

PART F—SERVICE OF THE PROCESSES OF THE COURTS  
IN INDIA IN PLACES BEYOND INDIA AND VICE VERSA

1. Order V, Rule 25, of the Code of Civil Procedure provides, generally, that if the defendant resides out of India, and has no agent in India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate. In practice, all summonses so sent should, where possible, be sent by registered post, and should be “registered acknowledgement due.”

Service of  
summonses by  
post.

The letter containing the summons which should always be sent in an envelope should be properly and fully addressed and prepaid. A copy of the address on the letter should also kept on the judicial record and care should be taken that the certificate given by the Postal authorities also contains the full address on the letter.

2. If it is not possible to effect service under Order V, rule 25, advantage may be taken of the provisions of Order V, rule 26. As regards clause (a) of this rule, no Political Agent has, so far, been appointed or a Court established with power to serve in any foreign country in which the defendant resides, a summons issued by a Court in India under the provisions of the Code. It is for the State Government to take the necessary action under clause (b) of this rule.

Service under  
Order V, rule 26.

3. Where service by post has been tried and has failed and the mode of service, if any, provided by Order V, rule 26 have been availed of, action may be taken under Order V, rule 20 of the Code of Civil Procedure.

Service under  
Order V, rule 20.

4. In cases where service is desired to be effected under Order V, rule 26, the following instructions should be followed :

Instructions re.  
service under  
Order 5, Rule 26  
Cr.P.C.

Channel of correspondence.

(a) The summons should be forwarded in an envelope through the District Judge, with a covering letter to the High Court for transmission to the State Government, duly certified that service by post has been tried and failed and in what manner it has failed. The channel of communication within India of summonses for service in foreign countries is the State Government and the Government of India, Ministry of External Affairs. The summons should never be sent direct. An exception is made in the case of certain countries, viz., the Federation of Malaya, Iraq and Nepal to which processes may be forwarded direct by the Indian Court.

Date of returns of Summonses.

(b) In no case should a precise date be fixed in the summons or forwarding letter for the return of the service. It is impossible for a Court in India to order a date before which a foreign judicial authority must execute a request which the foreign judicial authority is under no obligation to execute at all.

A sufficiently long date however (in any case not less than four months) may be fixed for the appearance of the parties before the Court in expectation of the return of the service after making allowance (a) for the time which is bound to be taken by the various channels through which the documents have to pass, and (b) the time which should be given to the person on whom service is effected to prepare his case and attend the Court.

Duplicate copies and translation.

(c) The covering letter, both copies of the summonses and all other documents should be prepared in duplicate and translated in English and type-written and must be checked and legibly signed by the presiding officer of the Court and should bear the seal of the Court. Where it is not possible to type them in English they should be neatly and legibly written by the presiding officer in his own hand

writing. All translations should be certified to be correct.

- (d) The names and addresses of the persons on whom service of summonses is desired should be neatly and legibly written and should also be given in the forwarding letter. The name and address of the Court should be legible, and its seal should also be legible and properly affixed. Summonses, notices copies of plaint and other judicial documents should be accompanied by translation in duplicate in the language of the country in which service is to be effected, at the expense of the party at whose instance summonses, etc., are issued. Where the party concerned is unable to prepare such translation a request should be made that translation be arranged by the Foreign Office.

Names and addresses and translation in foreign language.

The approximate charges for translations into certain foreign language are the same as given in paragraph 27 of Chapter 10-D, Volume I.

Similarly, request should be made that the executing officer should cause translations of all the documents sent by him to be made in English and money for this purpose should be recovered in advance from the party concerned.

- (e) An amount equal to 50 per cent more than the estimated cost of effecting service and translation should be recovered from the party concerned in advance and deposited. This amount need not be sent along with the process as heretofore but should be sent when a demand is made to that effect.

Cost of translation and service.

- (f) The preparation of summonses must not be left to clerks. The presiding officer of the issuing Court primarily be held responsible for its accuracy and completeness in every respect before transmission to

Presiding officer responsible for completion of the documents.

the High Court and it is the duty of the Superintendent to the District Judge to examine the summonses and its accompaniments carefully and to see that all instructions have been complied with.

