Charuvila Philippose v. P.V. Sivadasan: Harmonizing India's Civil Procedure Code and the Hague Service Convention

Written by George Jacob, Incoming Associate, Bombay Law Chambers

Globalisation has led to a rise in cross-border disputes, making international service of summons increasingly relevant. While domestic service in India is straightforward, sending summons to foreign defendants involves complex legal procedures. Proper service ensures that the defendant is duly notified and can respond, embodying the principle of *audi alteram partem*. Until recently, the procedure for international service in India was unclear. This ambiguity was addressed by the Kerala High Court in *Charuvila Philippose v. P.V. Sivadasan*.[1] This blog outlines the legal frameworks for international service, revisits the earlier *Mollykutty****[2]*** decision, and analyses the broader implications of *Charuvila Philippose*.

Process of Overseas Service of Summons in India – the Methods

Theoretically, serving of summons abroad should be straightforward. However, in India, the mechanism for international service of summons is tangled due to a patchwork of legal frameworks ranging from international treaties – such as the Hague Service Convention and Mutual Legal Assistance Treaties, to government routes such as Letters Rogatory and even provisions under the Indian Code of Civil Procedure, 1908. This section unpacks the various routes for international service from India; it lays the groundwork for understanding why the *Charuvila Philippose* case and the confusion it sought to resolve, matters.

1. **Letters Rogatory and Mutual Legal Assistance Treaty (MLAT) Route**

Traditionally, Indian courts have relied on letters rogatory for service abroad. A letter rogatory is a formal request issued by a court in one country to the judiciary of another, seeking assistance in serving judicial documents – in the absence of a binding treaty. This method was relied on situations when there were no specific agreements between countries.

In cases where bilateral Mutual Legal Assistance Treaties (MLATs) exist, the process becomes more structured. MLATs provides a treaty framework for cooperation on international service and other matters. Indian currently has MLATs with 14 countries. However, the abovementioned routes are cumbersome and slow.

2. The Hague Service Convention Routes – Article 2, 8 and 10

The rise in the number of cross-border disputes led to the development of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965 (henceforth "Hague Service Convention" or "HSC"). India acceded to the treaty in 2006 and ratified it in 2007. Under Article 2 of HSC, India has designated the Ministry of Law and Justice as the Central Authority responsible for receiving and forwarding summons to the relevant authority in the foreign country where the defendant resides. Once received, the foreign Central Authority effects services on the defendants and returns proof of service. The HSC also permits alternate methods of service through Article 8 and Article 10. However, these routes are subject to each country's reservations. Article 8 of HSC allows service through consular or diplomatic agents provided the receiving state has not objected. For example, Indian courts can serve a defendant in Canada directly through its consular or diplomatic agents in Canada as Canada has not opposed such a route. This is in contrast with People's Republic of China which has opposed the Article 8 route, preventing India from serving a Chinese defendant through India's diplomatic/consular agents in China. Article 10 of HSC allows service via postal channels, subject to whether the receiving country has not objected. For example, an Indian court may send a summons directly by post to a defendant in France, which permits such service.

But this route is unavailable for defendants in Germany, as it has formally opposed service through postal channels under Article 10.

Indian Code of Civil Procedure Routes

In addition to international instruments for service, the Code of Civil Procedure, 1908 (henceforth "CPC") provides a domestic legal framework for overseas service under Order V through Rules 25, 26 and 26A.

Rule 25 allows courts to serve summons via post, courier, or even email if the defendant has no agent in India authorized to accept service. Rule 26 provides for service through political agents or courts specifically appointed by Central Government in a foreign territory. However, this provision remains obsolete as no political agents or courts have been appointed till now. Rule 26A enables service through an officer appointed by a foreign country (and recognized by the Central Government). In this process, the summons is routed through the Ministry to the designated officer abroad. If the officer endorses the summons as served, such endorsement is treated as conclusive proof of service.

In conclusion, the issuance of summons abroad from India becomes complex because of the multiplicity of legal frameworks surrounding summons. The provisions of CPC coupled with the distinct HSC routes and the foundational mechanism of MLAT and letters rogatory significantly muddies the water.

