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***Human progress is neither automatic nor inevitable. Every step toward the goal requires sacrifice, suffering and struggle; the tireless exertions and passionate concern of the dedicated individuals.***

***Martin Luther King Jr.***

We begin by bowing before the omnipresent who has guided us to take up academics as a career and develop a fondness for lifelong learning.

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***Research Scholars***

***Deepankar Rai***

***Amar Bhandari***

## CHAPTER-I

### 1. INTRODUCTION

***“There is no doubt, as has been said in a long line of cases, that it is not merely of some importance, but it is of fundamental importance, that justice should both be done and be manifestly seen to be done.”***

***Lord Hewart, CJ in  
R. v. Sussex Justices. Ex parte McCarthy,  
[1924] 1 K.B. 256, [1923] All ER Rep 233***

What is justice? This is an age long question since the beginning of civilization. It is an elusive term. What appears justice to one person or from one person's point of view may be injustice to another or from the perspective of another person. We cannot have such elusive concept as a yardstick. There must always be some objective test to form a foundation of just society<sup>1</sup>. Jurisprudence formulates that test as “justice according to rules”<sup>2</sup>. Therefore, W. Freidmann said, “justice is an irrational concept”. He concludes that justice as a generally valid concept is the goal to which every order aspires as a “purposeful enterprise”. Hence, the process involves adjudication of disputes by a body which is vested with the competency and powers to adjudicate.

Judiciary is thus, an independent and indispensable organ of the State for delivering justice. The legal and judicial system of any country has, at any point of time, not been a creation of any individual but it is an ongoing process under constant evolution. It reflects the cumulative result of the endeavour, experience, thoughtful planning and patient labour of a large number of people i.e. the lawmakers, judges, lawyers and litigants over generations. India has a civilised

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1 Sabaha Khan, “Judicial Process in India”, available at <http://www.legalservicesindia.com/article/article/judicial-process-in-india-464-1.html>, accessed on 7<sup>th</sup> June 2017 at 4:40 p.m.

2 V.K.S. Choudhary, “The Ivory Tower: 51 years of Supreme Court of India”, Universal Law Publication Pvt. Ltd. 2002 Edition, P: 12.

history of over 5000 years and all along distinctive legal system, formal or informal was prevailing. However, the present judicial system can be mainly related to the British period.<sup>3</sup>

The growing consciousness among the people about their rights has contributed considerably to litigation. Vices of delay and expenses have become inherent features of the system which itself discourages litigation and hence, prevents a citizen from exercising his rights, especially private.

In the words of Justice P. A. Choudary: *“In an adversary system of justice duty of the Court is merely to umpire and enforce the Rules of the game keeping itself always above the battle. Being insensitive to the result and indifferent to the fate of the suit and taking no steps unless moved are the hall-marks of this machine. It can see the truth only through the partisan windows opened by the advocates. Fortunately much of this theory is not practised in our Courts.”*<sup>4</sup>

According to our Constitution<sup>5</sup>, the judicial system of our country has three-tier hierarchical system, namely, the Supreme Court at the apex level, the High Courts in various States and the Subordinate Courts at the lower level.<sup>6</sup> The judicial system of India is broadly divided into civil and criminal. According to the National Judicial Data Grid, the total number of criminal cases pending before various Courts of India as on date 26/07/2017 is pegged at **1,71,05,255**.<sup>7</sup> Whereas, civil matters stands equally disappointing. The average life of a litigation in the lower Court is 7 to 10 years. Certain parties can intentionally cause delay of cases by stretching the litigation with unwarranted

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3 K. Mahesh Thakar, (Ph.D Thesis) *“Delay in judicial proceedings and execution of decrees A critical study of existing provisions of law with special reference to recovery suits by banks financial institutions”*. Online available at <http://hdl.handle.net/10603/59725>.

4 High Court of Andhra Pradesh. In Civil Revision Petition No.2099 of 1987, Gottumukkala Venkata Krishna Raju v/s Bhupathiaju Jayalakshmi.

5 The Constitution of India, 1950.

6 *“The Indian Judicial System, Law, Courts and the Constitution”*, available at <http://www.scribd.com/doc/24311385/indian-judicial-system>, accessed on 7<sup>th</sup> June 2017.

7 [http://www.njdg.ecourts.gov.in/njdg\\_public/main.php](http://www.njdg.ecourts.gov.in/njdg_public/main.php).

appeals/reviews/revisions to the High Courts and the Supreme Court. The total number of cases pending before the civil Courts as on 26/07/2017 is **78,55,338**.<sup>8</sup>

The concern regarding the backlog of pending cases has been expressed continuously by various sections of the society viz. the legislature, judges, Bar Councils and other legal luminaries. The Government of India have appointed various Committees to make extensive studies in this area of reference.<sup>9</sup> The law makers have responded by various measures in dealing with the increased volume of work and one of them is the "Tribunalisation of Justice". "Tribunalisation of Justice" means that the matter will be decided by specially constituted tribunals or quasi-judicial bodies and as such, the ordinary Courts will not have jurisdiction in such matters. Only a limited right of appeal, from these bodies, to the Supreme Court or High Courts are permissible.<sup>10</sup>

The problem of delays is not limited to India only. Lord Devlin once commented on the British Judicial System in the following words:

*"If our business methods are as antiquated as our legal methods, we should be a bankrupt country. There is hence need for a comprehensive inquiry into the roots of procedure backed by a determination to adopt it to fit the functions of the welfare State".<sup>11</sup>*

Chief Justice Warren Burger of the United States Supreme Court expressed dissatisfaction about his country's backwardness in Court management in these words:

*"In the Super-market age we are trying to operate the Courts with corner grocer methods and there is need for fundamental changes"<sup>12</sup>*

8 Ibid note 7.

9 Various committees have been formed to investigate causes of pendency time and again. For instance, Rankin Committee was set up in the year 1924 on delay in civil cases in High Courts and subordinate Courts. Further, a High Court Arrears Committee under the chairmanship of Justice S.R. Das was appointed in 1949. In 1969 Hidayatulla CJ presided over a committee to look into the problem of arrears in all its aspects. Later on, Justice Shah was appointed the Chairman of the Committee. The Committee was known as High Courts Arrears Committee, 1972.

10 *Supra* note 2.

11 Harcharan Singh V/S Smt. Shivrani and Ors. 1981 SCC (2) 535 at para 33 page 535.

12 *Supra* note 3.



## **1.1 Legal history of the Code of Civil Procedure in India**

In every civilized society there are two sets of laws (i) substantive laws and (ii) procedural law. Substantive law determines the right and obligations of citizens. Procedural laws prescribes the procedure for the enforcement of such rights and obligations. Unless the procedural law is simple, expeditious, inexpensive, the substantive laws however good are bound to fail in their purpose and object.<sup>13</sup>

The history of Civil Procedure in India begins from 1859, when the first Uniform Code of Civil Procedure (Act VII of 1859) was enacted since prior to this enactment, there was no uniform law of Civil Procedure applicable to the whole of the country. However, the Code of 1859 was not applicable to the Supreme Court (Crown Courts under the Royal Charter) in the Sadar Diwani Adalats (Principal Courts under the Judicial Plan by the Governor General).

In 1861, the Indian High Courts Act was passed and the Supreme Courts and Sadar Diwani Adalats were abolished.<sup>14</sup> Then, the High courts were established by replacing the Supreme Courts at Madras, Bombay and Calcutta wherein Civil Procedure Code, 1859 was made applicable to this newly established High Courts in the exercise of Civil, intestate, testamentary and matrimonial jurisdictions.<sup>15</sup>

The new Letters Patent of 1865, however, modified this position and empowered the High Courts to make their own rules and orders for regulating civil proceedings. At the same time, it imposed a duty on them to be guided by the provisions of the Code of 1859 as amended from time to time which was further replaced by passing the Civil Procedure Code, 1877. This Code of 1877 was amended in 1878 and 1879 and the third Civil Procedure Code was enacted in 1882, which replaced the previous Code. The Code of Civil Procedure, 1882 was

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<sup>13</sup> Law commission of India 27th Report.

<sup>14</sup> Dr. Kailash Rai, *"History of Courts, Legislature and Legal Profession of India"*, Published by Allahabad Law Agency, 2016 Ed.

<sup>15</sup> See the revoked Letters Patent of 1862, section 37 of the Calcutta Letter Patent, 1862.

also amended several times and ultimately the present Code of Civil Procedure, 1908 (Act No. 5 of 1908) was passed overshadowing the defects of the Code of 1882.<sup>16</sup>

The Code of 1908 is a product a well-thought out efforts and experimentation extending over more than half a century.<sup>17</sup> The Code has stood the test of time. An eminent Chief Justice of High Court observed thus<sup>18</sup>:

*“The more you study the Civil Procedure Code the more you realise what an admirable piece of legislation it is.”*

The essence of Social Welfare State envisaged by our Constitution itself is largely based upon the Anglo-Saxon model.<sup>19</sup> Most of our laws, both procedural and substantive, are based upon English jurisprudence which ensures “fair trial” however, some delay is inherent in the system itself. The Law Commission of India in its fourteenth report (Reforms of Judicial Administration) 16 September 1958, Volume. I and II, after investigating the defects in the Civil Procedure Code, 1908 and came up with a conclusion that;<sup>20</sup>-

*“It was generally agreed that the Code of Civil Procedure is an exhaustive and carefully devised enactment, the provision of which if properly and rigidly followed are designed to expedite rather than delay the disposal of cases. The delay results not from the procedure laid down by it but by reason of the non-observance of many of its important provisions, particularly those intended to expedite the disposal of proceedings.”*

The Law Commission of India in its twenty-seventh report (The Code of Civil Procedure, 1908) December, 1964, has highlighted the causes of delay in civil cases under four heads, viz. (1) Insufficient number of judges, (2) Inadequate

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16 Nikieta Aggarwal, available at <https://blog.iplers.in/indian-civil-procedure-code/> accessed on 8 June 2017.

17 Law Commission of India 27<sup>th</sup> Report (Code of Civil Procedure, 1908).

18 C.J Chagla. (as he then was) in his foreword to Soonavala’s Treaties on the Law of Execution Proceedings (1958).

19 The body of legal principles that prevailed in England from the 6<sup>th</sup> Century.

20 Law Commission of India 14<sup>th</sup> Report (Reforms of Judicial Administration) Vol. I, page 253, para 10.

ministerial staff, (3) Personal factors, and (4) Defects in procedure.<sup>21</sup> Further, justifiable explanation have also been incorporated with regard to issues number 1 to 3. However, issue number 4 (delay due to defect in procedure) was further examined with reference to three stages<sup>22</sup>:-

(1) Delay in trial of suits, (2) Delay at the appellate stage, and (3) Delay in execution proceedings. *(The second and third stages categorised under issue no. 4 are outside the scope of the present study).*

Delay in trial of suits may be divided under two heads<sup>23</sup> (1) Delay before trial, and (2) Delay during trial.

Delay before trial may be considered in the following manner<sup>24</sup> (1) service of summons and other processes, (2) filing of written statement, (3) filing of documents, and (4) issues *(Our enquiry is related with service of summons hence, item no. 2, 3 and 4 are also outside the scope of our study).*

Delay under the first item can be further sub-divided under two heads<sup>25</sup>:

(1) Delay in payment of process fee and preparations of process, and  
(2) Delay in the actual service of summons.

In the Code of Civil Procedure, 1908, Order IX Rule 13 provides that *in case it is satisfied that the summons was not duly served or if sufficient cause exists, the ex-parte decree should be set aside.* The advantage of such a rule is that both the parties of a case get an opportunity to present their side and argument before the Court and get a fair trial as per the Code.<sup>26</sup> The expression “sufficient cause” has not been defined anywhere in the Code. It is a question to be determined in the facts and circumstances of each case and not on precedents

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21 Ibid note 17 page 9, para 16.

22 Ibid note 17 page 11, para 19.

23 Supra note 17, page 11, para 20.

24 Supra note 17, page 11, para 21.

25 Supra note 17, page 11, para 22.

26 Infra note 35.

as held by the Supreme Court of India in the case of *Vijay Kumar v. Kamalabai*.<sup>27</sup> The words of the Supreme Court of India, “sufficient cause” must be liberally construed to enable the Court to exercise power *ex debito justitiae*<sup>28</sup> as held in the case of *G.P Sribastaba v. R.K. Raizada*.<sup>29</sup> A party should not be deprived of hearing unless there has been something equivalent to misconduct or rash negligence on her part as held by the Apex Court in *Sudhadevi v. M.P. Narayanam*.<sup>30</sup>

In this project we have tried to examine the major bottleneck in service of summons through a process server under *Order V of the Code of Civil Procedure, 1908* and to remove such hurdles *vis-a-vis* liberal use of alternative modes of service and make suggestions for such reforms. The available literature and reports on the subject has been studied and in the said process, we have also contacted few well-meaning eminent fellow citizens in the field whose details and feedback are available in the foregoing Chapters. This report is an outcome of an extensive research work under the guidance of Dr. Tshewang Dorjee Lama, Assistant Professor, Sikkim Government Law College and Miss Denkila Bhutia, Assistant Professor, Department of Law, Sikkim University, Gangtok.

*Judicial process is basically “whole complex phenomenon of court working” and what went wrong with this phenomenon is the issue in our current project.*<sup>31</sup>

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27 (1995) 6 SCC 148.

28 Latin: as of right. A matter *ex debito justitiae* is one which a litigant is entitled merely upon the asking for it.

29 (2000) 3 SCC 54.

30 AIR 1988 SC 1381.

31 *Supra* note 1, page 1.

## 1.2. Statement of Problem

Indian Legal System has been criticised for delay in disposal of cases. Time and again necessary changes have been brought in the legislations, however, the same have not proved to be a success with regard to providing justice to the litigants on time.

The reasons for the pendency of cases in the Courts are varied, such as, non-implementation of the legal provisions, procedural hurdles in implementation of the provisions etc. Apart from many factors responsible for pendency of cases, service of summons on the parties by way of process service has been identified as the major reason for the delay in the disposal of cases.

After the institution of a suit, “service of summons” to the parties/defendant is the immediate step to be taken. Unless and until the parties receive intimation by way of summon from the Court that a suit has been instituted against him, the Court cannot proceed further with the matter. Ultimately hindering the Court's proceedings to conduct the trial on time.

The present research, as stated earlier, has been undertaken to study the major bottlenecks in service of summons under *Order V of the Code of Civil Procedure, 1908*. Timely issuance and service of summons on the parties is essential to avoid delay in the Court proceedings. For this purpose, *Order V* lays down detailed procedure as how summons are to be issued and served. In this regard, the role of *process servers* is very significant. However, time and again it is brought to the notice of the Courts that in most of the cases, the process servers for some reason or the other, fails to serve the summons on the parties.

In this backdrop, the present study is undertaken to discover the relevant hindrances encountered by the process servers in the state of Sikkim and to find out whether necessary reforms in the provisions is required or whether adopting alternative modes of service is needed to deal with non-service of summons, which ultimately results in backlog and hinders/defeat timely disposal of cases.

### **1.3. Scope and Limitations of the Study**

Pendency of cases in the Courts has been a matter of concern since the past many decades in our country. Out of many reasons, it has been felt that the major factor responsible for pendency of cases is the issuance of summons upon the parties by way of process service.

After review of available records, it is clear to us that in our State (Sikkim), a detailed study on this problem has not been undertaken so far at the micro level. It is pertinent to find out whether or not the delay in the pendency of cases is due to issuance of summons upon the parties by process servers and to find out the applicability of alternative modes of service (FAX message, e-mail, SMS or any other electronic medium for transmitting summons) in the State of Sikkim.

Thus, for the purpose of undertaking this research, a detailed study in four districts Courts of the State of Sikkim has been conducted by the team. However, the Researchers could not dwell in all the suits of civil nature. The research is limited to Money Suits, Title Suits, Eviction cases and Execution matters.

With regard to the pendency of civil cases in the State of Sikkim, the Researchers have relied on the data available at National Judicial Data Grid<sup>32</sup> and the official website of the High Court of Sikkim.<sup>33</sup>

On the basis of the available online data, the Researchers have divided the pendency of civil cases into the following categories:

- (i) Cases pending over 10 years,
- (ii) Cases pending between 5 to 10 years,
- (iii) Cases pending between 2 to 5 years, and
- (iv) Cases pending less than 2 years.

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32 Online available at [http://www.njdg.ecourts.gov.in/njdg\\_public/main.php](http://www.njdg.ecourts.gov.in/njdg_public/main.php).

33 Online available at [www.highcourtofikkim.nic.in](http://www.highcourtofikkim.nic.in).

However the civil cases which is pending less than two years in the four District Courts of Sikkim has been excluded.

#### **1.4. Research Questions**

1. Whether in civil suits, service of summons to the defendants is amongst the principal cause of delay in the State of Sikkim?
2. Whether summons issued by the Court is received on time or not?
3. Whether topographical feature and mountainous terrain of the State of Sikkim is a hindrance in serving of summons?
4. Whether it is a common practice that defendants avoid accepting summons in the State of Sikkim?
5. Whether e-mail, fax, SMS or any other electronic device/medium can be utilized in service of summons?
6. Whether it is the need of the hour to do away with the process servers?

#### **1.5. Hypothesis**

***“Backlog of cases is due to delay in service of summons by the process servers”***

***“In addition to the regular modes of serving summons, other modes i.e. FAX message, e-mail or other electronic message service can be applied in the State of Sikkim”***

#### **1.6. Sources of data**

For this research, variety of correct and reliable data have been collected by the Research team from all the four District Courts Complex of Sikkim. Questionnaires were prepared and distributed among the four sampling units (Appendix B to G) viz. Judges, Advocates, Litigants and Process Servers in the four District Courts Complex of the State. Besides these sources, other information has also been collected from various other sources, such as, books, Acts, law journals, Law Commission Reports, case laws, websites etc.

## **1.7. Research Methodology**

Research methodology is a systematic way of study to solve the research problem. It can be understood as a science of studying how research is done scientifically and takes many dimensions and research methods to constitute a part of research methodology. Thus, when we refer to research methodology, we do not only advert to the research methods but also consider the logic behind the methods used in the context of research study in such a way that results are capable of being evaluated either by the researcher himself or by others. In this work, variety of data is used at various levels. Different statistical techniques have been used while analysing the data. Answers of the Respondents have been calculated in percentage for easy analysis. Bar-graphs have been prepared wherever necessary.

### **1.7.1. Data and Methods**

Data has been into two parts:

1. Documentary Study: It is the data obtained from relevant documents and researches, i.e. articles, journals and reports on relevant research.
2. Field Study: It was conducted using questionnaire method to collect the data from study group and then prepare statistical analysis.

### **1.7.2. Subjects and Sample Groups**

In this study, the subjects have been divided into two groups, in the following order:

1. Sample group for inquiry, that is, Lawyers and Litigants.
2. Sample group for interview, that is, Judges and Process Servers.

In order to select the sample group, we have applied simple random sampling of the following subjects:



## **1. Sample group from inquiry.**

1.1 Lawyers practicing in the Courts.

1.2 Litigants whose cases are pending before the Court.

## **2. Sample group from interview.**

2.1 Judges.

2.2 Process servers.

### **1.7.3. Tools used for Collection of Data**

#### **Primary Data:**

Major portion of the information has been collected from primary sources. The primary data has been collected through structured comprehensive questionnaires prepared for the Judges, Advocates and Litigants. The said information has been collected from different Courts of the four districts of the State by supplying performa (see Appendix – A to G). Interviews, discussions and observation methods were used by the Researchers whenever it was required at the time of collecting the requisite factual information related the research work. The questionnaire and interview form consists of both closed ended question and opened-ended question.

#### **Questionnaire and Interview Form Examination:**

1. **Content Validity.** The questionnaire was examined and amended by the research Guides.

2. **Amendment.** Questionnaire and interview Form were amended for correctness and suitability.

