

Role of Summons in upholding the Principles of Natural Justice

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Abstract- "Justice must not only be done, but must also be seen to be done." This famous legal mantra underpins the principle of Natural Justice, specifically the Right to be Heard (*Audi Alteram Partem*). This rule guarantees that no individual can be judged without first receiving proper notice. The summons is the legal system's procedural key, directly linking this fundamental right to the integrity of the judiciary. However, the summons process has become a major systemic choke-point in the Indian justice system. This failure contributes heavily to case backlogs and denies citizens their constitutional right to speedy justice under Article 21. The core flaw lies not in the statutory framework, but in the integrity of execution. Methods like Deemed Service (where notice is assumed based on an officer's report of refusal) often rely on a legal fiction that is easily misused. This procedural fraud frequently results in an unjust ex-parte decree against genuinely unaware defendants, placing an unfair burden of proof on the unserved party. To overcome this, the system requires a transformation built on technology and enforceable accountability. Mandatory reforms must include establishing electronic service as the primary mode for all verified contacts and utilizing Geo-tagging and Time-stamping to digitally verify every action taken by process servers. These measures are ethical necessities designed to create a transparent, auditable process that eradicates evasion tactics. By making the summons inherently reliable, the judiciary can finally balance the need for the finality of decisions with the absolute requirement for procedural fairness, thereby honouring the constitutional mandate of due process.

Key Words: Natural Justice, right to be Heard, Notice, Summons, Systemic Choke point, Case backlogs, Speedy justice integrity of execution, Deemed Service, legal friction, Ex-parte decree, burden of proof, enforceable accountability, electronic Services, Geo-tapping and time stamping Ethical necessities, Finality of decisions, Procedural fairness.

I. INTRODUCTION

Think about the most basic idea of fairness. In everyday life, we all agree that you shouldn't be judged or punished for something you didn't even know about. The legal system works on this exact same principle. It's what we call Natural Justice, a set of fundamental rules that stand above the man-made

laws and ensure that every legal process is fundamentally fair, unbiased, and transparent. The principles of equity, justice and good conscience are nothing but application of natural justice¹. These rules are foundational and fundamental concepts in administrative law² and are recognized as a great humanizing principle, the soul of which is fair play in action.³ They act as a vital safety net, protecting individuals from arbitrary decisions and ensuring justice is done and seen to be done.⁴

The foundation of Natural Justice rests upon two massive pillars. The first, often stated in Latin as *Nemo debet esse judex in propria sua causa*, simply means no one can be a judge in their own case. This prevents any form of bias and ensures the person deciding the outcome is neutral. The second, and arguably the most relevant to our topic, is *Audi Alteram Partem*, which translates literally to "hear the other side" or the right to a fair hearing. This pillar is non-negotiable: it means a court cannot make a decision that affects you without first giving you a proper opportunity to know the claims against you and present your defence. For justice to be real, it must be obvious to everyone, which brings to mind a famous, often-quoted phrase from the legal world: "Justice must not only be done, but must also be seen to be done."

If the right to be heard is the core of Natural Justice, then the court summons is the delivery mechanism that brings it to life. What exactly is a summons? In simple, human terms, it's the legal system knocking on your door. It is a formal, official document issued by the court to inform you that you are involved in a legal matter- either as an accused person, a defendant, or a witness. It tells you exactly what the case is about, who is involved, and most importantly, when and where you must appear. Without this official notification, the right to be heard- *Audi Alteram Partem* is meaningless. You cannot defend yourself in a case you don't know exists. Thus, the summons is not just a piece of paper; it is the procedural gateway to due process, ensuring the scales of justice

start off level by giving every party the essential knowledge they need to participate.

The administration of criminal justice in India has long grappled with issues of inefficiency and procedural delay. The Code of Criminal Procedure, 1973 (CrPC) struggled to keep pace with modern demands⁵, contributing to nearly 4.4 crore pending criminal cases as of 2023.⁶ Recognizing this, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) was enacted to replace the CrPC,⁷ with the objective of creating a more efficient, citizen-centric, and technologically equipped system.⁸ This push aligns with the constitutional guarantee of speedy justice, which the Supreme Court has interpreted as an essential facet of the Right to Life and Liberty under Article 21 of the Indian Constitution⁹. Landmark cases like *Hussainara Khatoon v. State of Bihar*,¹⁰ and *Abdul Rehman Antulay v. R.S. Nayak*¹¹ have emphasized that delay erodes the legal system's moral foundation. Therefore, when the BNSS modernizes the delivery of summons- such as through electronic means- it is fundamentally an effort to reduce procedural delays, uphold *Audi Alteram Partem*, and fulfill this constitutional mandate of speedy justice. This paper will examine how the procedural mechanics surrounding court summons actively work to fulfil the constitutional mandate of fairness and uphold the twin pillars of Natural Justice.

