

The Code of Civil Procedure :
Summons
Section – 27 to 29 & Order - V

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Introduction

Institution of Suit – Presentation of Complaint

Intimation to the defendant

To attend before the court to defend the suit

Technical name - Summon

Principles of Natural Justice

Meaning



The Code of Civil Procedure has not been defined the term



According to dictionary meaning -



"A summon is a document issued from an office of the court, calling upon the person to whom it is directed to attend before a judge or officer of the court for a certain purpose".

Object

Compliance of Principles of Natural Justice

1. Nature of Law -
2. Law of Nature

Audi alteram partem

Opportunity must be given to the defendant to know the case against him.

Decree passed against him is not binding.



Essentials of Summons

1. Every Summons shall be signed by the judge or officer appointed
2. Shall sealed with the seal of the Court
3. Must be accompanied by a Plaint
4. Enclosure of necessary documents.



Form of Summons

Every summons should be in the Forms prescribed in Appendix B to the (First) Schedule of the Code.

Pleadings (Plaint and Written Statement formats)

Process formats

Discovery, Inspection, and Admission

Decrees

Execution

Supplemental Proceedings

Appeal, Reference, and Reviews

Miscellaneous

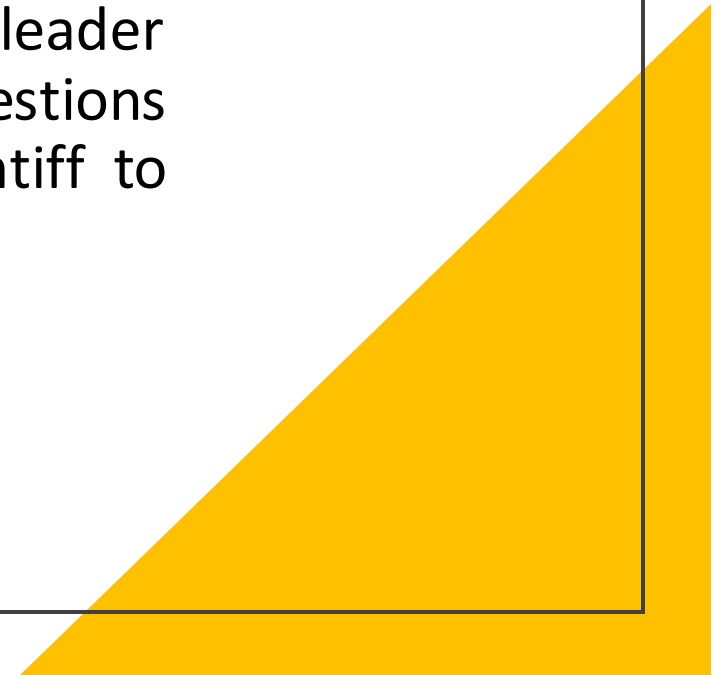
Summons to Defendant :

- Sec. 27, Order V Rule 1 – Summons to Defendant
- Order XVI – Summons to Witnesses.
- ❖ When a suit has been duly filed by presentation of a plaint, the Court must issue summons to the defendant calling upon him to appear and answer the claim of the plaintiff by filing a written statement within 30 days from the date of service of summon.



Appearance in Person : Rule 3

A defendant to whom a summons has been issued may appear in person or by a pleader duly instructed and able to answer all material questions relating to the suit or by a pleader accompanied by some person able to answer all such questions the Court, however, may order the defendant or plaintiff to appear in person.



Exemption from Appearance In- Person :

Sec. 132-133 O. V, R-4

No party shall be ordered to appear in person:

A) Unless he resides

- a. With in the local limits of the Court's ordinary Original Jurisdiction.
- b. Outside such limits, but at a place less than
 - i. 50 miles; or
 - ii. 200 miles (where public conveyance is available) from the court-house;

