

CAN YOUR WHATSAPP MESSAGE BE A LEGAL NOTICE? UNDERSTANDING E-COMMUNICATION IN THE LEGAL SYSTEM OF INDIA

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INTRODUCTION

Having a structure in place to appropriately handle any legal issues that may occur is crucial in today's society. For this reason, it is critical to understand the various channels via which legal notices can be sent in India. In India, it has been standard practice to send or receive a legal notice by post. The phrase "legal notice" is one that is frequently used when initiating a legal action.

So, what is the proper definition of a 'Legal notice'?

*'A legal notice is an acknowledgment made by one party that it intends to file an action against another after the other party has harmed the person who sent the legal notice. Anyone can serve another party with a legal notice, either in their own right or through an authorized representative who is legally permitted to do so'*¹ It can be used in disputes related to property such as partition, loan defaulters, divorce cases, employer/employee issues, etc. The type of notice sent for each case can vary i.e. the format of such notice, which any legal professional must be aware of.

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This generation has seen a new method of legal communication, reducing its dependence on postal services which used to be the only preferred method of forwarding a legal notice, and making communication through the internet a more preferred choice. One important legal provision that establishes a mandatory requirement to give notice prior to filing a lawsuit against the government or public officials for actions taken in their official capacity is Section 80 of the Civil Procedure Code (CPC) in India. This clause serves as a basic procedural protection, ensuring that public servants and government agencies are properly notified of impending lawsuits against them.

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¹'Legal Notice - The Basics' (Manupatra) <<https://www.manupatra.com/corporate/Blog/legal-notice-basics.aspx>> accessed May 4, 2024

TRADITIONAL METHODS OF LEGAL NOTICE SERVICE IN INDIA

In India, serving legal notices has traditionally relied on two primary methods: Registered post and hand delivery. While these methods have served the legal system for decades, they come with limitations.

The process of sending a legal notice through registered post involves sending the legal notice in writing through a postal system. A registered acknowledgment slip serves as proof of dispatch, and upon delivery, the recipient signs for the notice.

However, this traditional method of sending legal notices through the post office or by hand has its own drawbacks:

1. There is a risk of delay or loss of the notice during transit.
2. There is a lack of proof of delivery and acknowledgment.
3. There is a higher chance of disputes regarding the validity and authenticity of the notice as there is no concrete evidence of its delivery.
4. The manual process of sending legal notices by post or by hand can be time-consuming and labor-intensive.
5. There is a limited reach of the post office system in remote or rural areas, which may result in difficulties in serving legal notices to parties residing in such areas.
6. Relying on the post office or hand delivery for legal notices may not be cost-effective compared to digital methods.

These conventional approaches are still useful and trustworthy choices, but in a society where efficiency and speed are valued more and more, their drawbacks become evident. The possibility of quicker and more convenient legal communication with innovative solutions like E-mail and WhatsApp is made possible due to the uncertainties that come with traditional delivery methods.

EXPLORING ELECTRONIC MEANS FOR SENDING LEGAL NOTICES IN INDIA

In recent decades, there has been a noticeable shift in legal communication from traditional methods to electronic means. This shift is driven by the advantages that electronic communication offers over traditional methods of delivery.

One such advantage is the increased reliability and efficiency of electronic methods. Unlike traditional postal services or hand delivery, electronic communication, such as email, provides a clear and time-stamped record of delivery, ensuring proof that the notice was sent and received. This helps to establish the validity and authenticity of the notice in legal proceedings.

Moreover, electronic communication allows for immediate delivery, reducing the risk of delays and ensuring the timely receipt of important legal documents. This is particularly critical in legal matters where time is of the essence.

Another key factor contributing to the rising acceptance of electronic methods is the cost-effectiveness and efficiency they offer. Sending legal notices via email eliminates the need for postage and reduces the labour-intensive nature of manual delivery, making it a more economical option.

CAN WHATSAPP SERVE YOU LEGAL NOTICE?

The Pandemic saw the Supreme Court of India ban physical entry into the court premises. Hearings were held via Skype, zoom, WhatsApp, etc. Multiple High Courts, including the Bombay High Court, Karnataka High Court, and Gujarat High Court, have followed.