Legal Framework and Analysis of Summons and Notice

The entire legal architecture surrounding the issuance and service of a summons is dedicated to fulfilling the constitutional mandate of Natural Justice, primarily the Hearing Rule (*Audi Alteram Partem*). The procedural documents are merely tools, but the underlying law ensures that this tool is used effectively, guaranteeing the defendant actual or constructive knowledge of the proceedings.

The Civil Mandate: Order V of the Code of Civil Procedure, 1908

The foundation for civil proceedings is laid by the Code of Civil Procedure (CPC), 1908. Section 27 provides the initial timeline, requiring the court to issue a summons to the defendant within thirty days of the institution of the suit. However, it is Order V, Rules 1 to 30, that meticulously detail the permissible modes of service. The significance of this Order lies in its purpose: to ensure procedural fairness, mitigate

delays, and minimize ambiguities in the communication process. These provisions are the practical realization of the principle that no one can be condemned unheard.

Personal Service: The Gold Standard of Notice

The law prioritizes Personal or Direct Service as the "gold standard." This method requires the serving officer to tender a copy of the summons directly to the defendant, or failing that, to an authorized agent or an adult member of the defendant's family residing with them. This process is the most robust form of notice because it maximizes the likelihood of actual knowledge. The integrity of this process hinges entirely on the serving officer's action. Order V, Rule 18, makes the serving officer's endorsement- a written record of the time, date, and manner of service- the primary proof relied upon by the court. If this proof is flawed or dishonest, the entire subsequent legal action risks being invalidated for want of fair notice.

Deemed Service:

Not every defendant is cooperative or easily traceable, which necessitates the concept of Deemed Service. This occurs when the defendant refuses to accept service, or when the defendant cannot be found despite the serving officer exercising "due and reasonable diligence." In such cases, the officer is authorized to affix a copy of the summons to the outer door of the defendant's residence.

The critical analysis point here is that this deemed service is not automatic. The court's satisfaction regarding the diligence of the serving officer is paramount. Judicial precedents emphasize that a perfunctory report by the officer- a simple statement that the defendant was 'not found' - is insufficient to validate the service. The court must be convinced that every reasonable step was genuinely taken. This judicial scrutiny acts as a vital safeguard, preventing a malicious party from falsely claiming non-traceability to secure an *ex parte* order, thus protecting the defendant's right to be heard.

BNSS and the Importance of Appearance

In the criminal domain, the principle remains identical: the summons must compel the accused to appear and answer the accusation. While the old Code of Criminal Procedure (CrPC), 1973, governed this process, the recently enacted Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, continues to place

the procedure for issuing and serving summons as fundamental to upholding Article 21 rights. CrPC Section 62 (now mirrored in BNSS) dictates the process for service, typically carried out by a police officer or other authorized public servant.

However, the remedy against an incorrectly or unjustly issued summoning order differs significantly from a civil suit. The Hon'ble Supreme Court, in *Adalat Prasad vs. Roopal Jindal & Others*¹² and *Subramaniam Sethuraman vs State of Maharashtra & Anr*,¹³ clarified that a Magistrate has no inherent power to review or recall a summons order issued under Section 204 CrPC. The only remedy available to an aggrieved accused is to invoke the High Court's inherent power under Section 482 CrPC. This judicial perspective underscores that the act of summoning an accused in a criminal case is a serious and immediate judicial intervention, and once enacted, it requires extraordinary remedy to undo, further cementing the significance of this initial procedural step.

The Role of Technology in Summons Service

The implementation of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, marks a watershed moment by formally integrating technology into the service of judicial process. This procedural shift is a direct legislative response to the persistent problem of protracted trial delays. The Supreme Court has repeatedly held that prolonged criminal proceedings constitute a grave violation of the fundamental constitutional Right to a Speedy Trial, an inherent component of the Right to Life and Personal Liberty guaranteed under Article 21.¹⁴ By formalizing electronic service, the BNSS operationalizes the state's paramount constitutional obligation to conduct trials efficiently and without undue delay.¹⁵ This innovation drastically cuts down the time and manpower historically wasted on multiple attempts at traditional physical delivery, thereby accelerating the entire justice system.