#### **Secondary data:**

In addition to the primary data, information was collected by the Researchers from the following other sources:

i. Published data.

ii. Published sources viz, Books, Bare Acts, Journals, Law Commission Reports and relevant websites.

#### **1.7.4. Period covered**

The primary data with the help of questionnaire has been collected by the Researchers from the period June 2017 to October 2017.

#### **1.7.5. Methods of Data Collection and Statistical Analysis**

The Research team asked the samplers to fill in the questionnaire and the interview Form. Researchers interviewed the samplers structurally. After the data was collected, the Researchers organized and analysed all the data.

Percentage and Average methods are used for data analysis. The calculated data is presented in various forms: table and graphs in the Chapters of Data Analysis and Presentation. Raw data were analysed by the Researchers using personal computer on SPSS.

#### **1.8. Scheme of Chapterisation**

The entire research study is divided into four Chapters in the following order:

**Chapter 1 - Introduction.**

**Chapter 2 - Constitutional and other Legal Provisions governing Service of Summons in India.**

**Chapter 3 - Empirical study of Service of Summons through process server in four Districts of the State of Sikkim.**

**Chapter 4 - Conclusion and Suggestions.**

**Bibliography.**

## CHAPTER-II

### 2. Constitutional and other Legal Provisions governing Service of Summons in India.

#### 2.1. Constitution of India:

The Preamble to the Constitution of India provided that the people of India gives themselves a constitution which ensures “Justice- social, political and economic to all its citizens”<sup>34</sup> This justice of social, political and economic factors is usually referred to as the concept of natural justice. Natural justice simply means the unbiased, fair and just methods of legal proceedings. In the Constitution of India, we do not find the use of the expression natural justice. However, golden thread of natural justice sagaciously pass through the body of the Indian Constitution, especially, the fundamental rights.<sup>35</sup> Ken Binmore in his article ‘Natural Justice’<sup>36</sup> discusses that the Apex Court of the country has laid down guidelines for all the Courts to ensure fair trial during a legal proceeding and that Courts while delivering judgments should ensure impartiality, should act fair in all manners, should not be biased in any way and the judgments must be passed in good faith.<sup>37</sup> Also, the Courts must give reasonable time to both the parties to respond to the legal notice and a fair and equal opportunity must be given to them to present their case.<sup>38</sup> Violation of these principles is actually considered as the violation of Article 14 and 21 of the Constitution of India, which entails the Right to Equality and Life.

Article 14 of the Constitution provides the ‘equality’ clause and requires that all persons subjected to any legislation should be treated alike under like circumstances and conditions, and is a basic feature of the Constitution which

34 Constitution of India, 1950, Preamble.

35 Available at <http://kuklawnotes.blogspot.in/p/constitution-law-question-1-what-is.html>, accessed on 1<sup>st</sup> July 2017.

36 Ken Binmore, *Natural Justice*, Oxford University Press, (2005).

37 Neeraj Gurnani & Prakhar Maheshwari, “*Making CPC effective & justice oriented*”, (2015), available at, <http://www.lawctopus.com/academike/making-cpc-effective-justice-oriented/> accessed on 23<sup>rd</sup> March 2017.

38 Supra note 22.

cannot be altered even by amending the Constitution. The phrase in Article 14 is based on Dicey's concept "Rule of Law"<sup>39</sup> of English law and the guarantee of equal protection applies against substantive as well as procedural laws. Whenever a person suffers any civil consequence or a prejudice is caused to him/her in any administrative action, principles of natural justice is violated.

The two main principles of natural justice in Latin terms are:-<sup>40</sup>

1. "***Nemo debet esse judex in propria causa***" – "no one should be judge in his own cause", or the rule against bias, and
2. "***Audi alteram partem***" – "no man should be condemned unheard", or hear the other side.

Further Article 21 states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This Article has received the widest possible interpretation. The concept of fair trial before an impartial Court as read into Article 21 can be attributed to the decision in *Maneka Gandhi v. Union of India*<sup>41</sup>. "It is widely accepted as the Indian version of the American concept of 'due process of law'."<sup>42</sup> Under Article 21, many rights have found shelter, growth and nourishment. The meaning of 'life' in Article 21 does not signify '*mere animal existence*'. It has been equated to mean living with dignity and without discrimination. The right to life under Article 21 has been extended to a large number of rights with dignity. The Supreme Court of India and the High Courts to a large extent has interpreted life under Article 21 to education, clean, healthy and pollution free air, water, environment. It has also gone to the extent of providing the citizens and others with the right to free legal aid and speedy justice, among other things.

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39 A.V. Dicey, "*Introduction to the Study of the law of the Constitution*", Liberty Fund; 8<sup>th</sup> Ed. (1 Jan. 1982)

40 Ajay R. Singh(Advocate), "*Legal Maxim: Audi Alteram Partem & Nemo Debet Esse Propria Causa: Doctrine of Natural Justice*", (2012), available at <https://ctconline.org/documents/legal/11.10.12%20Ajay%20Singh%20Material> accessed on 14<sup>th</sup> April 2017.

41 (1978) 1 SCC 248.

42 M.P Jain, *Indian Constitutional Law* (6<sup>th</sup> Ed, 2012)

The edifice of summons is completely based on the principles of natural justice. The defendant must be heard in person before the suit is decided. Hence, serving of summons on the defendant/opposite party is an important subject matter of the Code of Civil Procedure which has to be followed necessarily.

The term “summons” has not been defined in the Code of Civil Procedure, 1908. When the plaintiff institutes a suit, the defendant has to be informed that the suit has been filed against him, and that he is required to appear in the Court to defend and protect his interest. This intimation, which is sent to the defendant by the Court is known as “summons”. It is a document issued from the office of a Court of justice which shall be signed by the Judge or such Officer appointed by him and shall bear the seal of the Court. Summons must be accompanied by a copy of the plaint under Order V, Rule 2, calling upon the person to whom it is directed to attend before a Judge or Officer of the Court for a certain purpose. Order V, Rule 1 further states that no summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff’s claim. In all other cases, summons must necessarily be issued and served to the defendants.

## **2.2. Statutes:**

Parliament has harmonised the statutory framework to include the service of summons through the Code of Civil Procedure, 1908 (in short, the CPC). This statute has been enacted with the object of dealing with the procedural matters only, that is the matter relating to the machinery for enforcement of substantive rights as distinguished from the substantive rights themselves. The CPC and the Civil Rules of Practice made thereunder are applicable to all the proceedings in Court of Civil judicature, except that it does not affect any special or local law, or any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law for the time being in force.

### 2.2.1. Legal Provisions regulating issue and service of summons:

**Order V** of the CPC provides the procedure for service of summons. **Order V** contains 30 Rules. Similarly, **Order 16** of the CPC provides the procedure for the issue and service of summons to the witness for their attendance which contains 21 Rules.

The Code prescribes six methods for serving summons on such defendant:

- (i) Service by Court (Process Servers/ Serving Officer) **Rule 9 (1)**.
- (ii) Service by registered post acknowledgement due or by speed post, or by such courier services (*panel of courier agencies*) as approved by the High Court or the District Judge. **Rule 9 (3) and (6)**.
- (iii) Transmission of document through fax message or electronic mail service (*provided by the rules made by the High Court*) **Rule 9 sub-rule (3)**.
- (iv) On application of the plaintiff, Court may permit to effect service of summons on such defendants personally and the provisions of Order V Rule 16 (*to sign acknowledgement*) and Rule 18 (*time and manner of service*) shall apply **Rule 9A (1) and (3)**.
- (v) Service by affixation on the outer door or some other conspicuous part of the house by the Serving Officer **Rule 17**.
- (vi) Substituted service by an advertisement in daily newspaper **Rule 20**.

**Each Rule are discussed extensively herein below:**

#### **(i) Service by Court:**

#### **Rule 9. Delivery of summons by Court.**

- 1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall,

unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

- 2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him in such manner as the Court may direct.
- 3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

- 4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply.
- 5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any

other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

- 6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

***Rule 9A. Summons given to the plaintiff for service.-***

- 1) The Court may, in addition to the service of summons under Rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.
- 2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.
- 3) The provisions of Rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.
- 4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such



summons is not be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

**Rule 10. Mode of Service.**

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court.

The following principle must be remembered:

- Where there are more defendants than one, service of the summons shall be made on each defendant (**Rule 11**).
- Where it is practicable, the summons must be served to the defendant in person or to his authorized agent (**Rule 12**).
- Service on agent by whom defendant carries on business (**Rule 13**).
- Service on agents in charge in suits for immovable property (**Rule 14**).
- Where the defendant is absent from his residence at the time of service of summons may be served on any adult male member of the defendant's family residing with him (**Rule 15**).
- Signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons. (**Rule 16**)

In all above cases, service of summons should be made by delivering or tendering a copy thereof.

**(ii) Service by Affixation:**

**Rule 17** specifies this method. When the defendant or his agent refuses to accept personal service of summons, this method is to be used when the

defendant or his agent refuses to accept personal service, the serving officer shall affix a copy of the summons to on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain.

Mere temporary absence of a defendant from his residence or place of business does not justify service by affixation.

**(iii) Service by Post:**

Law Commission of India had taken up this issue *suo muto* to amend Order V Rule 19A of the Code of Civil Procedure, 1908 relating to service of summons by registered post with a view that miscarriage of justice had been occasioned in the working of concerned provisions, which prescribes that “the court is required to issue a summons for service by post, in addition to personal service”.

The Commission in its report revealed a number of instances where injustice has been occasioned to a litigant, inasmuch as the concerned provision enjoins to the effect that if an article containing the summons is received back with the endorsement “refused”, the Court “shall” declared that the summons had been duly served. No discretion is left in the Court as the provisions makes it mandatory to make such a declaration. Number of instances have come to light where an unscrupulous postman may make such an endorsement for dishonest reasons or a negligent postman might have tendered the article to a wrong person and he might have refused to accept the article. In the result, an *ex-parte* decree would have been passed against the addressee by reason of the mandatory declarations by the Court that he has been duly served and serious prejudice, at times irreparable would have been occasioned to him.<sup>43</sup> Insertion of the provision regarding the service of summons by registered post was recommended by Law Commission in its 54<sup>th</sup> Report on the Code of Civil

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43 Law Commission of India 140<sup>th</sup> Report (Need to amend Order V Rule 19A of the Code of Civil Procedure, 1908, relating to service of summons by registered post with a view to foreclose likely injustice) page 1, para 1.2.

Procedure (after a consideration of the recommendations made in the earlier reports of the Commission being the 14<sup>th</sup> and 27<sup>th</sup> Reports).

27<sup>th</sup> Report of the Law Commission (at page 46 and 47) contains the draft amendments on 19A.<sup>44</sup> The Law Commission of India in the year 1991 submitted its 140<sup>th</sup> Report on the Need to amend Order V Rule 19A of the Code of Civil Procedure, 1908, relating to service of summons by registered post with a view to foreclose likely injustice. Thereafter, the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) repealed the provision of Order V Rule 19A.

**(iv) Substituted Service:**

**Rule 20** provides the provision for substituted service. In two situations, the method of substituted service may be restore to:

- When there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or
- When for any other reason summons cannot be served in the ordinary way.

**(v) Service in Special Cases:**

Apart from the above modes of service of summons, Order V Rules 21 to 30 further deals with service of summons under certain circumstances.

In conclusion, it can be said that summons plays a vital role in the Civil Procedure Code, 1908.

**2.3. Provisions under Order V Rule 9 sub-rule (3) and (6) are mandatory or directory?**

The classification of statutes as mandatory and directory is useful in analysing and solving the problem of what effect should be given to these directions. However, there are no ready tests or any invariable formula to determine whether a provision is mandatory or directory, the broad purpose of

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<sup>44</sup> Ibid, page 4, para 3.1.

the statute is important and the object of the particular provision must be considered.<sup>45</sup> But it must be kept in mind, in what sense the terms are used. It is the duty of the Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered, these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other.<sup>46</sup>

The query before this research team is that below quoted provisions of Civil Procedure Code, 1908 are mandatory or directory in nature.

**(A) Order V Rule 9 (3).** The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post, or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1), or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court: *Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.*

**(B) Order V Rule 9 (6).** The High Court or the District Judge, as the case maybe, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

In determining whether the above Rules are mandatory or directory we have examined numerous cases on the question of interpretation which as follows:

In the case of *Subrata Sarkar & Another v. Union of India & Another*,<sup>47</sup> Calcutta High Court has referred the observations made in *Craies on Statute Law 7<sup>th</sup>*

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45 Dal Chand v. Municipal Corporation, Bhopal, AIR 1983 SC 303.

46 Dr. Sanjeev Kumar Tiwari, "Interpretation of Mandatory and Directory Provisions in Statutes: A Critical Appraisal in the light of judicial decisions", *International journal of Law and Legal Jurisprudence Studies*, Vol 2 Issue 2, Page 1.

47 AIR 1986 Cal 198, para 16 at page 202 & 203.

*Edn.at page 263:- “If the requirements of a statutes which prescribes the manner in which something is to be done are expressed in negative language that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute and that neglect to attend to them will invalidate the whole proceeding”.*

The Bombay High Court in the case of *DA Koregaonkar v. State of Bombay*,<sup>48</sup> has held that one of the important tests that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and, if it does, then the Court would say that, the provision must be complied with and that it is obligatory in its character.

In *Chandrika Prasad Yadav v. State of Bihar*,<sup>49</sup> it was held by the Supreme Court of India that the question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principle as regards the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve.

In *Shivjee Singh v. Nagendra Tiwary*,<sup>50</sup> the Supreme Court ruled that procedural principles under the Code of Criminal Procedure, 1973 are meant for doing substantial justice. If violations of a procedural provision does result in denial of fair hearing or causes prejudice to the parties, the same has to be treated as directory notwithstanding the use of the word ‘shall’.

Yet in *Salem Advocate Bar Association v. Union of India*,<sup>51</sup> the Supreme Court of India held that the use of the word ‘shall’ in Order VIII Rule (1) of the Code of Civil Procedure, 1908 by itself is not conclusive to determine whether the provision is mandatory or directory. Ordinarily, it is indicative of mandatory

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48 AIR 1958 Bom 167, para 9 at page 172.

49 2004 (6) SCC 331, para 31 at page 340.

50 AIR 2010 SC 2261, para 6 at page 2263.

51 AIR 2005 SC 3353, para 21 at page 3360 & 3361.

nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislature, the same can be construed as directory. Rule (1) has to advance the cause of justice and not to defeat it. The order extending time to file written statement cannot be made in routine. The time can be extended beyond ninety days only in exceptionally hard cases.

In *Kasi Bishwanath Dev v. Paramananda Routari*,<sup>52</sup> the matter before the High Court of Orrisa was whether under Section 35 B of Code of Civil Procedure, the payment of cost would be a mandatory condition precedent to the proceedings of the suit. The Court held that cause of justice was paramount and a procedural law could not be raised to the pedestal of a mandatory provision as would take away the Court's right in a given case to exercise its discretion in the interest of justice. Hence, the language in which Section 35 B of the Code had been expressed must be considered to be directory.

Careful appraisal of the above judicial decisions indicates that a provision must be taken as mandatory or directory depending upon the scope and the object of a particular statute. However, in matter of procedure, mandatory words may be construed as directory. With regard to Order V Rule 9 (3) and (6), Civil Courts have powers to use technologies to facilitate speedy and effective solution for service of summons. However, "It must be acknowledged that a whole-hearted acceptance of technology is necessary for courts to meet societal demands for efficient and timely justice"<sup>53</sup>.

## **CHAPTER- III**

### **EMPIRICAL STUDY OF SERVICE OF SUMMONS THROUGH PROCESS SERVERS IN THE FOUR DISTRICTS OF THE STATE OF SIKKIM**

#### **Introduction:**

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52 AIR 1982 Ori 80, para 3 at page 83.

53 Dr. D Y Chandrachud, Justice Supreme Court of India in "Transfer Petition (Civil) No.1278 of 2016". Available at [www.livelaw.in](http://www.livelaw.in) accessed on 3<sup>rd</sup> Oct 2017.

## **Geographical condition of the state of Sikkim.**

Sikkim is nestled on the lap of the Himalayas between 27° 5' N to 20° 9' N latitudes and 87° 59' E to 88° 56' E longitudes. Covering 7096 kms, the cross-section of the State measures 100 km from North to South and 60 km from East to West. The topography of Sikkim in South blend with the plains of West Bengal and gradually gathers height towards the North. So, the altitude of Sikkim ranges from 300m to as high as 8585m, the top of mighty Khangchendzonga. The Singalila Range encompasses the Western borders of Sikkim. In the East, the Chola Range separates Sikkim from its neighbouring State. In the North, the Donkiala Range reaches out to the Tibetan Plateau.<sup>54</sup> Sikkim, an Indian State has four districts, each overseen by the District Collector, who is in charge of the administration of the civilian areas of the districts, As the State is a sensitive border area and the Indian Army has control of a large territory. Many areas are restricted and permits are required to visit these places.

The four districts of the State are:

East district headquartered at Gangtok, West district headquartered at Gyalshing, North district headquartered at Mangan and South district with Namchi as its headquarter.

### **3.1 Data of Case records**

#### **Case Records of the District and Subordinate Courts: *Summary Report of Pending Case (Civil) in the State of Sikkim as on 26/07/2017.***

##### **1. Cases Pending (Registered) over 10 years per district:**

(1)	<b>Gangtok</b>	<b>02</b>
(2)	<b>Gyalshing</b>	<b>NIL</b>
(3)	<b>Mangan</b>	<b>NIL</b>
(4)	<b><u>Namchi</u></b>	<b><u>NIL</u></b>
	<b>Total</b>	<b>02</b>

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<sup>54</sup> <http://www.mapsofindia.com/sikkim/geography/>.