Index and schedule of documents sent.

- (g) The forwarding letter should either at the foot thereof contain a schedule of all the documents sent alongwith it or be followed immediately by an index of such documents. The first document should be a concise narrative of the action of the parties thereto and of the course to be pursued. The documents should be numbered or lettered so as to correspond with the schedule or index mentioned above.

Copies to be certified.

- (h) All copies should be certified by an official of the Court that they have been examined and are true copies. Such certified copies should also bear the seal of the Court.

Stitching of papers sent.

- (i) The forwarding letter and all its accompaniments should be on strong paper and sewn together in a parchment paper cover down the left hand side, the end of the silk, tape or thread with which they are sewn being brought out on the front cover and the ends sealed down and the binding signed and sealed by the Judge so that there is no possibility of the removal substitution or addition of any sheet without breaking the seal.

Directions to be given in forwarding letter.

- (j) The forwarding letter or the first annexed document should indicate clearly (a) which is the actual document (or documents) to be served, and (b) if any special method of service is desired (as opposed to a case where any method usually employed by the courts of the foreign country in question will suffice)

the method of service desired : (viz., that one copy of the documents to be served should be left with the intended recipient; that a certificate of service by the process-server should be written on the copy of the documents to be served; that the recipient should be asked to sign a copy of the document served, etc., as the case may be.)

- (k) The letter to a Foreign Court, where the proper description of the Foreign Judicial Authority in question is not known, should be addressed to the competent Judicial Authority in \_\_\_\_\_  
(Name of the country concerned.)

Address.

5. Summonses and other processes issued by civil or revenue Courts outside India may be sent to the Courts in the territories to which Code of Civil Procedure extends and may be served as if they were summonses issued by such courts in accordance with the provisions of section 29 of the Code.

Service in the State of Punjab of processes of courts outside India.

Clause (a) of the section refers to Courts in territories specified in clauses (a) to (d) of section 1(3) of the Code.

As regards clause (b), civil and revenue courts in the State of Pondicherry are only courts outside India which are continued by the authority of the Central Government outside India, vide clause (4) of the French Establishments (Administration, Order, 1954, issued under the Foreign Jurisdiction Act, 1947) (See Chapter 15.)

With reference to clause (c) the provisions of section 29 have been applied to Courts in the following countries:-

Serial No.	Name of country	Number and date of notification	Courts in respect of which notification has been issued
1	Singapore ..	S.R.O. 1233, dated 29 <sup>th</sup> May, 1956	All Civil Courts
2	Ceylone ..	No. 247, dated 16-2-1909	Ditto
3	France ..	No. 852-C, dated 3-2-1913	Civil Courts
4	Spain ..	No. 852-C, dated 3-2-1913	Ditto
5	Belgium ..	No. 852-C, dated 3-2-1913	Ditto
6	Russia ..	No. 852-C, dated 3-2-1913	Ditto
7	Portugal ..	No. 852-C, dated 3-2-1913	Ditto
8	Iraq ..	No.F.209-23, dated 6-6-1923	Civil and Revenue Courts
9	Kenya ..	No.F.811-23, dated 4-6-1924	Civil Courts
10	Egypt ..	No. 369, dated 31-5-1938	Mixed Courts
11	Japan ..	No. 1924, dated 25-11-1920	Civil Courts
12	Sweden ..	No.F.12/17/35, dated 20-1-1936	Ditto
13	Persia ..	No.F.840/25 dated 3-5-1928	Ditto
14	Nepal ..	No.F.576/24 dated 15-8-1925	Courts specified in the Schedule to the notification
15	Pakistan ..	No. S.R.O. 1340, dated 1-9-1951	Civil and Revenue Courts
16	Federation of Malaya	No. S.R.O. 223, dated 24-1-1956	All Civil Courts
17	Sikkim ..	No. S.R.O. 63, dated 6-1-1956	High Court of Sikkim in the exercise of its civil jurisdiction. All Civil and Revenue Court.

6. Special procedure in regard to some particular foreign countries is given below:-

(i) AFGHANISTAN

Procedure with regard to particular foreign country.

