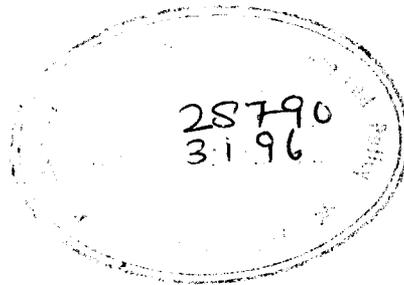


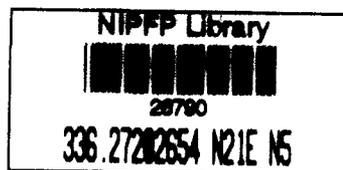
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**ECONOMIC REFORMS AND THE STAMP ACT**

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**NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY  
NEW DELHI**



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## ABBREVIATIONS

A.A.	:Appropriate Authority
BIFR	:Board for Industrial and Financial Reconstruction
CBDT	:Central Board of Direct Taxes
CRR	:Cash Reserve Ratio
CVB	:Central Valuation Board
DDA	:Delhi Development Authority
FSI	:Floor Space Index
GIC	:General Insurance of Corporation of India
HFI	:Housing Finance Institutions
ICICI	:Industrial Credit and Investment Corporation of India
IFCI	:Industrial Finance Corporation of India
IT Act	:Income Tax Act
JSD	:Judicial Stamp Duty
LIC	:Life Insurance Corporation of India
LAN	:Local Area Network
MIS	:Management Information System
NHB	:National Housing Bank
NIPFP	:National Institute of Public Finance and Policy
NSD	:Non Judicial Stamp Duties
NOC	:No Objection Certificate
NRI	:Non Resident Indian
PAC	:Public Accounts Committee
RF	:Registration Fees
SBI	:State Bank of India
SD	:Stamp Duty
SDP	:State Domestic Product
SEBI	:Security and Exchange Board of India
ULC	:Urban Land Ceilings And Regulation act
USAID	:United States Agency for International Development

## CHAPTER I

### Introduction and Background

#### Legal and Economic Context

Department of Revenue, Ministry of Finance, Government of India, entrusted to the NIPFP a Study of the Indian Stamp Act, 1899 and the States' Stamp Acts, with reference to the new economic policy and the impact of Stamp Duties on the process of liberalisation. The Study is expected to analyse the provisions of Indian Stamp Act and States' Stamp Acts from the point of view of national and international experience, and formulate a set of concrete recommendations for the amendment of the Act and revision of rates so as to ensure that the scheme of Stamp Duties does not hamper economic growth, and structure of the Duties so designed as to minimise the regressive effects. At the same time, in recognition of the contribution of Stamp Duties and Registration Fees to States' revenues (and Municipal revenues through Surcharge on Stamp Duties on transfer of property in some States), care has to be taken to see that the amendments do not lead to a substantial loss of revenue.

While clarifying the scope of the Study, the Department of Revenue desired the Institute to address the issues raised in the Onkar Goswami Report on Industrial Sickness and in the Interim Report of Chelliah Committee relating to the cumulative burden of different Central, State and Local Taxes on property, and to the scope for devising a uniform property valuation base for adoption by taxing authorities and public agencies at different levels for their purposes. It was also indicated that the Study may review the recommendations of various Commissions and expert Committees on the levy of Stamp Duties including the 67th Report of the Law Commission, Report of Eighth Finance Commission, Chelliah Committee on Tax Reform, Goswami Committee on Industrial Sickness, Sarkaria Commission on Centre-State relations etc.

Taking into account the requirements of the Study and the perceived problems of implementation, a detailed questionnaire was devised and sent to all the States and Union Territories. Letters were sent to concerned Central Ministries and institutions under them, financial institutions, capital market institutions, builders, consumer groups etc. Individual visits were made to Tamil Nadu, Uttar Pradesh, Karnataka, Maharashtra, Gujarat, Delhi and West Bengal within the constraint of time. Replies to the questionnaire could be obtained, however, only from a few States and institutions despite personal efforts. The Study has benefited from wide ranging discussions with persons and officials concerned with, or affected by the Stamp Act and Registration Act. The data on revenues have been drawn from the published reports of RBI, Finance Commission, budget documents of the State Governments and GOI/State Finance Accounts. Subsequent to the submission of the Interim Report to the Government in July 1994, the Institute team had made efforts to obtain the reactions to the Report from a number of State Governments as well as officials of the concerned Central Government Departments.

