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Proper Issuance of Summons After Admission of Complaint Under CPC

Part 2

Article

SERVICE OF PROCESS IN CIVIL SUITS.

Service of summons upon the defendant is one of the most important stages in civil proceedings. After a complaint is admitted and registered, the Court acquires the duty to notify the defendant regarding institution of the suit so that he may appear, contest the claim, file written statement, produce evidence and defend his rights. Proper service is therefore the foundation of a fair trial and observance of the principles of natural justice.

The law relating to service of summons is mainly contained in:

1. Sections 27 to 32 of the Code of Civil Procedure, 1908;
2. Order V Rules 1 to 31 CPC; and
3. Rules 94 to 112 of the Sindh Civil Courts Rules (SCCR).

These provisions collectively ensure:

- notice to the defendant;
- fair opportunity of hearing;
- expeditious disposal of suits;
- prevention of fraudulent ex parte decrees; and
- maintenance of judicial discipline and procedural fairness.

Sections 27–31 CPC and Order V prescribe the statutory framework for issuance and service of summons.

I. Importance of Proper Service of Summons

1. Requirement of Natural Justice

The maxim *audi alteram partem* means that no person should be condemned unheard. Service of summons gives the defendant knowledge of the proceedings and opportunity to defend himself. Any decree passed without proper service may be set aside.

2. Foundation of Jurisdiction over Defendant

Though the Court may possess territorial and pecuniary jurisdiction, effective jurisdiction over the defendant is practically established only after lawful service of summons.

3. Essential for Fair Trial

A defendant cannot file written statement, produce evidence or raise objections unless informed of the proceedings through valid service.

4. Prevention of Ex Parte Abuse

Improper or fictitious service often results in illegal ex parte proceedings. Therefore the CPC and Sindh Civil Courts Rules require strict scrutiny of service reports by the Court.

5. Ensures Expeditious Disposal

Proper service at the initial stage avoids repeated adjournments, delays, fresh summons and restoration proceedings.

6. Judicial Duty

Issuance and monitoring of summons is not a mere ministerial act. The Presiding Officer must personally supervise compliance of Order V CPC and relevant Civil Court Rules.

II. Statutory Scheme under Sections 27–32 CPC

Section 27 CPC — Summons to Defendant

Section 27 provides that where a suit has been duly instituted, summons may be issued to the defendant to appear and answer the claim and may be served in the prescribed manner.

This section establishes:

- issuance of summons after institution of suit;
- mandatory appearance of defendant;
- service according to prescribed procedure.

The summons must ordinarily be accompanied by copy of plaint and documents.

Section 28 CPC — Service where Defendant Resides in Another Province

Where the defendant resides outside the territorial jurisdiction of the Court but within Pakistan, summons may be sent to another competent Court for service. The receiving Court proceeds as if the summons were issued by itself and returns the service report to the issuing Court.

Importance:

- facilitates inter-provincial judicial cooperation;
- prevents defendants from avoiding service merely because they reside elsewhere.

Section 29 CPC — Service of Foreign Summonses

This provision deals with summons and processes issued by foreign Courts recognized under law and reciprocal arrangements.

Though rarely invoked in ordinary litigation, it reflects the principle of international judicial assistance.

Section 30 CPC:-- Interrogatories

For delivery and to answer **interrogatories** it empowers the court to issue summons for the admission or production of documents, facts and the discovery, inspection, production, impounding and return of documents or other material objects to be produced as evidence.

This provision of law is very important, goes to the root of the case but the judges unfortunately forgotten in the process of trial. Its primarily purpose is to facilitate the pre-trial discovery process. It enable the parties to obtain written admission and relevant information directly from their opponents. This narrows the scope of the dispute, prevents surprise during trial and expedites the litigation.

Section 31:-- Summons to witnesses

The court has been empowered to compel the attendance of persons mentioned in Sections 27, 28 and 29 to issue summons to attend and give evidence or to produce documents or other material objects.

Section 32: Penalty for disobedience of summons issued under section 30

To compel the attendance of such persons the court has been empowered to issue warrant of arrest, attach and sell his property, impose fine, or order him to furnish security for his appearance and in default commit him to prison.

It Provides **penal consequences** for non-compliance (arrest, fine, attachment etc).

III. Modes of Service under Order V Rules 10–31 CPC

Order V CPC contains detailed provisions regulating service of summons.

A. Personal Service — Rule 10

Rule 10: Mode of Service

Service is ordinarily effected by delivering or tendering a copy of summons signed and sealed by the Court to the defendant personally.

