REFORM REVIEW

Reviewing the proposed reforms to the CIVIL PROCEDURAL LAW

Previously, the decree-holders were required to apply for the execution of the decree separately after getting the decree in their favour. However, by insertion of Rule 104 of Order XXI, decree-holders will no longer be required to bring a separate proceeding for decree execution. The mode of execution of the decree for the payment of money will see a paradigm shift with the new Rule 30A under Order XXI.

SHADAB BIN ASHRAF *and* NADIA ISLAM NODY

Widely perceived as a colonial relic, the Code of Civil Procedure 1908 (CPC) has been criticised and held liable for procedural impediments and excessive delays in the administration of justice. This piece aims to discuss the proposed changes to be brought to the Code of Civil Procedure (Amendment) Ordinance 2025. First, under section 57 of this Code, the government was able to fix monthly subsistence allowance for the judgment-debtors on the basis of rank, race, and nationality. This provision has been repealed by the upcoming Amendment due to its discriminatory element.

Second, for modernising the modes of summons delivery, a significant change is introduced in Order V Rule 9 (3) that discusses the delivery or transmission of summons to the defendant in a civil litigation. Previously, the provision mentioned that on the application of the plaintiff, the Court may direct the summons to be served by means of transmission of documents through fax or email, in addition to the serving of a physical summons as per sub-rule 1. The proposed Ordinance adds other methods such as "Short Message Service, Voice Calls, Instant Messaging Services" as the methods for delivering or transmitting summons. The new Ordinance also requires the insertion of phone number, national identity card number (NID), and email address (optional) of the plaintiff and defendant while filing a plaint for civil suit under Order VII Rule 1 of the Code.

To make the law time-efficient, section 11 of the proposed Ordinance inserted a new proviso in the Order IX Rule 13. This rule previously allowed the defendant to apply for setting aside an ex parte decree against him for non-appearance on the fixed date in the court. However, the new proviso of the Ordinance requires not to set aside an ex parte decree more than once at the instance of the same defendant. Furthermore, section 12 of the proposed Ordinance brings changes to Order XVII of the Code, which deals with the adjournment of the hearing of a suit. Previously, under Order XVII Rule 1(3), the Court had the power to grant a maximum of 6 adjournments in a suit at the instance of either party before a peremptory hearing. The new Amendment reduced the power by only allowing the court to grant a maximum of four adjournments. Moreover, to reduce procedural hurdles and the sufferings of the parties to the suit, parties are no longer required to be produced in the examination-in-chief as part of oral submission. Parties will produce their pleadings by submitting a statement of their pleadings by affidavit, along with the documents upon which they rely. This provision will be inserted in the Code by Rule 4A in Order XVIII.

Next, previously, the decree-holders were required to apply for the execution of the decree separately after getting the decree in their favour. However, by insertion of Rule 104 of Order XXI, decree-holders will no longer be required to bring a separate proceeding for decree execution. The mode of execution of the decree for the payment of money will see a paradigm shift with the new Rule 30A under Order XXI.

Lastly, some minor changes were introduced to Order XLI of the Code. In Rule 21 of the Order, a proviso was added as "Provided that no appeal shall be re-heard more than once under this rule." In the marginal note of Rule 24 of the same Order, the term "may" is substituted by "shall".

Indeed, our century-old colonial-era CPC required reforms for a long time. With time, it will become clearer how effective the changes are and what further changes are required.

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FOR YOUR INFORMATION

Proposed CPC reforms and other countries

TAHSINA ZAMAN

One of the most admirable features of the proposed amendments lies in the procedural efficiency. Replacing the traditional in-person oral testimony of plaintiffs and defendants with affidavit-based written statements, followed by cross-examination, is not merely a technical but a strategic shift. This model could drastically reduce courtroom hours, cut litigation delays, and relieve judges from prolonged hearings. For litigants who wait for years, even decades, this efficiency is a beacon of hope.