Dissecting Service – Three Connected Principles

Understanding the various legal routes for service is only the first layer of the issue. To fully understand why the procedure of service matters, it remains essential to look deeper into three distinct, but interconnected principles related

to service. The three principles are: the act of service, the court's recognition of service and the consequences flowing from such recognition. These principles are foundational to any well-functioning legal system's procedural laws concerning service. And they are present in both HSC and CPC. These three principles are crucial to understand the judicial debate that unfolded in *Mollykutty* and later in *Charuvila Phillipose*.

No.	General Process	Hague Service Convention	Indian CPC
1.	The specific **process** of service by the court i.e., **modality of service** (e.g.: postal, email etc.)	HSC Article 2-5, Article 8 or Article 10	Order V Rule 9(1) and 9(3) [*for domestic service*] Order V Rule 25, 26 and 26A [*for service abroad*]

2.	Once service of summons is done, there is a **declaration of service**. This is important as it recognizes that service of summons to the defendant has been accomplished. i.e., the defendant has been provided sufficient notice of the case against them.		
	Expressly: In the form of acknowledgement certificates or endorsements that prove delivery of summons. This is vital as it indicates that the defendant had the opportunity to understand the case made against them.	HSC Article 6	Order V Rule 9(5)
	Implicitly: In case there are no acknowledgement certificates or endorsements to prove delivery of summons. The court is occasionally permitted to assume that summons was served ("deemed service").	HSC Article 15 Paragraph 2	Order V Rule 9(5) Proviso

3.	**Issuing decrees** – once declaration of service is done, the parties are given time to respond and make their case before the court. If the defendant does not appear, then an ex-parte decree is issued. This is done on the assumption that despite proper service or best efforts to undertake proper service, the defendant did not appear.	HSC Article 15 Paragraph 1	Order IX Rule 6

Background of the *Mollykutty* Dispute

Although India has ratified HSC and issued multiple notifications appointing the Ministry of Law and Justice as the Central Authority under Article 2 of HSC. The HSC provisions have not been legislatively incorporated into CPC. This has resulted in a fragmented legal framework where both HSC and CPC had overlapping legal regimes which diverged on the three connected principles of service – modality of service, declaration of service and issuing of decrees.

The coexistence of this diverging regimes came to a head in the *Mollykutty* case, a seminal decision of the Kerala High Court. The case concerned a suit in which

the defendant resided in the United States. The trial court issued summons directly via registered post to the US defendant – a method permitted under Order V Rule 25 of CPC. However, it failed to obtain any acknowledgement of service. Due to this, the court invoked proviso to Rule 9(5) which allows court to declare deemed service if summons was "properly addressed, pre-paid and duly sent by registered post". This raised concerns across all three foundational principles connected to service.

Act/Modality of Service – the trial court's reliance on registered post conflicted with the procedure set out in HSC which mandates transmission of service through the Central Authority as the main route. The *Mollykutty* judgement held that in cases involving service abroad to a HSC signatory country, compliance with the HSC's Central Authority route was mandatory.

Declaration of Service – the trial court declared deemed service based on the Proviso to Rule 9(5) which permits assumption of service if the summons was "properly addressed, pre-paid and duly sent by registered post". The High Court in *Mollykutty* held that deemed service can be declared only as per the conditions stipulated in Article 15 of HSC.

Issuance of Decree – the High Court set aside the trial court's ex parte decree since the method of service and the declaration of deemed service was improper.

The *Mollykutty* judgment mandated strict compliance with the HSC's Central Authority for sending summons abroad. However, this strict interpretation of HSC, in the absence of legislative incorporation into CPC was concerning. Several High Court benches found the *Mollykutty* judgement to be overtly rigid and referred the issue to a larger bench in *Charuvila Phillipose*. The central question before the larger bench was whether, despite the lack of amendment to CPC, will HSC provisions concerning international service override the corresponding provisions in CPC? Or will CPC based routes for international service remain as

valid alternatives?

