

Service of Warrants/Processes

Introduction

NCRB's publication "Crime in India-2016" reveals in its table 18A.6 (page 585) that in 2016 while 2,61,47,223 court processes (Bailable warrants, non-bailable warrants, summons, other processes) were received by police, a total of 2,23,05,296 processes were served. While the All-India %age of process service was 85.3%, it was the lowest for Nagaland at 45.5% and highest for U.P. at 97.9%. However, these figures are misleading because NCRB does not collect the breakup of service of processes in the 4 categories i.e. BWs, NBWs, summons and other processes. The age analysis of pending processes would also give a fairer idea of the problem of pendency. There is also no data for the pendency of proclamations u/s 82 Cr.P.C. separately. Most importantly, it is well known that process pendency as per police records is much lower than that as per court records. Therefore the above percentages would be vastly inferior if the NCRB based this portion of the report on Court data.

A fairer idea of this pendency can be gauged from Table 18A.5 of the same publication that reveals that of the 12,74,348 criminal trials in the country in different trial courts, as many as 4,31,482 or nearly 34% were more than 3 years pending. Trials pending for more than 3 years were much more for Sessions cases (more than 50%) than for summons cases (around 27.7% for JFCMs and about 32% for JSCMs). This reveals that Sessions trials are taking much longer despite the offences being more serious in nature. The relationship between court process service and duration of trials is also self evident. For instance, U.P. shows as many as 78.6% of Sessions trials being older than 3 years.

Problem definition and suggested solutions

This problem may be divided into the following categories:

1. The problem of wrong/incomplete identification of the arrested persons. It is at the point of arrest that the person, against whom a warrant is issued subsequently, that the Criminal Justice System records his identification particulars (we will address the issue of processes for witnesses subsequently, as in their case the problem is more of the second category below). It is at this point that errors in identification lead to difficulties in process service later.
2. The problem of execution of warrants/process despite correct identification. These problems pertain to insufficient manpower, failure to harness the power of IT and other tools and failure to re-engineer police processes.

We therefore make the following recommendations:

1. **Physical verification of address of accused** - The IO or the SHO shall ensure that they shall personally or through one of their Subordinate official visits the address disclosed by the accused so as to check its correctness before or after his arrest or while seeking his arrest warrants from the Courts.
2. **Ratification of address of accused by neighbours during verification-** The IO/SHO shall record in the case diary the name of at least two respectable persons of the locality of accused with their contact details like addresses and telephone who ratifies that the address of the Accused mentioned in the arrest memo or the applications for seeking warrants of arrest of the accused is a correct and complete one and it does actually belong to the accused.

3. **Ascertaining permanent address or additional address of accused with verification** - The IO/SHO must ascertain the additional addresses of the accused viz. the permanent or the native place address and if addresses are located in other States, the same shall be got verified through a subordinate or by any other means through the local police of the address disclosed.
4. **Collection of documentary proof of address of accused** - The IO/SHO shall obtain documentary proof of the address disclosed by the accused and append the same with the Chargesheet.
5. **Collection of documentary proof of tenanted premises of the accused** - In case an accused is a tenant in the property, a copy of the rent deed/rent receipt or a plain paper declaration by the Landlord would be a sufficient compliance of this requirement.
6. **Appending photograph of the dwelling unit of the accused** - The IO/SHO shall take photographs of the dwelling unit of the accused which is shown/claimed to be address of the accused.
7. **Site plan of the residential address of the accused** - The IO/SHO may prepare a site plan of the residential address of the accused so that it can be used as an aid while serving the accused with any process issued by the Court or execution of NBWs or u/s 82/83 Cr.P.C. processes. In case the IO/SHO has an internet facility at Police Station, he may take the help of printouts of internet maps like Google Maps so as to show the specific location of the house.
8. **Ascertaining workplace details and address of the accused** - The IO/SHO shall ascertain the work profile/job profile of the accused and shall obtain his complete address and details of his place of work/employer with other contact details.
9. **Documentary proof of workplace details along with photograph** -The IO/SHO may obtain a documentary proof of the place of work and record it in the charge sheet as an address where due service can be effected. Photograph of such work place and a sitemap may also be obtained.
10. **Ascertaining details of the head office of the employer of the accused** - In case the accused is found to be working in a Government/Private employment, the Head Office address of his employer shall be obtained apart from requiring such Employer to share with the Police/Court in case there is a change of place of employment or termination or removal of accused from employment.
11. **Mandating disclosure of name and address of three blood relatives of the accused** - At the time of arrest, the accused shall share names of at least three blood relatives with their details like address and contact numbers and the nature of relation preferably with documentary proof who can be specifically contacted in case of issuance of any coercive process against him.
12. **Mandating accused to share documentary IDs** - At the time of arrest or soon thereafter it shall be mandatory for the accused to submit at least two of the following documents:-
 - i) Passport
 - ii) Pan Card Copy
 - iii) Bank Passbook
 - iv) Credit card with photograph
 - v) Ration card
 - vi) Electricity bill
 - vii) Landline telephone bill
 - viii) Voter I.D. Card issued by the Election Commission of India

