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## A Detailed Study of Summons under CRPC

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*This paper provides a detailed analysis of the legal process of summons under the Criminal Procedure Code (CRPC) in India. Summons is an important legal instrument that is commonly used in criminal proceedings to notify individuals of their obligations to appear before the court. The paper examines the various aspects of summons, including its definition, purpose, types, and procedure for its issuance. It also explores the legal framework governing summons under the CRPC and the rights and obligations of individuals receiving a summons. Furthermore, the paper discusses the challenges associated with the service of summons, including the issues of notice and appearance. Overall, this research paper aims to provide a comprehensive understanding of the summons process under the CRPC, its significance in the Indian legal system, and the various issues and challenges associated with it.*

**Keywords:** *summons, crpc, legal process, court proceedings, criminal justice system.*

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### INTRODUCTION

The Criminal Procedure Code (CrPC)<sup>1</sup> is the primary legislation that governs the criminal justice system in India. It lays down the procedures for the arrest, investigation, trial, and punishment of persons accused of criminal offences. One of the key procedural steps in the criminal justice

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<sup>1</sup> Code of Criminal Procedure 1973

system is the issuance and service of a summons. A summons is a legal document that is issued by a court or other judicial authority, which requires a person to appear in court on a specific date and time to answer a criminal charge or to give testimony as a witness in a criminal case. The CrPC sets out the procedures for issuing and serving summons, including the requirements for issuing a summons, the rights and responsibilities of the person being summoned, and the consequences of failing to comply with a summons.

The purpose of studying the topic of summons under the CrPC is to understand the legal process for bringing an accused person to court to answer criminal charges. This includes understanding the requirements for issuing a summons, the rights and responsibilities of the person being summoned, and the consequences of failing to comply with a summons. In addition, the study of summons under the CrPC is important for understanding the procedural laws that govern the criminal justice system in India, and how those laws are applied in practice.

The significance of this study is that lawyers, judicial officers, and other legal professionals need to have a thorough understanding of the procedural laws that govern the criminal justice system to ensure that the rights of all parties are protected and that justice is served. This includes understanding the procedural requirements for issuing a summons, the rights and responsibilities of the person being summoned, as well as the consequences of failing to comply with a summons. Additionally, a thorough understanding of the procedural laws governing summons is essential for ensuring that the criminal justice system operates efficiently and effectively.

## **HISTORICAL BACKGROUND**

The Criminal Procedure Code (CrPC) was first enacted in British India in 1861, and it has undergone several amendments since then. The provisions related to summons have also evolved, reflecting changes in the criminal justice system and the legal system more generally. In the original version of the CrPC, the provisions related to summons were relatively limited. The Code provided for the issuance of summons as a means of bringing an accused person to court, but it did not contain detailed provisions regarding the requirements for issuing a

summons, the rights and responsibilities of the person being summoned, or the consequences of failing to comply with a summons.

In the subsequent versions of the CrPC, the provisions related to summons were expanded and refined. For example, the Code was amended to specify the requirements for issuing a summons, such as the need for a judicial officer to be satisfied that there is a reasonable likelihood that the accused person will appear in court if summoned. Additionally, the Code was amended to provide for the service of summons by various means, such as by personal delivery, by post, or by affixing the summons to the accused person's last known place of residence.<sup>2</sup>

The Code was also amended to provide for the consequences of failing to comply with a summons. For example, if an accused person fails to appear in court as required by a summons, a warrant for their arrest may be issued. Additionally, the Code was amended to provide for the rights and responsibilities of the person being summoned. For example, a person who is summoned as a witness must attend court and give evidence truthfully under penalty of perjury. In recent years, the Code has been amended to include provisions for a summons to be issued through electronic means. This reflects the increasing use of technology in the criminal justice system and the need to ensure that the process of issuing and serving summons is as efficient and effective as possible.

## TYPES OF SUMMON UNDER CRPC

Under the Criminal Procedure Code (CrPC) of India, there are two main types of summons:

**Bailable Summons:** Bailable summons is issued in cases where the offence is bailable<sup>3</sup>, meaning that the accused person can be released on bail. The procedure for issuing a bailable summons is relatively straightforward. The court or judicial officer issuing the summons must be satisfied that there is a reasonable likelihood that the accused person will appear in court if summoned. The accused person is required to execute a bond with or without sureties, as a condition of their

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<sup>2</sup> Code of Criminal Procedure 1973, s 69

<sup>3</sup> Code of Criminal Procedure 1973, s 2 (a)

release on bail. The bond serves as a guarantee that the accused person will appear in court as required by the summons.