This is the primary and preferred mode of service.

Essential Requirements

- summons must bear Court seal;
- signed by Judge or authorized officer;
- accompanied by plaint/documents;
- served by authorized process server.

B. Service by Registered Post / Courier / Postal Service — Rule 10-A

Rule 10-A introduced modern methods of service. Simultaneously with ordinary process, summons may be sent through:

- registered post acknowledgment due;
- courier service;
- postal service;
- other approved means.

Importance

This provision was inserted to:

- reduce delay;
- avoid manipulation by process servers;
- improve proof of delivery.

Acknowledgment signed by defendant or postal endorsement of refusal constitutes prima facie evidence of service.

C. Service on Several Defendants — Rule 11

Where there are multiple defendants, each defendant must ordinarily be served separately.

Importance:

- ensures independent notice to each defendant;
- prevents challenge on ground of non-service.

D. Personal Service on Defendant or Agent — Rule 12

Whenever practicable, service should be made personally upon defendant. If unavailable, service may be made upon an authorized agent.

The rule emphasizes direct communication of proceedings to defendant.

E. Service on Agent Carrying Business — Rule 13

Where defendant carries on business through an agent, service upon such agent is sufficient.

Examples:

- branch manager;
- authorized attorney;
- business representative.

F. Service on Agent in Charge of Immovable Property — Rule 14

In suits relating to immovable property, service may be effected upon the agent or caretaker managing the property.

This provision is particularly relevant in:

- rent suits;
- possession matters;
- agricultural property disputes.

G. Service on Adult Male Family Member — Rule 15

Where defendant is absent from residence and cannot be found within reasonable time, service may be made upon an adult male member of the family residing with him.

Conditions:

- defendant absent;
- no likelihood of immediate return;
- family member resides with defendant.

This rule is an exception and must be applied cautiously.

H. Acknowledgment of Service — Rule 16

The person served should sign acknowledgment of receipt.

Importance:

- provides documentary proof;
- reduces dispute regarding service.

I. Refusal or Non-Availability — Rule 17

If defendant refuses service or cannot be found, the serving officer may:

- affix copy of summons on conspicuous part of house; and
- report circumstances to Court.

The process server must mention:

- date;
- time;
- efforts made;
- names of witnesses;
- exact conduct of defendant.

Courts must carefully scrutinize such reports because false reports frequently occur in practice.

J. Endorsement by Process Server — Rule 18

The serving officer must endorse:

- manner of service;
- date and time;
- name of identifier/witness;
- acknowledgment/refusal details.

This endorsement is vital evidence of service.

K. Examination of Process Server — Rule 19

Before declaring service sufficient, the Court may examine the process server on oath.

Importance:

- prevents fraudulent reports;
- enables judicial satisfaction regarding validity of service.

This rule imposes judicial responsibility upon the Presiding Officer.

L. Substituted Service — Rule 20

Where the Court is satisfied that:

- defendant is deliberately avoiding service; or
- ordinary service cannot be effected,

the Court may order substituted service.

Modes of Substituted Service

1. Affixation at residence;
2. Publication in newspaper;
3. Public proclamation;
4. Electronic means of communication (after amendments and modern interpretation);
5. Any manner directed by Court.

Substituted service is exceptional and may be ordered only after the Court records reasons.

M. Service through Another Court — Rules 21–23

Where defendant resides within jurisdiction of another Court, summons may be transmitted to that Court for service.

The receiving Court must:

- serve summons;
- record proceedings;
- return service report.

N. Service on Prisoners — Rule 24

If defendant is confined in prison, summons shall be delivered to the officer in charge of prison for service.

O. Service Outside Pakistan — Rules 25–26

Where defendant resides outside Pakistan and has no agent within Pakistan, service may be effected through:

- political agent;
- foreign Court;
- diplomatic channel;
- prescribed international procedure.

P. Service on Public Officers — Rule 27

Where defendant is a public officer or servant of railway/local authority, summons may be sent to the head of department for service.

Importance:

- maintains official discipline;
- ensures prompt communication through department.

Sindh Civil Courts Rules also emphasize service through official channels.

Q. Service on Soldiers, Sailors and Airmen — Rule 28

Where defendant belongs to armed forces, summons shall be sent to commanding officer for service.

R. Duty of Person Receiving Summons for Service — Rule 29

Any officer or authority receiving summons under Rules 24, 27 or 28 must serve it if possible and return acknowledgment/report to Court.

Failure may invite departmental consequences.