The *Charuvila Philippose* Case

Arguments Raised

The parties primarily debated whether legislative amendment to the CPC is necessary when implementing an international instrument like the Hague Service Convention (HSC). The Amicus Curiae submitted that no such amendment is required unless the treaty affects the rights of citizens or conflicts with municipal law. Given that CPC is procedural in nature, the Amicus argued that litigants do not possess vested rights over specific modes of service and therefore, no individual rights are compromised. Furthermore, the Amicus contended there is no inconsistency between the CPC and the HSC: Order V Rule 25 fails to ensure proof of service; Rule 26 is largely ineffective; and Rule 26A is neutral, aligning with Mutual Legal Assistance Treaties. The Amicus also pointed to various memorandums and notifications to demonstrate the widespread administrative implementation of the HSC across India.

In response, the respondents emphasized that Article 253 of the Indian Constitution mandates parliamentary legislation to implement international treaties domestically. They argued that the CPC does confer substantive rights—such as appeals—and that certain HSC provisions, including Articles 15 and 16, impact citizens by altering domestic rules on ex parte decrees and limitation periods. Addressing criticisms of Order V Rule 25, the respondents asserted that uncertainties in proof of service also exist under the HSC, as enforcement depends on mechanisms in the receiving country, beyond India's control. The respondents further maintained that India's ratification of the HSC does not render Rule 25 obsolete and stressed that mere executive notifications cannot amend statutory provisions. Citing Article 73 of the Constitution, they concluded that executive action cannot override areas governed by existing laws.

Court's Analysis

1. **Regarding International Law and its Application in India**

The court's analysis centered around whether the Parliament needs to legislatively amend CPC for implementing an international convention like HSC. Since this concerns the question of application of international law to a domestic legal system. The court contrasted monistic and dualistic approaches to international law in the Indian legal system. Article 253 of the Indian Constitution states that *"…Parliament has the power to make any law…for implementing a treaty or international convention…."*. This article provides support for a dualistic approach as it empowers the Parliament to make laws for implementing treaties or international conventions. Conversely, monism is supported by Article 51(c) of the Indian Constitution, a directive principle, which encourages respect for international law and treaty obligations. In this case, the court balances dualism and monism by stating that Article 253 is "enabling" or provides the Parliament with the power to make laws for implementing treaties/conventions, only if necessary.

According to the court, Article 253 of the Constitution is by no means mandating the Parliament to make laws, for implementing every treaty or convention.

To support this balanced position, the court then proceeded to examine several precedents including *Maganbhai Ishwarbhai Patel etc. v Union of India and Anr.****[3]*** and *Karan Dileep Nevatia v Union of India, through Commerce Secretary & Ors****[4]***. The position that emerges is as follows: –

"…(iv) The Parliament needs to make laws in respect of a treaty/agreement/convention when the treaty or agreement restricts or affects the rights of citizens or others or modifies the law of India. (v) If the rights of citizens

or others are not affected or the laws of India are not modified, then no legislative measure is needed to give effect to such treaties/agreement/conventions."

Since the Parliament is only required to legislatively implement those treaties/agreements/conventions that are either – (i) restricting or affecting the rights of citizens or others, (ii) or modifies the law of India; the court's subsequent analysis examines these exceptions in detail.

- **Whether Rights of Citizens or Others are Restricted or Affected? No, They Are Not!**

The court held that parties to a litigation have no vested right in procedural mechanism as settled in *BCCI v Kochi Cricket Pvt. Ltd*.[5] And through *Sangram Singh v Election Tribunal and Anr*[6], it emphasized that Hague Service Convention merely addresses procedural aspects of CPC without affecting any substantive rights of parties. On this basis, the court concluded that the HSC does not affect or restrict the rights of citizens or others.

- ***Whether the HSC Modifies the Law of India? The Answer is a Little Complex!***

If the court found that HSC "modifies" the existing laws of India, then it would be forced to hold that the Parliament needs to legislatively amend CPC to incorporate HSC into the Indian legal system. However, relying on *Gramophone Company of India v Birendra Bahadur Pandey and Ors****[7]***, the court held that the standard of "modifies" the laws of India has been significantly tightened. The *Gramophone* case established that Parliamentary intervention is required only where an international convention is "in conflict with" domestic law, not merely if it "modifies" existing provisions.