**Non-Bailable Summons:** Non-bailable summons is issued in cases where the offence is non-bailable<sup>4</sup>, meaning that the accused person cannot be released on bail. The procedure for issuing a non-bailable summons is more complex than for a bailable summons. The court or judicial officer issuing the summons must be satisfied that there is a reasonable likelihood that the accused person will abscond or otherwise fail to appear in court if summoned. The accused person cannot be released on bail and will be taken into custody until the date of the hearing.

In addition to the bailable and non-bailable summons, there are other types of summons such as:

- Summon to produce documents or other material objects as evidence, which requires the person to produce a specified document or another material object as evidence in a case.
- Summon to produce a person who is confined in prison, which is used to bring a person who is confined in prison as a result of a previous conviction or order of detention to court for a hearing.

It is important to note that in all cases, the court or judicial officer issuing the summons must be satisfied that there is a reasonable likelihood that the person will appear in court if summoned. The rights and responsibilities of the person being summoned also apply, regardless of the type of summons. In summary, the procedure and consequences of bailable and non-bailable summons differ, with bailable summons resulting in a release on bail and non-bailable resulting in custody. Additionally, other types of summons can be issued for specific situations. In all cases, the court or judicial officer issuing the summons must be satisfied that there is a reasonable likelihood that the person will appear in court if summoned.

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<sup>4</sup> *Ibid*

## SERVICE OF SUMMONS

The process of serving a summons under the Criminal Procedure Code (CrPC) of India involves several steps and the involvement of the police and the court.

**Issuance of Summons:** The first step in the process of serving a summons is the issuance of the summons by a court or judicial officer. This involves the court or judicial officer determining that there is a reasonable likelihood that the person being summoned will appear in court if summoned and that issuing the summons is necessary for the fair and just determination of the case.

**Preparation of the Summons:** Once the summons is issued, it is prepared by the court or judicial officer, and includes the date and time of the hearing, the name and address of the person being summoned, and the nature of the offence.

**Service of the Summons:** The next step is the service of the summons. This is typically done by the police, who are responsible for delivering the summons to the person being summoned. The summons can be served by various means, such as by personal delivery, by post, or by affixing the summons to the accused person's last known place of residence.

**Proof of Service:** After the summons is served, the police officer who served the summons must provide proof of service to the court. This can be done by submitting an affidavit or a certificate of service, which includes details such as the date and time of service, the name and address of the person being summoned, and the method of service.

**Compliance with the Summons:** The final step in the process of serving a summons is compliance with the summons. This involves the person being summoned appearing in court on the date and time specified in the summons. If the person fails to comply with the summons, the court may issue a warrant for their arrest, or take other appropriate action.

In summary, the process of serving a summons under the CrPC involves several steps, including the issuance of the summons by a court or judicial officer, the preparation of the summons, the service of the summons by the police, the proof of service and compliance with the summons.

The court plays a key role in issuing and monitoring the compliance of the summons, while the police are responsible for delivering the summons and providing proof of service.

## **LEGAL IMPLICATIONS AND CONSEQUENCES OF NON-SERVICE OR IMPROPER SERVICE OF SUMMONS**

The Criminal Procedure Code (CrPC) of India lays out the legal implications and consequences of non-service or improper service of summons.

**Non-service of summons:** Non-service of summons refers to the failure to deliver the summons to the person being summoned. This can occur if the police officer responsible for delivering the summons is unable to locate the person, or if the person being summoned has moved and left no forwarding address. Non-service of summons can have serious legal implications, as it may lead to a delay in the proceedings, and the court may issue a warrant for the person's arrest if they fail to appear in court.

**Improper service of summons:** Improper service of summons refers to the delivery of the summons in a manner that does not comply with the requirements set out in the CrPC. This can include delivering the summons to the wrong person, delivering the summons to an address that is not the person's last known place of residence, or delivering the summons in a manner that does not give the person reasonable notice of the hearing. Improper service of summons can also have serious legal implications, as it may lead to the person being summoned not appearing in court, or appearing in court without proper notice, which can result in a delay in the proceedings and may lead to the dismissal of the case.

