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PANNUN SUMMONS CASE

Can India Refuse to Serve Legal Notice on Its Officials?

1. Latest Developments

A US District Court recently permitted Khalistani separatist Gurpatwant Singh Pannun to serve summons on National Security Adviser (NSA) Ajit Doval and former RAW chief Samant Kumar Goel through Indian courts. The summons relate to a civil lawsuit alleging a conspiracy to assassinate him.

The lawsuit is linked to the US Federal Bureau of Investigation's (FBI) June 2023 findings of an alleged assassination plot against Pannun, who is wanted in India on terror charges.

India has dismissed the allegations as fabricated and malicious. However, the order raises significant legal questions about international judicial cooperation.

2. How Are Summons Served Across Borders?

The Hague Service Convention (1965)—formally, the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters—provides the framework for serving legal documents internationally.

- Both India and the US are parties to this Convention.
- Each member state designates a 'central authority' to process service requests. In India, this is the Ministry of Law and Justice.
- The treaty permits alternative channels, including diplomatic or consular channels, postal service and direct communication between judicial officers.

3. India's Reservations Under the Convention

India has not accepted the Hague Convention's alternative service methods without conditions.

- Under Article 10, the treaty allows documents to be served through diplomatic or consular officials directly.
- India objected to this provision, restricting it with one key condition: such officials can serve documents only on their own nationals.
- In practice, US diplomatic or consular officials cannot serve legal documents on Indian citizens through this route; they can use it only if the recipient is a US national.
- Article 13 gives India's Law Ministry the power to refuse a service request, but only on narrow grounds. The Ministry can reject a request only if it believes service would threaten India's sovereignty or security.

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- It cannot refuse merely because the underlying lawsuit is based on a claim that Indian law does not recognise.

To implement the Convention domestically, the government issued a notification in January 2009. This extended Section 29(c) of the Code of Civil Procedure (CPC), 1908 to all Convention member countries.

As a result, when a court in a member country, such as the US, issues summons, they can be sent to an Indian court, which then serves them on the defendant as it would serve domestic summons.

4. Procedural Hurdles: Why Service Often Gets Delayed

The Convention sets no deadline for processing service requests, leaving litigants with limited recourse against delays.

A 2009 Permanent Bureau assessment, the Convention's monitoring secretariat, found:

- 66% of requests were completed within two months.
- 18.3% took at least a year.
- 10.3% were returned unexecuted.

US courts have repeatedly flagged delays specifically regarding India's central authority:

- FTC v. PCCare247 Inc. (2013): A New York court permitted email service of subsequent documents, noting that it was impractical to wait more than five months for every motion.
- Richmond Technologies, Inc. v. Aumtech Business Solutions (2011): A California court allowed summons to be served via US-based counsel, citing India's Article 10 objections and anticipated delays of six to eight months.

5. What Exactly Did the US Court Order in the Pannun Case?

- The District Judge noted that Pannun's three attempts to personally serve Doval during official US visits were blocked by security personnel. Attempts through the Law Ministry had also failed.
- Before ruling, the court consulted the US Attorney's Office and State Department, both of which took 'no position'.
- The court invoked Article 19 of the Convention, which allows more liberal service methods permitted under the receiving country's domestic laws, even if they are not explicitly covered by the treaty.
- Relying on Section 29(c) of the CPC and the 2009 notification, the judge authorised summons against Doval and Goel to be transmitted to three Delhi district courts—Patiala House, Dwarka and Tis Hazari—based on jurisdiction over their presumed residences.

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- The judge rejected Pannun's argument that India's earlier refusal made the Convention inapplicable, since the reasons for refusal remained unclear. However, the court left room for reconsideration if India or an Indian court objects.

6. Implications: What This Does and Does Not Mean

The External Affairs Minister (EAM) called the lawsuit 'fabricated and malicious', stating that all official communication would be routed through the Law Ministry.

- Crucially, the order concerns only the service of summons. It does not establish liability on the Indian government or the named officials.

Diplomatic Immunity Limitation

India has previously invoked diplomatic immunity to refuse service. However, in Gurung v. Malhotra (2011), a New York court held that diplomatic immunity is not a valid ground for refusal under Article 13; only sovereignty or security concerns qualify.

The Safety Valve – Article 15

Even if India refuses to cooperate, US courts can pass a default judgment, provided:

- Documents were transmitted through a method prescribed by the Convention.
- At least six months have elapsed.
- No certificate of service has been received despite reasonable efforts.

In Duong v. DDG BIM Services LLC (2023), a US federal court described Article 15 as a safeguard allowing default judgment if India's central authority fails to fulfil its obligations.

7. Conclusion

The Pannun case highlights the delicate balance between international judicial cooperation and national sovereignty. While the Hague Convention obligates India to process foreign summons, it also safeguards India's right to refuse on security grounds. The Law Ministry's eventual response, rather than the US court's order itself, will therefore be the decisive factor in this unfolding diplomatic and legal matter.

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