**1.1. Establishment (Gangtok).**

**(a) Chief Judicial Magistrate: NIL**

**(b) Civil Judge Sr.Division: 2**

SI No	Case Type	Filing No	Filing Date	Reg. No.	Reg. Date	CNR No
1.	Title Suit	268/2013	11-03-1994	21/2013	11-03-1994	SKGT03-000007-2013
2.	Title Suit	15/2014	28-12-2005	9/2015	28-12-2005	SKGT03-000002-2015

**(c) District and Session Court: NIL**

**2. Cases Pending (Registered) between 5 to 10 years per district:**

**(1) Gangtok 02**

**(2) Gyalshing NIL**

**(3) Mangan NIL**

**(4) Namchi NIL**

**Total 02**

**2.1. Establishment (Gangtok):**

**(a) Chief Judicial Magistrate: NIL**

**(b) Civil Judge Sr.Division: 01**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
1.	Title Suit	121/2013	26-02-2010	10/2013	26-02-2010	SKGT03-000001-2010

**(c) District and Session Court: 01**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
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1.	Eviction Suit	98/2013	11-07-1995	13/2013	08-02-2012	SKGT01-000002-1995
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**3. Cases Pending (Registered) between 2 to 5 years per district:**

(1)	<b>Gangtok</b>	<b>48</b>
(2)	<b>Gyalshing</b>	<b>NIL</b>
(3)	<b>Mangan</b>	<b>NIL</b>
(4)	<b>Namchi</b>	<b>05</b>
	<b>Total</b>	<b>53</b>

**3.1. Establishment:**

**(a) Chief Judicial Magistrate: 02**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
1.	Title Suit	57/2015	23-05-2015	11/2015	23-05-2015	SKGT03-000022-2015
2	Money Suit	126/2014	11-08-2014	52/2014	11-08-2014	SKGT03-000058-201

**(b) Civil Judge Jr. Div: 11**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
1.	Money Suit	116/2015	17-08-2015	26/2015	17-08-2015	SKGT03-000069-2015
2	Title Suit	17/2015	16-03-2015	3/2015	16-03-2015	SKGT03-000008-2015
3	Title Suit	27/2013	18-12-2013	22/2014	28-02-2014	SKGT03-000040-2013
4	Money Suit	64/2015	28-05-2015	13-2015	28-05-2015	SKGT03-000025-2015
5	Civil	27/2014	02-12-2013	2/2014	02-12-2013	SKGT03-000069-

	Execution					2013
6	Money Suit	23/2015	26-03-2015	4/2015	26-03-2015	SKGT03-00013-2015
7	Title suit	95/2014	30-05-2014	33/2014	30-05-2014	SKGT03-000039-2014
8	Civil Execution	67/2015	04-06-2015	7/2015	04-06-215	SKGT03-000027-2015
9	Money Suit	100/2015	23-07-2015	22/2015	24-07-2015	SKGT03-000055-2015
10	Money Suit	114/2014	01-07-2014	47/2014	01-07-2014	SKGT03-000049-2014
11	Money Suit	124/2014	07-08-2014	50/2014	07-08-2014	SKGT03-000056-2014

**(c) Civil Judge: 09**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
1.	Money Suit	97/2015	21-07-2015	19/2015	22-07-2015	SKGT03-000052-2015
2	Title Suit	17/2013	28-12-2013	12/2014	28-12-2013	SKGT03-000030-2013
3	Title Suit	122/2015	11-09-2015	19/2015	11-09-2015	SKGT03-000073-2015
4	Title Suit	7/2015	09-02-2015	1/2015	09-02-2015	SKGT03-000003-2015
5	Civil Execution	108/2015	30-07-2015	8/2015	30-07-2015	SKGT03-000063-2015

6	Money Suit	113/2015	13-08-2015	23/2015	13-08-2015	SKGT03-000066-2015
7	Title Suit	97/2014	29-05-2014	35/2014	29-05-2014	SKGT03-000040-2014
8	Title Suit	26/2013	18-12-2013	21/2014	28-02-2014	SKGT03-000039-2013
9	Title Suit	166/2014	16-10-2014	44/2014	16-10-2014	SKGT03-000087-2014

**(d) District and Sessions Court: 10**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
1.	Civil Misc. C. Succ	72/2014	06-12-2013	24/2014	06-12-2013	SKGT01-001216-2013
2	Probate of Will	307/2015	27-05-2015	2/2014	27-05-2015	SKGT01-000328-2015
3	Letter of Admin	632/2015	15-09-2015	2/2015	15-09-2015	SKGT01-000920-2015
4	Money Suit	554/2015	04-08-2015	14/2015	04-08-2015	SKGT01-000807-2015
5	Title Suit	314/2014	16-06-2014	7/2014	17-06-2015	SKGT01-000505-2014
6	Money Suit	392/2015	06-07-2015	10/2015	07-07-2015	SKGT01-000607-2015
7	Eviction Suit	4/2015	16-01-2015	1/2015	16-01-2015	SKGT01-000017-2014
8	MACT	580/2015	17-08-2015	8/2015	17-08-2015	SKGT01-000838-

	Execution					2015
9	Civil Exe	118/2014	19-03-2014	1/2014	21-03-2014	SKGT01-000192-2014
10	Money Suit	391/2015	06-07-2015	9/2015	07-07-2015	SKGT01-000606-2015

**(e) District & Sessions, Special Division-I: 16**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
1.	Civil Exe	211/2015	23-03-2015	6/2015	23-03-2015	SKGT01-000288-2015
2	Eviction Suit	219/2013	25-06-2013	18/2013	25-06-2013	SKGT01-000057-2013
3	Title Suit	629/2015	14-09-2015	16/2015	14-09-2015	SKGT01-000915-2015
4	Title Suit	235/2015	02-04-2015	3/2015	02-04-2015	SKGT01-000333-2015
5	Money Suit	314/2015	03-06-2015	5/2015	03-06-2015	SKGT01-000467-2015
6	Title Suit	612/2015	31-08-2015	14/2015	01-09-2015	SKGT01-000885-2015
7	Title Suit	275/2015	29-04-2015	6/2015	29-04-2015	SKGT03-000398-2015
8	Title Suit	615/2015	04-09-2014	15/2015	04-09-2015	SKGT01-000890-2015
9	T.S. DECL Suit	133/2014	21-08-2012	1/2014	15-11-2013	SKGT01-000355-2012

10	Civil Exe	587/2015	21-08-2015	15/2015	21-08-2015	SKGT01-000852-2015
11	Civil Exe	604/2015	25-08-2015	16/2016	25-08-2015	SKGT01-000871-2015
12	Title Suit	382/2015	01-07-2015	12/2015	03-07-2015	SKGT01-000584-2015
13	Title Appeal	600/2015	24-08-2015	4/2015	24-08-2105	SKGT01-000866-2015
14	Money Suit	380/2015	01-07-2015	7/2015	01-07-2015	SKGT01-000568-2015
15	Eviction Suit	213/2015	19-03-2015	4/2015	25-03-2015	SKGT01-000291-2015
16	Money Suit	393/2015	06-07-2015	8/2015	07-07-2015	SKGT01-000608-2015

**(f) Civil Judge Sr. Division, South: 02**

SI No	Case Type	Filing No	Filing Date	Regd. No.	Regd. Date	CNR No
1.	Title Suit	74/2014	11-04-2014	9/2014	11-04-2014	SKNM03-000051-2014
2	Title Suit	3/2013	28-12-2013	2/2014	01-02-2014	SKNM03-000036-2013

**(g) District and Sessions Judge, South: 03**

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
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1.	Eviction Suit	142/2015	04-08-2015	2/2015	04-08-2015	SKNM01-000251-2015
2	Money Suit	178/2015	16-09-2015	1/2015	16-09-2015	SKNM01-000303-2015
3	Eviction Suit	141/2015	04-08-2015	1/2015	04-08-2015	SKNM01-00250-2015

After collection of the above data (case records Total 57 in numbers) from the four district Courts Complex (*also available in the National Judicial Data Grid and Sikkim High Courts web portal*), the Research team bifurcated these data into four groups viz. Title Suit, Eviction Suit, Execution Suit and Money Suit. (**Annexure- A**). Further, Simple Random Sampling (SRS) method<sup>55</sup> was applied to select the data for case study. Altogether eleven (11) samples were selected for case study as subjects.

### **3.1.1. Case Analysis (as on 26/07/2017)**

*Since this research is related with the service of summons hence below mentioned list of dates and events is related up till the stage of Service Report (in short SR)*

#### **Case Study No. 1**

Case Type	Title Suit		
Filing Number	121 /2013	Filing Date	26-02-2010

<sup>55</sup> In this technique, each member of the population has an equal chance of being selected as subject. The entire process of sampling is done in a single step with each subject selected independently of the other members of the population.

Registration Number	10/2013	Registration Date	26-02-2010
CNR Number	SKGT030000010		
First Hearing Date	26-12-2012		
Next Hearing Date	09-10-2017		
Stage of Case	Pending		
Court Number and Judge	Civil Judge Jr.Div.		

**Petitioner(s) name:** Md. Sahid and Others

**Address:** Green Hotel, Gangtok, East Sikkim

**Advocate:** Mr. Manish Kumar Jain

***Versus***

**Respondent's name:** Mrs. Marium Igbal

**Address:** Green Hotel, Gangtok, East Sikkim

**Advocate:** Mr. S.L. Pradhan and Mr. R. Sinha

#### **List of Dates and Events**

<b>Dates</b>	<b>Events</b>
18.08.2014	a) Defendant No.1 was present. b)Defendant No. 2 absent since proceeded ex- party. c) Defendant No. 3 was present. d) Date was fixed for filing of evidence and settlement.

#### **Case Study No. 2**

Case Type	Title Suit		
Filing Number	17 /2015	Filing Date	16-03-2015
Registration		Registered	16-03-2015

Number	000003/2015	Date	
CNR Number	SKGT03000008201 5		
First Hearing Date	18-03-2015		
Next Hearing Date	18-10-2017		
Stage of Case	Pending		
Court Number and Judge	Civil Judge Jr. Div.		

**Petitioner's name:** Man Bahadur Darjee

**Address:** Sakhu, West Pendam, P.O. West Pendam, via Singtam, East Sikkim.

**Advocate:** Mr. Meg Nath Dhungel

***Versus***

**Respondent's name:** Janak Lall Darjee Suji Alias Janak Lall Bardewa

**Address:** Sakhu, P.O. West Pendam, via Singtam, East Sikkim.

**Advocate :** NA

#### **List of Dates and Events**

Date	Events
16.04.2015	a) Institution of the suit by the plaintiff. b) Issuance of summons to the defendants by the Court returnable by 27.06.2015
27.06.2015	a) Defendant No.1 was present through his Counsel. b) However defendant No. 2 and 3 were absent. c) Fresh summons were issued returnable by 22.07.2015.
22.07.2015	Data not available
20.08.2015	Defendant No. 1, 2 and 3 were present through their respective Counsel.

#### **Case Study No. 3**

Case Type	Title Suit			
Filing Number	07 /2015	Filing Date	09-02-2015	
Registration		Registered	09-02-2015	



Number	000001/2015	Date	
CNR Number	SKGT03000003201 5		
First Hearing Date	09-02-2015		
Next Hearing Date	05-10-2017		
Stage of Case	Pending		
Court Number and Judge	Civil Judge, Chungthang Sub-Division stationed at Gangtok		

**Petitioner's name:** Manoj Rai

**Address:** Assam Lingzey, P.O Assam Lingzey, P.S Ranipool, East Sikkim

**Advocate:** Mr. Bhol Nath Sharma

***Versus***

**Respondent's name:** District Collector

**Address:** Office of the District Collectorate, Administrative Centre Building, Sichey, East Sikkim

**Advocate :** NA

#### **List of Dates and Events**

<b>Dates</b>	<b>Events</b>
11.02.2015	a) Institution of the Plaint b) Issuance of summons to the defendants by the Hon'ble Court returnable by 18.02.2015
18.02.2015	a) Defendant no. 1, 2, 3 and 4 were absent. b) fresh summons was issued to Defendant no 4 returnable by 25.03.2015
25.03.2015	a) Defendant no .1 and 2 were absent. b) defendant no 3 and 4 were present through their counsel.

#### **Case Study No. 4**

Case Type	Title Suit		
Filing Number	629 /2015	Filing Date	14-09-2015
Registration		Registered	

Number	000016/2015	Date	14-09-2015
CNR Number	SKGT01000915201 5		
First Hearing Date	14-09-2015		
Next Hearing Date	13-10-2017		
Stage of Case	Pending		
Court Number and Judge	District and Sessions Judge, Special Division-1		

**Petitioner's name:** Jiwan Kumar Pradhan

**Address:** Melli Bazaar, P.O. and P.S.Melli, South Sikkim

**Advocate:** Ms. Bindu Gurung

***Versus***

**Respondent's name:** Keshar Kumar Pradhan

**Address:** Khani Khola, Majhitar, East Sikkim

**Advocate:** NA

#### **List of Dates and Events**

<b>Dates</b>	<b>Events</b>
14.09.2015	a) Institution of Plaint by the Plaintiff. b) date fixed for Service Report on 29.09.2015.
29.02.2015	a) Defendant no. 1 and 2 are present along with their counsel. b) Defendant no. 3 to &7 were present in person. c) Date was fixed for filing of W.S. On 28.10.2015

#### **Case Study No. 5**

Case Type	T.S. DECL.SUIT		
Filing Number	133 /2014	Filing Date	21-08-2012

Registration Number	1/2014	Registered Date	15-11-2013
CNR Number	SKGT01000355-2012		
First Hearing Date	26-12-2013		
Next Hearing Date	06-12-2017		
Stage of Case	Steps		
Court Number	District and Sessions Judge, Special Division-1		

**Petitioner's name:**

- 1) M/s. Nauratanmal Ashok Kumar
- 2) Mr. Sampatlall Bucha

Address: M.G. Marg, Gangtok, East Sikkim.

**Advocate:** NA

***Versus***

**Respondent's name:** Yangzila Bhutiani

Address: Development Area, Gangtok, East Sikkim.

**Advocate:** Mr. S. Mazumdar

**List of Dates and Events**

Dates	Events
26.03.2014	a) Date fixed for hearing on the application under Order VI Rule 17 r/w Section 151 of the CPC,1908. b) Defendant present through his Counsel.

**Case Study No. 6**

Case Type	Eviction Suit		
Filing Number	4 /2015	Filing Date	16-01-2015
Registration	000001/2015	Registered	16-01-2015

Number		Date	
CNR Number	SKGT01000017201 5		
First Hearing Date	16-01-2015		
Next Hearing Date	13-10-2017		
Stage of Case	Pending		
Court Number and Judge	District and Sessions Judge		

**Petitioner's name:** Dr. Yogesh Verma

**Address:** STNM Hospital Quarters, P.O Gangtok, P.S Sadar, Gangtok, East Sikkim

Advocate: Mr. Yok Kumar Rai

***Versus***

**Respondent's name:** Ram Niwas Bansal

**Address:** T.C Verma Building, 10 National Highway, P.O Gangtok, P.S Sadar, Gangtok, East Sikkim

**Advocate:** NA

**List of Dates and Events**

<b>Dates</b>	<b>Events</b>
21.04.2015	a) Defendant present through his counsel. b) Date was fixed for filing of W.S. On 21.04.2015.
21.04.2015	a) Defendant was present. b) filed an application requesting for time to file Written Statement.

**Case Study No. 7**

Case Type	Civil Exe.		
Filing Number	27 /2014	Filing Date	02-12-2013
Registration	000002/2014	Registered	02-12-2013

Number		Date	
CNR Number	SKGT03000069201 3		
First Hearing Date	27-03-2014		
Next Hearing Date	25-09-2017		
Stage of Case	Pending		
Court Number and Judge	Civil Judge Jr Div		

**Petitioner's name: Devi Prasad Sharma**

**Address:** Rhenock, East Sikkim

**Advocate:** Mr. S.S. Hamal

***Versus***

**Respondent's name:** Tashi Lhendup Bhutia

**Address:** Pelling, West Sikkim

**Advocate:** NA

#### **List of Dates and Events**

<b>Dates</b>	<b>Events</b>
27.03.2014	a) Institution of suit. b) Decree Holder was present through his Counsel. c) Judgment Debtor was present with his Counsel. d) Date was fixed for Payment on 26.05.2014
26.05.2014	Data not available
11.07.2014	a) Decree Holder was present through his Counsel. b) judgment Debtor was absent. c) Date was fixed for further orders.

#### **Case Study No. 8**

Case Type	Civil Exe.		
Filing Number	211 /2015	Filing Date	23-03-2015
Registration	000006/2015	Registered	23-03-2015

Number		Date	
CNR Number	SKGT01000288201 5		
First Hearing Date	23-03-2015		
Next Hearing Date	11-10-2017		
Stage of Case	Pending		
Court Number and Judge	District and Sessions Judge, Special Division1		

**Petitioner's name: Norbu Tshering Bhutia**

**Address:** Khamdong Busty, P.O Khamdong, East Sikkim

**Advocate:** Ms. Bandana Pradhan

***Versus***

**Respondent's name:** M/s Calcutta Hardware Stores

**Address:** M.G Marg, P.O and P.S Gangtok, East Sikkim

**Advocate:** NA

#### **List of Dates and Events**

<b>Dates</b>	<b>Events</b>
28.04.2015	a) Decree Holder present through his Counsel. b) Judgment Debtors were present through their counsel. c) Date was fixed for hearing.

#### **Case Study No. 9**

Case Type	Money Suit		
Filing Number	64 /2015	Filing Date	28-05-2015
Registration	000013/2015	Registered	28-05-2015

Number		Date	
CNR Number	SKGT03000025201 5		
First Hearing Date	28-05-2015		
Next Hearing Date	12-10-2017		
Stage of Case	Pending		
Court Number and Judge	Civil Judge Jr Div		

**Petitioner's name: State Bank of India-Gangtok**

**Address:** Branch Office at M.G.Marg, Gangtok, East Sikkim.

**Advocate:** Mr. Jai Kishan Chandak

***Versus***

**Respondent's name:** Phuti Chettri

**Address:** 3<sup>rd</sup> Mile, J.N. Road, Near 3rd Mile, Check Post, P.O. Raj Bhawan, Gangtok, East Sikkim.

**Advocate:** NA

**List of Dates and Events**

<b>Dates</b>	<b>Events</b>
11.08.2015	a) Defendant was absent. b) Fresh summons was issued returnable by 26.10.2015.
26.10.2015	Data not available.
27.11.2015	a) Defendant no. 2, 4 and 5 were present.

**Case Study No. 10**

Case Type	Money Suit			
Filing Number	97 /2015	Filing Date	21-07-2015	
Registration	000019/2015	Registered	22-07-2015	

Number		Date		
CNR Number	SKGT03000052201 5			
First Hearing Date	22-07-2015			
Next Hearing Date	09-10-2017			
Stage of Case	Pending			
Court Number and Judge	Civil Judge, Chungthang stationed at Gangtok.			

**Petitioner's name:** State Bank of India, Represented by its Chief Manager

**Address:** Deorali Bazaar, Gangtok, East Sikkim.

**Advocate:** Mr. Sudesh Joshi

***Versus***

**Respondent's name:** Ms. Beena Kumari Sharma

**Address:** Chisopani, Singtam, East Sikkim.

**Advocate:** NA

**List of Dates and Events**

<b>Dates</b>	<b>Events</b>
03.10.2015	a) Respondent Nos. 1, 2 and 3 were present through their counsel. b) Date was fixed for examination of Aggrieved person on 06.11.2015
06.11.2015	Data no available
22.02.2016	a) Plaintiff was present through his Counsel. b) Defendant no. 1 was absent, summon issued to her was not returned. c) Defendant no. 2 was absent, summons issued to her was returned unserved with the report that she could not be found in the given address.
06.04.2015	a) Defendant nos. 1 and 2 absent. b) Date was fixed for steps with regard to Def. No. 2. c) Substituted service of summons shall be served upon Def. No.2 in the address given in the cause title of the Plaint along with the area Panchayat office and DAC, East returnable by 25.05.2016 d) Fresh summons was issued to Def.



	No.1 returnable by 25.05.2015.
25.05,2015	Data not available
19.09.2016	a) Both Defendants are absent. b) Date was fixed for further order and taking steps by the Plaintiff.

### **Case Study No. 11**

Case Type	Money Suit		
Filing Number	314 /2015	Filing Date	03-06-2015
Registration Number	000005/2015	Registered Date	03-06-2015
CNR Number	SKGT01000467201 5		
First Hearing Date	03-06-2015		
Next Hearing Date	09-10-2017		
Stage of Case	Pending		
Court Number and Judge	District and Sessions Judge, Special Division1		

**Petitioner's name:** Karma Rinzing Lepcha

**Address:** Phamtam, North Sikkim.

**Advocate:** Sujay Singh Hamal

***Versus***

**Respondent's name:** Namgyal Dorjee Bhutia

**Address:** Jignam Lodge, Arithang, Gangtok, East Sikkim.

**Advocate:**

### **List of Dates and Events**

<b>Dates</b>	<b>Events</b>
23.07.2015	a) Plaintiff was present with his Counsel. b) Defendant was absent because summons returned unserved with a report that the Defendant could not be located at given address. c) Fresh summons was issued to Defendant returnable by 11.08.2015.
11.08.2015	Data not available

16.09.2015	a) Defendant represented by Counsel present. b) Date was fixed for Filing of Witten Statement by the Defendant on 07.10.2015.
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Based on the above case study, a chart has been prepared which shows the frequency of appearance of the defendants (herein subjects) after receiving Court summons.