Moreover, courts are under an obligation to interpret municipal statutes in a way that avoids confrontation with international law. A harmonious approach to interpreting international law and domestic law is encouraged in the *Gramophone* case. Since the focus is on procedural law rather than any substantive law, the court held that it will not readily infer a conflict between HSC and CPC.

Due to the new higher threshold, the court then proceeded to examine if HSC covenants are "in conflict with" the CPC provisions.

2. Whether HSC covenants are "in conflict with" CPC provisions regarding service abroad?

The rigor when examining the standard of "in conflict with", is less for procedural law as compared to substantive law. Since the case hinges on whether the HSC methods for international service are in conflict with the CPC methods. The court examined each of the CPC methods – Order V Rule 25, 26 and 26A with HSC.

To recap, Rule 25 allows summons to be issued to the defendant by post or courier or email if the defendant does not have an agent empowered in India to receive service. Rule 26 pertains to service through a political agent or court in a foreign country. Rule 26A provides for service of summons through an officer appointed by the foreign country as specified by the Central Government.

- **Are HSC covenants "in conflict with" Order V Rule 26A?**

Article 2 and 3 HSC concerns the appointment of a Central Authority by each signatory state for enabling cross-border service. Under this route, service is sent

to the requisite authority of the originating state which then forwards the service to the Central Authority of the destination state.

According to the court, the only difference between HSC and Rule 26A is that there is a Central Authority rather than a judicial officer (as laid down in CPC) through which service is to be sent abroad. Since this was the only difference, the court held the Central Authority route in HSC to be close and proximate to Rule 26A. And HSC was not "in conflict with" Rule 26A of CPC.

- **Are HSC covenants "in conflict with" Order V Rule 26?**

The court did not examine this provision in detail as the Government has not appointed any political agent or courts in any foreign country. Due to this, the question of whether HSC is in conflict with Rule 26 does not arise in the first place.

- **Are HSC covenants "in conflict with" Order V Rule 25?**

Article 10 of the Hague Service Convention (HSC) permits alternate methods of serving summons abroad, including through postal channels, subject to the receiving state's acceptance. India, however, has expressly reserved against these methods, declaring its opposition to the provisions of Article 10. The court clarified that India's reservation applies specifically to incoming service—i.e., documents sent from other HSC contracting states to India—not to outbound service, from India to states that do not object to direct postal channels.

Based on this, the court held that Order V Rule 25 CPC, which governs service of summons abroad, remains unaffected by the HSC. Article 10 HSC and Rule 25 CPC are not in conflict, as the former itself legitimizes postal service to foreign

states that permit such service under HSC.

Nevertheless, the court noted practical challenges with ensuring effective service under Rule 25, particularly when using post or email, as there is often no reliable mechanism to confirm service, which is an essential safeguard to protect the defendant's right to a fair hearing. Recognizing this, the court stressed that all courts must endeavor to attempt to secure effective service on the defendant.

To reconcile the CPC and HSC, the court endorsed a harmonious interpretation. Courts may proceed under Rule 25 for service abroad – if confirmation of service is received or the defendant appears in response. If so, service under Rule 25 is valid. However, if no confirmation is obtained or the defendant fails to appear within a reasonable period, courts must resort to the Central Authority mechanism prescribed under the HSC.

Reference Questions and their Answers

The court based on its analysis, concluded that: *firstly*, HSC is enforceable without a corresponding legislation since it is neither in conflict with provisions of CPC nor affecting the rights of citizens or others. *Secondly*, HSC does not foreclose CPC Order V Rule 25 route for service, as Article 10 HSC itself contemplates service through postal channels. *Thirdly*, the law laid down in *Mollykutty*, which prescribes strict adherence to the procedure prescribed in HSC (Central Authority route) to the exclusion of alternate methods of serving summons, is overruled.

Case Analysis

The Change in Jurisprudence

In addition to the factors identified by the court in *Charuvila Phillipose*, the

decision in *Mollykutty* suffers from a significant omission. The judgment failed to account for the fact that Article 10 of the Hague Service Convention (HSC) permits service through postal channels, and the United States (the destination state in the *Mollykutty* case) does not object to inbound service via this route. This is a glaring oversight since none of the government memorandums/notifications specifically address the use of Article 10 for service abroad. A detailed judicial consideration of this aspect was required.