B) Who is a women not appearing in public

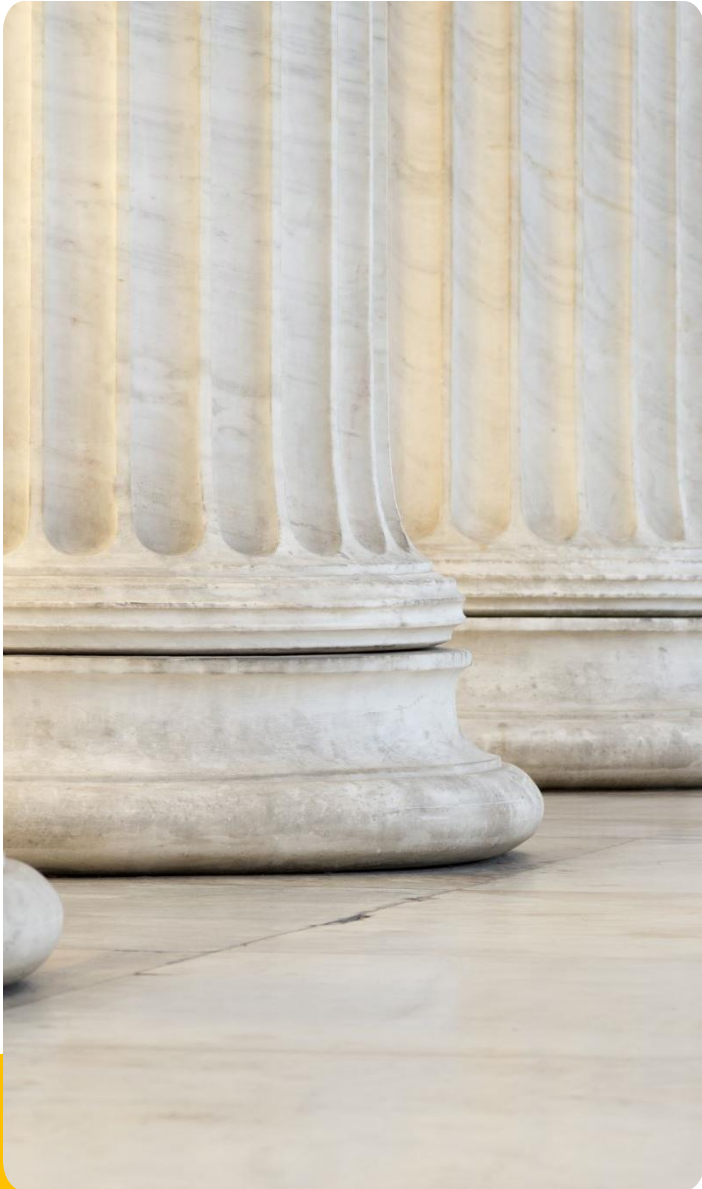
C) Who is entitled to exemption under the Code



Sec. 133. Exemption of other Persons

The following persons shall be entitled to exemption from personal appearance in Court, namely

1. the President of India;
2. the Vice-President of India;
3. the Speaker of the House of the People;
4. the Ministers of the Union;
5. the Judges of the Supreme Court;
6. the Governors of States and the administrators of Union Territories;
7. the Speakers of the State Legislative Assemblies;
8. the Chairman of the State Legislative Councils;)
9. the Ministers of States;
10. the Judges of the High Courts; and
11. the persons to whom section 87-B (Foreign rulers) applies. [98]



Contents of Summons : Rule 5 to 8

The summons must contain a direction whether the date fixed is for settlement of issues only or for final disposal of the suit.

In the latter case, the defendant should be directed to produce his witnesses.

The court must give sufficient time to the defendant to enable him to appear and answer the claim of the plaintiff on the day fixed.

The summons should also contain an order to the defendant to produce all documents or copies thereof in his possession or power upon which he intends to rely on in support of his case.

Mode of Service of Sumon

The service of summons is of primary importance as it is a fundamental rule of the law of procedure that a party must have a fair and reasonable notice of the legal proceedings initiated against him so that he can defend himself.

The problem of service of summons is one of the major causes of delay in the progress of the suit.

It is common knowledge that defendants try to avoid service of summons.

The Law Commission considered the problem, and it was felt that certain amendments were necessary in that direction and a defendant can be served by a plaintiff or through modern means of communication.

Accordingly, amendments were made in the Code in 1976, 1999 and 2002.

The Code prescribes five principal modes of serving a summons to a defendant:

1) Personal or direct service: Rules 10-16, 18 -

- ❖ Rules 10 to 16 and 18 deal with personal or direct service of summons upon the defendant.
- ❖ This is an ordinary mode of service of summons.
- ❖ Here the following principles must be remembered :
 - i. Wherever it is practicable, the summons must be served to the defendant in person or to his authorized agent.
 - ii. Where the defendant is absent from his residence at the time of service of summons and there is no likelihood of him being found at his residence within a reasonable time and he has no authorized agent, the summons may be served on any adult male or female member of the defendant's family residing with him.
- A servant, however, cannot be a member of family.

iii. In a suit relating to any business or work against a person, not residing within the territorial jurisdiction of the court issuing the summons, it may be served to the manager or agent carrying on such business or work.

iv. In a suit for immovable property, if the service of summons cannot be made on the defendant personally and the defendant has no authorised agent, the service may be made on any agent of the defendant in charge of the property.

v. Where there are two or more defendants, service of summons should be made on each defendant.

