travelling by bus causes lot of delay and is time consuming. As there is no identification mark on their vehicles, sometimes they have to face lot of difficulty in parking especially in unauthorised colonies. They have to pay parking charges which adds to their cost. Their transportation allowance is Rs.1000/- per month which is very low given the present scenario.
3. There is no training given to them regarding their duties and responsibilities. They only learn from the experience of the senior process servers. There are no guidelines for the process servers related to effective service.
4. At the time of delivery of summons, it becomes really difficult for them to identify the person on whom the summons/notice is to be served and nobody gives them the identification proof.
5. They also face lot of difficulties in getting the signatures of witnesses. Calling of process servers as a witness in other courts is also a factor which affects their efficiency.

IV JUDICIAL PRONOUNCEMENTS

Hon'ble Supreme Court of India in **Central Electricity Regulatory Commission Vs National Hydroelectric Power Corpn. Ltd. & Ors.**⁵ has directed that in commercial litigation and in those cases where the Advocates seek urgent interim reliefs, service of notices may be effected by E-mail, in addition to normal mode of service. The apex court observed that in various courts, the statistical data indicates that, on account of delay in process serving, arrears keep on mounting. In Delhi itself, the input indicates that fifty percent of the arrears in courts particularly in commercial cases is on account of delay in process serving. The court further directed the Cabinet Secretariat to provide central e-mail addresses of various Ministries/Departments/Regulatory Authorities along with the names of the nodal officers appointed for the purposes of service.

It has been held by the Supreme Court in **Sunil Poddar vs Union Bank of India**⁶, that if, the court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non-service of summons for setting aside ex-parte order passed against him by invoking Order IX Rule XIII of the Code.

In **Ravi Datt vs Chuni Lal**⁷, the court observed that there are a large number of cases in which it is alleged that service has not been properly effected resulting in an ex parte decision followed by an application under Order IX Rule 13 of the CPC for setting aside the ex parte decision. This frequently happens not only in civil matters but also in matters arising under the Industrial Disputes Act, 1947. It is generally accepted that the process serving agency in the district courts needs an overhaul, to avoid recurrence of cases such as the present, and also to avoid a large number of applications being filed under Order IX Rule 13 of the CPC.

In **Salem Advocates Bar Association, T.N v Union of India**⁸, 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 common knowledge that the defendants have been avoiding to accept summons. There have been serious problems in

⁵ Civil Appeal No. 2010(D.21216/2010)

⁶ Civil Appeal No. 86 of 2008

⁷ AIR 2004 Delhi 405, 2004 (75) DRJ 39

⁸ (2003) 1 SCC 49, (2005) 6 SCC 344

process serving agencies in various courts. There can, thus, be no valid objection in giving opportunity to the plaintiff to serve the summons on the defendant or get it served through courier. There is, however, danger of false reports of service. It is required to be adequately guarded. The courts shall have to be very careful while dealing with a case where orders for deemed service are required to be made on the basis of endorsement of such service or refusal. The high courts can make appropriate rules and regulations or issue practice directions to ensure that such provisions of service are not abused so as to obtain false endorsements. In this regard, the high courts can consider making a provision for filing of affidavit setting out details of events at the time of refusal of service. For instance, it can be provided that the affidavit of person effecting service shall state as to who all were present at that time and also that the affidavit shall be in the language known to the deponent. It can also be provided that if affidavit or any endorsement as to service is found to be false, the deponent can be summarily tried and punished for perjury and the courier company can be black-listed.

V INITIATIVES TAKEN BY VARIOUS HIGH COURTS

Several high courts have initiated efforts to improve the procedure for process service within their jurisdictions. Some innovative practices have been adopted to ensure effective implementation of the legislative provisions, reforms in the functioning of the process service agencies and its monitoring, and fixing accountability on court functionaries for failure of delivery of service within the specified time. Some of these initiatives are mentioned below:

A. Initiatives in Delhi High Court

1. In exercise of powers under Part X and Order V, Rule 9 of the Code of Civil Procedure, 1908, the High Court of Delhi has framed '**Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010**' which were notified on February 9, 2011. Email service is specifically provided for under Rule 12 of the said Rules. Under Rule 15 of the said Rules, even witnesses may be summoned via emails. Also, any party may request the court to issue service to it via emails so that it may receive the court's communication or communication from the other party to the proceeding via email. High Court of Delhi

has also taken an initiative of providing SMS or email alert facility for information of the members of the bar and parties.