**3.1.2                      Case Study Chart**

	<b>Appearance of the defendants after issuance of summons</b>
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Case Study Number	1 <sup>st</sup> date	2 <sup>nd</sup> date	3 <sup>rd</sup> date	4 <sup>th</sup> date	5 <sup>th</sup> date
1.	✓				
2.		✓			
3.		✓			
4.	✓				
5.	✓				
6.	✓				
7.	✓				
8.	✓				
9.		✓			
10.	✓				
11.		✓			

(Fig. No. Y)

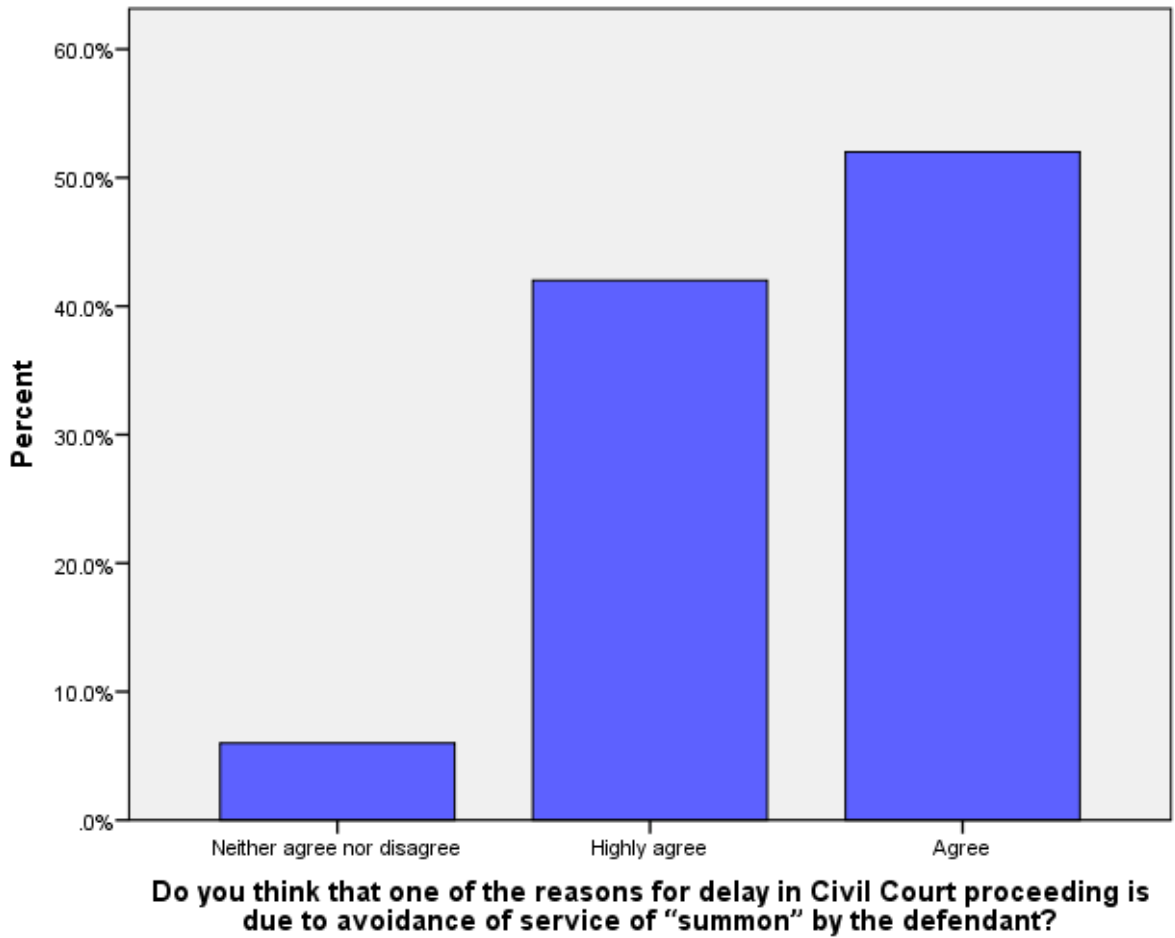
On the basis of the above case study, a chart appearing at Fig. No. Y (above) has been prepared showing the frequency of defendant's appearance in each case the summons have been served. A glance at Fig. Y, will reveal that service of summons within the four districts of Sikkim is satisfactory and the local residents of this State appears to be abiding with the judicial mechanism/process of the State.

### 3.2 Analysis upon questionnaire

### **3.2.1 Brief outline:**

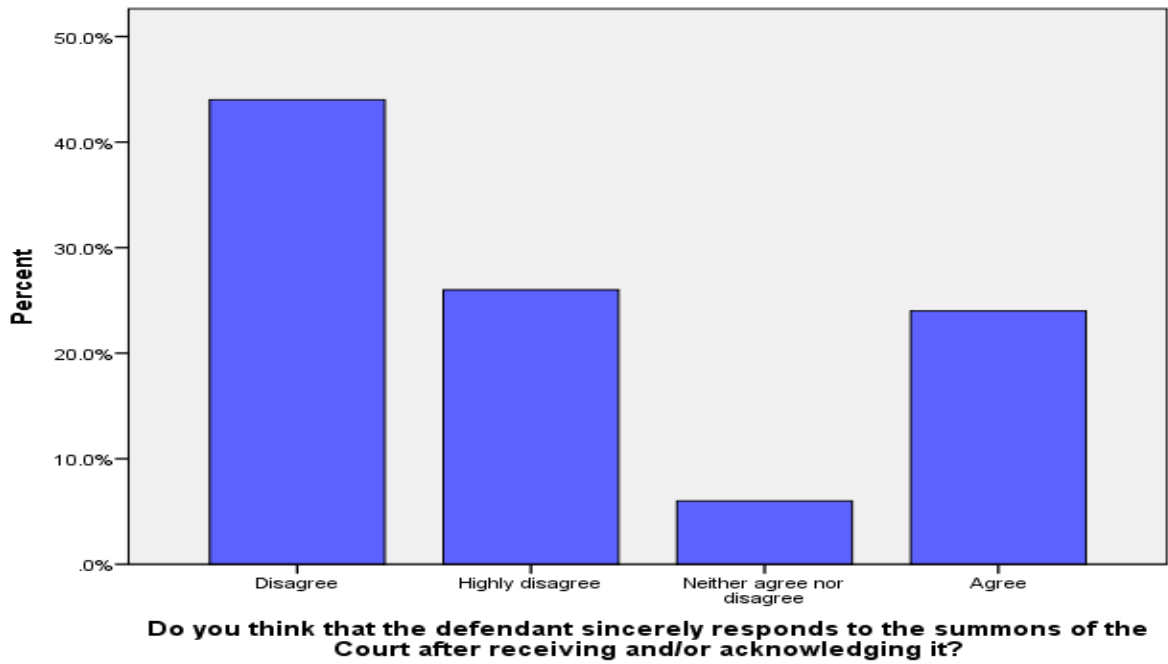
The Plaintiffs, Defendants, Advocates, Judicial Officers and Process Servers of all the four District Courts Complex of the State were also interviewed with the aid of questionnaires. The Researchers interviewed fifty (50) plaintiffs and fifty (50) defendants in these Court Complexes. Sixty-three (63) Advocates and fourteen (14) process servers were also interviewed. Due to busy schedule of the Judicial Officers, suggestions and views of few Judicial Officers could be managed to be incorporated in the report. Furthermore, the views of few eminent persons on this topic was also taken, such as Mr. J.B Pradhan, Additional Advocate General of the State, Mr. N. B. Khatiwada, Senior Advocate, Ex-MLA and former Additional Advocate General of Sikkim, and Mr. Jagat Bahadur Rai, Legal Remembrance-cum-Secretary, Law, Legal Legislative and Parliamentary Affairs Department, Government of Sikkim.

### **3.2.2 Views of the Plaintiffs**



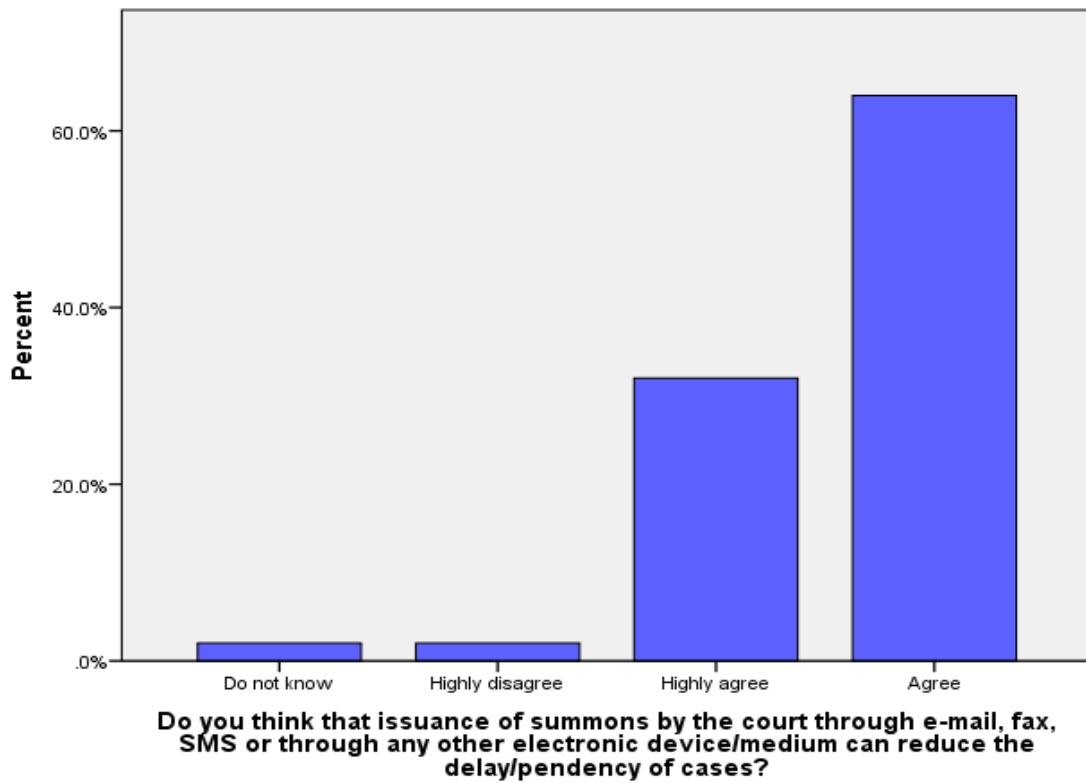
**Fig. A**

According to Fig. A (above), majority of the sample group of plaintiffs i.e. 52% has agreed and 42% has highly agreed that one of the reasons for delay in Civil Court proceedings is due to avoidance of service of summons by the defendant. Only 6% of the plaintiffs have neither agreed nor disagreed about the same.



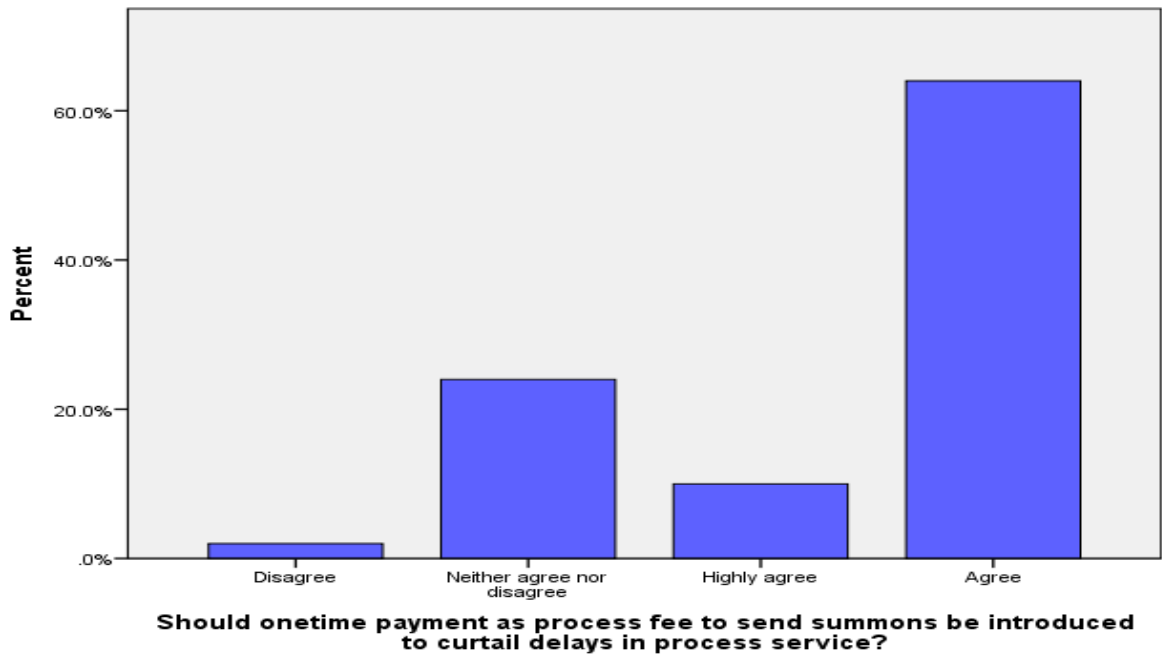
**Fig. B**

According to Fig. B (above), only 24% of plaintiffs think that defendants will sincerely respond to the summons of the Court after receiving and/or acknowledging it. Majority of plaintiffs i.e. 44% has disagreed and 26% has highly disagreed about the same. 6% of the plaintiffs have neither agreed nor disagreed to this question.



**Fig. C**

According to Fig. C, majority of the sample group of plaintiffs i.e. 64% has agreed and 32% has highly agreed that issuance of summons by the Court through e-mail, fax, SMS or through any other electronic device/medium can reduce the delay/pendency of cases. Only 2% of plaintiffs has highly disagreed and 2% do not know regarding the same.

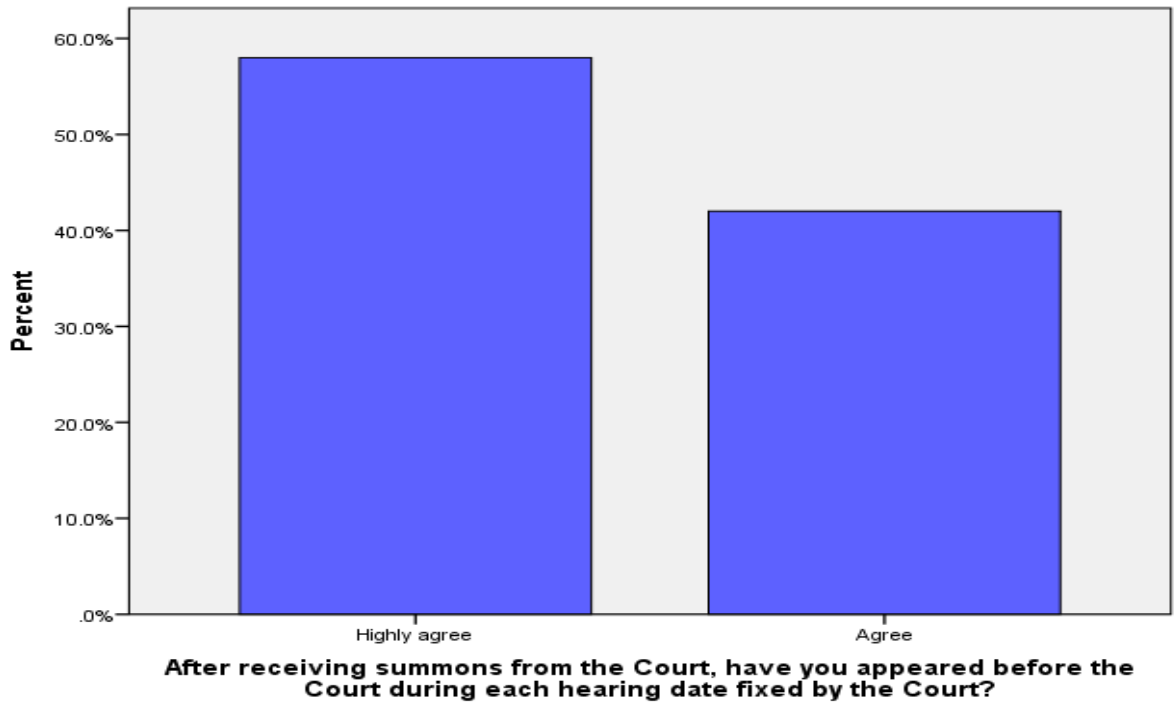


**Fig. D**

According to Fig. D (above), majority of the sample group of plaintiffs i.e. 64% has agreed and 10% has highly agreed that one-time payment as process fee to send summons be introduced to curtail delays in process service. Whereas, 24% of the plaintiffs neither agree nor disagree and 2% has disagreed regarding the same.

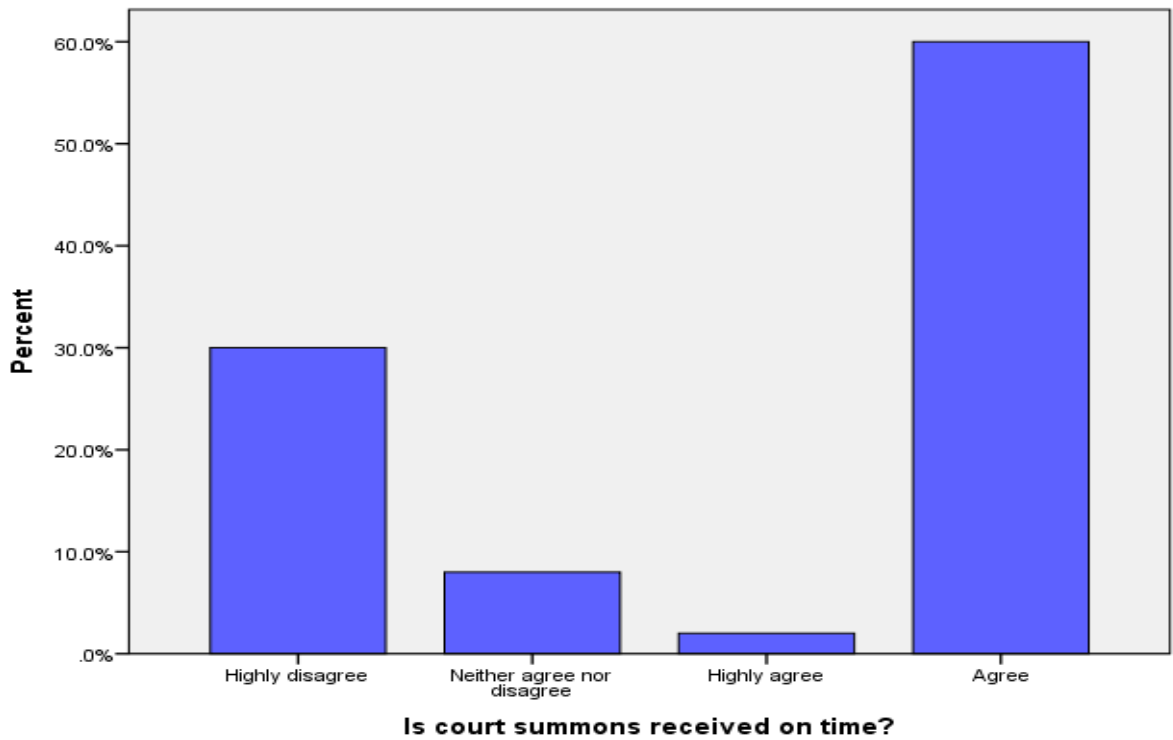


### 3.2.3 Views of Defendants



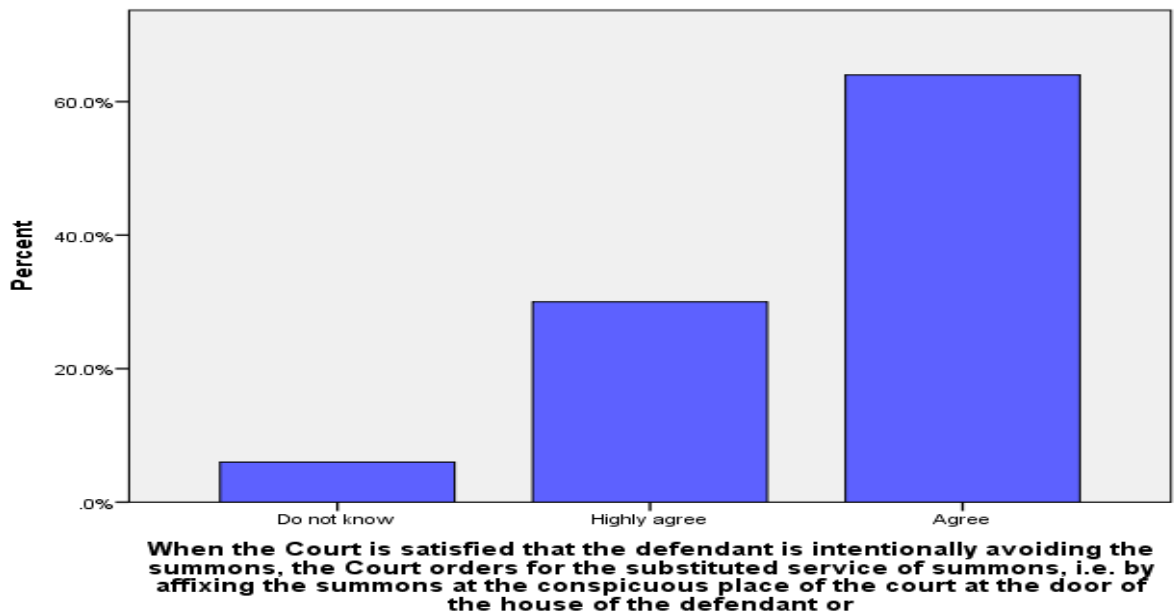
**Fig. E**

According to Fig. E, the sample group of defendants i.e. 58% has highly agreed and 42% has agreed that they have appeared before the Court during each hearing date fixed by the Court.