### Constitutional Scheme

Stamp Duties are levied on various instruments reduced to writing and not on the transaction per se. The idea of raising revenue to a State from the transactions of its citizens originated in Holland when the first Stamp Law was passed in 1624. In England, Stamp Duties were first imposed in 1694 as a revenue raising measure to finance the on-going war, and this was elaborated in subsequent statutes to cover various instruments. In India, Stamp Duties were first imposed in Calcutta on prescribed instruments in 1797, and then in other Presidency States with the objective of abolition of tax levied earlier on traders for the maintenance of police establishments. Provisions were added later for stamping acknowledgments for the receipt of money rates, and on other deeds. The Stamp Act of 1860 replaced the existing regulations of the three Presidencies, and this Act was ultimately replaced by the Act of 1899. This was based to a considerable extent on the English Act. This has undergone only minor changes in substance and the Schedule has been slightly amended in 1956, 1958, 1976, 1985 and 1994. The Act itself was amended in 1971 and 1976 to a minor extent.

Under Article 268 of the Constitution, such Stamp Duties and such Duties of Excise on medicinal and toilet preparation as are mentioned in the Union List (I) shall be levied by the Government of India but shall be collected: a) in the case of Union Territories by the Government of India, and b) in other cases by the States within which such Duties are leviable. The proceeds in any financial year of any such Duties leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State. Entry 91 of the Union List empowers the Centre to fix the rates of Stamp Duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. These documents are normally executed in the course of transactions in banking, industry, trade and commerce. The inclusion of these rates in the Central List is with a view to keep them uniform throughout the country. However, the Centre can add new instruments only by Constitutional amendment. The levy and collection of Duties on Central instruments is governed by the Indian Stamp Act, 1899, which was last amended in 1976.

Entry 63 of the State List (II) provides for rates of Stamp Duties in respect of documents other than those specified in the provisions of List (I) with regard to rates of Stamp Duties. The States can insert new instruments from time to time. The levy and collection of Duties on State instruments is governed by the State Stamp Acts some of which are enacted independently as in Maharashtra except for matters relating to Entry 91. There are some State Acts which combine the provisions of the Central and State Acts. In Delhi, the Punjab Stamp Act has been adopted with variations. The Union and the States have no concurrent powers of taxation of the same instrument, but in practice the States are levying Duties on related transactions of instruments in the Central List such as transfer of shares and assignment of debt.

Entry 44 of the Concurrent List (III) refers to Stamp Duties but covers only the machinery provisions, and not the rates of Duties. The Parliament has overriding powers in respect of the machinery provisions, and can make use of such powers in bringing consistency and uniformity in the machinery provision of the Stamp Act.

## **Reports of Commissions**

The Law Commission of India in its 67th Report of 1976 suggested that the Government of India enact a uniform Stamp Act applicable throughout India in respect of the machinery provisions and Central List, with a supplementary State Schedule subject to the exclusive amending power of the States. The Commission suggested possible revisions of the Act in respect of:

- a) the structure and arrangement of the Act;
- b) legal labels employed in the Act, to denote the various kinds of documents; and to remove avoidable ambiguity;
- c) rectification of the unsatisfactory position arising from conflicting decisions or otherwise in regard to the charging section and connected provisions;
- d) improvement of the machinery provisions;
- e) reducing the multiplicity of the rates of duties, and the types of stamps; and incorporating in the Act itself various notifications on remissions;
- f) facilitation of international trade; and
- g) reducing the hardship of the common man, and promoting self-assessment on the basis of widely known rates and easy procedures.

No follow-up action has been taken on the Report of the Law Commission by the Government of India since 1976. However, some States like Maharashtra have implemented many of the recommendations applicable to them.

## **Commission on Centre-State Relations**

The Sarkaria/Balakrishnan Commissions on Centre- State Relations (1989) referred to the demand of the States for upward revision of the rates of Stamp Duties and Excise Duties on medicinal and toilet preparations under Article 268 in order to realise larger revenues. It also referred to their complaint about the failure of the Centre to revise these rates frequently, considering that the instruments in the Central List were primarily of a commercial and trading nature, and did not affect the common man. The Commission did

not however, recommend a major upward revision of the rates.