A summons or court notice is often sent to the other party's residential address when a case is brought. But can one receive a court notification via email, WhatsApp, or other electronic means, as new forms of communication are now commonly used and have become more acceptable?

Well, in granting permission for an extension of time the Hon'ble Supreme Court noted and decided that pleadings, notices, and summonses might be served by fax, email, or popular instant messaging apps like Signal, Telegram, and WhatsApp.² [Suo Moto (C) No. 3 of 2020],

² Preeti Motiani, "Is a Legal Notice Sent through WhatsApp, Email Valid?" (*The Economic times*, December 5, 2023) <<https://economictimes.indiatimes.com/wealth/legal/will/is-a-legal-notice-sent-through-whatsapp-email-valid/articleshow/105744303.cms?from=mdr>> accessed May 11, 2024

In the case of *Central Electricity Regulatory Commission v. National Hydroelectric Power Corporation Limited & Others 2010*³, the Supreme Court passed an order allowing the service of notices to be given by e-mail, the reason stated in the order is that in various courts, the statistical data had indicated that, on account of delay in process serving, arrears keep on mounting. In Delhi itself, the input indicates that fifty percent of the arrears in courts particularly in commercial cases is on account of delay in process serving. Further, the apex court In *Indian Bank Association v. Union of India, (2014)*⁴, directed that summons to the accused in cases under section 138 of the Negotiable Instruments Act shall be sent to their e-mail address.

It is to be said while analysing the purpose of such services i.e. postal, e-mail, WhatsApp that the idea or purpose of the service is to deliver the information of the proceedings to the opposing party.⁵ The Supreme Court in the days after the COVID pandemic crisis, recognized the difficulties that obstructed the judicial process through its order I.A. No. 48461/2020⁶ stating:

“Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.”

The Hon'ble High Court of Bombay in the case of *SBI Cards & Payments Services Pvt. Ltd. v. Rohidas Jadhav, 2018*⁷ after discovering that the notice had been served and that the file had been seen, accepted the service of notice via WhatsApp. The defendant was avoiding the claimants' calls and attempts to contact him through legal agents, so the claimant filed an

³ *Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Limited & Others*, (2010) SCC CR 3 1280

⁴ *Indian Bank Association v Union of India*, AIR 2014 SCC OnLine SC 351

⁵ *Dr. Madhav Vishwanath Dawalbhakta & ors. v M/s. Bendale Brothers* (2018) SCC OnLine Bom 2652

⁶ I.A. No. 48461/2020

⁷ *SBI Cards & Payments Services Pvt. Ltd. v Rohidas Jadhav*, (2018) SCC OnLine Bom 1262

application for execution against him in violation of Order XXI Rule 22 of the 1908 Code of Civil Procedure. He received a notification regarding the next hearing date after his number was located. An authorized officer of the claimant served notice by sending a WhatsApp message and a PDF to his mobile number. The icon indicators made it evident that the message and its attachment had been delivered to the respondent's number and had also been opened, thus the bench of G.S. Patel, J. accepted this for the purposes of serving notice in accordance with Order XXI Rule 22

“I shall accept this for the purposes of serving the Notice under Order XXI Rule 22. I take this action because the symbol indicators blatantly demonstrate that not only was the message and its attachment delivered to the Respondent's number but that both were opened,”

However, every legal counsel must keep in mind that most high courts have framed their independent rules and guidelines with respect to the service of notices and pleadings and processes by electronic means.⁸

The Bombay High Court has released the ‘Bombay High Court Service of Processes by Electronic Mail Service (Civil Proceeding) Rules, 2017’⁹, which, as per the High Courts Act, 2015, are applicable to all commercial disputes, including commercial appeals under the commercial courts, commercial division, and commercial appellate division. Most recently the Karnataka high court has passed the “The Karnataka Courts – Service of Summons/Notices/ Processes/Documents (Civil Proceedings) by Electronic Mail Rules, 2023”¹⁰ where the regulations are designed to ensure that summonses, notices, processes, and documents are served quickly with fast, modern communication methods. Further advising courts and tribunals to follow these guidelines to properly serve summonses, notices, processes, and documents.