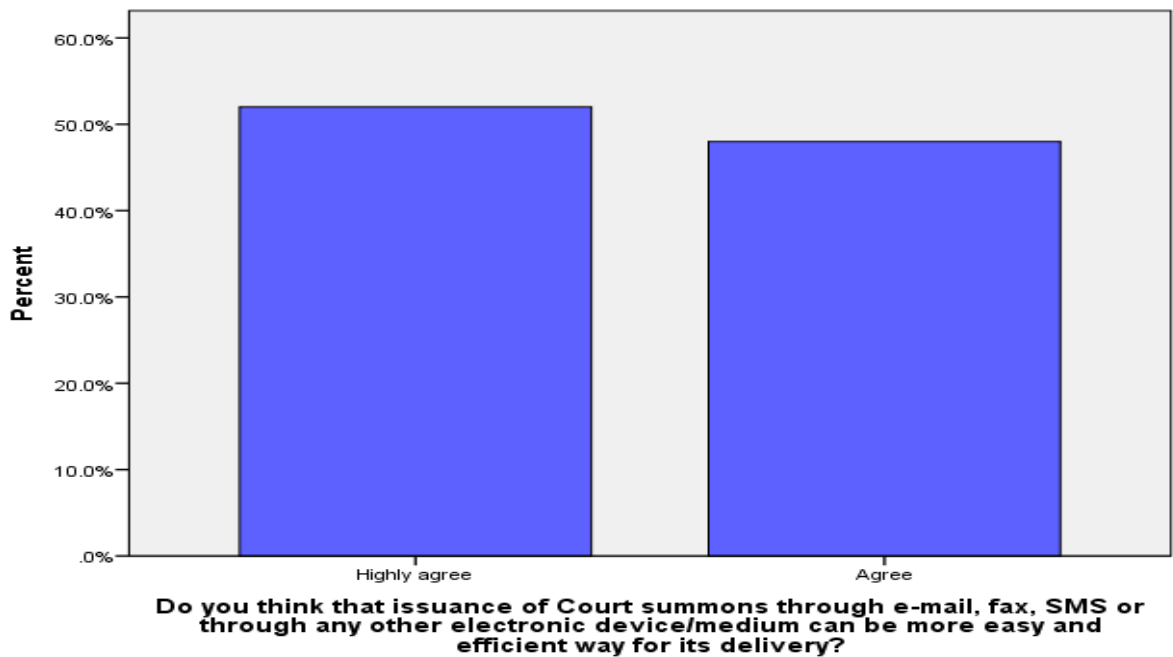
**Fig. F.**

From the above statistical analysis in Fig. F, it can be concluded that out of 50 defendants from the four district of Sikkim, 2% highly agrees and 60% agrees that the Court summons are received by them on time. 30% of the defendants has highly disagreed and 8% has neither agreed nor disagreed about the same.



**Fig. G**

According to Fig. G, of majority of the sample group of defendants, 30% has highly agreed and 64% has agreed that when the Court is satisfied that the defendant is intentionally avoiding the summons, the Court orders for the substituted service of summons. Only 6% do not have any idea regarding the same.



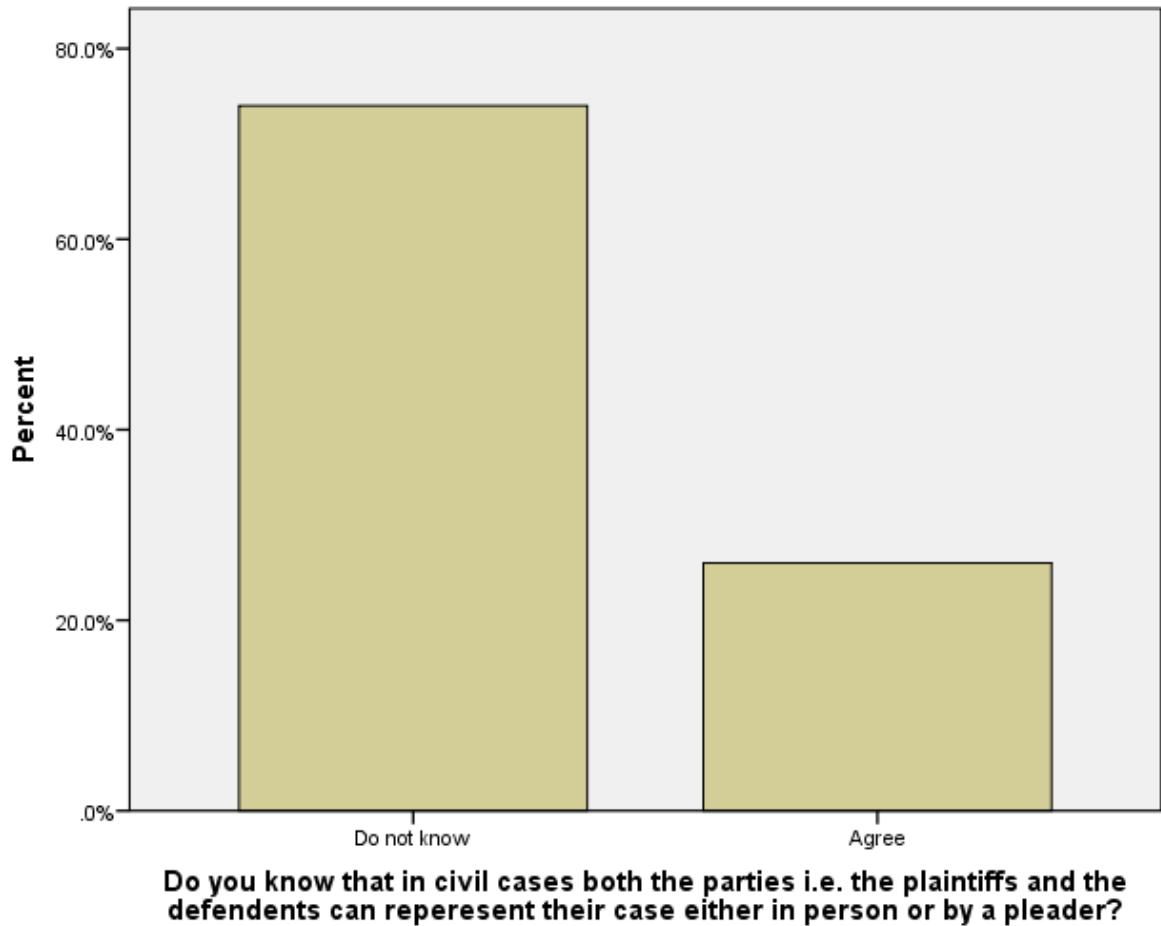
**Fig. H**

According to the study of the defendants sample group, 48% has agreed and 52% has highly agreed that issuance of summons by the Court through e-mail, fax, SMS or through any other electronic device/medium can reduce the delay/pendency of cases.

### **3.2.4 Contradictions Noticed:**

The response of the majority of the plaintiffs to the question 'whether the defendant responds to the summons of the Court?' is in negative as per Fig. B (above) while, the response of the majority of the defendants is in affirmative as per Fig. E (above).

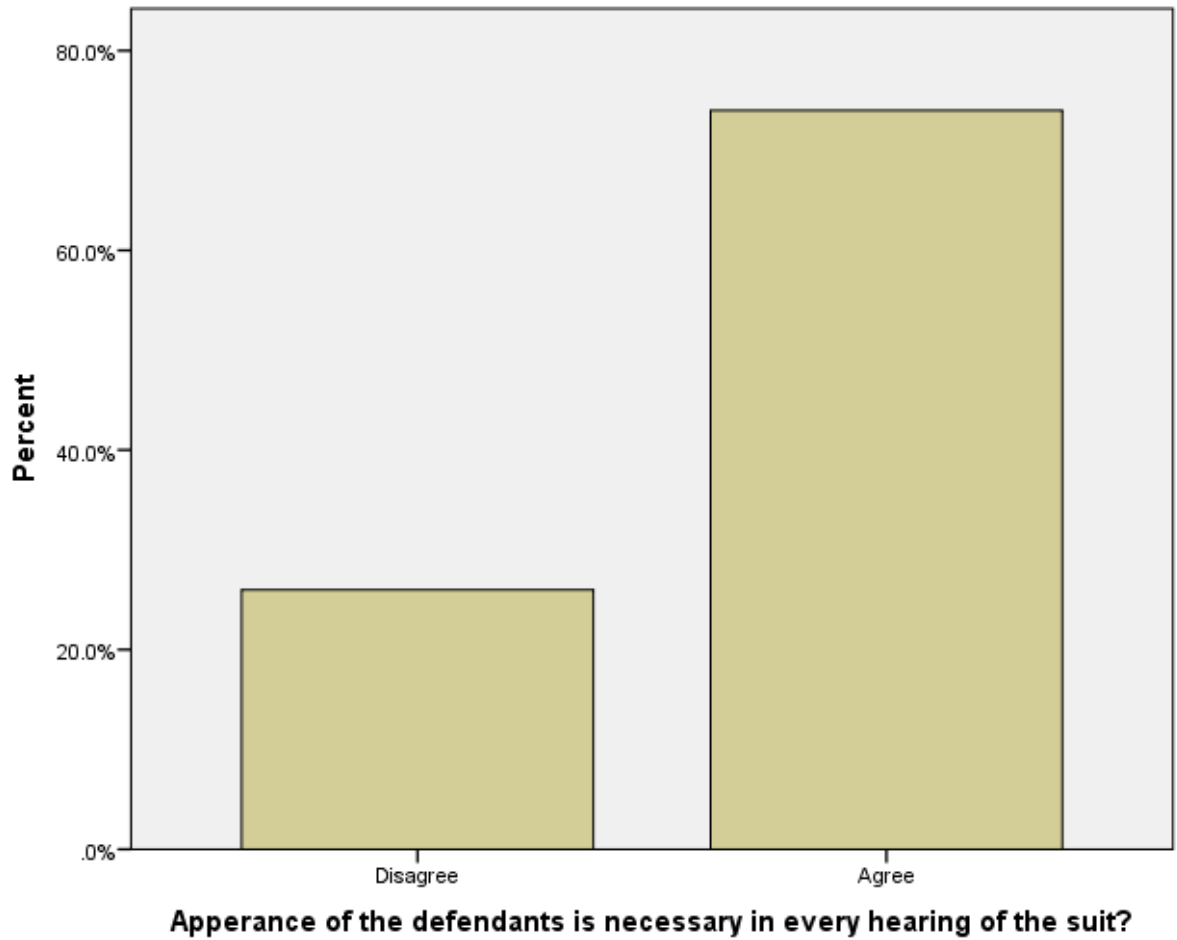
To resolve the contradictory responses of the plaintiffs and the defendants, the Researchers furthered prepared two supplementary questions and recorded the response in percentage. The same are as under:



**Fig. I**

From the response of the plaintiffs as seen in Fig. I, we can conclude that 75% of the plaintiffs are not aware that the parties in a Civil Suit can represent their case either in person or through a pleader. In many cases, the defendants authorize their pleader(s) to represent their case and come to the Courts only in the first date of appearance and during the stage of leading evidence. Since the majority of the plaintiffs were of the view that defendants ought to appear (in person) on every date the case is listed, and since they were not aware that pleaders could represent them, they had responded in negative to the question 'whether the defendant responds to the summons of the Court?' as per Fig. B (above).

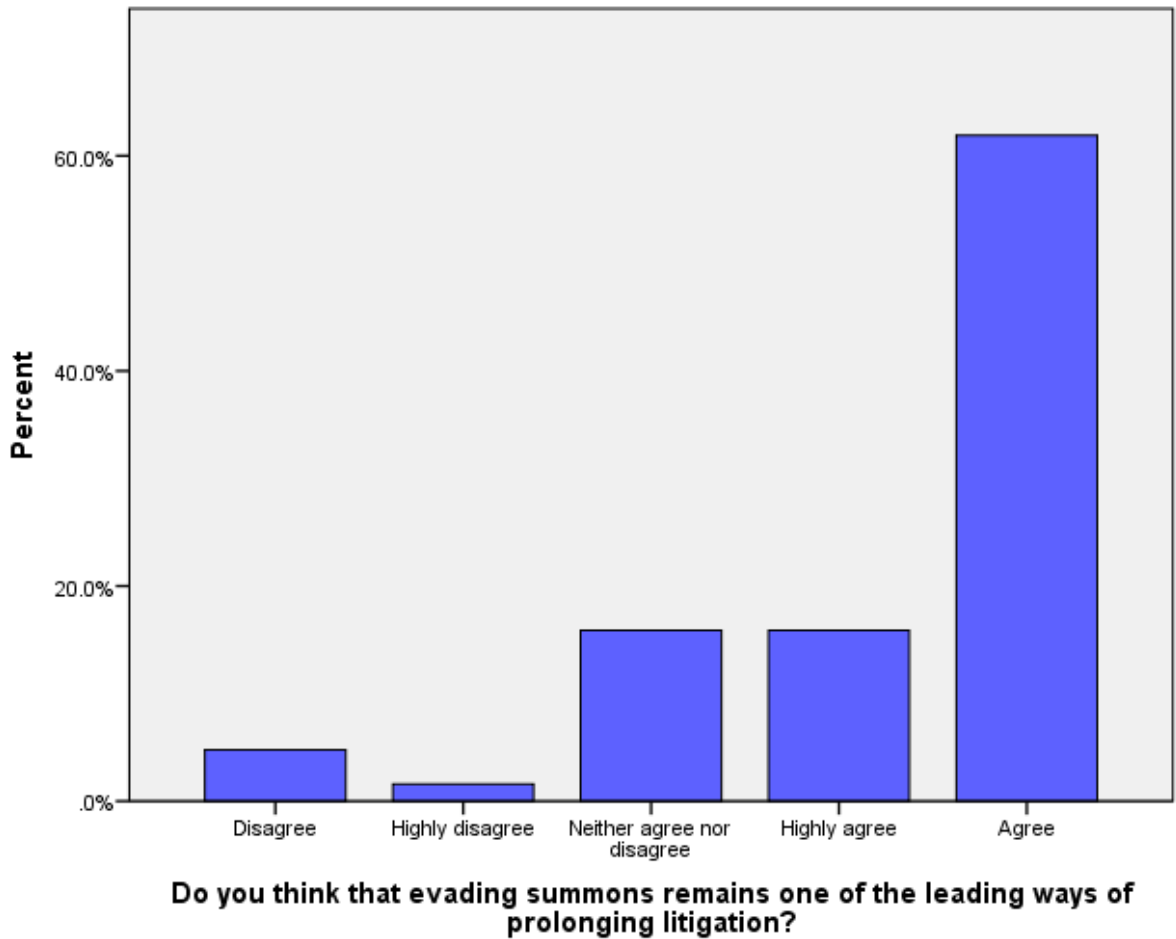
This clarifies the anomaly which was apparent in Fig. B.



**Fig. J**

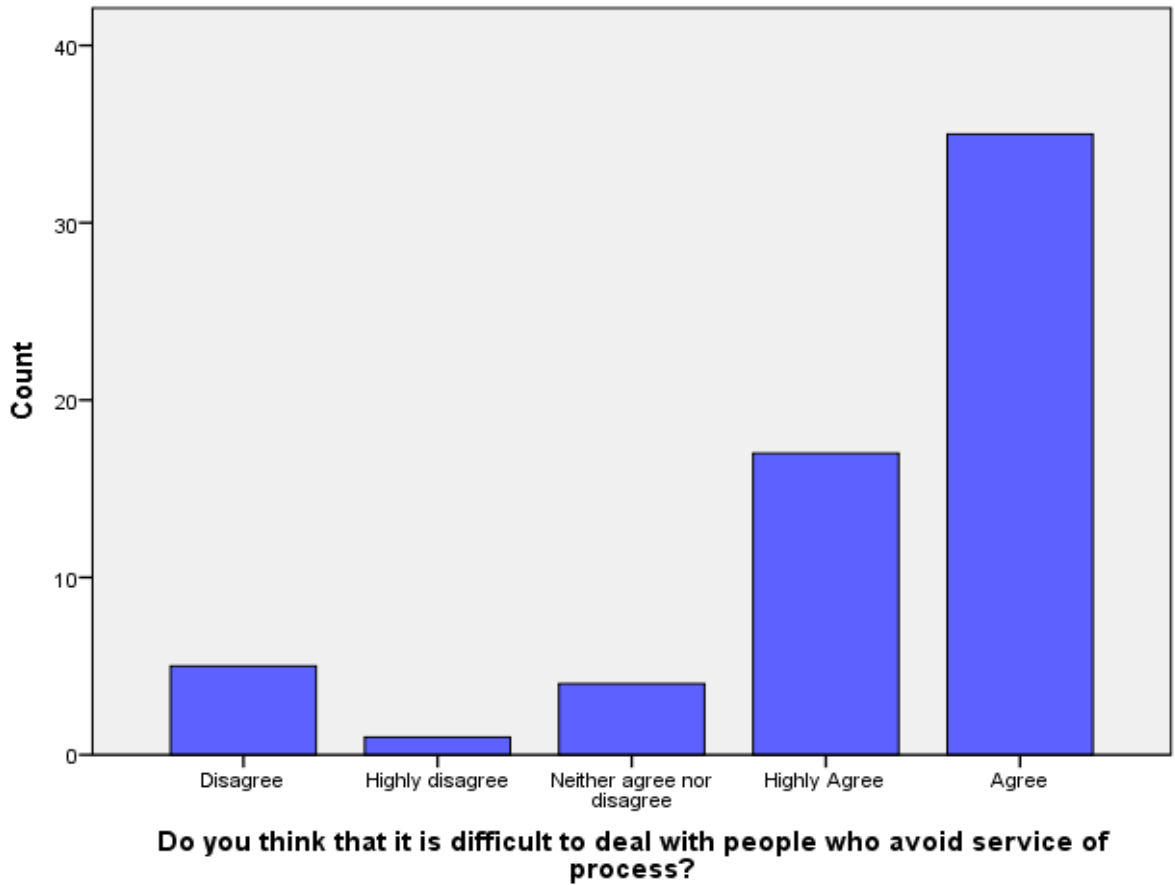
Also as per Fig. J, 75% of the defendants agrees and 25% disagrees that the appearance of the defendant is necessary in every hearing of the suit. This clarifies the response of the majority of the defendants in Fig. E (above) that they have appeared in each date fixed after receiving the summons from the Court.