Formalizing Electronic Service

The BNSS modernizes the service process by explicitly sanctioning the use of contemporary electronic and digital mediums. This not only drastically reduces bureaucratic friction and administrative costs but also overcomes the geographical barriers that often plagued traditional, paper-based service. The recognized digital modes now explicitly include: Email, Fax/Telegram, and critically, modern Digital Communication

(SMS/Messaging). This explicit allowance for instant digital tools, potentially including court-sanctioned messaging applications, moves the legal system into the 21st century and makes the delivery of notice virtually instantaneous, thereby boosting procedural effectiveness.

Upholding Procedural Fairness through Digital Safeguards

To prevent potential abuse and ensure the Hearing Rule of Natural Justice is thoroughly respected, the law mandates two stringent safeguards to validate electronic service:

Verified Contact Details

It is essential that the electronic address (email, phone number) used is demonstrably and officially linked to the party being summoned. This strict verification process prevents fraud, mistaken identity, and later claims by the recipient that the electronic notice was irrelevant or incorrect.

Confirmation Mechanism

The court requires reliable electronic confirmation of delivery and reading (e.g., system-generated read receipts, server logs, or automated delivery reports). This digital proof of successful notice serves as the complete functional and legal equivalent of the process server's physical affidavit and the recipient's manual signature, officially closing the notification gap and allowing the proceedings to move forward confidently.

Balancing Efficiency with Procedural Fairness

In conclusion, while these digital service methods offer vast gains in efficiency, their implementation is governed by the paramount need to uphold the Hearing Rule of Natural Justice. The underlying legal requirement remains that the chosen method must provide a reasonable certainty that the notice reached the intended party. The shift toward electronic service under the BNSS signifies a crucial, proactive legislative step to align procedural law with modern technological capabilities, ensuring that the legal process is not only faster but also more transparent and accessible, fully supporting the constitutional right to an expeditious judicial process.

In the world of law, a summons is the most crucial document you might ever receive. It isn't just a letter; it is a formal, written command from a court or legal

authority telling you: "You are now involved in a legal case, and you must appear."

This document is foundational because it activates the primary rule of Natural Justice: The Hearing Rule (*Audi alteram partem*), which means "hear the other side"¹⁶ Whether you're a defendant in a property dispute or an accused person in a criminal case, the summons ensures fairness by notifying you of the claims and giving you the right to defend yourself. This entire process is regulated meticulously by law: Order V of the Code of Civil Procedure (CPC), 1908, governs civil matters, while the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, handles criminal proceedings.

Types and Format of Summons

Summons are tailored to their purpose, but they share a common format: they must include the name and address of the person summoned, the court's jurisdiction, the nature of the proceedings, and, most importantly, the date and time of appearance.

The legal system recognizes three main types:

1. Civil Summons (CPC): Issued to a defendant in a civil suit, requiring them to appear and file their defense (answer the claims made by the plaintiff).
2. Criminal Summons (BNSS): Issued to either accused persons (to appear for inquiry or trial) or witnesses (to give testimony or produce documents).
3. Summons for Document Production: This compels a person, regardless of their status as a party or witness, to submit specific records or articles to the court.

The Legal Framework and Service Procedures

The law prescribes specific "modes of service" to ensure the notice actually reaches the person. This is often an administrative challenge, but one critical to judicial integrity.

1. Direct Service: The Gold Standard

The law prioritizes Personal/Direct Service (Rules 10–15 CPC / Section 62 BNSS). This is the most reliable way to confirm notice, requiring the court officer or police officer to physically deliver a copy of the summons to the defendant or an authorized agent. The officer must then file an endorsement report (Rule 18 CPC), which serves as the primary proof that service was executed correctly. If the

defendant cannot be found, the summons can be served to an adult family member residing with them (Section 62(2) CrPC).

2. Substituted Service and Evasion

When a defendant deliberately tries to evade service or cannot be found despite "due and reasonable diligence", the court can resort to Substituted. This may involve:

- i) Affixing a copy to a conspicuous part of the person's residence or place of work.
- ii) Publishing the summons in a local newspaper.

The court must be absolutely satisfied that the serving officer genuinely attempted service; a perfunctory report will not be accepted.