ix) Property Tax Register

13. **Accused and surety to inform police and Court of changed address** -That in case of grant of bail, it shall be mandatory for every accused and every surety as a condition for grant of bail that, both the accused and the sureties must necessarily inform the police authorities as well as the Court granting the bail about the change of their residential address while the accused is on bail. The change of residential address should be immediately intimated either by the accused or by the sureties as the case may be or by both with due documentary proof.
14. **Area Magistrate to ensure compliance of all guidelines relating to arrest** - The concerned area Magistrate/Court hearing the application shall ensure that the above guidelines have been duly complied with by the police.
15. **Mandating disclosure and filing of documents in case anticipatory as well as regular bails before the hearing** - The concerned area Magistrate/Court hearing the Bail application shall ensure that the accused share all the above before the benefit of bail is granted to the accused.
16. **Mandating surrender of passport in Sessions Trial cases** - That in all Sessions cases it shall be made mandatory that the accused surrenders his passport, if any, with the IO/SHO.
17. **In private complaints, the following guidelines may be given:**
 - Supply of addresses of accused** - The complainant shall share all the addresses known to him i.e. current/temporary/ permanent and workplace.
 - Documentary proof by complainant** - The complainant shall file documentary proof of the address of the accused, if available.
 - Declaration from complainant** - Mandating the complainant to state on oath in his affidavit that address mentioned by him in the complaint is true and complete to the best of his knowledge.
 - Complainant shall also disclose additional addresses**-The complainant shall also disclose additional addresses of the relatives of the accused even though service at those addresses may or may not be treated as due service upon the accused.
 - Additional addresses to be shared by Accused**-Post entering of appearance by the accused, it shall be mandatory to him to disclose additional addresses other than those mentioned in complaint to the Court with address proof.
 - Accused to furnish name, address of three of his relatives**-In complaint cases, accused shall furnish name, address, relation and other details of three of his relatives for future communications. However, service of summons to those addresses may not be treated as due service under Section 64 Cr.P.C.
 - Address of the accused and surety be got verified**-Since in a private complaint no arrest memo is prepared, whether or not the Court is satisfied or bond is furnished at the time of bail, it may be mandated that the address of the accused and surety be got verified from the local police including obtaining permanent and workplace address and in case of tenanted premises, tenancy document.
18. **Photograph of the accused and surety**-Mandating Courts and Police to take on record photograph of the accused and surety along with surety bond.
19. **Surety to be sound**- Courts to ensure that the surety furnished by the accused is either in blood relation or of a person who has effective control over the accused.