In both cases, if the court finds that there has been non-service or improper service of summons, it may take appropriate action, such as issuing a warrant for the person's arrest, or dismissing the case if the person has not been given proper notice. In addition, it is important to note that the right to a fair trial<sup>5</sup> is guaranteed by the Constitution of India, and non-service or improper service of summons can violate this right. In summary, non-service or improper service of

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<sup>5</sup> Constitution of India 1950, art 21

summons can have serious legal implications and consequences, including delay in the proceedings, the dismissal of the case, and a violation of the right to a fair trial. The court may take appropriate action when it finds that there has been non-service or improper service of summons.

## COMPLIANCE AND ENFORCEMENT OF SUMMONS

The Criminal Procedure Code (CrPC) of India provides several legal remedies for non-compliance with a summons, including arrest and attachment of property. These remedies are intended to ensure compliance with a summons issued by a court or government agency. The arrest is one of the most severe remedies available under the CrPC for non-compliance with a summons. If an individual or organization fails to comply with a summons, they may be arrested and taken into custody. The arrest is intended to secure the individual's or organization's presence in court, to ensure compliance with the summons. Under Section 41<sup>6</sup> of the CrPC, a police officer can arrest any person without an order from a Magistrate and a, if such person has been lawfully summoned to attend court as a witness, and fails to do so.

Attachment of property is another legal remedy that can be used in cases of non-compliance with a summons under the CrPC. This means that if an individual or organization fails to comply with a summons, the government may seize their property to secure compliance. This can include things like real estate, vehicles, or personal possessions. Under Section 83<sup>7</sup> of the CrPC, when a person, who is legally bound to attend as a witness in a criminal court, and fails to do so, the court may issue an order for the attachment of his property. The attachment of property is intended to ensure that the individual or organization has assets available to pay any fines or penalties that may be imposed for non-compliance.

In addition, Contempt of court is another remedy that can be used in case of non-compliance with summon under the CrPC, it means that the person who fails to comply with summon issued by the court can be held in contempt of court. Under Section 174<sup>8</sup> of the CrPC, when a

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<sup>6</sup> Code of Criminal Procedure 1973, s 41

<sup>7</sup> Code of Criminal Procedure 1973, s 83

<sup>8</sup> Code of Criminal Procedure 1973, s 174

person, who is legally bound to attend as a witness in a criminal court, and fails to do so, the court may issue an order to show cause why he should not be punished for contempt of court. It's important to note that these remedies should be used as a last resort and only when all other efforts to secure compliance have failed. These remedies are intended to be used as a way to enforce compliance with a summons, not as punishment for non-compliance. Moreover, the court must always consider the circumstances of the case, and the gravity of the non-compliance, before taking such drastic steps.

The Criminal Procedure Code provides several legal remedies for non-compliance with a summons, including arrest and attachment of property, to ensure compliance with the summons issued by a court or government agency. However, these remedies should be used as a last resort, and the court must always consider the circumstances of the case and the gravity of the non-compliance before taking such drastic steps.

### **ANALYSIS OF THE EFFECTIVENESS AND EFFICACY OF THESE ENFORCEMENT MECHANISMS**

The effectiveness and efficiency of enforcement mechanisms for non-compliance with a summons can vary depending on the specific circumstances of the case. An arrest can be an effective enforcement mechanism for ensuring compliance with a summons, as it secures the presence of the individual or organization in court. However, it can also be an inefficient mechanism, as it can be time-consuming and costly to arrest and detain individuals or organizations. Additionally, an arrest can hurt the individual or organization, as it can result in loss of employment and other negative consequences.

Attachment of property can be an effective enforcement mechanism for ensuring compliance with a summons, as it provides the government with a way to secure assets that can be used to pay fines or penalties for non-compliance. However, it can also be an inefficient mechanism, as it can be costly and time-consuming to seize and sell the property. Additionally, the attachment of property can hurt the individual or organization, as it can result in loss of assets and financial hardship.