From a global perspective, this method is not unprecedented. Countries such as India, and several states of the United States have long employed affidavits in civil proceedings, particularly in pre-trial motions and evidentiary hearings. In India, the Civil Procedure Code (Amendment) Act of 2002 also introduced affidavit-based evidence in place of oral testimony to expedite trials under Order XVIII Rule 4. Studies from Indian trial courts revealed that affidavit-based witness submissions reduced the average trial length, especially in urban jurisdictions. Similarly, in the UK, written witness statements are standard practice in civil courts under the Civil Procedure Rules (CPR 1998). These reforms contributed to the UK civil courts clearing backlogs relatively faster within five years of implementation.

While the amendment replaces oral examination-in-chief with affidavits, it still retains in-person cross-examination in court. This means judges will have the opportunity to observe the parties' behaviour, demeanour, tone, and facial expressions—critical elements that often influence the outcome of trials. Thus, by striking a balance between the efficiency of written statements and the nuanced observations of human expressions, the amendment ensures that the complexities of human nature in a dispute are not reduced to mere paper submissions.

Similarly, the inclusion of digital tools such as online case resolution, summons via phone call, SMS or WhatsApp, and the removal of separate execution suits reflects a forward-looking approach. In countries such as Estonia, where over 95% of government and judicial services are digital, the average case disposal time is amongst the fastest in Europe. Digital communication not only saves time but democratises access to justice, especially for citizens in remote or underserved areas.

In conclusion, the amendment to the CPC represents a bold and timely stride toward resolving the chronic backlog that has long paralysed Bangladesh's civil justice system. If implemented with foresight, supported by digital infrastructure, and balanced with human sensitivity, this reform could become a landmark.

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REFORM ANALYSIS

Critical analysis of 'digital summons'

Summons served through SMS, voice calls, or IMS-- all suffer from a lack of transparency. For example, in the case of SMS, the sender does not get a 'read receipts' to know if the summons has even been received by the defendant. Summons if served through automated voice calls or IMS will suffer from the same defect as the mode of communication is one-way.

KHALID KHAN

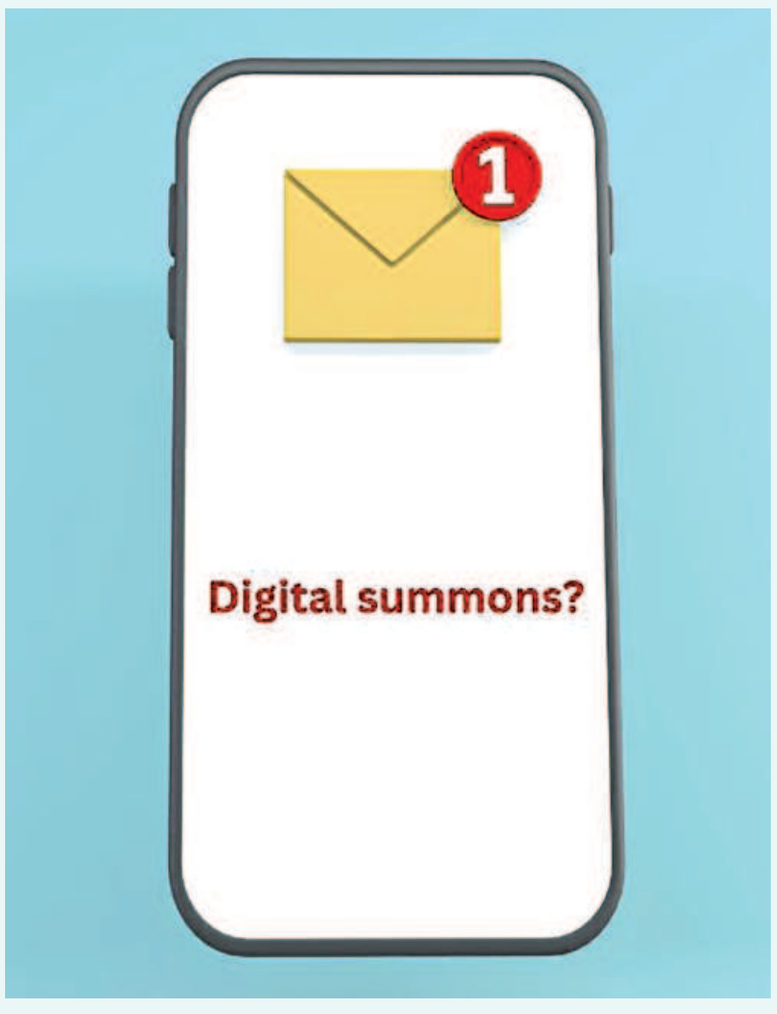
An amendment to the Code of Civil Procedure 1908 (CPC) has recently been approved in principle to digitise the judiciary and rectify procedural defects. Of all the changes, the issuance of summons via short message services, voice calls, Instant Messaging Services (IMS) is perhaps the most significant change.