### 3.2.5 Views of the Advocates



**Fig. K**

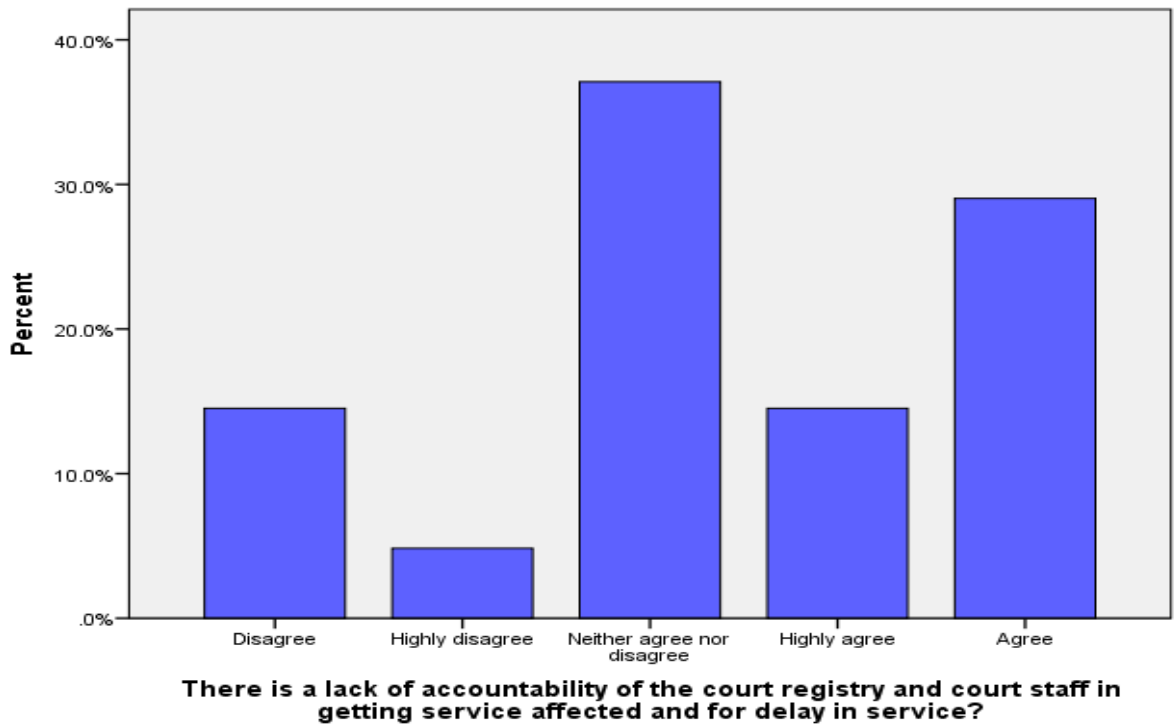
According to Fig. K, 61.9% of the Advocates interviewed has agreed and 15.9% has highly agreed that evading summons remains one of the leading ways of prolonging litigation. 1.6% of the Advocates have highly disagreed and 4.8% has disagreed to the above proposition. However, 15.8% has neither agree nor disagreed regarding the same.



**Fig. L**

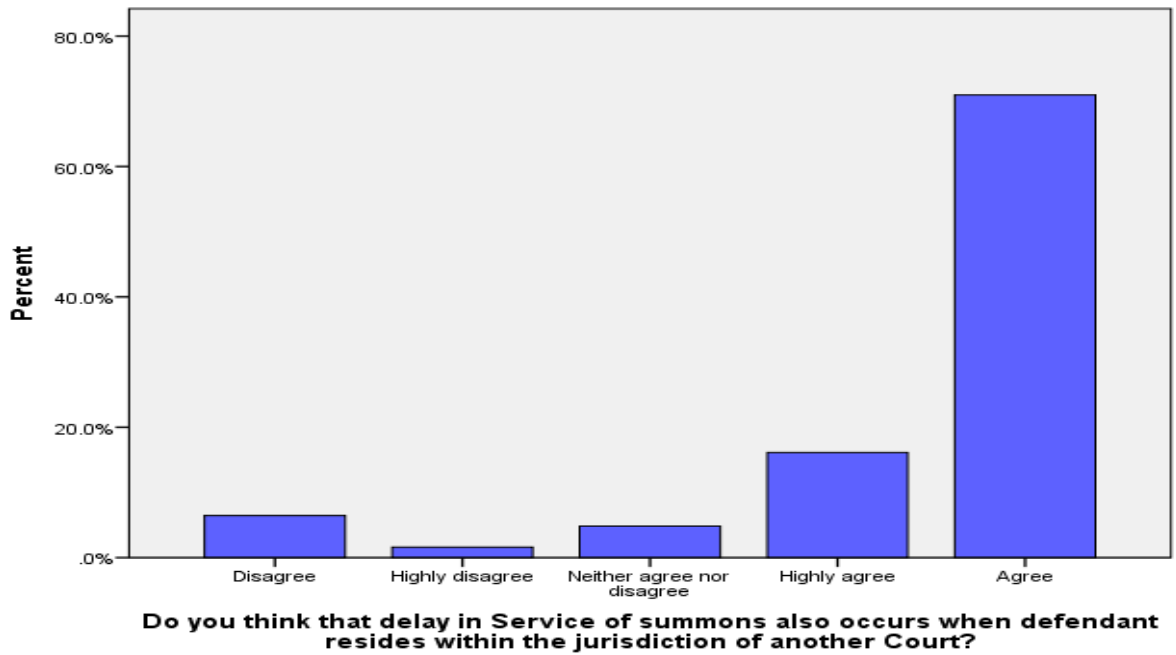
In Fig. L, majority of the sample group of lawyers i.e. 57.1% has agreed and 27.1% has highly agreed that it is difficult to deal with people who avoid service of process. 1.6% of the Advocates has highly disagreed and 7.9% has disagreed. 6.3% has neither agreed nor disagreed to the above proposition.





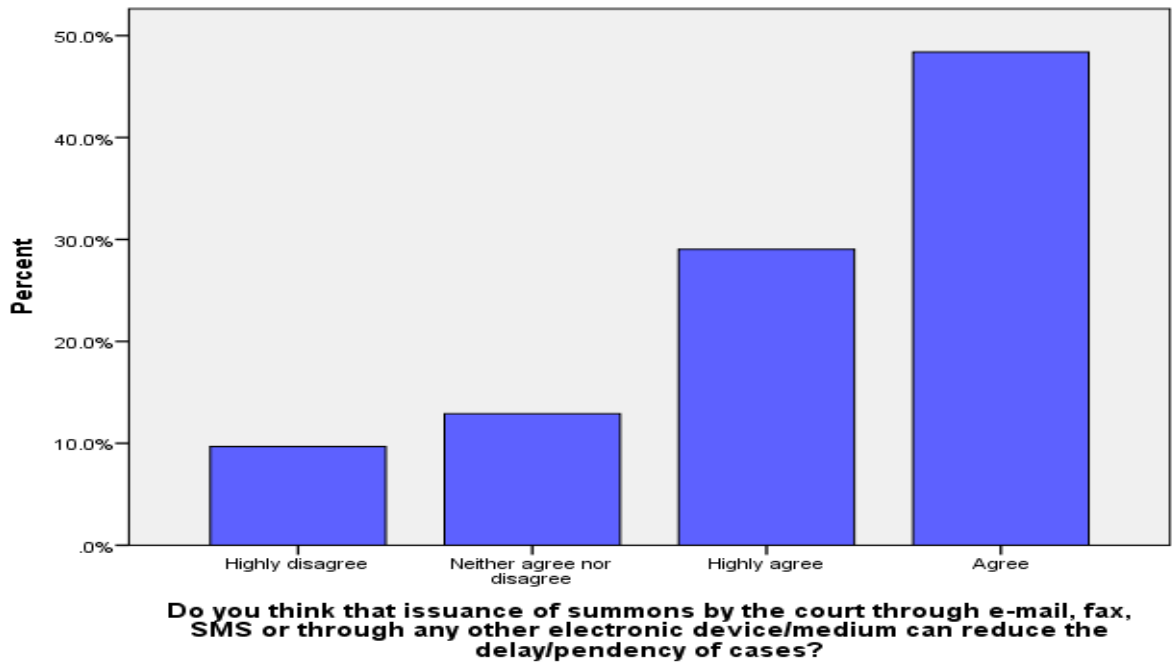
**Fig. M**

According to Fig. M, 14.3% of the Advocates (from the sample group) has highly agreed and 30.2% has agreed that there is a lack of accountability of the Court registry and Court staff in getting service affected and for delay in service. 14.2% of has disagreed and 4.8% has highly disagreed. Also 36.5% of the sample group has neither agreed nor disagreed.



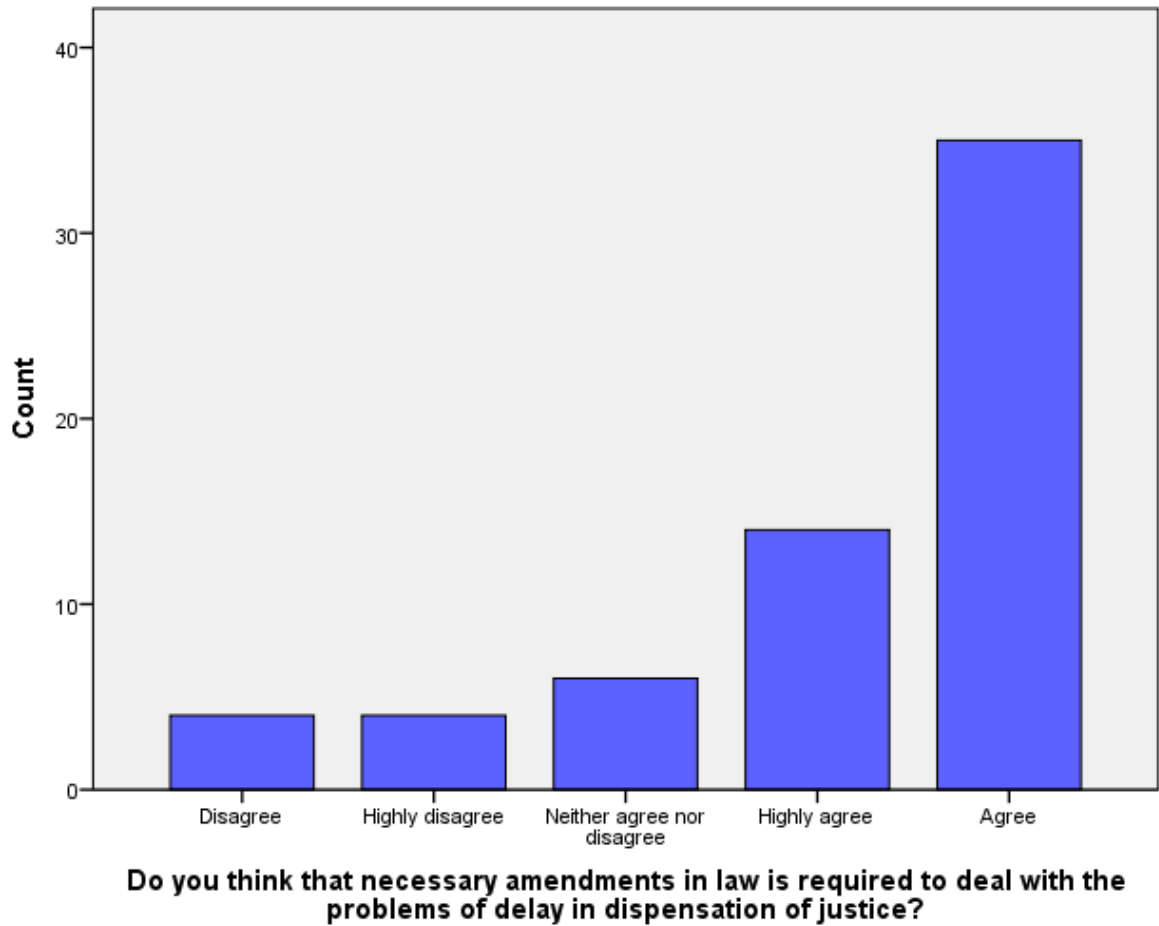
**Fig. N**

According to Fig N, it is found that majority of the Advocates have positively responded i.e. 71.4% has agreed and 15.9% has highly agreed that the delay in service of summons also occurs when the defendant resides within the jurisdiction of another Court. Only 1.6% has highly disagreed and 6.3% has disagreed to this proposition. 4.8% has neither agreed nor disagreed regarding the same.



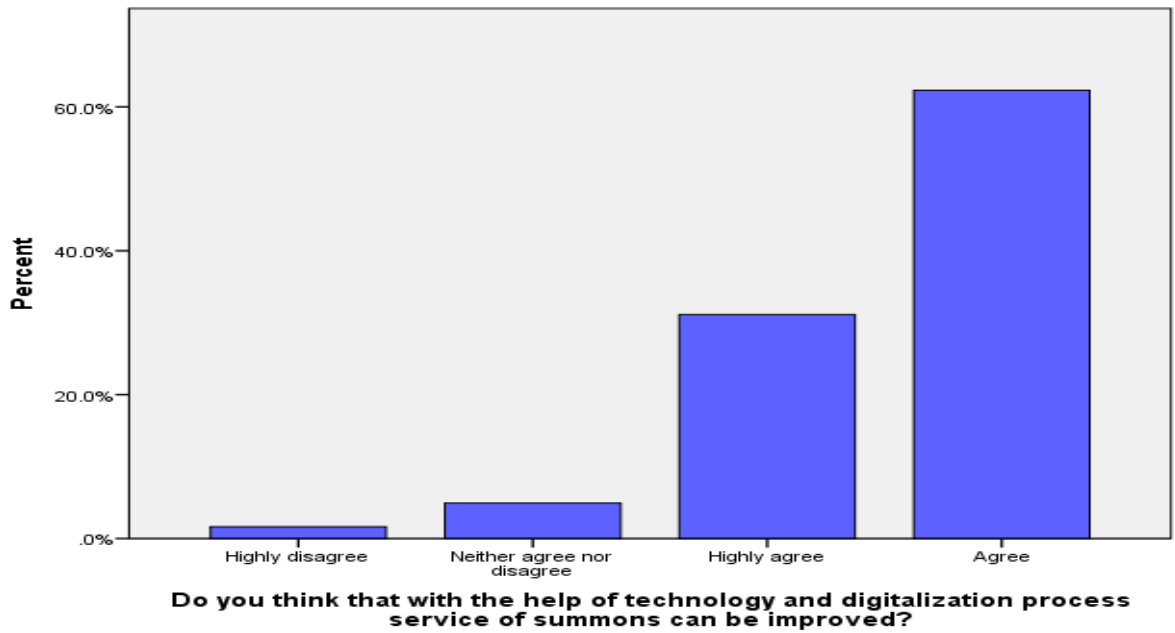
**Fig. O**

According to Fig. O, the sample group of 49.2% has agreed and 28.6% has highly agreed that issuance of summons by the Court through e-mail, fax, SMS or through any other electronic device/medium can reduce the delay/pendency of cases. 9.5% has highly disagreed and 12.7% has neither agreed nor disagreed about the same.



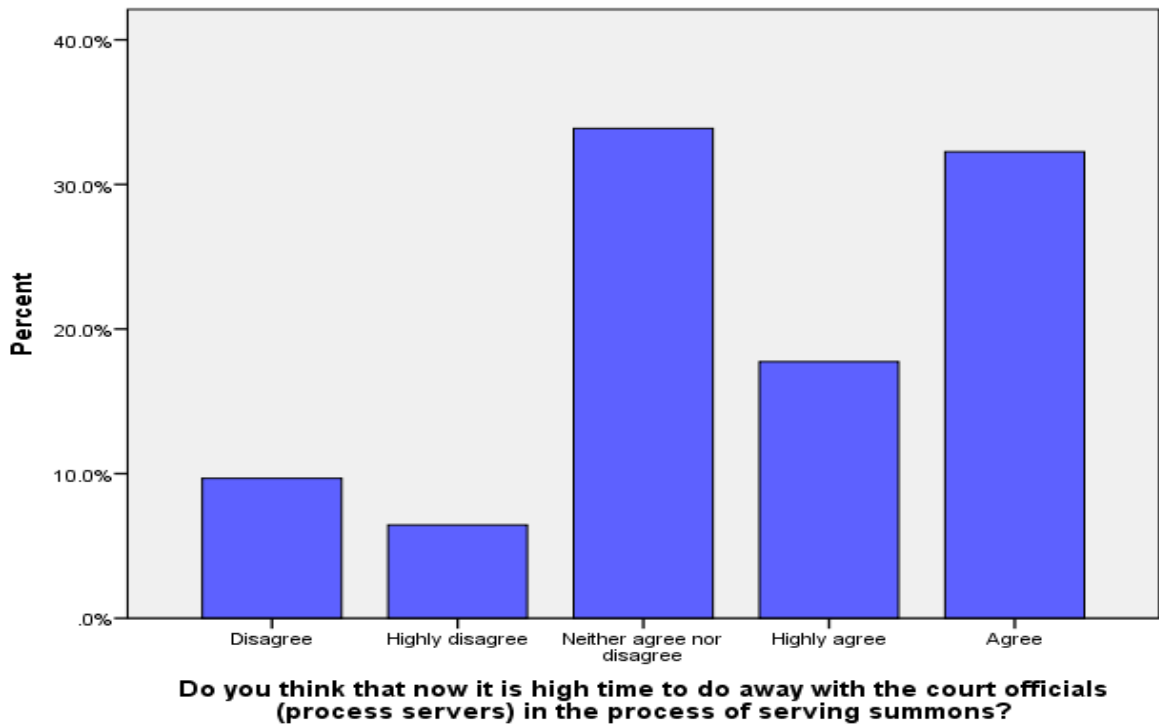
**Fig. P**

As per Fig. P, majority of the sample group of Advocates i.e. 55.6% has agreed and 23.8% has highly agreed that necessary amendments in the law is required to deal with problem of delay in dispensation of justice whereas 4.8% has highly disagreed and 6.3% has disagreed about the said proposition. 9.5% neither agreed nor disagreed regarding the same.



**Fig. Q**

According to Fig. Q, the majority of the sample group of Advocates i.e. 61.9% has agreed and 30.2% has highly agreed that with the help of technology and digitalization, service of summons can be improved. 1.6% of the sample group highly disagrees that service of summons cannot be improved by digitalization of Courts. 6.3% neither agrees nor disagrees regarding the same.



**Fig. R**

From the four district of Sikkim, 17.6% of Advocates has highly agreed and 33.3% of them has agreed that it is high time to do away with Court officials (process servers) in the service of summons. 6.3% of the study group has highly disagreed and 9.5% has disagreed with this proposition. 33.3% has neither agreed nor disagreed to the said question.

### **3.2.6 Views of the Judges**

The views of the following learned Judges have been incorporated in this study:

1. Mrs. K.C Barphungpa, District and Sessions Judge, West Sikkim at Gyalshing.
2. Mr. Suraj Chettri, District and Sessions Judge, South Sikkim at Namchi.
3. Miss Jyoti Kharka, District & Sessions Judge, East Sikkim at Gangtok.

4. Mr. Benoy Sharma, Chief Judicial Magistrate-cum-Civil Judge, East Sikkim at Gangtok.
5. Miss Subarna Rai, Chief Judicial Magistrate-cum-Civil Judge, West Sikkim at Gyalshing.
6. Miss Ranjeeta Pradhan, Civil Judge-cum-Judicial Magistrate, East Sikkim at Gangtok.