3. The Modern Shift: Electronic Service

To combat delays, the judiciary has embraced technology. This shift is now formalized under the BNSS, which explicitly sanctions modern digital modes like Email, Fax/Telegram, and Digital Communication (SMS/Messaging). This is a crucial mechanism for procedural effectiveness, as the Supreme Court considers delays a failure of the constitutional Right to a Speedy Trial under Article 21.¹⁷

The courts have upheld this move, notably when the Bombay High Court accepted WhatsApp blue ticks as valid proof of service in *Kross Television India Pvt. Ltd. v. Vikhyat Chitra Production* (2017). For electronic service to be valid, the court must receive reliable electronic confirmation of delivery and reading, which functions as the digital equivalent of a manual signature, ensuring the Hearing Rule is still respected.

Consequences and Challenges

Failure to comply with a summons can lead to severe legal repercussions. The judicial process will not be stalled simply because a party chooses to ignore the court's command:

- i) If the accused person doesn't show up in court, the court can issue a bailable or non-bailable warrant to make sure they appear. Basically, it's the court's way of saying, "You can't just skip this." This rule comes under Section 71 of the BNSS.
- ii) If a witness ignores the court's summons, the court can issue a warrant to bring them in, or even start contempt of court proceedings for

disrespecting the legal process. This is covered under Section 70 of the BNSS.

- iii) When a defendant in a civil case fails to appear, the court doesn't wait forever - it can move forward and make a decision without hearing their side. This is called an ex-parte proceeding, and it's allowed under Order IX Rule 6 of the CPC.
- iv) If a party refuses to show or produce important documents, the court can assume that those documents would have gone against that party's case. This negative assumption is called drawing an adverse inference, and it's based on Section 114(g) of the Indian Evidence Act.

Beyond non-compliance, practical challenges often slow the process. These include intentional recipient evasion (e.g., refusing to answer the door), non-cooperation of household members who deny residency, or the reliance on incorrect or outdated addresses in court records, which forces officers to conduct time-consuming inquiries.

The Discharge Debate in Criminal Summons Cases
A complex legal debate arises once a Magistrate issues a criminal summons under Section 204 CrPC (or its BNSS equivalent): Can the Magistrate later recall the order or discharge the accused if the defense is clearly innocent?

The Hon'ble Supreme Court clarified in cases like *Adalat Prasad vs. Roopal Jindal & Others*¹⁸ and *Subramanium Sethuraman vs State of Maharashtra & Anr*¹⁹ that a Magistrate generally cannot review or recall a summoning order. The only clear path for an aggrieved accused to challenge the order at that stage is to invoke the inherent power of the High Court under Section 482 Cr.P.C.

However, many subsequent judicial rulings have established a crucial distinction: while the word 'discharge' isn't explicitly used for summons cases (unlike warrant cases), the Magistrate retains the inherent duty to prevent an abuse of the court's process. Courts have held that under Section 251 CrPC, when the accused appears, the Magistrate is obligated to review the complaint. If the material genuinely fails to disclose the necessary ingredients of an offense, the Magistrate is bound to drop the proceedings/discharge the accused. This judicial discretion is essential to ensure that the process,

which is meant to secure justice, doesn't become an instrument of harassment.

II. ANALYSIS

The summons procedure is widely known as a systemic choke-point in the civil justice system, leading to massive judicial backlog and compromising the constitutional right to a speedy trial. This failure involves resource wastage from repetitive processes and, critically, encourages dilatory tactics by defendants who exploit the inherent slowness of the traditional mechanism.

The core weakness lies in the failure of service methods to guarantee actual notice. The "Deemed Service" concept—such as service reported after refusal or via registered post—relies on a legal fiction that may be based on dishonest reports from serving officials. This flaw can lead to an unjust ex-parte decree against an unaware party.

Certain service modes further compromise due process: Substituted Service (Order V Rule 20), like newspaper advertisements, offers insufficient notice, especially for illiterate or low-income individuals. Similarly, service on any "adult member of the family" (Order V Rule 15) can be misused, as the recipient might not convey the summons, yet the service is deemed valid. Even with modernization, Electronic Service faces proof challenges, as digital confirmation lacks the certainty of a physical signature, making subsequent ex-parte decrees vulnerable to legal challenge.²⁰

These procedural failings represent a fundamental violation of Natural Justice and the right to a fair trial (*Audi Alteram Partem*). The most severe consequence is the passing of an ex-parte decree, which places the heavy and unfair burden of proof entirely on the defendant to prove improper service years after the fact. This denial of justice is compounded by the historical lack of strict accountability for officials who file false reports, allowing procedural fraud to persist unchecked.

