

SYNOPSIS

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63. Form of summons:

Every summons issued by a Court under this Sanhita shall be,--

(i) 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; or

(ii) in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature.

64. 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:

Provided that the police station or the registrar in the Court shall maintain a register to enter the address, email address, phone number and such other details as the State Government may, by rules, provide.

(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:

Provided that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide.

(3) Every person on whom a summons is so served personally shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

65. Service of summons on corporate bodies, firms, and societies:

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(1) Service of a summons on a company or corporation may be effected by serving it on the Director, Manager, Secretary or other officer of the company or corporation, or by letter sent by registered post addressed to the Director, Manager, Secretary or other officer of the company or 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, "company" means a body corporate and "corporation" means an incorporated company or other body corporate registered under the Companies Act, 2013 (18 of 2013) or a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Service of a summons on a firm or other association of individuals may be effected by serving it on any partner of such firm or association, or by letter sent by registered post addressed to such partner, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

## **66. 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 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.

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## **67. Procedure when service cannot be effected as before provided:**

If service cannot by the exercise of due diligence be effected as provided in section 64, section 65 or section 66, 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.

## **68. 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 64, 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.

## **69 - 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.

## **70. Proof of service in such cases and when serving officer not present:**

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(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 64 or section 66) 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.

(3) All summons served through electronic communication under sections 64 to 71 (both inclusive) shall be considered as duly served and a copy of such summons shall be attested and kept as a proof of service of summons.

## **71. Service of summons on witness:**

(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 electronic communication or 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 or on the proof of delivery of summons under sub-section (3) of section 70 by electronic

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communication to the satisfaction of the Court, the Court issuing summons may deem that the summons has been duly served.

## **72. Form of warrant of arrest and duration:**

(1) Every warrant of arrest issued by a Court under this Sanhita 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.

## **73. 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 bail 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.

## **74. 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

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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.

### **75. 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 73.

### **76. 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.

### **77. Notification of substance of warrant:**

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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.

78. 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 73 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.

79. Where warrant may be executed:

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

80. 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


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against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 83 to decide whether bail should or should not be granted to the person.

## **81. 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.

## **82. Procedure on arrest of person against whom warrant issued:**

(1) 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

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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 73, be taken before such Magistrate or District Superintendent or Commissioner.

(2) On the arrest of any person referred to in sub-section (1), the police officer shall forthwith give the information regarding such arrest and the place where the arrested person is being held to the designated police officer in the district and to such officer of another district where the arrested person normally resides.

### **83. 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 bond to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 73 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 bond 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 480), or the Sessions Judge, of the district in which the arrest is made on consideration of the information

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and the documents referred to in sub-section (2) of section 80, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 73.

84. 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

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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 which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, 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).

### **85. Attachment of property of person absconding:**

(1) The Court issuing a proclamation under section 84 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,--

- (a) is about to dispose of the whole or any part of his property; or
- (b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment of property simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made;

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and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made--

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases--

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

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(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

## **86. Identification and attachment of property of proclaimed person:**

The Court may, on the written request from a police officer not below the rank of the Superintendent of Police or Commissioner of Police, initiate the process of requesting assistance from a Court or an authority in the contracting State for identification, attachment and forfeiture of property belonging to a proclaimed person in accordance with the procedure provided in Chapter VIII.

## **87. Claims and objections to attachment:**

(1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 85, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 85, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached

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under an order endorsed under sub-section (2) of section 85, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

88. Release, sale and restoration of attached property:

(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 87 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

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(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

**89. Appeal from order rejecting application for restoration of attached property:**

Any person referred to in sub-section (3) of section 88, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court.

**90. Issue of warrant in lieu of, or in addition to, summons:**

A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest--

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the

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Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

91. Power to take bond or bail bond for appearance:

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond or bail bond for his appearance in such Court, or any other Court to which the case may be transferred for trial.

92. Arrest on breach of bond or bail bond for appearance:

When any person who is bound by any bond or bail bond taken under this Sanhita to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

93. Provisions of this Chapter generally applicable to summons and warrants of arrest:

The provisions contained in this Chapter relating to summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Sanhita.