**The views of the learned Judges are summarised hereinunder:**

- Service of Summons in the first instance is rarely delivered. Therefore, it is one of the principal reasons for delay in the trial.
- While serving summons in particular cases under Rule 21 to 30 of the C.P.C, 1908, the Courts should opt for sending the summons by fax or e-mail to the concerned Court(s) in whose jurisdiction the defendants resides so that summons are served at the earliest.
- Summons to witnesses from outside State, sent through post does not return on time or it returns only after the date fixed has elapsed. In criminal cases, the Investigating Officer(s) provide incomplete address of the witnesses and sometimes even mention wrong gender (further confusion arises when it comes to Buddhist names). Also summons sent through Registered Post AD never returns on time.
- Summons from other Courts are normally received very late due to which it is difficult to have it served on time.
- Amendment should be incorporated to include any other electronic mode of communication valid service in-as-much, as telephonic information should also be considered as valid service.
- With the advancement of technology, message applications, such as Whatsapp could be used to issue notice upon the parties. However, the

limitations is that applications of this kind can in the future be modified, abandoned or lose its popularity. Hence, it is only short term solution.

- Use of electronic medium for service of summons may be limited. Parties who are illiterate and economically backward may not be reached by this means. In cases where any party denies receipt of summons or notice for reason that he did not check the message or his mobile phone was lost or data destroyed etc. the Court have no other option but to accept the plea. It is also difficult to bring on record the mode of service of summons through such mobile applications.
- Publication of notice and summons in local newspaper has to be encouraged. Service of summons and notice through electronic mode should also be recognized.
- Rules are to be framed for the service of summons and notice through electronic mode.
- If electronic mode of service of summons is not incorporated in the Code, then it defies logic as to how Courts could be turned paper-less.
- Process servers are not well trained. They are not aware as to how they are to serve summon or notice and what kind of report(s) are to be prepared. Emphasis should be for periodical training of the process servers.
- The service provided by post office is very poor. Notice and summons sent through post office rarely returns with proper report.

### **3.2.7 Views of the Process Servers**

The views expressed by Process Servers are summed up as under:

- Summons are issued giving very short period for service. Tour programs are usually approved two-three days before the actual date listed for



service and practically, it is not possible to serve summons within such short span of time in remote areas. Sometimes, it is difficult to reach the relevant person on mobile phone due to network problems in remote areas of the hilly State.

- It is troublesome to serve summons in remote areas due to non-availability of public transportation.
- For tour to distant places also, the process servers are directed to report back to the station on the same day which frequently results in non-service of summons on time.
- Sometimes the address of the parties are not correctly mentioned. Parties are not available in the given address. Yet sometimes the parties conceal/suppress their identity and mislead the process server by reporting that said person is deceased or have shifted to another place, with sole intent to avoid the summons.
- Particularly in the East district at Gangtok, there are many Courts in the same Complex, i.e. District and Sessions Court, Special Division-I, Special Division-II, Family Court, Fast Track Court, Chief Judicial Magistrate, Civil Judge-cum-Judicial Magistrate (East), Civil Judge-cum-Judicial Magistrate (Chungthang), Civil Judge-cum-Judicial Magistrate (Soreng) and various benches of Lok Adalats. Yet there are only five process servers who have to handle summons and notices issued by all these Courts. Additionally, the same process servers are also expected to serve summons outside the States.

**3.2.8 Suggestions of the following eminent persons are summarized below:**

1. Mr. J.B Pradhan, Addl. Advocate General of Sikkim.

2. Mr. Jagat Bahadur Rai, (Member of Sikkim Superior Judicial Service) Law Remembrancer-cum-Secretary, Government of Sikkim.
  3. Mr. N.B Khatiwada, Senior Advocate, EX- MLA and former Addl. Advocate General of the State.
- By paying one time process fee to the State Government, service of summons in Civil cases can be outsourced.
  - In most of the cases, addresses of the parties (defendants herein) are not correct. There is need to work on proper address verification by the postal department when the summons are issued by post.
  - In addition to the prescribed mode for service of summons in the Code, personal service (*dasty service*) should also be encouraged in the trial Courts and the report of the party itself could be accepted and placed on record.
  - In some cases where the defendant refuse to sign the acknowledgement or after using all due and reasonable diligence, cannot be found and there is no agent empowered to accept service of summons on his behalf nor any other person on whom service can be made, in such situation plaintiff may be allowed to invoke Order V Rule 17 and shall then return the original to the Court from which it was issued, with endorsement that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.
  - Also during the training sessions of the process servers, special emphasis should be made upon Order V Rule 17 which will help them to understand that in any situation discussed above what step/steps can be taken.

## CHAPTER – IV

### CONCLUSION AND SUGGESTIONS

The essence of civil jurisprudence begins with the contributions rendered by the great English *utilitarian* philosopher and social reformer, Jeremy Bentham. In his book *An Introduction to the Principles of Morals and Legislation*,<sup>56</sup> he laid the groundwork for a theory of “law as the expressed will of the sovereign”. John Austin, followed the theoretical footsteps of Bentham by writing *The Province of Jurisprudence Determined*.<sup>57</sup> However, Austin departed from Bentham on a number of points, for example by supporting common law. He considered the “law as command from a sovereign that are enforced by the threat of sanction”. This sovereign can be a single person or a collective sovereign such as parliament, with a number of individuals, with each having various authoritative powers. Austin’s theory is also somewhat brief in his explanations of Constitution, International Law, non-sanctioned rules or law that gives rights. According to Austin “source of law” has three different significances.<sup>58</sup>

- (1) The historical document from which the body of law can be known.
- (2) Immediate or direct author of the law which means the sovereign in the country.
- (3) The cause that have brought into existence the rules that later on acquire the force of law. Example customs, judicial decision, equity etc.

It is useful to note that the origin of Civil law is through the customs prevailing from time immemorial. Preamble of the Code of Civil Procedure, 1908 states:

*“An Act to consolidate and amend the laws relating to procedure of the Courts of Civil Judicature.”*

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56 Jeremy Bentham, “*An Introduction to the Principles of Morals and Legislation*”, Published by Prometheus Books Publishers, 1879.

57 John Austin, “*The Province of Jurisprudence Determine*”, published by Cambridge University Press, (1995) (1832).

58 [www.desikanoon.co.in](http://www.desikanoon.co.in) accessed on 4<sup>th</sup> Oct 2017.

The entire spectrum of the Code is to deliver justice. Therefore, Rules should be strictly interpreted but whenever interest of justice so requires, the provisions can be made flexible in order to render complete justice in a case. If there is any ambiguity about any provision, that interpretation should be applied which serves the purpose of the Civil Procedure Code, that is to meet ends of justice.<sup>59</sup> The law of procedure is also called the “law of action” and is considered as that branch which governs the process of litigation,<sup>60</sup> which includes the jurisdiction of the Courts, proceeding in the Court, issue of processes/summons, warrants, etc, pleadings, trial procedure, recording of evidence, appearance of parties, Advocates etc, judgement of the courts, costs, review, revision, appeals etc, and finally the execution of decree or order.

The preliminary stage in the Civil Procedure Code involves the summoning of the parties which is strictly adhered according to the procedure which provides all interested parties an opportunity for appearance in a Court in order to put forth their respective arguments for the settlement of issues. Another important procedural stage is called “pleadings”<sup>61</sup> defined in the Code which is the backbone of litigation. The third procedure of vital importance is to bring the proof, it is a process which enables the parties to furnish the material by adducing evidence to that, the Court may arrive at the just conclusion on the basis of issues for determination before it. Then comes the decision of the Court which is embodied in its judgement. The final stage in the procedure is execution it is considered as the process where a decree is enforced by the Court. In a nutshell, jurisprudential aspect of the Civil Procedure Code, 1908 is a product of well-thought out efforts and experimentation extending over more than half a century. The Code has stood the test of time as rightly held by the Law Commission of India in its 27<sup>th</sup> report of December, 1964.

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59 Law Times Journal, “*Civil Procedure Code*”, Friday, Oct 13, 2017, available at [www.lawtimesjournal.in/civil-procedure-code/](http://www.lawtimesjournal.in/civil-procedure-code/) accessed on 13<sup>th</sup> Oct 2017.

60 P.J. Fitzgerald (ed.): *Salmond on Jurisprudence* (12<sup>th</sup> ed.) page. 461.

61 Civil Procedure Code, 1908 Order VI Rule 1. (Shall mean plaint or written statement. The object and purpose of pleadings is to enable the adversary party to know the case it has to meet).

However, to ensure fair trial and speedy justice, countless efforts have been made by the law makers to improve the Civil Procedure Code, 1908, by amending it multiple times, though, without making any radical changes. In the year 1999, “a bill was formulated to amend the Civil Procedure Code, 1908 which was proceeded from the recommendation in the 129<sup>th</sup> report of the Law Commission of India but it was discarded as it met with great resistance and strikes from lawyers across the country”.<sup>62</sup> Later, the Code of Civil Procedure (Amendment) Act, 2002 was formulated for reducing delays and hardships experienced by litigants at various levels in the trial of civil suits. The mode of serving summons on defendants have been enlarged with the addition of more options such as e-mail, fax, speed post and private courier under Order V Rule 9 (3). Further, on application of the plaintiff to the Court he/she may be permitted to effect service of summons to the defendants under Order V Rule 9A.

The Hon’ble Supreme Court of India in the case of ***Salem Advocate Bar Association, T.N v. Union of India***,<sup>63</sup> at paragraph 28 has held that:

*“Service of summons is one of the major causes of delay in the due progress of the case and there is a serious problems in process serving agencies in various courts. In such scenario giving opportunity to the plaintiff to serve the summons on the defendant or get it served through courier cannot be objected. There is, however, danger of false report of service, which is required to be adequately guarded. The courts shall have to be very careful in cases where order for deemed service are required to be made on the basis of endorsement of such service or refusal. The High Courts can make appropriate rules and regulations or issue practice directions to ensure that such provisions of service are not abused so as to obtain false endorsements. The guidelines as to the relevant details to be given can be issued by the High Courts. The High*

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62 Frontline, “Lawyers against an Act” India’s National Magazine from the publisher of THE HINDU, Vol 17, Issue 5, March 04 – 17, 2000.

63 (2005) 6 SCC 344.

Courts, it is hoped, would issue as expeditiously as possible, requisite guidelines to the trial courts by framing appropriate rules, orders, regulations or practice directions". Further the Supreme Court of India in this case observed that the case flow management model rules can yield remarkable results in achieving move disposal of cases. Hence, was pleased to request the Law Commission of India to prepare a case management formula based upon modern principles. (emphasis supplied)

After the above direction issued by the Hon'ble Supreme Court, some of the High Courts in exercise of powers under Part X, Rule 122 (*Power of certain High Courts to make Rules*) of the Civil Procedure Code, 1908 made considerable efforts to improve the procedure for process service within their jurisdiction. Later, Supreme Court of India received a "Consultation Paper on Case Management" along with the "Draft Rules for High Courts and Subordinate Courts" from a committee setup by it and headed by the Chairman Law Commission. As a result, the Supreme Court of India directed the High Courts and Subordinate Courts in the country to implement the "Case Flow Management" Rules for speedy disposal of cases.<sup>64</sup> First few Courts who took the initiative as directed by the Hon'ble Supreme Court of India are herein below;-

High Court	Notification No.	Regulations	New Rule	Statute
Bombay	Maharashtra. Govt. Gazette Dt. 26-9-1996, Part 4-C. Page. 423	The Bombay High Court Appellate Side Rules, 1960	Rule (5A)	In addition to other modes, urgent orders may be sent or communicated through FAX or E-Mail, wherever such facility is available, at the cost of the party.
Karnataka	LAW 293 LAC 2005, Bangalore, Dated 29 <sup>th</sup>	Code of Civil Procedure (Amendment) Karnataka Rules,	Rule (5A) and (5B) has been inserted	(5A) Order on deemed service are required to be made on the basis of endorsement of such service

64 Law Commission of India, "Consultation Paper on Case Management", available at [www.lawcommissionofindia.nic.in/adr\\_conf/adr\\_index.htm](http://www.lawcommissionofindia.nic.in/adr_conf/adr_index.htm)

	December, 2006	2005	along with	or refusal under this rule, the person effecting service shall file an affidavit in the language known to him stating, inter alia, as to who were all present at the time of service. The Court on consideration of such affidavit, shall pass orders as to deemed service.  (5B) If the contents of an affidavit filed under sub-rule (5A) are found to be false, the deponent can be summarily tried and punished for perjury and the concerned courier company can be black-listed.  (12A) District Judge in consultation with the local bodies, statutory bodies, corporations and autonomous bodies within the jurisdiction of the district shall prepare a panel of their respective authorized agents empowered to accept service of summons/notice in the suits, appeals and other proceedings initiated against such local bodies, statutory bodies, corporations and autonomous bodies, on their behalf which shall be deemed as valid service.
Karnataka	LAW 294 LAC 2005, Bangalore, Dated 29th December, 2006	Karnataka (Case Flow management in Subordinate Courts) Rules, 2005	Rule4 sub-rule (2)(b)	The plaintiff/petitioner shall furnish the correct postal address of the parties in the pleading as required under Rule 14A of Order VI, in the absence of the same the office shall not take further steps until necessary compliance is made.
Delhi	Delhi Gazette: Extraordinary No. 70/Rules/DHC Dated 9 <sup>th</sup> Feb 2011	Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil	Rule (8) and (12)	(8) A party desirous of sending the process by Fax shall provide the Fax Number of the other party whom it would like to serve by Fax.

		Proceedings)Rules, 2010		(12) Parties to provide electronic mail address, if desire to serve the other party by electronic mail. Party shall file an affidavit in Court stating that the electronic mail address of the other party given by him is correct to the best of his knowledge.
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With regard to the State of Sikkim, the current Rules relating to filing of petitions, appeals and other procedure in the High Court of Sikkim is the “Sikkim High Court (Practice and Procedure) Rules, 2011”. Initially, the Rules pertaining to Practice and Procedure in the High Court of Sikkim, was the Sikkim High Court (Judicial Business) Rules, 1980 framed in exercise of the powers under Section 8 of the High Court of Judicature (Jurisdiction and Powers) Proclamation of 1955. Consequent to this Rules being repealed, the Sikkim High Court Practice and Procedure Rules, 1991 came into force, which was further repealed and replaced by Sikkim High Court (Practice and Procedure) Rules, 2011.<sup>65</sup> However, the said Rules do not expressly provide for separate Rule(s) regarding service of summons except in Chapter-VI, i.e. Rules under Special Act, Part A- Rules Regarding Trial of Election Petition under Part VI of the Representation of the People Act, 1951, as Amended, being Rule 161 Issue of Process, Rule 162 substituted service<sup>66</sup>. It is pertinent to mention that these Rules do not contain the additional procedure for service of summons as indicated in the Code of Civil Procedure (Amendment) Act, 2002 under clause (3) of Rule 9 and Rule 9A of Order V.

Thereafter, High Court of Sikkim framed the **High Court of Sikkim Case Flow Management Rules, 2006** vide Notification No. 27/HCS dated 05.08.2006 which was published in the Sikkim Government Gazette Extraordinary No. 249 at Gangtok on Monday 11<sup>th</sup> August, 2006. Further, **Subordinate Courts of**

<sup>65</sup> Sikkim High Court (Practice & Procedure) Rules 2011.

<sup>66</sup> Ibid note 65 at page 38, 42 & 43.



***Sikkim, Case Flow Management Rules, 2006*** was also framed vide Notification No. 28/HCS dated 05.08.2006 published in the Sikkim Government Gazette Extraordinary No. 250 at Gangtok on Monday 11th August, 2006. However, after careful perusal of these notified Rules in contrast with the Draft (Model) Rules prepared by the Law Commission of India, we observed that ***Subordinate Courts of Sikkim, Case Flow Management Rules, 2006, inter alia***, does not deal with the original suits, which includes service of summons/notices.<sup>67</sup>

## **FINDINGS OF THE STUDY**

1. On the basis of the case study followed with case study chart Fig. No. Y and upon perusal of the questionnaires which were calculated in terms of percentage (%) i.e. Fig. No. B, Fig. No. E, Fig. No. I and Fig. No. J, it cannot be concluded that in civil suits, service of summons to the defendants is among the principal cause of delay in the State of Sikkim. However, on the other hand it cannot be ignored that delay in service of summons occurs when the defendant resides outside the Court's jurisdiction as per Fig. No. N.
2. Careful analysis of questionnaire in Fig. No. F would show that summons are being delivered on time to the defendants residing within the jurisdiction of the concerned Court.
3. It is practically not possible for the process servers to serve summons within two-three days in remote areas the State due to non-availability of transportation, frequent road block by landslide etc. This would mean that topographical feature and the mountainous terrain of the State of Sikkim State is in itself a hindrance in serving of summons.

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<sup>67</sup> Consultation Paper on Case Management:- Law Commission of India Annexure at page 7, 8 & 9. Available at [www.lawcommissionofindia.nic.in/adr\\_conf/adr\\_index.htm](http://www.lawcommissionofindia.nic.in/adr_conf/adr_index.htm) assessed on 03.10.2017.

4. Sometimes parties conceal/suppress their identity and mislead the process servers by informing that the relevant person is deceased or have shifted to another location. However, on analysis of Fig. No. F, shows that defendants receive Court summons on time. Therefore, it can be deduced that in Sikkim, it is not a common practice to avoid accepting summons. Nevertheless, we cannot completely ignore the fact that sometimes defendants avoid accepting summons by influencing process servers.
5. One of the question to the sample group of Advocates was whether defendants influence the process server to avoid the summons?

Out of 63 persons examined, 11 of them have said that they neither agree nor disagree, which comes to 17.5%. 18 of them mentioned 'do not know' which comes to 28.5% and 9 of them gave their answer as 'highly disagree' which comes to 14.3%. 6 of the Advocates examined have answered as 'highly agree', which comes to 9.5% and 19 of them have agreed to this question, which is equal to 30.2%. [*calculation value for each answer is X (divided by) total subjects = Y (multiplied by) 100 = %*]

Therefore, it can be concluded from the findings that sometimes process servers are being influenced by the defendants in the State of Sikkim.

6. Perusal of Fig. No. C, Fig. No. H, Fig. No. O and Fig. No. Q would reveal that the issuance of summons through e-mail, FAX, SMS is encouraging and may be utilized as a medium of serving summons in the State of Sikkim.
7. To the proposition whether it is the need of the hour to do away with the process servers, Fig. No. S shows that out of 63 Advocates, 11 of them, which is 17.6% highly agrees and 21 of them, which is 33.3% agrees to do away with the process servers. However, 6 of them, which comes to 9.5% disagree and 4 which is 6.3% highly disagrees to do away with

process servers. Further, 21 of the study group which comes to 33.3% have neither agreed nor disagreed to this question.

On the other hand, most of the Judges of the subordinate Courts in the State were not in favour of doing away with the Court process servers. However, few of them neither agreed nor disagreed to this question. In the light of contradictory responses from the Bar and the Bench, we have left this question open ended for further inquiry and test of time in this digital age.

**Resultantly**, it is disproved that the backlog of cases in the State of Sikkim is due to delay in service of summons by the process servers. Furthermore, we cannot lose sight of the difficult hilly terrain of our State, which in itself is a major bottleneck causing delay movement. Hence, to overcome this situation in addition to the regular mode of serving summons, other modes such as, FAX messages, e-mail, SMS or any other electronic message service may be applied/adopted for the advancement of justice.