2. High Court of Delhi has directed that where the defendants/respondents are located outside Delhi, notice should be served either through a courier agency approved by the court or by registered/speed post. The tracking report of the courier agency or the postal authority, as the case may be, should be filed by the petitioner not later than two weeks in advance of the next hearing alongwith an affidavit of service. Where the notice has been sent through approved couriers, a copy of the consignment note acknowledging the receipt/refusal of the notice also be enclosed. Thereafter, the said report to be placed by the registry with a service report before the court Registry should take a strict view of the delay in filing process fee in all such cases.
3. According to Part 4 of Delhi High Court Rules on service of processes in both civil and criminal matters,
 - i. Every attempt should be made to effect personal service in the first instance and failing that service on an agent or a member of the family. The process server should go again and again for this purpose, if there is time before the date fixed for scrutiny of service, and obtain such successive attempts at service, attestation of witnesses different from those who have attested reports of previous attempts. The court should not proceed to hear a case *ex parte* until it is proved to its satisfaction that the summons has been duly served.
 - ii. It is the plaintiff's duty to use his best endeavours to discover the defendant's residence before obtaining orders for substituted service. It is only after all the other methods of effecting service have been tried and have failed that it is open to the court to exercise the discretionary power conferred by the concluding words of Order V, Rule 20(1), of C.P.C. Publication in the newspaper should only used as a last resort.
 - iii. The judge should verify whether service of process has been completed before the date of hearing.
 - iv. A very short date should be fixed for payment of process fee and for the giving of adequate details of the persons to be served. On this date, the judge should

satisfy himself that the fees, diet money etc. have been paid and that the name and other particulars of the person to be summoned are reasonably sufficient to secure service.

- v. Courts should not proceed ex parte, if summons has not been duly served.
- vi. Under the Chapter 8, in criminal cases which are not cognizable by the police, within the meaning of Section 4 (f) of Cr. P.C, summons are to be served through the civil process serving establishment attached to the courts.

B. Initiatives in Bombay High Court

1. **Bombay High Court Appellate Side Rules, 1960**, were amended and new rule 5A was inserted which states that in addition to other modes, urgent orders may be sent or communicated through FAX or E-Mail, wherever such facility is available, at the cost of the party.
2. Under the Bombay High Court (Original Side) Rules, mode of service of summons prescribed is through registered post pre-paid for acknowledgement and acknowledgment signed by defendant. It also provides that an endorsement by a postal servant that the defendant refused service shall be deemed to be prima facie proof of service and in all other cases, an inquiry should be held to decide whether the service is effective or not.
3. Summons need not be served on a defendant personally, if his advocate undertakes in writing to accept service, and file a vakalatnama.
4. In the matters in which the court has granted ad-interim / interim reliefs, if it is noticed that steps to serve notice on other side are not taken, the matter may be dismissed for default and heavy cost may be imposed on the applicants. Notice can be sent either through Fax/SMS/Speed Post.
5. In exercise of the powers conferred by Section 62 (1) of the CrPC, in its application to the state of Maharashtra, the Government of Maharashtra has made the **Maharashtra Service of Summons by an Officer of the Court or other Public Servant Rules, 1986**. According to these Rules, in any

proceedings initiated on a complaint or application under the code, if the court directs that the summons shall be served by the baliff then such summons shall be served by such baliff either in addition to or in lieu of the service of summons by the police officer as the court issuing the summons may order. It shall be the duty of the baliff to serve the summons without the aid of the persons connected with the proceedings but wherever necessary may seek the assistance of a village officer, a police officer or any other person not connected with the proceedings.

6. There is also a service of e suvidha which has all the facilities from filing of various applications, depositing the required fees and ensuring the delivery at given time may be provided at single point. This facility in the form of e-Suvidha is provided in every district. This service is also provides the immediate information to nazarat branch about deposit of amount by the party. In addition, the software i.e. Case Management Information System at the high court and Case Information System at district courts generates notices, summons, writs etc. through e-mail, fax and/or mobile.
7. Similarly, at the time of filing of case, the information regarding telephone no., mobile no., fax no., e-mail etc. of the petitioner/respondents and also advocate code is being obtained, so that the notices, writs, summons can easily be disseminated to the advocates and litigants.
8. Bombay High Court Process Fees Rules, 2006 have been framed by Bombay High Court in exercise of the powers conferred upon it under section 32 of the Bombay Court Fees Act, 1959. To curtail delay, the process fee rules have been amended to charge one time process fee. Moreover, women litigants have been provided with exemption from payment of process fees in cases relating to maintenance, property right, violence and divorce.

C. Initiatives in Karnataka High Court

1. High Court of Karnataka has framed **Code of Civil Procedure (Amendment) Karnataka Rules, 2005** and new rule 5A has been inserted. According to this Rule, whenever orders on deemed service are required to be made on the

basis of endorsement of such service or refusal under this Rule, the person effecting service shall file a detailed affidavit in the language known to him stating as to who were all present at the time of service. In case the contents of an affidavit filed are found to be false the deponent can be summarily tried and punished for perjury and the concerned courier company be blacklisted.