S. Substitution of Summons to Letter of request. --- Rules 30 CPC and 98 SCCR

Where the defendant is a person of high rank instead of summons a letter of request be sent to him directly and if he is a Gazetted Officer, the letter be sent to the head of his office. In special cases it may be sent to him directly but for that, reasons are to be recorded with intimation to the head of his office.

The prevalent practice of issuing ordinary summons through bailiff in such cases is contrary to law and defeats the purpose of ensuring proper and dignified service upon person of high rank and Gazetted officer through official channel.

IV. Relevant Sindh Civil Courts Rules

The Sindh Civil Courts Rules supplement CPC provisions and impose administrative discipline regarding service.

Important features include:

1. Preparation and Scrutiny of Process

The ministerial staff must ensure:

- correct address;
- complete particulars;
- requisite copies;
- process fee;
- postal covers;
- annexures.

2. Duties of Nazarat and Process Branch

The Process Branch must:

- maintain dispatch registers;
- monitor execution;
- ensure timely return of summons;
- supervise process servers.

3. Responsibilities of Process Server

The process server must:

- personally attempt service;
- identify defendant correctly;
- avoid vague reports;
- obtain signatures or witness statements;
- specify exact location and time.

Mechanical reports such as “defendant not found” are insufficient.

4. Judicial Scrutiny by Presiding Officer

The Judge must not blindly rely on office reports. The Court should examine:

- whether summons was correctly addressed;
- whether service complies with Order V;
- whether substituted service is justified;
- whether refusal report appears genuine.

5. Service on Civil Public Officer or Servants of Railway Company or Local authority

The Rules require service through proper departmental heads in accordance with Order V Rule 27 CPC.

6. Service upon persons of high rank and Gazetted officer through official channel.

The Rule 98 requires service through letter of request instead of Summons.

7. Simultaneous Modes of Service

Modern practice encourages simultaneous issuance through:

- ordinary process;
- registered post;
- courier;
- electronic communication where permitted.

This minimizes delay and avoids repeated adjournments.

V. Defects Commonly Found in Practice

The following irregularities are frequently noticed:

- incomplete addresses;
- unsigned summons;
- summons without plaint copy;
- vague process reports;
- false refusal endorsements;
- substituted service without judicial satisfaction;
- ex parte orders without proper scrutiny.

Such defects may vitiate proceedings and result in setting aside of ex parte decree.

VI. Principles Governing Valid Service

For valid service:

1. summons must be issued by competent Court;
2. prescribed procedure must be followed;
3. service report must be specific and credible;
4. Court must record satisfaction regarding service;
5. substituted service requires speaking order.

VII. Consequences of Non-Service or Improper Service

Improper service may result in:

- adjournment of proceedings;
- setting aside ex parte proceedings;
- setting aside ex parte decree;
- remand by appellate Court;
- disciplinary proceedings against staff/process server.

VIII. Suggested Reforms

1. Mandatory Simultaneous Service

Adopt practice of:

- Postal + Courier + Bailiff + Electronic service etc (where permitted)

2. Digital Monitoring

- GPS tracking of bailiffs
- Photographic proof of service (as envisaged in modern provisions)

3. Standardized Bailiff Reports

- Prescribed format
- Mandatory details

4. Judicial Training

- Emphasize:
 - Order V compliance
 - Importance of service stage

5. Accountability Mechanism

- Penal action for false reports
- Performance audit of Nazir office

6. Time-bound Service

- Strict timeline (e.g., 7–15 days)

7. Use of Technology

- WhatsApp/email service (where permitted)
- Online tracking system
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IX. Model Best Practice (Recommended Protocol)

1. Admit plaint after scrutiny
2. Issue summons with plaint copy
3. Order **simultaneous service**:
 - Bailiff
 - Registered post
4. Fix short date (7–15 days)
5. Monitor service through Nazir
6. Examine bailiff if needed

If unsuccessful → **immediate substituted service**

X. Conclusion

Service of summons is not a mere technical formality; it is the very foundation of a fair civil trial. Sections 27–32 CPC together with Order V Rules 10–31 provide a comprehensive mechanism to ensure that every defendant receives proper notice of proceedings. The Sindh Civil Courts Rules further strengthen this mechanism by prescribing detailed administrative and procedural safeguards.

The Court, ministerial staff and process-serving agency all share responsibility for ensuring lawful, prompt and effective service. Strict compliance with these provisions is essential to uphold due process, prevent abuse of ex parte proceedings and maintain public confidence in the judicial system.

Justice Rahmat Hussain Jafferi