20. **Verification of employment** - In case the surety claimed to be employed at some place, verification of his address be got done but verification of his employment be also got carried out.
21. **Putting in place of mechanism of E-Service of Summons** - Absence of mechanism of service by additional modes like registered post, e-mail, courier, SMS and like leaves scope for false service reports by human agency.
22. **Reducing instances of false report by Process Servers** - Furnishing of false reports by process servers/police officials, absence of mechanism where process service/police official can be mandated to pay up three visits at the address of the accused as in Civil cases, no mandate to process server/Police official to submit affidavit of proper service in criminal matters when accused is in the same district and no directive to Process Server/Police official to photographed/video-graphed of the actual delivery of summons or affixation need to be addressed.
23. **MLAT with Foreign Countries** - That in case any criminal complaint or in a case filed by Police, before the summons shall be served on the accused in a foreign country, the court must satisfy whether India has **Mutual Legal Assistance Treaty (MLAT)** or any other similar Treaty. Upon ascertainment of these facts, summons should be served only under the formats/guidelines provided therein.
24. **Modification of arrest memos in terms of UID/Aadhar particulars** - There is an urgent need to update the Arrest Memo Forms (IIF-III). The form does not carry any specific particulars which can be got verified in a foolproof manner, without wastage of any time. One way of doing the same is by mentioning the duly verified Aadhaar Number and if possible by appending the Aadhaar I.D. print out of the arrestee. Such Arrest Memo may also have a declaration by the SHO of the area that the fact that the fact of his/her arrest has been uploaded/updated in the modified UIDAI data management system. For arrestee who does not have a Aadhar Card or registration, it can be got prepared or done even post his arrest, in no time.
25. **Mandatory affixation of photograph of the arrestee on the Arrest Memo** -The modified Arrest Memo should also have a mandatory column for affixation of front and side pose photograph of the arrestee. Inclusion of photograph would not only bring credibility in Arrest Memo but would also come handy in the future proclamation proceedings, if any. Also, once included in the Data Bank of National Crime Record Bureau (NCRB), the photo can be used to identify the repeat offender with the help of latest software tools which use face recognition techniques.
26. **Inclusion of all mobiles and landline connections of the arrestee in the Arrest Memo** -The Arrest Memo shall carry all mobile and landline numbers of the arrestee apart from such contact numbers of his/her parents, spouse or any other first degree relation for future reference purposes. Availability of mobile phone number of the suspect, arrested accused would come handy in establishing communication with him/her by the Investigating Agencies or the Courts. Also under 'Know Your Customer' (KYC), all telecom companies are obliged to keep updated photos and other IDs of all their customers. Once a person shares his mobile number with the investigating agency or the court during investigation or trial, apart from serving him the conventional mode of communication like summons, registered post etc. he can be served through new I.T. technology tool like Email, Facebook, Twitter, etc. In case, the mobile number

of the accused is available with the police or the court not only the service of a notice/summon can be made through SMS service but even if some dasti service is to be effected, the accused can be forewarned to remain present at his house at a particular time, on scheduled date for service of processes.

27. **Inclusion of all other particulars of information technology communication tools like Email I.Ds, Facebook accounts, Linked in accounts and Twitter handles etc. of the arrestee in the arrest memo** - Another improvement which can be brought into the modified arrest memo is inclusion of particulars of other modes of communications namely Email I.Ds., Facebook accounts, LinkedIn accounts, Twitter handles, etc. These modern days social media tools can be used for tracking and tracing an accused in case of any exigency akin to abscondance. Such information technology modes of communication can be legally accepted as per 'e-service' provided in Delhi Electronic Service Delivery Rules.
28. **Inclusion of all the Bank Account particulars and Credit/Debit Cards particulars of the arrestee in the arrest memo with real time web linkage to Aadhar Card**- Another suggestion is to include all the Bank Accounts particulars and Credit/Debit Cards particulars of the arrestee in the arrest memo with real time web linkage to Aadhar Card data. This would go a long way in tracking an accused if he absconds. Any usage or operation of Bank account or the Credit Card, when put under surveillance, would get registered and send the required alarm.
29. **Creation of a dedicated website containing particulars of all the persons arrested or bailed in criminal offences** - A database may be created in CCTNS separately of all arrested criminals and also all those who are facing Criminal Prosecutions. Such a data base can even be made accessible to the public so that the same can be used to verify the criminal antecedents or credentials of a person through a simple search process by private parties. Such a data bank can also help identify repeat offenders and serial offenders and can be an effective tool in efficient handling of crime.
30. **Creation of a dedicated website for all persons against whom proclamation is issued or who are declared Proclaimed Offenders (PO)**- Likewise we can also create a database and a dedicated Website of all absconders and Proclaimed Offenders. This would go a long way in bringing in discipline in Criminal Trials. Access to this tool would help in speedy trials and help tracking the absconders. As of now there is no sure shot mechanism whereby list of absconders or P.O. of a particular state can be easily accessed by police force from other States. Having a state-wise data bank apart from a national data bank of such absconders/P.O. would help all stake holders in tracking such persons and bringing them to justice. Even otherwise, abscondance is public information and as per law, an absconder/P.O. can be arrested even by non-police general citizen.
31. **To ensure the NBWs are issued only against the correct persons during the stage of investigation, the following may be ensured:**
 - (a) Investigating Officer may apply to a Magistrate for issuance of warrant of arrest where the offence is cognizable & non-bailable and proposed warrantee is evading his arrest
 - (b) While applying for warrant, the Investigating Officer must show the Magistrate his efforts made for arresting the proposed warrantee