2. A new Rule 12A has been inserted by the amendment in 2005, which provides that district judge in consultation with local bodies, statutory bodies and corporations and autonomous bodies within the jurisdiction of the district shall prepare a panel of their respective authorised agents empowered to accept service of summons/notices in the suits, appeals and other proceedings initiated against such local bodies, etc. shall be deemed as valid service.
3. Karnataka High Court has also framed **Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005**. Rule 4 provides that the plaintiff shall furnish the correct postal address of the parties in the pleadings and the summons/notices to be served on government advocate in matters relating to state or union government. The process for service shall be paid within seven days from the date of order, failing which the case will be dismissed for non-prosecution. Substituted service order to be issued simultaneously in case of non-service due to refusal or deliberately. The envelope of the summons/notice sent by registered post or courier shall bear written or printed instructions to the server to deliver summons or notice to the party and in his absence, to any adult member of the family. The acknowledgement of service shall be submitted to the court.
4. Rules provide for different stages of the suit or proceeding and the first stage is service of summons/notices. The case at the stage of steps for service of summons/notice, appearance, filing of written statement or objections or rejoinder and framing of issues shall be listed in cause list No. II and the case at the stage of appearance and steps at the request of the advocate or party be posted in List I for necessary orders for expeditious service of summons/notices.

D. Initiatives in Kerala High Court

1. Kerala High Court in 2013 has framed its **Civil Courts (Case Flow Management) Rules**. In the rules it is stated that the case may be dismissed in case the process fee for service is not paid within seven days from the date of order. The process fee, if paid in time, for service through court or post, the case shall be posted to a date not later than 21 days, if service is to be effected within the same district and in other case, not later than 30 days from the date of issuance of summons or notice, for appearance.
2. The rules have further introduced that the report of such service shall be filed in court with necessary acknowledgment of service along with an affidavit of the plaintiff. Whenever summons/notice issued to defendant/ respondent through post/courier is reported unserved, the court shall order issuance of summons through court and substituted service simultaneously. The envelope of the summons/notice sent through registered post/courier shall bear written or printed instructions to the server to deliver summons or notice to the party and in his absence, to any adult member of the family residing with him.
3. The High Court has also adopted an initiative to incorporate a new Rule 97-A in the **Rules of the High Court of Kerala** for faster service of the process, hearing on day-to-day basis, automatic termination of stay after the expiry of two months, *etc.*

E. Initiatives in Orissa High Court

1. Regarding the process service, different (Red-Brick) colour postal A.D cards are being used for issuing summons/notices for priority attention in the court matters.
2. Further, the Government of Orissa in Home department have been moved for creation of police cell in courts for effective service of summons/notices and warrants in criminal matters.

3. The framing of rules regarding issuance of summons through courier, fax and e-mail is under active consideration of court.

F. Initiatives in Andhra Pradesh High Court

1. In respect of Writs and Writ Appeals, the service of rule nisi or notice shall ordinarily be effected by registered post, speed post or by an approved courier service or by fax message or by Electronic Mail Service or by such means and the party has to deposit necessary charges in the shape of court fee stamps for meeting the service charges when the notices are to be sent by Court. In respect of Criminal cases, the notices are sent to Subordinate Courts for effecting service on the parties through police concerned.
2. For service of notices on Appellate Civil side, amended rules prescribe Acknowledgement due or by speed post or by an approved courier service or by fax message or by electronic mail service or by such means.

G. Initiatives in Madhya Pradesh High Court

The High Court of Madhya Pradesh has embarked upon an exercise for redrafting of M.P.Civil Court Rules as well as M.P.Rules & Order (Criminal) in which use of Information & Communication Technology as a mode of issuance and service of processes will be included. Some of Computer Devices such as **CPGM** (Centralized Process Generation System) are being used for generating the processes issued by the Courts on experimental basis. CPGM (Centralised Process Generation System) is useful to implement Change Management System in Subordinate Courts, to optimize and utilize the strength of Information and Communication Technology, to optimize the strength of available manpower and to introduce accountability and transparency in process generation. The Centralized Process Generation System coordinates with different wings like filing counter, preparation counter, printing counter and process assistants involved in issue of processes.

VI. INTERNATIONAL BEST PRACTICES

In United States of America, many states have process serving laws that govern the way service of process is effected, the licensing requirements to effect service, the forms to be used and the time deadlines that service of process may be accomplished upon individual respondents and corporations. For example, in New York service of process may require licensing of the process server. Most states have a deadline for completing service of process after filing of the summons and complaint. In New York, for example, service must be completed in 120 days after filing for almost all cases, and Hawaii State Circuit Court rule 28 requires service in a civil lawsuit must be effected within 6 months from commencing suit. New York's City Council passed a bill toughening rules for entities that hunt down people and serve them with legal papers, including a requirement that they electronically log every attempt. Under the new legislation, process servers must pass an exam showing they understand the law. They also must electronically log their attempts to serve papers using some kind of GPS device, and keep those records in a database for seven years.