There is no agency in Afghanistan for the service of summonses on witnesses issued by the Punjab Courts. It is, therefore, useless to issue such summonses.

Defendants can only be summoned under rule 25 of

Order V of the Civil Procedure Code: in other words by issue of a summons direct to them by post and not through any agency.

If action under Rule 25 of Order V, fails Order V, Rule 26 does not apply for the service of such summonses in Afghanistan.

The Punjab Courts should in no case, address Afghanistan Courts or officials or the authorities in Kabul direct.

Violation of these instructions by Subordinate Judges Magistrates and members of their staff, concerned with the despatch of summonses cause much embarrassment to the Government of India.

It will be impossible to treat breaches of them with leniency even though they may have been the result of mere carelessness.

In cases of any further contravention, disciplinary action will be taken by way of stopping the increments of the official or officials concerned or otherwise as may be considered suitable.

#### (ii) MAURITIUS

Every process for service in the town of Mauritius shall be accompanied by a remittance of Rs 3 per person to be served. If the process is to be served in the country, a further sum at the rate of 75 cents or about two rupees per mile (to and fro) should be remitted. When documents are written in the vernacular, a sum of Rs 10 should be remitted as translation charges. But in all cases an English translation should be sent.

#### (iii) UNITED STATE OF AMERICA

Service in this country is normally done by appointing a local lawyer acting as agent for the parties. Where desired Indian Consular Officer will recommend suitable firm of local lawyers.

## (iv) KENYA

Processes for service should be sent in duplicate; the copies to be identified “original” and “duplicate” and should be sealed with the Court’s Seal. A Postal Order of 10 shillings for expenses of service should accompany the process.

## (v) UNION OF SOUTH AFRICA

Summonses and the processes should not be sent direct to that country but should be sent as mentioned in rule 4(a).

The returnable date of the summonses or other processes should be at least six months.

The charges for service should be sent along with the summonses or other processes.

The fees ordinarily charged by the Courts in the various provinces of the Union of South Africa for the service of summonses issued by Courts in India are given below:-

Province	Fees for service	Travelling allowance (per mile or, fraction of a mile)	Radius (from Deputy Sheriff’s office) within which no transport allowance allowed
Cape ..	5	Civil matters 1/6d Criminal” 1.	Miles 3
Orange Free State ..	6/3	1/3d	1
Natal ..	5	2 (for outward journey only)	1
Transval ..	7	1/3d	3

For procedure for service in Japan, Thailand, Netherland, East Indies, Iran, Nepal, Federated Malaya States, Iraq, etc. see Chapter 10-F, Volume I.



## (vi) PAKISTAN

1. It is provided by the proviso. to rule 25 of Order V of the Code that where a defendant resides in Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides ; and further that where any such defendant is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces) or is a servant of a railway company or local authority in that Country, the summons together with a copy thereof, may be sent for service on the defendants, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Service Pakistan.

2. The Central Government has issued the following notification under the second proviso to Order V, Rule 26 of the Code:-

Notification under second provisions to Order V, rule 25.

*S.R.O. 1342, dated 1st September, 1951.*—In pursuance of the second proviso to rule 26 or Order V in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), the Central Government hereby specifies the following officers in Pakistan to whom summons may be sent for service on defendant who is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces), namely :-

- (a) Where the defendant is a public officer serving in connection with the affairs of the Dominion of Pakistan or is a servant of a Railway in Pakistan, to the Secretary to the Government of Pakistan in the Ministry of the Interior.
- (b) Where such defendant is serving in connection with the affairs of any other Government in Pakistan or under any local authority in Pakistan, to the Home Secretary to that Government or, as the case may be, to the Home Secretary to the Government within whose territory the local authority has its jurisdiction.

3. Whenever a summons issued by a Court in Pakistan is served on a person in India and the report of the service is made in a language other than English the report should also be translated into English and the translation sent with the summons to the issuing Court. The Government of Pakistan have also agreed to offer similar facilities in such matters. (Government of India, Ministry of Home Affairs, letter No. D-3105/J/II/56, dated the 1<sup>st</sup> September, 1956 and Punjab Government endorsement No. 9360-J-56/76708-A, dated the 17<sup>th</sup> October, 1956.)