- (c) Investigating Officer must show that the proposed warrantee is ordinarily residing at or was very recently residing at some address which is in the knowledge of the IO through any manner and that now the proposed warrantee is not available at that address due to his deliberate intention to avoid custody in the case in question
- (d) No warrant shall be issued against a proposed warrantee merely on the ground that he is not available for the IO/ Police officials for the purpose of joining him in the investigation
- (e) Investigating Officer must satisfy the criteria that in his belief and on the basis of material collected by him/previous IO during the investigation, he is of the opinion that the proposed warrantee is involved in the case as an accused
- (f) Only a strong suspicion or information of secret informer may not be treated as a ground for issuance of warrant of arrest
- (g) No warrant shall be issued against proposed warrantee unless the Police Officer has categorically stated in writing that there exists grounds of arrest and such grounds are not only legally admissible but are also sufficient to sustain filing of a chargesheet against him in the Court.
- (h) Investigating Officer must show that in his opinion custodial interrogation of the proposed warrantee is necessary for the just and fair investigation of the offence(s) in question;
- (i) The Magistrate must record his satisfaction in respect of the fact prima facie involvement of proposed warrantee, requirement of his custodial interrogation and that he is evading his arrest
- (j) The Magistrate than can exercise his powers to issue warrant of arrest even at the stage of investigation in cognizable & non-bailable offences.
- (k) Such prayers shall be endorsed by the SHOs and Asstt. P.P./Addl. P.P./Chief P.P. of the Court as well with a declaration that they are satisfied that it is a fit case for issuance of NBW.

32. To ensure the NBWs are issued properly during the stage of trial, the following may be ensured:

- (a) At the stage of trial, accused will normally be on bail on executing personal bond with surety. The scenario of abscondance during trial stands on a different footing, at least as compared to abscondance during investigation. In this category the accused has crossed the stage of joining of investigation and he has been summoned by a Court of Law as an accused to face trial after recording a finding of existence of sufficient material against him. And if the Trial has crossed stage of framing of Charge then a finding of existence of prima facie case also available on record. Now there exists a duly executed and sworn Bail bond coupled with a Surety bond to ensure regular appearance of the accused.
- (b) Therefore, at this stage, non-appearance of accused without any justified reasons should be taken as sufficient justification for issuance of warrants of arrest including NBW as the case may be.
- (c) If any authorized person is present before the Court on behalf of any accused and moves an application to show the reasons for non-appearance of the accused, the Court must

decide the application in accordance with the law particularly keeping in mind the provisions of Section-317, 205 and 87 Cr.P.C. as the case may be. If the Court is not satisfied with the reasons proposed, it may indicate the non-appearance without justification.