Globally, new modes of effecting service have also evolved in the recent past. Recently, two courts in Canada allowed process service through Facebook apart from other methods. Facebook is routinely used to serve claims in Australia and New Zealand and has been used a handful of times in Britain. In 2009, Britain courts allowed an injunction to be served via Twitter in a case where the defendant was only known by his Twitter-handle and could not easily be identified another way. Recently a case in U.S.A, involved a group of individuals based in India who allegedly "tricked American consumers into spending money to fix non-existent problems with their computers."⁹ After problems with more conventional methods of international service, the court exercised its authority under the federal rules to fashion its own means of service. In this case, service by Facebook was not specifically prohibited by relevant international agreement, including the Hague Service Convention, to which India and the United States are signatories. Further, the circumstances in which the Facebook accounts would be served ensured service was constitutionally proper. In particular, the order ensured due process by using a

⁹ Federal Trade Commission v. P C Care247 Inc., et al., No. 12 Civ. 7189

two pronged approach: email as the primary method of service and service through a Facebook message (similar to email but within Facebook) only as a secondary method. The order took care to point out that service on a known email address has been held to, and would here, satisfy constitutional norms of due process. Email therefore served as a constitutional “backstop” should service by Facebook fail.

VIII SUMMARY OF RECOMMEDATIONS

1. There should be increased use of additional modes of service such as e-mail/SMS/fax/courier, wherever feasible which will result in speedy delivery of process. Provisions of E-mail ID and mobile telephone numbers of parties and advocates be mandated by the rules to enable courts to deliver the processes through electronic mode for better transparency and accountability.
2. In cases where recipients do not have email IDs or do not have access to the internet, a hybrid system could be used whereby e-mails would be sent to the nearest post-office/courier office where it would be printed out and served on the recipient locally. The digitally authenticated service report could be transmitted to the court registry via e-mail.
3. Similarly, in order to speed up the process in criminal system, it is recommended that in the absence of the e-mail/mobile telephone numbers of the addressees, the summons may be served through the e-mail of the police station.
4. Possibility of using Aadhar cards database appropriately by Courts for establishing the identities and service of court processes can be explored.
5. To make the entire process of serving of summons transparent, hand-held devices or mobile phones with GPS could be provided to the process servers. They also must electronically log their attempts to serve papers using this device.
6. One time process fee could be introduced to curtail delays in process service.
7. The model at Bombay High Court of e-suidha could be replicated in other states. This facility of filing of various applications and depositing the required fees is provided in every district. This service also provides the immediate information to Nazarat branch about deposit of amount by the party.

8. 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.
9. 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.
10. There is a need to empower the process servers by giving them proper training, a uniform with a badge, parking sticker for their transport.
11. 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.

Process service is an important part of court processes and any improvement in this area will result in saving considerable and valuable time of both the litigants and judiciary.

Annexure- I

Questionnaire on Re-engineering Procedures for reducing pendency and backlog of cases in courts on account of Delay in Process Service

For Judicial Officers

1. Do you think delay in process service as a reason for delay in court proceedings?
2. If yes, what can be done under existing rules and laws to cut down delays on account of process service?
3. Please list few bottlenecks which are faced for delay in process fee?
4. Whether process fee should be waived off or made one time and merged with court fees?
5. Do you feel the need to amend C.P.C and Cr.P.C and make the law effective for ensuring quick justice? If Yes, then suggest changes.
6. Do you think e-filing, e-payments and using electronic means for service will be an effective method of service? If yes, whether existing laws and rules support this?
7. Views on using banks/Post Offices as for delivery of summons and accepting payments?
8. Whether the process serving could be outsourced to specialized process service agencies?
9. How far the method of service through specialized courier service can be used under existing provisions of rules and guidelines?
10. Whether using social networking sites i.e. facebook or twitter to serve notices/summons is an effective method and what are its limitations?
11. Any other suggestion.

For the Administrative Staff

1. As a Process Server, what hurdles do you face and ways of rectifying it?
2. Main reason for not filing the process server report on time?
3. How far the digitization of entire court record will help in improving the situation?
4. Do you think the current set up of registry needs to be changed with respect to process service or a separate cell is required to deal with process service?
5. What is the current method of appointment of process servers? Do you think the appointment procedure should be changed?
6. Do you feel the need to train process servers on provisions of laws relating to process service?
7. Any other suggestion.