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Protecting Rights: Why Police Summons Can't Go Digital, Rules Supreme Court

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Introduction: Digital Convenience vs. Legal Imperatives

In an era increasingly defined by instant communication and digital convenience, the legal landscape is constantly grappling with the integration of technology into traditional processes. While electronic means have revolutionized many facets of governance and public interaction, the realm of criminal procedure, particularly where personal liberty is at stake, demands a stricter adherence to established norms. The Supreme Court of India's recent reiteration that police summons issued under Section 35 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) cannot be served electronically stands as a significant testament to the enduring importance of due process and the safeguarding of individual rights, even in the face of technological advancement.

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The Indispensable Role of Personal Service under Section 35 BNSS

Section 35 of the BNSS (akin to the erstwhile Section 41A of the Criminal Procedure Code, 1973) is a pivotal provision designed to ensure that a person against whom a reasonable complaint or suspicion exists for a cognizable offence is given a "notice to appear" before the police or investigating agency and an opportunity to appear before the police/investigating agency without necessarily being arrested immediately. This notice is not merely an advisory; its non-compliance can, in specific circumstances, pave the way for an arrest.

The Supreme Court's unwavering stance on physical, personal service for such summons stems from a deep understanding of the implications involved. Unlike a general information dispatch, a police summons under Section 35 BNSS carries the weight of potential arrest upon non-compliance. Therefore, the mode of service must be unambiguous, ensuring:

- **Undeniable Receipt:** Personal service, ideally with an acknowledgement, provides a tangible and legally verifiable record that the individual has indeed received the summons. Electronic methods, while offering "read receipts," are often not foolproof and can be subject to technical failures, misidentification of the recipient, or deliberate non-acknowledgement.
- **Clarity and Understanding:** A physical document allows the recipient to fully comprehend the contents, seek legal advice, and prepare their response without the distractions or ambiguities that can arise from digital communication.
- **Protection of Liberty:** Since the failure to comply with a Section 35 BNSS summons can have a direct and severe impact on an individual's personal liberty (leading to arrest), the process of informing them must be robust and leave no room for doubt. Any loophole in service could be exploited, undermining the very essence of Article 21 of the Constitution, which guarantees the right to life and personal liberty.

The Court has consistently held that the conscious omission of electronic service in Section 35 of the BNSS, unlike other provisions where it is explicitly allowed (such as certain court summons or for forwarding reports to magistrates), signifies legislative intent. To introduce electronic service where the statute explicitly omits it would constitute judicial overreach and an unwarranted re-writing of the law.

The Catalyst: Satinder Kumar Antil v. Central Bureau of Investigation

The Supreme Court's definitive stance on the electronic service of police summons under Section 35 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) emerged from a critical interlocutory application within the **Satinder Kumar Antil v. Central Bureau of Investigation**^[1] proceedings. While the broader Satinder Kumar Antil judgment has provided extensive guidelines on arrests and bail, particularly relating to Section 35 BNSS (erstwhile Section 41A CrPC), this specific application centered upon the authorized procedures of serving notices.

The State of Haryana had filed an application seeking a modification of an earlier direction issued by the Supreme Court in January 2025, which had already clarified that notices under Section 41A CrPC/Section 35 BNSS could not be served via WhatsApp or other electronic means. Haryana's contention was that since the new BNSS permits electronic service for certain court-issued summons (e.g., under Sections 63 (Form of summons), 64 (Summons how served) and 71 (Service of summons on

witness) BNSS) and for producing documents (Section 93 BNSS), the same flexibility should extend to police summons under Section 35 BNSS to prevent evasion and conserve resources.

However, the bench firmly rejected this argument. The Court articulated a pivotal distinction: a summons issued by a court is a “judicial act,” whereas a notice by an investigating agency under Section 35 BNSS is an “executive act”. The Court reasoned that the specific procedural allowances for a judicial act cannot be automatically transposed to an executive act, especially when such an act directly impinges on an individual’s liberty. The Court observed that provisions like Sections 93 and 193 (Report of a Police Officer on the completion of investigation) of the BNSS, which allow electronic communication for producing documents or forwarding reports, do not have the same immediate bearing on personal liberty as a Section 35 notice, whose non-compliance can directly lead to arrest. This nuanced understanding led the Court to conclude that the conscious omission of electronic service for Section 35 notices reflects a deliberate legislative intent to protect fundamental rights.

Conclusion: A Safeguard for Personal Liberty

The Supreme Court’s reaffirmation that police summons under Section 35 BNSS cannot be served electronically is a critical development in upholding the principles of natural justice and safeguarding personal liberty. It draws a clear boundary between the efficiency of digital communication and the fundamental requirement of unambiguous and verifiable notice in criminal proceedings. This decision ensures that individuals are properly informed of their obligations and potential consequences, reinforcing the bedrock of due process in India’s criminal justice system and acting as a vital check against potential arbitrary action by investigating agencies.

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[1] (IA No. 63691 of 2025 in SLP(Crl). 5191 of 2021)

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