Before concluding, we feel that it is of vital importance to quote the observation made by the Law Commission of India in its Fourteenth Report (**Reforms of Judicial Administration**) Vol. I at page 253, para 10, which was further reiterated by the Law Commission of India in its Twenty-Seventh Report (**The Code of Civil Procedure, 1908**) Dec 1964 at page 11, para 18 as under:

*“It was generally agreed that the Code of Civil Procedure is an exhaustive and carefully devised enactment, the provisions of which if properly and rigidly followed are designed to expedite rather than delay the disposal of cases. Delay result not from the procedure laid down by it but by the reason of the non-observance of many of its important provisions, particularly those intended to expedite the disposal of proceedings.”*

## **SUGGESTIONS:**

- The plaintiff/petitioner should furnish correct postal address of the parties along with the contact number(s) and if possible, email address at the stage of filing itself. In the absence of these vital details, the filing section of the Courts should not register the case. Further steps should be initiated only after necessary compliance is made. (Specific provisions may be incorporated in the ***Subordinate Courts of Sikkim, Case Flow Management Rules, 2006***).
- Since the Civil Procedure Code (Amendment) Act, 2002, specifically provides that before transmitting service of process by courier, fax and electronic mail service, State High Courts should provide the Rules which includes preparing a panel of courier agencies by the High Court or the District Judge. Hence, it is suggested that to facilitate speedy and effective solutions for service of summons, the use of technology must be encouraged. Specific Rules may be framed in the State of Sikkim, which can be applied in all civil proceedings including Suits, Writ Petitions, Applications, Appeals, Revisions or Reviews pending before the High Court or any Subordinate Court or Tribunal.
- It is suggested that Rules may be framed wherein the District Judge in consultation with the village Panchayats and Councillors of the local municipal body within the jurisdiction of the district, may prepare a panel of respective authorised agents empowered to accept service of summons/notice in the suit, appeals and other proceedings on behalf of the defendant residing in that area which may be deemed as a valid service. (For the effective implementation of this method training can also be provided to the panelled members on regular basis by the State Judicial Academy).
- Since the Court process servers play a significant role in dispensation of timely justice, it is suggested that training should be provided to

them on a regular basis. While framing the training module, *inter alia* special emphasis should be made upon Order V Rule 17 of the Code of Civil Procedure, 1908.

- It is the duty of Advocates to assist the Court of Law. Hence, to make them well acquainted with the process of service of summons, it is suggested that training on the provisions of Civil Procedure Code (Amendment) Act, 2002 be provided to them. This responsibility could be taken by the local Bar Associations.
- The number of process servers in the four District Courts Complex of the State is very minimal. It is suggested that additional manpower may be deployed in serving summons keeping in mind the topographical feature of the State.
- The process servers must have the requisite knowledge about the provisions of the Code of Civil Procedure, 1908 regarding his duty as a process server. To create expertise, minimum standard and qualification have to be kept in mind at the time of their initial appointment.

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- v. Subordinate Courts of Sikkim, Case Flow Management Rules, 2006.
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## Appendix – A

### Title Suit

SI No	Case Type	Filing No	Filing Date	Reg No.	Reg Date	CNR No
1.	Title Suit	121/2013	26-02-2010	10/2013	26-02-2010	SKGT03-000001-2010
2.	Title Suit	268/2013	11-03-1994	21/2013	11-03-1994	SKGT03-000007-2013
3.	Title Suit	15/2014	28-12-2005	9/2015	28-12-2005	SKGT03-000002-2015
4.	Title Suit	57/2015	23-05-2015	11/2015	23-05-2015	SKGT03-000022-2015
5.	Title Suit	17/2015	16-03-2015	3/2015	16-03-2015	SKGT03-000008-2015
6.	Title Suit	27/2013	18-12-2013	22/2014	28-02-2014	SKGT03-000040-2013
7.	Title suit	95/2014	30-05-2014	33/2014	30-05-2014	SKGT03-000039-2014
8.	Title Suit	17/2013	28-12-2013	12/2014	28-12-2013	SKGT03-000030-2013
9.	Title Suit	122/2015	11-09-2015	19/2015	11-09-2015	SKGT03-000073-2015
10.	Title Suit	7/2015	09-02-2015	1/2015	09-02-2015	SKGT03-000003-2015
11.	Title Suit	97/2014	29-05-2014	35/2014	29-05-2014	SKGT03-000040-2014

12.	Title Suit	26/2013	18-12-2013	21/2014	28-02-2014	SKGT03-000039-2013
13.	Title Suit	166/2014	16-10-2014	44/2014	16-10-2014	SKGT03-000087-2014
14.	Title Suit	314/2014	16-06-2014	7/2014	17-06-2015	SKGT01-000505-2014
15.	Title Suit	629/2015	14-09-2015	16/2015	14-09-2015	SKGT01-000915-2015
16.	Title Suit	235/2015	02-04-2015	3/2015	02-04-2015	SKGT01-000333-2015
17.	Title Suit	612/2015	31-08-2015	14/2015	01-09-2015	SKGT01-000885-2015
18.	Title Suit	275/2015	29-04-2015	6/2015	29-04-2015	SKGT03-000398-2015
19.	Title Suit	615/2015	04-09-2014	15/2015	04-09-2015	SKGT01-000890-2015
20.	T.S. DECL Suit	133/2014	21-08-2012	1/2014	15-11-2013	SKGT01-000355-2012
21.	Title Suit	382/2015	01-07-2015	12/2015	03-07-2015	SKGT01-000584-2015
22.	Title Suit	74/2014	11-04-2014	9/2014	11-04-2014	SKNM03-000051-2014
23.	Title Suit	3/2013	28-12-2013	2/2014	01-02-2014	SKNM03-000036-2013

### **Eviction Suit**

<b>SI No</b>	<b>Case Type</b>	<b>Filing No</b>	<b>Filing Date</b>	<b>Reg No.</b>	<b>Reg Date</b>	<b>CNR No</b>
1.	Eviction Suit	98/2013	11-07-1995	13/2013	08-02-2012	SKGT01-000002-1995
2.	Eviction Suit	4/2015	16-01-2015	1/2015	16-01-2015	SKGT01-000017-2014
3.	Eviction Suit	219/2013	25-06-2013	18/2013	25-06-2013	SKGT01-000057-2013
4.	Eviction Suit	213/2015	19-03-2015	4/2015	25-03-2015	SKGT01-000291-2015
5.	Eviction Suit	142/2015	04-08-2015	2/2015	04-08-2015	SKNM01-000251-2015
6.	Eviction Suit	141/2015	04-08-2015	1/2015	04-08-2015	SKNM01-00250-2015

### **Execution Suit**

<b>SI No</b>	<b>Case Type</b>	<b>Filing No</b>	<b>Filing Date</b>	<b>Reg No.</b>	<b>Reg Date</b>	<b>CNR No</b>
1.	Civil Execution	27/2014	02-12-2013	2/2014	02-12-2013	SKGT03-000069-2013
2.	Civil Execution	67/2015	04-06-2015	7/2015	04-06-215	SKGT03-000027-2015
3.	Civil Execution	108/2015	30-07-2015	8/2015	30-07-2015	SKGT03-000063-2015
4.	MACT	580/2015	17-08-2015	8/2015	17-08-2015	SKGT01-000838-



	Execution					2015
5.	Civil Exe	118/2014	19-03-2014	1/2014	21-03-2014	SKGT01-000192-2014
6.	Civil Exe	211/2015	23-03-2015	6/2015	23-03-2015	SKGT01-000288-2015
7.	Civil Exe	587/2015	21-08-2015	15/2015	21-08-2015	SKGT01-000852-2015
8.	Civil Exe	604/2015	25-08-2015	16/2016	25-08-2015	SKGT01-000871-2015

### **Money Suit**

<b>SI No</b>	<b>Case Type</b>	<b>Filing No</b>	<b>Filing Date</b>	<b>Reg No.</b>	<b>Reg Date</b>	<b>CNR No</b>
1.	Money Suit	126/2014	11-08-2014	52/2014	11-08-2014	SKGT03-000058-2014
2.	Money Suit	116/2015	17-08-2015	26/2015	17-08-2015	SKGT03-000069-2015
3.	Money Suit	64/2015	28-05-2015	13-2015	28-05-2015	SKGT03-000025-2015
4.	Money Suit	23/2015	26-03-2015	4/2015	26-03-2015	SKGT03-00013-2015
5.	Money Suit	100/2015	23-07-2015	22/2015	24-07-2015	SKGT03-000055-2015
6.	Money Suit	114/2014	01-07-2014	47/2014	01-07-2014	SKGT03-000049-2014
7.	Money	124/2014	07-08-2014	50/2014	07-08-2014	SKGT03-000056-

	Suit					2014
8.	Money Suit	97/2015	21-07-2015	19/2015	22-07-2015	SKGT03-000052-2015
9.	Money Suit	113/2015	13-08-2015	23/2015	13-08-2015	SKGT03-000066-2015
10.	Money Suit	554/2015	04-08-2015	14/2015	04-08-2015	SKGT01-000807-2015
11.	Money Suit	392/2015	06-07-2015	10/2015	07-07-2015	SKGT01-000607-2015
12.	Money Suit	391/2015	06-07-2015	9/2015	07-07-2015	SKGT01-000606-2015
13.	Money Suit	314/2015	03-06-2015	5/2015	03-06-2015	SKGT01-000467-2015
14.	Money Suit	380/2015	01-07-2015	7/2015	01-07-2015	SKGT01-000568-2015
15.	Money Suit	393/2015	06-07-2015	8/2015	07-07-2015	SKGT01-000608-2015
16.	Money Suit	178/2015	16-09-2015	1/2015	16-09-2015	SKNM01-000303-2015

## Appendix – B

1. Do you have any idea regarding summons?  
5 = Yes, 4 = Do not know
2. Do you know that the purpose of serving summons is to put the other party/defendant to a notice of your claim and to give him a copy of the paper?  
5 = Yes, 4 = Do not know
3. Do you know if the summons are not duly served to the defendant then no action can be taken against him/her? Reasonable  
5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
4. Do you think that one of the reasons for delay in Civil Court proceeding is due to avoidance of service of “summon” by the defendant?  
5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
5. Who serves the summons in your case?  
5 = State Police, 4 = Court officials, 3 = Postman, 2 = Other Person, 1 = Do not know
6. Do you think that respondents influence these officials/persons and show themselves as not present to receive the summons?  
5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
7. Do you think that the defendant sincerely responds to the summons of the Court after receiving and/or acknowledging it?  
5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
8. Do you think that defendants who avoid and evade personal and direct service of summons should not be permitted to take advantage of that evasion?  
5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
9. Do you know summons can also be sent by registered post acknowledgment due and/or through such courier service as approved by High Court?  
5 = Yes, 4 = Do not know

10. What will you do if the Court intends to send summons through post office or courier service but on the expense of the plaintiff?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

11. Do you know that the order to deliver the summons by post is the discretion of Court?

5 = Yes, 4 = Do not know

12. Do you have any idea regarding the issue of summons through substituted service such as affixing the summons at the conspicuous place of the court at the door of the house of the defendant or even giving the advertisement in the newspaper?

5 = Yes, 4 = Do not know

13. Do you have any idea regarding the issuance of summons through alternative modes such as e-mail, fax, SMS or through any other electronic device/medium?

5 = Yes, 4 = Do not know

13. Do you think that issuance of summons by the court through e-mail, fax, SMS or through any other electronic device/medium can reduce the delay/pendency of cases?

5= Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

14. Do you know that substituted service of summons is the last way for service of summons to the defendants?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

15. Should onetime payment as process fee to send summons be introduced to curtail delays in process service?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

16. Do you know that if the person against whom serving of the summons had been issued does not appear in the court then this will be taken as a Contempt of Court and shall be punished accordingly?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

### **Demographic Data**

**Name (optional):** \_\_\_\_\_

Age: \_\_\_\_\_

Gender: 1 = Male, 2 = Female

Literate: 1 = Yes, 2 = No

Qualification: 5 = Post Graduate & above, 4 = Graduate, 3 = Sr.Secondary, 2 = Secondary, 1 = Primary

Area: 2 = Urban, 1 = Rural

Place: \_\_\_\_\_

## Appendix – C

1. Do you know that when a suit has been initiated by the plaintiff against the defendant, the court directs to issue summons to the defendant. This is to permit the defendant to appear and answer the claim of the plaintiff?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

2. Do you know that the purpose of serving summons is to put the other party/defendant to a notice and to give him a copy of the paper as this ensures a fair trial?

5 = Yes, 4 = Do not know

3. Your counsel have/has ever advised you to avoid Court summons?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

4. After receiving summons from the Court, have you appeared before the Court during each hearing date fixed by the Court?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

5. Is court summons received on time?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

6. Who brought/brings the summons in your case?

5 = State Police, 4 = Court officials, 3 = Postman, 2 = Other Person, 1 = Do not know

7. Do you know that if the defendant or his agent refuse to take the summons and does not accept to sign on the acknowledgement or absconds for the house then

the serving officer (process server) shall fix the copy of the summons on the outer door or some other conspicuous part of the house in which the defendant resides or carries on business or personally gains for work, before the witnesses who identify the house of the defendant?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

8. Do you know if the summons are not duly served to the defendant then no action can be taken against him/her?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

9. Do you know summons to the defendants can also be sent by registered post acknowledgment due and/or through such courier service as approved by High Court?

5 = Yes, 4 = Do not know

10. Do you know if the defendant or his agent refuses to take the delivery of the summons then the postman endorses the same and send it back to the Court, then the court declares that summons had been duly served on the defendant?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

11. When the Court is satisfied that the defendant is intentionally avoiding the summons, the Court orders for the substituted service of summons, i.e. by affixing the summons at the conspicuous place of the court at the door of the house of the defendant or even giving the advertisement in the newspaper?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

12. Do you know that substituted service of summons is the last way for service of summons to the defendants?

5 = Agree, 4 = Highly agree, 3 = Neither Agree nor Disagree, 2 = Highly disagree, 1 = Do not know

13. Do you have any idea regarding the issuance of summons through new alternative modes such as e-mail, fax, SMS or through any other electronic device/medium?

5 = Yes, 4 = Do not know

14. Do you think that issuance of Court summons through e-mail, fax, SMS or through any other electronic device/medium can be more easy and efficient way for its delivery?

5= Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

15. Do you know that if a person is served with summons but does not care to represent his case, he can be set *ex-parte* and the case can be disposed of without hearing him?

5= Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

### **Demographic Data**

**Name (optional):** \_\_\_\_\_

**Age:** \_\_\_\_

**Gender:** 1 = Male, 2 = Female

**Literate:** 1 = Yes, 2 = No

**Qualification:** 5 = Post Graduate & above, 4 = Graduate, 3 = Sr.Secondary, 2 = Secondary, 1 = Primary

**Area:** 2 = Urban, 1 = Rural

**Place:** \_\_\_\_\_

## **Appendix – D**

1. It is a common practice that the defendants avoid accepting summons?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

2. Do you think that evading summons remains one of the leading ways of prolonging litigation?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

3. Do you think that it is difficult to deal with people who avoid service of process?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

4. Do you think that legislative changes initiated to expedite the delivery of process service have not fully succeeded in resolving problems relating to service of summons?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

5. Do you think that the delay in disposal of civil suits may often be due to inability of Presiding Officers to pay personal attention to matters connected with the issue and service of processes due to heavy workload?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

6. Do you think that the work of the process servers is not properly monitored and there is no system of accountability for the court registry and court staff for delay in service?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

7. Do you think respondents influence the process servers and show themselves as not present to receive the summons?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

8. Do you think that the delay in service of process occurs due to non-observations of provisions of Civil Procedure Code?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know

9. Do you think that delay in filing of the service reports of summons also leads to the failure of justice?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

10. There is a lack of accountability of the court registry and court staff in getting service affected and for delay in service?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

11. These delays ultimately results in the delay in conclusion of the proceedings of the case?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

12. Do you think that the discretionary power under Order V Rule 20 (1) C.P.C relating to publication in newspaper is frequently exercised by courts?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know



- 13.** Do you think that in many cases this method is quite unsuitable. When, for example, the defendant is illiterate or belongs to marginalized section of society such notice is not of much use?
- 5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know
- 14.** Do you think that delay in Service of summons also occurs when defendant resides within the jurisdiction of another Court?
- 5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
- 15.** Do you think that sometimes delay also results from failure of service due to law and order situation?
- 5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
- 16.** Do you have any idea regarding the issuance of summons through alternative modes such as e-mail, fax, SMS or through any other electronic device/medium?
- 5 = Yes, 4 = Do not know
- 17.** Do you think that issuance of summons by the court through e-mail, fax, SMS or through any other electronic device/medium can reduce the delay/pendency of cases?
- 5= Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know
- 18.** Do you think that service of summons to respondents in civil suits can be considered among top cause of judicial delay?
- 5= Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Do not know
- 19.** Do you think that the defendants who avoid and evade service of summons by regular modes should not be permitted to take advantage of that evasion?
- 5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
- 20.** Do you think that necessary amendments in law is required to deal with the problems of delay in dispensation of justice?
- 5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree
- 21.** Do you think that with the help of technology and digitalization process service of summons can be improved?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

22. Do you think that now it is high time to do away with the court officials (process servers) in the process of serving summons?

5 = Agree, 4 = Highly agree, 3 = Neither agree nor disagree, 2 = Highly disagree, 1 = Disagree

## **Appendix – E**

1. Problem in respect of service of summons has been one of the major causes of delay in the due progress of the case?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

2. It is quite a challenging task to deal with people who avoid service of process?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

3. Although legislative changes have been initiated to expedite the delivery of process service however same have not fully succeeded in resolving problems?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

4. Summons is frequently returned with endorsement of 'party not found, 'address not known'and most of the endorsements are not genuine?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

5. There is danger of false reports of service, is required to be adequately guarded?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

6. The advocate for defendant seeks repeated adjournments to file written statement?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

7. The discretionary power under Order V Rule 20 (1) C.P.C relating to publication in newspaper is frequently exercised by courts. But in many cases this method is quite unsuitable. When, for example, the defendant is illiterate or belongs to marginalized section of society such notice is not of much use?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

8. Delay also results from non-service of summons to the parties residing beyond the jurisdiction of the court; failure of service due to law and order situation and delay in filing of the reports of service of summons?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

9. There is a lack of sensitization amongst civil nazirs/naib nazirs as well as process servers about important role played by the nazarat branch in the overall system of administration of justice?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

10. The entries in the registers are not properly maintained in as much as no track is kept of the processes which are not received back even up to the date of hearing fixed in the court?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

11. Urgent processes are dealt with in routine manner with no sense of urgency shown towards their execution?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

12. The accountability for the Civil Nazirs/Naib Nazirs and also the process servers does not exist?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

13. Large number of applications are being filed under Order IX Rule 13 of the CPC?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

14. SMS or email alert facility for information to the members of the bar and parties can be a convenient way for information?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

15. Liberal use of alternative mode of service should also be used for the service of summons?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

e.g. \_\_\_\_\_

16. Summons/notice can be served either through a courier agency approved by the court or by registered/speed post?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

17. One time process fee could be introduced to curtail delays in process service?

5 = Agree, 4 = Highly agree, 3 = So-So, 2 = Highly disagree, 1 = Disagree

## Appendix - F

- What are the problems encountered by you as a process server?
- Is there special reasons as to why report of the process servers is not filed on time?
- Is there any training being provided to you as process servers?
- Do you have any suggestions to deal with the problems being faced as a process server?

### Demographic Data

Name (optional): \_\_\_\_\_

Age: \_\_\_\_

Gender: 1 = Male, 2 = Female

Qualification: 5 = Post Graduate & above, 4 = Graduate, 3 = Sr.Secondary, 2 = Secondary, 1 = Primary

Place: \_\_\_\_\_

## Appendix – G

### *(Supplementary Questions)*

**SIKKIM JUDICIAL ACADEMY High Court Premises at Gangtok**

**Supplementary Annexure - I (Code-1-P) Serial No.**

**Questionnaire on “Study of Courts in the State of Sikkim on major bottlenecks in service of summons under Order V of C.P.C, 1908, through a process server and measures needed to remove such bottlenecks vis-a-vis liberal use of alternative modes of service”.**

1. Do you know that in Civil Cases both the parties i.e. the plaintiffs and the defendants can represent their case either in person or by a pleader?

3 = Agree, 2 = Disagree, 1= Do not know

2. Appearance of the defendants is necessary in every hearing of the suit?

3 = Agree, 2 = Disagree, 1= Do not know