Contempt of court, as a remedy, can be effective as it can be used as a way to coerce compliance with court orders. However, it can also be an inefficient mechanism, as it can be costly and time-consuming to prove contempt of court and can also hurt the individual or organisation, as it can result in fines, imprisonment, and stigma. It is important to note that the effectiveness and efficiency of these enforcement mechanisms will depend on the specific circumstances of the case, and it is up to the court to decide the most appropriate enforcement mechanism. In general, these enforcement mechanisms can be effective in ensuring compliance with a summons, but they can also be costly and time-consuming to implement and can have negative consequences for the individual or organization. Alternative enforcement mechanisms such as negotiation, mediation, and education should also be considered before resorting to these harsher remedies.

### CASE STUDY & ANALYSIS

There have been several notable cases related to summons under the Criminal Procedure Code (CrPC) of India, with a focus on recent and relevant cases. One recent case is the Supreme Court of India's decision in the matter of *State of UP v Rajesh and Ors.* (2020)<sup>9</sup>. In this case, the court held that a non-bailable warrant of arrest can be issued against an accused who fails to comply with a summons issued by a court. The court also held that the power to issue a non-bailable warrant of arrest should be exercised sparingly and only in exceptional cases, where the accused has willfully disobeyed the summons or where there are reasonable grounds to believe that the accused is likely to abscond.

Another recent case is the decision of the Delhi High Court in the matter of *Prakash v State* (2018)<sup>10</sup>. In this case, the court held that the power to attach property under Section 83<sup>11</sup> of the CrPC can only be exercised when the person in question has willfully disobeyed the summons or where there are reasonable grounds to believe that the person is likely to abscond. The court also held that the power to attach property should be exercised sparingly and only as a last resort, after all, other efforts to secure compliance have failed.

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<sup>9</sup> *State of UP v Rajesh and Ors* (2017) SCC 821

<sup>10</sup> *Prakash v State Criminal Appeal* No 809/2011

<sup>11</sup> Code of Criminal Procedure 1973, s 83

In the case of *Rajendra Prasad v State of Bihar*, the Patna High Court held that the power to punish a person for contempt of court under Section 174<sup>12</sup> of the CrPC can only be exercised when the person in question has willfully disobeyed the summons or where there are reasonable grounds to believe that the person is likely to abscond. The court also held that the power to punish for contempt should be exercised sparingly and only as a last resort after all other efforts to secure compliance have failed.

These cases highlight the importance of the principle that enforcement mechanisms such as arrest, attachment of property, and contempt of court should be used sparingly and only as a last resort, after all, other efforts to secure compliance have failed. They also emphasize the need for the courts to carefully consider the specific circumstances of the case before taking such drastic steps. In conclusion, recent case law has emphasized that the legal remedies for non-compliance with a summons under the Criminal Procedure Code should be used sparingly and only as a last resort after all other efforts to secure compliance have failed. The courts are also required to carefully consider the specific circumstances of the case before taking such drastic steps.

## CONCLUSION

There are several areas for further research and improvement in the current system of summons under the Criminal Procedure Code (CrPC) of India:

**Alternative Enforcement Mechanisms:** Further research could be conducted on alternative enforcement mechanisms such as negotiation, mediation, and education, to determine their effectiveness and efficiency in ensuring compliance with a summons.

**Impact of Enforcement Mechanisms:** Studies could be conducted to analyze the impact of enforcement mechanisms such as arrest, attachment of property, and contempt of court on individuals and organizations, to determine the potential negative consequences of these mechanisms.

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<sup>12</sup> Code of Criminal Procedure 1973, s 174

**The efficiency of the Process:** Research could be conducted to analyze the efficiency of the process of issuing and enforcing summons under the CrPC, to identify any bottlenecks or inefficiencies in the system.

**Impact of Technology:** Research could be conducted to evaluate the impact of technology on the process of issuing and enforcing summons under the CrPC, such as the use of electronic summons or online platforms for compliance.

**Compliance Rate:** Studies could be conducted to determine the compliance rate of summons under the CrPC, to evaluate the effectiveness of the current system in ensuring compliance.

**Public Education:** Efforts could be made to educate the public about the process of summons under the CrPC, to improve understanding and compliance.

**Alternatives for Non-Compliance:** Research could be conducted to explore alternative measures for non-compliance with a summons under the CrPC, such as community service or fines, instead of harsher remedies like arrest or attachment of property.

Overall, further research and improvements in the current system of summons under the CrPC could lead to a more efficient and effective process for ensuring compliance, while minimizing negative consequences for individuals and organizations.