It needs to be noted that the issuance of summons through digital means of communication was, to some extent, already included in the Code by the 2012 amendment. Order V Rule 9, sub-rule 3 allowed the Court, on the application of the plaintiff, to direct summons to be served by means of transmission of documents through 'fax message' or 'email' by the plaintiff at his/her own cost. Thus, the present amendment only adds some other convenient means of communication to the older ones.

However, the proposed amendment does not make SMS, voice calls, or IMS a substitute for the physical service of summons, rather, makes those means supplementary to the physical means. Some are criticising the Amendment for not completely replacing the older system with the digital system. However, in my opinion, the traditional system cannot be totally replaced. It may seem, at first glance, logical to completely replace the physical system with the digital ones, since we are living in the digital age and most people have, at least, access to digital devices. However, digital service of summons, although more convenient and efficient, comes with certain fatal defects vitiating the due process of law.

In case of physical service of summons, the serving officer attains the signature of the person to whom the summons has been delivered or tendered to as an acknowledgement of receipt of the summons (Order V Rule 16). The serving officer also endorses the time when and the manner in which the summons was served, and the name and address of the person identifying the person served and witnessing the delivery or tender of the summons (Order V Rule 18). This works as a confirmation that the summons has been duly served and curbs the probability of fraud or suppression of summons.

On the contrary, summons served through SMS, voice calls, or IMS-- all suffer from a lack of transparency. For example, in the case of SMS, the sender does not get a 'read receipts' to know if the summons has even been received by the defendant. Summons if served through automated voice calls or IMS will suffer from the same defect as the mode of communication is one-way. Unlike the physical service of summons, the recipient cannot sign the summons to acknowledge receipt. There is no person who identifies and witnesses the delivery of summons in case of digital service, keeping the gate open for abuse of the process. We need to also remember that SMS, voice calls, or IMS, if successfully sent, only confirm that the summons has reached the device it is intended to reach. But it does not confirm that the defendant has been duly served with the summons. Because the person before the device may not be the same as the defendant, and it is the defendant alone (or his agent), not the device, upon whom the law mandates that the summons be served. Hence, it keeps uncertainty if the 'right' defendant or his agent has received it. This shows why it is still important to have the traditional means of sending summons in addition to the new system.



However, there is a fair criticism to this provision that I would like to pose and it is relating to lack of authentication of the summons when it is served via SMS and voice call. The older amendment (2012), by allowing summons to be served through fax or email 'by transmission of documents', provided better means to ensure that the notice is authentically issued and served by the Court. It is because Order V Rule 10 categorically states that summons shall be served with a copy signed by the Judge or such officer as he/she appoints in this behalf and sealed with the seal of the Court. When the document itself, containing the sign and seal of the Court, is transferred through fax or email, it assures the defendant of the document's authenticity, which is important to prevent abuse of the process.

But the draft amendment is supposed to substitute the phrase 'transmission of documents through' with 'Short Message Services, Voice Calls, Instant Messaging Services', which is likely to adversely affect the authentication provided by law. None of the newly added services mentioned in the amendment, except for IMS, allow for transmission of the document itself. It will also not be obligatory to send the document via fax or email according to the substituted words of the new amendment. We need to remember that the concept of serving summons is part of the principles of natural justice. Hence, if the service of summons is defective, it will prejudicially affect the opposite party's right to appear before the court, defend themself, and may vitiate the whole proceeding.

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