- ❖ In all the above cases, service of summons should be made by delivering or tendering a copy thereof.**
- ❖ Where the serving officer delivers or tenders a copy of summons to the defendant personally or to his agent or other person on his behalf, the person to whom the copy is delivered or tendered must make an acknowledgment of service of summons.**
- ❖ The serving officer, thereafter, must make an endorsement on the original summons stating the time and manner of service thereof and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of summons.**



(2) Service by Court:

- **Rule 9 Summons to defendant residing within the jurisdiction of the court shall be served through Court Officer or approved courier service.**
- **Summons can also be served by Registered Post, speed post, acknowledgment due (RPAD), courier service, fax, message, e-mail service or by any other permissible means of transmission.**
- **Where the defendant is residing outside the jurisdiction of the court, the summons shall be served through an Officer of the Court within whose jurisdiction the defendant resides.**
- **The court shall treat refusal of acceptance as a valid service.**
- **Where summons is properly addressed, prepaid and duly sent by registered post acknowledgment due (RPAD) there will be a presumption of valid service of summons even in the absence of an acknowledgement slip.**

(3) service by Plaintiff

Rule 9-A The court may also permit service of summons by the plaintiff in addition to service of summons by the court.



(4) Substituted Service:

Rules 17, 19-20 "Substituted service" means the service of summons by a mode which is substituted for the ordinary mode of service of summons.

There are two modes of substituted service. They are:

1. Where the defendant or his agent refuses to sign the acknowledgment;
2. Where the serving officer, after due and reasonable diligence, cannot find the defendant who is absent from his residence at the time of service of summons and there is no likelihood of him being found at his residence within a reasonable time and there is no authorised agent nor any other person on whom service can be made, the service of summons can be made by affixing a copy on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain.

Substituted Service cont...

- ❖ The serving officer shall then return the original to the court from which it was issued with a report endorsed thereon stating the fact about affixing the circumstances under which he did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.
- ❖ If the court is satisfied, either on the affidavit of the serving officer or on his examination on oath, that the summons has been duly served, it may either declare that the summons has been duly served or may make further enquiry in the matter as it thinks fit.
- ❖ Thus, in the second mode of service of summons as provided by Rule 17, the service is effected without an order of the court by affixing a copy of the summons on the house of the defendant and therefore the declaration by the court about the due service of the summons is essential.
- ❖ If the provisions of Rule 19 have not been complied with, the service of summons cannot be said to be in accordance with law.

(5) Service by Post:

- ❖ When an acknowledgment purporting to be signed by the defendant or his agent is received by the court, or the defendant or his agent refused to take delivery of summons when tendered to him, the court issuing the summons shall declare that the summons had been duly served on the defendant.
- ❖ The same principle applies in a case where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due; and the acknowledgment is lost or not received by the court within thirty days from the date of issue of the summons.
- ❖ Where the summons sent by registered post is returned with an endorsement "refused", the burden is on the defendant to prove that the endorsement is false.

Refusal of summons

- ❖ Where the defendant refuses to accept summons.
- ❖ He is deemed to have been served.
- ❖ Similarly, where an acknowledgment or receipt purported to have been signed by the defendant (or his agent) is received by the court that the defendant (or his agent) has refused to take the delivery of summons, the court will proceed treating the defendant as served.

Objection as to service of summons



An objection as to service of summons should be raised at the earliest possible opportunity.



If it is not taken at that stage, it is deemed to have been waived, It has been held that there is distinction between non-service of notice and procedural irregularity in service of notice.



In the case of former category of cases, all consequential actions would be rendered bad in law whereas in the case of latter category of cases, consequential actions would be sustained unless he is able to show substantial prejudice due to procedural lapse in making service to him. It depends upon the facts of each case whether procedural lapses complained of has caused prejudice to the applicant.

Summons in Special Cases:

1. Where defendant resides in the jurisdiction of another court
2. Service of foreign summons
3. Where defendant resides in foreign court
4. Where defendant is the public servant
5. Where defendant is in prison, etc.





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