Similarly, the Kerala High Court for the purpose of serving legal notices, the Kerala High Court has introduced E-post, a hybrid technique that combines traditional physical delivery with electronic processing. E-post is an electronic postal service that facilitates the sending of

⁸ Preeti Motiani, ‘Is a Legal Notice Sent through WhatsApp, Email Valid?’ The Economic Times (December 5, 2023) <<https://economictimes.indiatimes.com/wealth/legal/will/is-a-legal-notice-sent-through-whatsapp-email-valid/articleshow/105744303.cms?from=mdr>> accessed May 5th 2024

⁹ Bombay High Court Service of Processes by Electronic Mail Services (Civil Proceedings) Rules ,2017

¹⁰ The Karnataka Courts – Service of Summons/Notices/ Processes/Documents (Civil Proceedings) by Electronic Mail Rules, 2023

notices digitally which are then physically delivered by the post office to the other party.¹¹ The Punjab and Haryana High Courts have also formulated similar rules. The above cases affirm the position of WhatsApp as well as other apps to be a valid source of communicating legal notices, summons, etc.

WHAT ARE SOME OF THE KNOWN DISADVANTAGES OF ELECTRONIC COMMUNICATION?

In the recent decade, the widespread use of electronic services, such as email WhatsApp and other applications, have led to their increasing adoption as a means of delivering legal notices. These technologies offer convenience and efficiency however, they also present several disadvantages that must be considered.

One of the primary concerns with using electronic services for legal notices is the issue of privacy and security. Electronic communications, particularly email, are vulnerable to interception, hacking, and unauthorized access including data breaches and malware infections. For example, electronic contracts may lack assured security and rely on privately owned software, risking sensitive legal information being compromised, potentially leading to a breach of confidentiality and the violation of privacy laws.¹²

Additionally, the ease with which electronic messages can be deleted or overlooked thereby increasing the likelihood of non-receipt or delayed delivery of crucial legal notices can hamper judicial proceedings. Moreover, the admissibility and weight of electronic evidence in a court can be challenged due to concerns over the potential for tampering, forgery, or the inability to verify the sender's identity.¹³

Furthermore, the reliance on electronic services can disadvantage individuals who may not have reliable access to the internet or technological devices, thereby creating a digital divide and potentially denying them the timely receipt of important legal information.¹⁴

¹¹ Tellmy Jolly, 'Kerala High Court Initiates Hybrid E-Post Service for Speedy Delivery of Legal Notices', (Live Law April 8, 2024) <<https://www.livelaw.in/news-updates/kerala-high-court-initiates-hybrid-e-post-method-speedy-delivery-legal-notices>>accessed 4th may 2024

¹² 'What Is Electronic Communication?' (Proofpoint, September 18, 2023)

<<https://www.proofpoint.com/us/threat-reference/electronic-communication>> accessed May 5th 2024

¹³ John Sammons, *The Basics of Digital Forensics: The Primer for Getting Started in Digital Forensics* (Elsevier 2012)

¹⁴ *ibid*

CONCLUSION

In conclusion, while traditional methods like registered post and hand delivery have been the standard for serving legal notices in India, the increasing use of electronic communication has led to a shift in legal practices. Electronic means such as email and WhatsApp offer advantages like faster delivery, time-stamped records, and cost-effectiveness. However, concerns still remain regarding privacy, security, and the potential for non-receipt or delayed delivery.

The Supreme Court and various High Courts have recognized the validity of serving notices and summons via email and instant messaging apps like WhatsApp, especially during the COVID-19 pandemic, and have regarded WhatsApp as a valid mode of service when traditional methods failed.

Nevertheless, legal professionals must be aware of the specific rules and guidelines framed by different High Courts regarding electronic service of notices and documents. While electronic communication is gaining acceptance, it is pivotal to also consider the potential drawbacks and ensure compliance with applicable laws and court directives when serving legal notices in India.

