

## Process of Service of Summons in India Under the Hague Convention

Contributed by: Shambhu Sharan

The Hague convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters<sup>1</sup> was signed on 15 November 1965.

The present convention would get attracted where the service of summons are to be effected by a foreign court and/or judicial authority

India acceded to The Hague Convention on 23rd November, 2006 and the Convention was entered into force in India on 1st August, 2007.<sup>2</sup>

The Hague Convention would get attracted where service of summons are to be effected by a foreign court and or judicial authority on any individual currently residing in India or in cases where Indian judicial authority orders for service of summons on a foreign national or a corporate entity having its office in a foreign country, such foreign country being party to the Hague Convention. Thus, the Hague Service Convention provides for a procedure for the transmission of judicial and extrajudicial documents from one signatory country to the other signatory country.

Prior to the enactment of the Hague Service Convention, the service of process was effected by means of Letters of Request/ Rogatory alone. 'Letter Rogatory'<sup>3</sup> denotes a formal communication in writing sent by a Court in which action is pending to the foreign Court/Judge requesting the service of summons or related acts.

As on date a round 68 countries have adopted the Hague Convention.

As regards the nature of the obligations under the Hague Convention and whether the provisions therein are mandatory, the Indian courts till date have still not laid down any precedent in that respect. However, the Supreme Court of the United States of America, in *Volkswagenwer Aktiengesellschaft v. Schlunk*<sup>4</sup>, observed through Justice Brennan that the terms of the Convention are "mandatory" with respect to any transmission covered thereunder.

### Process of service of Summons in India:

In accordance with the convention, each signatory state is required to designate a Central Authority to undertake to receive the requests for service coming from the other contracting states.<sup>5</sup> Accordingly, India has designated, the Ministry of Law and Justice, Department of Legal Affairs<sup>6</sup> as the Central Authority under the convention.

The process of service of summons in India has to be effected in accordance with the steps contemplated under the Convention, which are as follows:-

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<sup>1</sup> Hereinafter called the "Hague Convention"

<sup>2</sup> The official website of Hague Conference on Private International Law, as seen on September 1, 2015 at 3:55 pm ([http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17))

<sup>3</sup> Union of India v. W.N. Chadha, AIR 1993 SC 1082

<sup>4</sup> 486 U.S. 694 (1988)

<sup>5</sup> Article 2, Hague Convention

<sup>6</sup> The Ministry of Law and Justice, Department of Legal Affairs, 4th Floor, A-Wing, Shastri Bhavan, New Delhi, 110001, India

- The authority or the judicial officer competent under the law of the State of Origin, has to forward to the Ministry of Law and Justice, a request in the prescribed format<sup>7</sup> along with the document to be served or a copy of the document to be served.<sup>8</sup>
- The request and the document have to be served in duplicate.<sup>9</sup>
- If the request is in the prescribed format, then the Ministry shall itself serve the document or shall arrange to have it served by an appropriate agency, either by a method prescribed by its internal law or by a particular method requested by the applicant, unless incompatible with the Indian domestic law.<sup>10</sup>
- Additionally, all requests for service of documents in India should be in English language or accompanied by an English Translation.
- The part of the request which contains a summary of the document to be served is also to be served by the Law Ministry alongwith the document.<sup>11</sup>
- The Applicant would be required to pay or reimburse costs occasioned by the employment of a judicial officer or of a person competent under law, or costs arising out of the use of a particular method of service.<sup>12</sup>
- Upon completion of service by the Law Ministry, a certificate annexed to the Convention, would be forwarded to the Applicant which would state that the document has been served and would contain the method, the place and date of service and the person to whom the document was delivered.<sup>13</sup>
- If the service would not be complete, then the certificate would set out the reasons which would have prevented service.<sup>14</sup>

### Process of service of summons outside India:

The process of service of summons outside India is to be in accordance with the steps contemplated under the Convention, which are as follows:-

- The authority or the judicial officer competent under the law of the State of origin, has to forward to the Central Authority of the concerned State, a request in the prescribed format<sup>15</sup> along with the document to be served or a copy of the document to be served.<sup>16</sup>
- The request and the document have to be served in duplicate.<sup>17</sup>
- If the request is in the prescribed format, then the Central Authority shall itself serve the document or shall arrange to have it served by an appropriate agency, either by a method prescribed by its internal law or by a particular method requested by the applicant, unless incompatible with the law of the State addressed.<sup>18</sup>
- The Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.<sup>19</sup>
- The part of the request which contains a summary of the document to be served is also to be served by the Central Authority alongwith the document.<sup>20</sup>

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<sup>7</sup> Prescribed model forms are available at the website of the Hague Convention at [http://www.hcch.net/index\\_en.php?act=text.display&tid=47](http://www.hcch.net/index_en.php?act=text.display&tid=47)

