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15 June 2020

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India: Summonses, arrest warrants, and related police documents, including appearance, security features, issuance procedures, and samples (2017-June 2020)

Research Directorate, Immigration and Refugee Board of Canada

1. Summonses

1.1 Issuance Procedures

In correspondence with the Research Directorate, an associate professor of criminal justice at Indiana University, who has researched Indian police and criminal justice policy issues, explained that summonses are issued by the designated court, and the issuance procedures are governed by the *Code of Criminal Procedure*, which is applicable to all areas of the country and "followed by every judicial court and police department" (Associate Professor 13 May 2020). The same source further states that the information contained in summonses include the name and specific particulars of the person (such as address) and the day and time to appear before a specific court and the reason for serving the summons (such

as being related to an ongoing criminal case) (Associate Professor 13 May 2020).
Summonses are "[m]ostly" issued by mail, but in some cases the police will serve the summons on behalf of the court (Associate Professor 13 May 2020).

The *Code of Criminal Procedure* provides the following:

62. Summons how served.—

1. Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.
2. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.
3. Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

63. Service of summons on corporate bodies and societies.—Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Explanation.—In this section, "corporation" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

64. Service when persons summoned cannot be found.—Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation.—A servant is not a member of the family within the meaning of this section.

65. Procedure when service cannot be effected as before provided.—If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

66. Service on Government servant.—

1. Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon

cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

2. Such signature shall be evidence of due service.

67. Service of summons outside local limits.—When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

68. Proof of service in such cases and when serving officer not present.—

1. When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.
2. The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

69. Service of summons on witness by post.—

1. Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.
2. When an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served. (India 1973, Sec. 62-69)

Article 9(3) of Order V of the *Code of Civil Procedure* provides the following:

3. The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff. (India 1908)

Indian news source Firstpost reports that the Bombay High Court has decided that summons can be served using "'modern ways of service which are available due to internet connection'," and that delivery methods can include the following: "'by courier or by email or by WhatsApp[,] etc.'" (Firstpost 17 Aug. 2018). The source adds that "[c]ourts across various jurisdictions have included the 'electronic means' in their respective rules in order to speed up the summons process," noting that the Delhi High Court and the Rohini Civil Court in Delhi have accepted "tick" marks that appear in WhatsApp as proof that the summons has been delivered (Firstpost 17 Aug. 2018). Similarly, according to S.S. Rana & Co. Advocates, a law firm in India that specializes in intellectual property law and corporate law (S.S. Rana & Co. n.d.), several courts, including the Delhi High Court, the Financial Commissioner Court in Haryana, the Bombay High Court, Rohini Civil Court in Delhi, and Delhi Metropolitan Court have included WhatsApp as an acceptable electronic means of serving a summons, and that a "[d]ouble [t]ick" has been accepted as proof of receipt of the summons (S.S. Rana & Co. 1 June 2018).

1.2 Appearance and Security Features

Section 61 of the *Code of Criminal Procedure* provides the following: "Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court" (India 1973).

The Associate Professor noted that the process of issuing summons is "uniform" across the country (Associate Professor 13 May 2020). Further and corroborating information on the uniformity of summonses across India could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Order V of the *Code of Civil Procedure* provides the following:

30. Substitution of letter for summons.—

1. The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.
2. A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.
3. A letter so substituted may be sent to the defendant by spot or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent. (India 1908, Sec. 30)

Information on the security features of summonses could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Templates of a *Summons to an Accused Person*, in English and in Hindi, as provided on the website of the District Court of India, are attached to this Response (Attachments 1 and 2).

Templates of a *Special Summons to a Person Accused of a Petty Offence*, in English and in Hindi, as provided on the website of the District Court of India, are attached to this Response (Attachments 3 and 4).

2. Bailable Arrest Warrants

Section 2(a) of the *Code of Criminal Procedure* provides the following definition: "'bailable offence' means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence"; the Code includes the First Schedule and the full list of such offences (India 1973).

2.1 Issuance Procedures

The Associate Professor noted that the issuance process for an arrest warrant is governed by the *Code of Criminal Procedure*, and is uniform across India, explaining that warrants are executed by the police and are issued when a person does not obey a summons (Associate Professor 13 May 2020). In its handbook on practice and procedures, the Supreme Court of India states that "[i]n criminal proceedings, to compel appearance of an accused, the Court may direct issuance of warrant and other process in the manner provided by the Code" (India 2017, 174). The same source also explains that "'Code' means the Code of Civil Procedure, 1908 (5 of 1908) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be" (India 2017, 2).

The *Code of Criminal Procedure* provides the following:

71. Power to direct security to be taken.—

1. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.
2. The endorsement shall state—
 - a. the number of sureties;

- b. the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;
 - c. the time at which he is to attend before the Court.
3. Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

72. Warrants to whom directed.—

1. A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.
2. When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

...

74. Warrant directed to police officer.—A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

75. Notification of substance of warrant.—The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

76. Person arrested to be brought before Court without delay.—The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

77. Where warrant may be executed.—A warrant of arrest may be executed at any place in India.

78. Warrant forwarded for execution outside jurisdiction.—

1. When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.
2. The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court

acting under section 81 to decide whether bail should or should not be granted to the person.