33. **Post conviction:** The scenario of abscondance post trial stands on a totally different footing, as compared to abscondance during investigation or trial. In this category the accused has not only crossed the stage of joining of investigation but he has also faced a full-fledged trial by a Court of Law and a finding of conviction against him stands recorded in the form of judgment of conviction. Hence as compared to the stages of "During Investigation" and "During Trial" an act of abscondance at this stage shall be treated as the most serious one. An act of abscondance at this juncture, is tantamount to clear willful abscondance and such an accused shall be dealt with strictly according to Section 174-A IPC.
34. **Mandatory registration of all property owners/landlords who let their residential/commercial or industrial property on rent in Metropolitan areas-** All Metros attract lakhs of inbound settlers. Crimes committed by this floating population are alarmingly high. Compulsory Registration of all the Landlords and Tenants in Metro areas with specific reference to Aadhar Number may be considered.
35. **Mandating RWAs to keep track of floating population in their localities** - In order to bring orderliness in Criminal Justice System one measure that can be adopted is to involve the civil society in tracking the floating population of their locality. Residential Welfare Associations/Market Associations are in some states even allocated funds by the Govt. under various Schemes. They have sufficient ways and means and as such can be requested to keep track of floating population in their catchment colony and update the local P.S. about it. They can be requested to keep a list of landlords who let their residential, commercial or industrial properties on rent apart from details of their tenants.
36. **For early apprehension of absconding accused/proclaimed offenders, the following suggestions may be considered:**
 - Making Public the name details and pictures of Proclaimed Offenders** - Names, addresses and pictures if any of Proclaimed Offenders to be made public on different governmental website i.e. NCRB, CBI, Delhi Police and other State Police.
 - Launching of a Composite Proclaimed Offenders Website** -There is an urgent need to create a dedicated website which contains data of all the Proclaimed Offenders and Proclaimed Persons/ Absconders of each State / Union Territory in a consolidated way with details of the crime, address etc. Either it can also be integrated with the CCTNS so that the efforts to trace proclaimed offenders are not only in States where the accused declared PO but also in the entire Nation and even the world.
 - Providing search Option for tracking POs** – Such website and another criminal investigation police websites shall carry a simply search box option where details of each Proclaimed Offenders can be ascertained and by simply searching them with their names or other available particulars. There should be no hesitation for the police in making names and details of the POs public so that Proclaimed Offenders can be arrested by the citizens u/s 43 CrPC.

Standing orders to Police – Police be mandated to display on their website all their Standing Orders and SOPs so as to spread awareness in the general public.

Digital Surveillance of Proclaimed Offenders -A Digital Surveillance System needs to put in place whereby police may be given a “see only” access to all Digital Data of the following departments so that they can cross check if any Proclaimed Offenders can be digitally tracked and brought to justice:

- i. All Nationalized and Private Banks Saving Account Holders data
- ii. All Nationalized and Private Banks Loan Account Holders data
- iii. All Nationalized and Private Banks Credit Cards Holders Data
- iv. All PAN Card holders Data
- v. All MTNL / Private Landline holders Data
- vi. All MTNL / Private Mobile Holders Data
- vii. All Passport Holders Data
- viii. All Govt. and Private Insurance Holders Data
- ix. All Aadhar Card holders Data
- x. All Voter cards holders data
- xi. Transport Department, Driving Licence and Vehicle Registration Data
- xii. Registrar of Death Registration Data

Once given access, there is software which can as Web Crawler search out the POs out of large data bases.

Keep vigil on social media and websites-Apart from the above data base, vigil on social media and website like Facebook, WhatsApp, LinkedIn and Twitter etc. also needs to be kept for searching the accused with enhanced technological tools, now persons can be tracked even through photographs.

Each Police Station to display Names and Pictures of POs prominently – All the Police Stations to display Names and Pictures of POs prominently so as to make public aware of such persons and also that public can help nabbing such POs.

Creation of the 3D map of all the Police Stations areas with licensed or open source Google maps type mapping with the help of National Informatics Centre (NIC) which will have a real time pop-up display of all the proclaimed offenders, convicts and other accused in a locality. The pop-up shall display the image, name, address and other details in mobile/tab/pad device or laptop or desktop for usage by Police, Intelligence agencies and Judiciary only.

On the lines of PIN codes allotted by Postal Department to the entire length and breadth of our nation whereby a particular six digit PIN Code identifies a fixed area, this methodology can be further used to award a Unique Address Code (UAC) whereby with the help of Postal Department and Municipal Corporations having the house records, pre-verified six digit unique code for each address can be created. This code can be used by the police as well as by the Judiciary for cross checking of the address for verification purposes at the time of arrest/surrender and acceptance of bonds. In case a person does not have a passport to surrender, a letter can be sent to Passport Authority of India

to not to issue a passport to the accused as and when applied without clearance of the concerned SHO.

37. **Re-engineering the police's court-work:** Even if the identification of the accused has been done properly, the problem will remain that the police will have shortage of staff, courts will issue multiple processes to ensure service and courts will also issue processes far more in number than they can handle to ensure that they have sufficient number of witnesses to examine on any given day.

-Information and communication technology is a proven resource for effecting change in the way an organization processes its functions.