Modernizing Justice: Reforms to Protect the Right to be Heard

The entire purpose of a summons is to fulfill the most basic principle of fairness, known as Natural Justice—specifically, the Hearing Rule, which mandates that no one should ever be judged without first being

heard. When a summons fails, this right is denied. To stop the current system from failing this principle and causing massive judicial backlogs, we need practical, modern reforms centered on speed and honesty.

First, we must fully embrace technology and eliminate our reliance on outdated paper-based service. We should make service via email and instant messaging the primary way a court communicates, especially for large companies or individuals whose contact details are verified. More critically, the court system needs to explore secure integration with national digital IDs (like Aadhaar). This ensures the court is always using your most current, verified address, making it nearly impossible for someone to avoid service deliberately. This step is about guaranteeing that the fundamental right to notice is delivered instantly and accurately, turning a major systemic delay into a source of efficiency.

Second, the integrity of the process server's work—the person delivering the paper—must be flawless, as their report is what courts rely on to pass judgment. To stop procedural fraud, we must mandate Geo-tagging and Time-stamping using simple mobile apps. This creates an unchangeable digital proof (a photo and GPS coordinate) that shows exactly where and when the service attempt took place. Additionally, in cases where someone refuses the summons, the serving officer must be required to get a signature from an independent local witness. These steps directly protect the Hearing Rule by ensuring that any official report of service or refusal is genuinely honest and verifiable.

Finally, we need to empower judges to apply common sense and fairness. When a postal article is returned marked "refused," the law currently *forces* the judge to assume the person was served, even if it might be a mistake. We must change this technical rule so the judge may declare service valid, rather than shall declare it. This small yet vital change restores judicial discretion to prevent an innocent person from being punished by a procedural error. We should also introduce financial penalties—heavy, escalating costs for both the person who continually provides the wrong address (the plaintiff) and the person who is deliberately evading the court (the defendant). This stops intentional game-playing and ensures that the court's time is dedicated to delivering justice, not chasing paper. These collective reforms

are the key to making the summons process a reliable gatekeeper of the constitutional right to a fair hearing.

III. CONCLUSION

The summons is the starting gun of the legal process, and its proper execution is the single most important safeguard for Natural Justice. The principle of *audi alteram partem*—the right to be heard—is entirely dependent on the defendant first receiving fair and reliable notice. When the summons process fails through deliberate evasion or systemic inefficiency, the entire judicial system's integrity is compromised, leading directly to case backlogs and the ultimate denial of speedy justice under Article 21.

We've seen that while modern laws like the BNSS have embraced technology (like electronic summons), the biggest challenges remain in the integrity and accountability of the execution itself. Issues like process servers filing dishonest reports, the intentional misuse of presumed service (where a fake "refused" stamp leads to an unjust *ex parte* decree), and the time wasted chasing bad addresses are what transform a simple procedural step into a complex legal maze. These failures erode public trust and undermine the very foundation of a fair trial.

Therefore, the path forward requires a determined focus on enforceable accountability. Mandatory reforms like Geo-tagging and Time-stamping for process servers, restoring judicial discretion on refusal endorsements, and making digital service the primary mode for verified contacts are not just technical upgrades; they are ethical necessities. These measures ensure that the execution of the summons is transparent and honest.

The ultimate goal of all these reforms is to balance two competing values: the finality of court decisions and the fairness of the procedure. By making the summons process efficient, reliable, and auditable, we ensure that justice is not only delivered quickly but that every litigant genuinely had their right to be heard protected, confirming that the system serves as a true guardian of justice rather than a procedural hindrance.

NOTES

[1] Kumaon Mandal Vikas Nigam Limited v/s Girija Shankar Pant, A.I.R 2001 SC 24.

- [2] Mohinder Singh Gill v/s Chief election commissioner, New Delhi, A.I.R 1978 SC 851
- [3] Maneka Gandhi v/s Union of India, A.I.R 1978 SC 597.
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- [12] *Adalat Prasad vs. Roopal Jindal & Others* AIR 2004 SC 4674.
- [13] *Subramanium Sethuraman vs State of Maharashtra & Anr*, AIR 2004 SC 4711.
- [14] Maneka Gandhi v. Union of India, AIR 1978 SC 597.
- [15] P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578.
- [16] Ridge v/s Baldwin, 1963 (1) WB 569, 578.
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- [18] *Adalat Prasad vs. Roopal Jindal & Others*, AIR 2004 SC 4674.
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- [20] Kross Television India Pvt. Ltd. v. Vikhyat Chitra Production (2017).