79. Warrant directed to police officer for execution outside jurisdiction.—

1. When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.
2. Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.
3. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

80. Procedure on arrest of person against whom warrant issued.—When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

81. Procedure by Magistrate before whom such person arrested is brought.—

1. The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:
Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437 ["When bail may be taken in case of non-bailable offence"]), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.
2. Nothing in this section shall be deemed to prevent a police officer from taking security under section 71. (India 1973)

2.2 Appearance and Security Features

Section 70 of the *Code of Criminal Procedure* provides the following: "(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court. (2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed" (India 1973).

Information on the security features of bailable arrest warrants could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Templates of arrest warrants, as provided on the websites of the District Court of India and the Aizawl District Court, are attached to this Response (Attachments 5-8).

A template of a bailable arrest warrant, as provided on the website of the District Court of India, is attached to this Response (Attachment 9).

3. Non-Bailable Arrest Warrants

An article written by a partner at Vaish Associates Advocates, a full-service law firm in India with offices in New Delhi, Mumbai and Bengaluru (Vaish Associates Advocates n.d.), explains that "a non-bailable offence does not mean that bail cannot be granted. In case of non bailable offences[,] the bail can be granted by the courts and the courts have to use their discretion while granting bail in non-bailable offences" (Vaish Associates Advocates 20 May 2019).

3.1 Issuance Procedures

According to a report summarizing various documents related to arrest warrants, available on the website of the Maharashtra Judicial Academy, which is affiliated with the Government of Maharashtra's Department of Law and Justice (Maharashtra n.d.),

[i]n a reported judgment *Inder Mohan Gowswamy and Anr. Vs. State of Uttaranchal and others reported in (2007)12 SCC 1*, the Hon'ble Apex court [India's Supreme Court] held that [a] [n]onbailable warrant [is] normally not to be issued if [the] presence of [the] accused could be secured. It is further held that, issuance of [a] [n]onbailable warrant involves interference with personal liberty. Arrest and [i]mprisonment means deprivation of the most precious right of an individual. Therefore the courts have to be extremely careful before issuing nonbailable warrants. The Hon'ble Apex court further held that [a] nonbailable warrant should be issued to bring the person to court when [a] summons and bailable warrant would be unlikely to have the desired result. This could be reasonable to believe that the person willing to appear in court or the Police authorities are unable to find the person to serve him with summons or it is considered that the person could harm some one if not placed into custody immediately. The

Hon'ble Apex court held that some times in the larger interest of the public and the State it becomes absolutely imperative to curtail the freedom of individual for a certain period[;] only then nonbailable warrants should be issued. (Maharashtra 15 Nov. 2014, para. 5)

An article published by Bar and Bench, a news source that covers the Indian legal system (Bar and Bench n.d.), citing a statement by the Jharkhand High Court, reports that the "mere absence' of [the] accused in Court cannot lead to a [n]on-[b]ailable [w]arrant" (Bar and Bench 28 Apr. 2020). The same source adds that the Court emphasized that, according to the *Code of Criminal Procedure*, non-bailable arrest warrants "can be issued only after the conditions envisaged in the respective sections [of the Code] are 'strictly' followed" and observed that "a non-bailable warrant can only be issued if the accused is (i) [an] escaped convict, or (ii) a proclaimed offender, or (iii) a person [a]ccused of a non-bailable offence and who is evading arrest" (Bar and Bench 28 Apr. 2020).

As cited in the report on the website of the Maharashtra Judicial Academy, India's Supreme Court provided the following guidelines to the subordinate courts for the issuance of non-bailable warrants, in a 2012 decision:

- d. The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;
- e. Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;
- f. No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;
- g. A register similar to the one in Clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;
- h. Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;
- i. On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned Police Station or the Officer Incharge of the concerned agency;

- j. The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;
- k. In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and
- l. In the event of cancellation of the arrest warrant by the Court, the order canceling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused. (Maharashtra 15 Nov. 2014, para. 9)

Section 73 of the *Code of Criminal Procedure* provides the following:

73. Warrant may be directed to any person.—

1. The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.
2. Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.
3. When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71. (India 1973)

3.2 Appearance and Security Features

Citing the 2012 Supreme Court decision, the report available on the website of Maharashtra Judicial Academy provides the following description of non-bailable warrants:

- a. All the High Courts shall ensure that the Subordinate Courts use printed and machine numbered Form No. 2 for issuing warrant of arrest and each such form is duly accounted for;
- b. Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;
- c. The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;

(Maharashtra 15 Nov. 2014)

Information on the security features of non-bailable arrest warrants could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A template of a non-bailable arrest warrant, as provided on the website of the District Court of India, is attached to this Response (Attachment 10).

4. Proclamation for Person Absconding

The *Code of Criminal Procedure* provides the following:

82. Proclamation for person absconding.—

1. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.
2. The proclamation shall be published as follows:—
 - i.
 - a. it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
 - b. it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
 - c. a copy thereof shall be affixed to some conspicuous part of the Court-house;
 - ii. the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.
3. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.
4. Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.
5. The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).] (India 1973)

A template of a *Proclamation Requiring the Appearance of a Person Accused*, as provided on the website of the District Court of India, is attached to this Response (Attachment 11).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.


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