-Large number of police force is engaged in court matters, which has to be reduced. Conviction rate has to be increased, and the disposal of the pending trial cases has to be faster. The classical system of representing the police during criminal trials is to have court constables representing the police station in the court of law. The court duty police personnel have monopoly over the court work and the system is prone to abuse. Because of territorial and functional distribution of work in different courts it is also required for each police station to have several staff on court duty. Therefore, a paradigm shift is required to improve the performance of police in the courts.

-The e- monitoring of court work titled as Court Monitoring System (CMS) was introduced in Vijayawada (A.P.) in 2004. Prior to the introduction of this system, there were the usual problems associated with prosecution of criminal cases in the trial courts of the Commissionerate like non-execution of process, non-attendance of witnesses and investigating officers and delay in prosecution. After the introduction of the system, there was a quantum jump in the quality of police performance in the courts which resulted in overall drastic improvement in the conviction percentage that is continued since then.

-The court-related work of the criminal cases in police stations has conventionally been an entirely manual process. In every police station, all the court-related work is traditionally assigned to one or more personnel (depending on the workload), designated as Court Constable(s) / Court Head Constable(s). The work consists largely of constant liaison with court personnel and is, therefore, assigned on permanent or long-term basis to specific individuals amongst the police station staff. This leads to some kind of monopolistic control of those individual staff members over court related work. The SHO being already hard pressed for time due to other never-ending preoccupations is not able to exercise proper control over smooth proceeding of the court work relating to his police station.

-Instances have not been wanting in which the efficiency and efficacy of court work has suffered on account of whims and fancies of those personnel, if not sheer lethargy in say, collecting the summons / warrants from the court in good time, or ensuring attendance of witnesses or the investigating or prosecuting officer. The system has also been prone to abuse for extraneous considerations on the part of court staff of the police stations.

-The dissipated system of record maintenance of court proceedings also renders the monitoring and supervision of court work of their police stations by senior police officers cumbersome and difficult, even as the dwindling rate of conviction in criminal cases as well as the disposal of pending trial cases has increasingly become a matter of concern.

-Further, the traditional system also involves deployment of considerable quantum of manpower from police stations. Since the jurisdiction of police stations is divided on territorial basis and the jurisdiction of courts is divided on the basis of territorial as well as functional distribution of work, each police station is required to earmark dedicated staff for multiple numbers of courts.

-CMS was conceived as an Information and Communication Technology (ICT)-based solution to streamline the business processes of court-related work of police stations and to provide various operational and management outputs for smooth transaction of court work by police stations, on the one hand, and its effective monitoring by senior police officers, on the other. CMS is based on two basic principles.

-The first is the fundamental concept in e-governance of distancing the case worker from the point of contact. The second is to substitute the police station-based management of court work by a court-oriented management of the same.

-Thus, with the advent of CMS, all the cases of several police stations being dealt with by a single court are pooled together and dealt with by a single court officer (of the rank of ASI or HC), assisted by a PC where necessary due to heavier workload. This has made the court of the police more transparent and resistant to abuse. Transparency has also improved because the CMS allows the case status to be known online to different stakeholders including the complainant/victim.

-CMS is not an IT project but process reengineering. CCTNS, that is a database, needs to be linked with CMS like systems for effective court work which includes effective process/warrants service, along with linkages with the Case Information System of Courts. This will also help in addressing the problem of issue of excess summons by courts as service effectiveness would increase and the disparity in Court and Police data would disappear. It would also help Superintendents and Commissioners of police to pool the processes based on the location of the wanted persons effectively.

38. **Amendment to the Identification of Prisoners' Act 1920:** The Law Commission of India in its 87th report submitted in 1980 had made detailed recommendations w.r.t. amendments in this Act. While a number of recommendations have become dated due to advent of Information Technology and advancements in forensic science, it is required to relook into the report and have a comprehensive amendment of this important legislation carried out at the earliest. BPRD may be tasked with this exercise.
 39. **Video-Conferencing** between Courts and jails for under trial accused needs to be established on a massive scale for overcoming the shortage of staff and avoidance of re-issuance of processes against witnesses who could not be examined for want of production of accused in court.
 40. **Amendments in Cr.P.C.:** The word 'male' may be deleted from Section 64. Use of Section 69 is limited to witnesses. Its scope may be expanded to all summons, and not be limited to only witnesses. Service by 'electronic means' may also be added along with 'post' in section 69.
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