Despite these limitations, prior to *Charuvila Phillipose*, several High Courts had blindly relied on the reasoning in *Mollykutty* to broadly hold that the HSC provides the exclusive mechanism for serving summons outside India. With *Charuvila Phillipose* now having expressly overruled *Mollykutty*, courts are presented with two possible approaches: either to adopt the updated and nuanced reasoning in *Charuvila Phillipose*, which permits the coexistence of the HSC and CPC procedures for service abroad; or to adhere to the dated and restrictive reasoning in *Mollykutty*, which confines service exclusively to the Central Authority route prescribed under the HSC.

This divergence creates the possibility of conflicting High Court judgments on the issue of service abroad—an inconsistency that can ultimately only be resolved through authoritative pronouncement by the Supreme Court, unless the other High Courts also adopt the approach in *Charuvila Phillipose*.

Potential Legal Challenges Following *Charuvila Phillipose*

The *Charuvila Phillipose* decision may give rise to further litigation on two unresolved legal questions. First, whether the use of methods under Order V Rule 25—such as service by email—would be inconsistent with a destination state's objection under Article 10 of the Hague Service Convention (HSC). Second, whether Articles 15 and 16 of the HSC, which pertain to ex parte decrees and limitation periods, are "in conflict with" existing provisions of the Civil Procedure

Code (CPC).

- **Compatibility of email service under CPC Rule 25 and HSC Article 10 objection.**

Article 10 of HSC permits the use of "*postal channels*" to send summons to persons directly abroad, unless the destination state objects to it. Suppose a destination state has made an objection under Article 10 HSC. In such cases, courts are free to take either a broad or a narrow approach to interpret the scope of "*postal channels*".

The broad approach to interpretation would entail construing "*postal channels*" to encompass modern means of communication including social media and email. This approach relies on Article 31 of the Vienna Convention on the Law of Treaties (VCLT), which requires treaty terms to be interpreted in terms of their object and purpose.[8] Under this approach, if a state objects to Article 10 of HSC, it is understood to oppose all alternate channels including email/social media, for direct service abroad.

Conversely, the narrow approach construes "*postal channels*" restrictively – to include direct post only. It excludes modern means of communication such as email and social media. This view draws from the fact that the HSC was concluded in 1965, prior to the advent of electronic communication. This interpretation considers an Article 10 HSC objection by a state, as a bar, only on postal service. It perceives a state objection under Article 10, to not bar service by email/social media, thus validating electronic service under Order V Rule 25.[9]

In *Charuvila Phillipose*, the Kerala High Court endorses a narrow interpretation of Article 10 postal methods by stating *"…we take the call to limit the same…*" in

reference to postal channels. This allows litigants in India to send service abroad via email. However, this interpretation carries significant legal risks.

Countries oppose direct "postal channels" under Article 10 HSC for various reasons such as due process concerns, desire for reciprocity or efficiency of Central Authorities. However, certain civil law jurisdictions such as Japan, China and Germany consider service of process as an exercise of judicial sovereignty. They oppose Article 10 HSC on the basis that service is a function exclusively belonging to the state by virtue of its sovereignty.[10] Proceeding with electronic service (through the narrow approach), despite a specific objection, might be perceived as a challenge to a nation's judicial sovereignty.

A further challenge may arise at the enforcement stage. A foreign court may refuse to recognize or enforce an Indian judgment on the ground that service by email was not compliant with proper service under HSC.[11] While such email service might serve the purpose of adequate notice to the defendant, its legality remains contested. For instance, in *Lancray v Peters*, the Court of Justice of the European Union (CJEU) refused to recognize a foreign judgment due to improper service, even though the defendant had actual notice.[12]

- **Whether Article 15 and 16 of HSC is "in conflict with" CPC?**

One of the arguments canvassed to argue that HSC provisions were in conflict with CPC were Article 15 and 16 of HSC. These provisions concern the setting aside of ex-parte judgements and the extension of limitation periods, areas already governed by CPC. It was argued that these provisions significantly alter the existing procedures under CPC

The court however, sidestepped the issue, noting that this was not one of the questions referred for determination. Nevertheless, the court, recognizing the

possibility of a conflict, clarified that its harmonious construction between CPC and HSC was limited to provisions concerning service of summons and cannot automatically result in compatibility between HSC and Indian law for all the other provisions. Since this question remains unresolved, it is likely to be subject to future litigation. The court's avoidance of this issue is particularly notable given that Mollykutty held that a deemed declaration of international service to an HSC signatory state could be made only upon satisfaction of the conditions under Article 15 of the Convention. This however went unaddressed in Charuvila Philippose.