<sup>8</sup> Article 3, Hague Convention

<sup>9</sup> Article 3, Hague Convention

<sup>10</sup> Article 5(1), Hague Convention

<sup>11</sup> Article 5(4), Hague Convention

<sup>12</sup> Article 12, Hague Convention

<sup>13</sup> Article 6, Hague Convention

<sup>14</sup> Article 6, Hague Convention

<sup>15</sup> Prescribed model forms are available at the website of the Hague Convention at [http://www.hcch.net/index\\_en.php?act=text.display&tid=47](http://www.hcch.net/index_en.php?act=text.display&tid=47)

<sup>16</sup> Article 3, Hague Convention

<sup>17</sup> Article 3, Hague Convention

<sup>18</sup> Article 5(1), Hague Convention

<sup>19</sup> Article 5(3), Hague Convention

<sup>20</sup> Article 5(4), Hague Convention

- The Applicant would be required to pay or reimburse costs occasioned by the employment of a judicial officer or of a person competent under law, or costs arising out of the use of a particular method of service.<sup>21</sup>
- Upon completion of service by the Central Authority, a certificate annexed to the Convention, would be forwarded to the Applicant which would state that the document has been served and would contain the method, the place and date of service and the person to whom the document was delivered.<sup>22</sup>
- If the service would not be complete, then the certificate would set out the reasons which would have prevented service.<sup>23</sup>
- When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge has the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and the defendant has disclosed a prima facie defence to the action on the merits. An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.<sup>24</sup>
- Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.<sup>25</sup> The said provision is applicable in India and an application for relief will not be entertained if filed after the expiration of one year following the date of the judgment.

### **Non-applicability of the Hague Convention in India:**

Under the Hague Convention, as agreed upon by India, the service of judicial documents in India is not permitted directly through the State of Origin's diplomatic or consular agents unless the document is to be served upon the national of the State of Origin.<sup>26</sup>

Furthermore, India has opposed all modes of service under Article 10, which means that no service of documents shall be effected by postal channels, directly through judicial officers, officials, or other competent persons of India, through State of Origin or the persons interested in the Judicial proceedings. This implies that service only through the Central Authority, i.e. the Ministry of Law has been agreed to under the Convention. However, a United States Court has recognized service of summons in India vide facebook and e-mail saying that the same are not covered under Article 10 of the Hague Convention<sup>27</sup> and as such India has not opposed such service.

In *Anupama Sharma v. Union of India*<sup>28</sup>, the summons issued by the New York Court was privately delivered to the Petitioner in the proceedings which were pending before the New York Court. The petitioner contended that the service of summons was contrary to Article 3 and 5 of the Hague Convention since the summons was served not by the U.S. Court to the Indian Government but privately delivered. The Petitioner also submitted that India had specifically opposed Article 10 of the said Convention, which permits service of summons or judicial documents by postal channels directly to the persons staying abroad. However, the Bombay High Court observed that it will not be possible for it to stay the service of summons while exercising its writ jurisdiction under Article 226 of the Constitution of India and the petitioner can take the said objection before the New

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<sup>21</sup> Article 12, Hague Convention

<sup>22</sup> Article 6, Hague Convention

<sup>23</sup> Article 6, Hague Convention

<sup>24</sup> Article 16, Hague Convention

<sup>25</sup> Article 16, Hague Convention

<sup>26</sup> Article 8(2), Hague Convention

<sup>27</sup> *Federal Trade Commission v. PCCare247 Inc.*, Case No. 12 Civ. 7189. (PAE), 2013 WL 841037

<sup>28</sup> W.P.(L) No.119 of 2014

York Court and if her contention is right, the New York Court may ask the respondent to serve the summons again, in terms of the provisions laid down under Article 3 and 5 of the Convention.

In addition to the above reservations, it is also open to the country to refuse to comply with the service where the compliance with the request for service would infringe its sovereignty or security.<sup>29</sup>

In addition to the above, the Hague Convention would become inapplicable<sup>30</sup>:-

- a. Where the address of the person to be served is not known;
- b. Where the case is not a civil or commercial matter;
- c. Where the document to be served is not a judicial or an extra-judicial document;

### **Certificate of Service:**

Each Contracting State shall be free to declare that the Judge may give judgment even if no certificate of service or delivery from the Central Authority has been received, if all the following conditions are fulfilled:-

- a. The document was transmitted by one of the methods provided for in this Convention;
- b. A period of time of not less than six months, considered adequate by the Judge in the particular case, has elapsed since the date of the transmission of the document;
- c. No certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.<sup>31</sup>



### **Shambhu Sharan**

Partner

D: +91 11 47471480

E: [shambhu@singhania.in](mailto:shambhu@singhania.in)

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<sup>29</sup> Article 13, Hague Convention

<sup>30</sup> Article 1, Hague Convention

<sup>31</sup> Article 15, Hague Convention