- **Recognition of Problems with HSC Route**

The judgment implicitly acknowledged the practical difficulties associated with serving summons abroad via the Central Authority route under HSC. These include significant delays, often ranging from six to eight months and the risk of non-service. Additionally, the costs associated with the Central Authority route impose a heavy financial burden, particularly on individual litigants and smaller entities. In light of these challenges, the court's harmonized approach serves a dual purpose – it resolves an inconsistency between HSC and CPC and, simultaneously offers an alternate route for service of summons that eases the burden on litigants.

One hurdle that prevents reliance on Rule 25 is the absence of an express mechanism to prove summons was served abroad. The court adopts a practical approach where service is deemed valid under Rule 25 – if the postal authorities of the destination state provide acknowledgement of successful service, or if the defendant voluntarily appears before the court. This is only a temporary fix to address a procedural lacuna in CPC. However, modern technology can prove to be an effective fix. While regular email offers speed, efficiency and accessibility compared to service by post, it is difficult to conclusively prove whether the email was received, opened or read by the defendant. To address these limitations, "certified email" platforms offer an alternative. Such platforms provide encryption, verifiable delivery tracking, time-stamped acknowledgements along

with confirmation of when and whether the recipient opened the message. It provides a comprehensive digital trail similar to postal service, while providing a higher evidentiary value. Incorporation of such tools could significantly improve reliability of international service under Order V Rule 25 of CPC.

In conclusion, the *Charuvila Philippose* judgement is a progressive shift in the law concerning service. The judgement performs a dual function. It overrules the faulty reasoning in *Mollykutty* while simultaneously harmonizing the HSC and CPC provisions for international service. The judgement provides litigants with alternate channels for international service that is less cumbersome than the Central Authority mechanism. However, there are a set of hurdles that the judgement unfortunately does not resolve. This includes whether email service is compatible under Article 10 HSC with a destination state's objective, the potential conflict between Article 15 and 16 HSC with Indian procedural law and the likelihood of divergent interpretations by other High Courts. These issues remain ripe for further litigation. While the judgement is clearly a step in the right direction, there is a need to further simplify and clarify the law concerning international service in India.

[1] *Charuvila Philippose Sundaran Pillai and Ors v. P.N Sivadasan and James W Thomas v. Fr. Jose Thomas S.J and Ors.*, 2024/KER/84933

[2] *Mollykutty v Nicey Jacob and Ors*, 2018/KER/67412

[3] (1970) 3 SCC 400

[4] (2010) SCC OnLine Bom 23

[5] (2018) 6 SCC 287

[6] AIR 1955 SC 425

[7] (1984) 2 SCC 534

[8] Nicolás Lozada Pimiento, "From Physical Location to Electronic Address: Omnipresence in the era of the Internet" in The HCCH Service Convention in the

Era of Electronic and Information Technology, Page 90-93. Available at: https://assets.hcch.net/docs/24788478-fa78-426e-a004-0bbd8fe63607.pdf.

[9] See the following US case laws – *Gurung v. Malhotra* [279 F.R.D. 215] and *Philip Morris USA Inc. v. Veles Ltd*. [2007 WL 725412].

[10] Huang, Jie (Jeanne), Can Private Parties Contract Out of The Hague Service Convention? (July 01, 2024). Journal of Private International Law, volume 20, issue 2, 2024[10.1080/17441048.2024.2369366], Available at SSRN: https://ssrn.com/abstract=5157959.

[11] Id.

[12] Case C-305/88 *Lancray v Peters* 1990 E.C.R. I-2742, at § 22-31