### **Eighth Finance Commission**

Among the Finance Commissions, the Eighth Commission considered for the first time the scope for enhancing revenues from the Stamp Duties mentioned in Article 268 and invited suggestions from various States. They referred to the low rates of Stamp Duties on instruments in Central List contrasting with the frequent revision by the States and the need for these rates to be periodically increased to maintain their buoyancy with reference to inflation and value addition of the instruments. They demanded imposition of duty on cheques and higher rates on other instruments, especially letters of credit, bills of exchange, bills of lading, insurance policies, transfers of shares and debentures and to withdraw the exemptions. They pointed out that the increased burden would be absorbed by the better-off sections without much effect on trade and commerce, even as the increased rates would help the States to raise larger revenues. They regretted that the Central Government displayed little interest in revising the rates as the increased revenues would accrue to the States and not to the Centre, and, in fact, the trend has been to reduce or remit the rates rather than increase them. In the course of their memoranda to the Commission, the States also called for rationalisation and simplification of the tax structure on ad valorem basis. They asked for deletion of the exemption to Article 27 of the Indian Stamp Act, which encouraged companies to register trust deeds in States with lesser duty on the trust and mortgage and use these trusts for the issue of debentures. As regards insurance policies, the States wanted the Stamp Duties to be related to the sum insured and not the rate of premium. The Tenth Finance Commission, which submitted its Report recently to the Government of India, recommended the continuance of the fiscal dispensation under Article 268.

The Eighth Finance Commission expressed itself against any increase in Stamp Duties on bills of exchange, promissory notes, life insurance policies, receipts, transfer of shares and debentures. It was also not in favour of reimposition of Stamp Duty on cheques because of the ensuing administrative work, disproportionate to the revenue. The Commission recommended an increase in the Duties on bills of lading, letters of credit and general insurance policies including marine insurance but left the matter to the Central

Government for appropriate action.

#### **Committee on Industrial Sickness**

The Goswami Committee on Industrial Sickness and Restructuring observed, inter alia, that high Stamp Duties are major barriers to amalgamation and recommended that the Central Government use its powers of persuasion to convince the industrial States with high Stamp Duties and sick units like Maharashtra and West Bengal to reduce the rates in their own interest. The burden goes up because States like Maharashtra treat property transfer in mergers and amalgamations as conveyancing, and the duty is charged on the market value determined by the Registering Department instead of the negotiated value or the value mentioned in the Orders of the Court or BIFR. Unfortunately, mergers are constrained by the location of the Registered Office of the sick company, irrespective of the location of the healthy company. Hence, there is little hope that firms will merge in the States with low Stamp Duties. The Committee recommended a study on the rates and effects of Stamp Duties in Maharashtra, Gujarat, West Bengal, Karnataka, Tamil Nadu and Uttar Pradesh, and also proposed a conference of concerned States to evolve a rational rate structure. This point was also raised by FICCI in their submission. The Department of Revenue desired that this recommendation be also taken note of by the NIPFP.

#### **Action at the level of the Department of Revenue**

The recommendations of the Eighth Finance Commission were examined by the Finance Ministry in the light of the comments received from the State Governments. In pursuance of this examination, Stamp Duty on bills of lading was raised from 25 paise to Re 1 and on letters of credit from Re 1 to Rs 2 through the Finance Act 1985. A working group was set up under the Chairmanship of Additional Secretary (Insurance) with State representatives to examine the suggestions for the consolidation of Stamp Duties on general and life insurance policies and increase in the rates of Stamp Duties on other Central instruments. It is understood that the Report of the Working Group has been examined in the Department of Revenue and that the following recommendations are proposed to be accepted by the Government:

- i) To issue an order permitting the insurance companies not to affix the stamps on policies issued by them, without losing their evidentiary or other value for registration etc. The insurance companies may, however, be ordered to pay to each State/Union Territories Stamp Duties in advance every quarter in a consolidated lumpsum at the rate of 20 paise for every Rs 100 of gross direct premium in the case of GIC, and 50 paise on each block of assured sum of Rs 1000 or a fraction thereof in the case of LIC (Section 35 of Stamp Act is to be amended for this purpose).
- ii) To levy flat Stamp Duty at the rate of Re 1 for receipt of amounts exceeding Rs 500 (this has since been notified after amending the Schedule)
- iii) To abolish Stamp Duties on promissory notes and bills of exchange payable in less than three months and drawn by a commercial or cooperative bank;
- iv) To maintain the existing rates of duty on letters of credit and bills of lading and share transfer.
- v) To enable registration of mortgage deeds for debentures in the State in which the Registered Office of the concerned company is located, and to fix the Stamp Duty at Rs 10 for every Rs 500. (This is to be further examined prior to issue of notification).
- vi) To examine, if the exemption to Article 27 can be deleted to avoid inter-State distortions in the issue of debentures by companies and to safeguard the revenue of States and the legality of the deletion is to be examined by NIPFP.

Our Preliminary views on these recommendations are given in Appendix I of this Chapter.

#### **Report on Tax Reform by Chelliah Committee**

The Interim Report of the Tax Reforms Committee under the Chairmanship of Dr. R. J. Chelliah (1992) has referred in para 4-18 to 4-20 to the unintended high burden on rental income and housing property owing to the fact that the taxes falling directly or indirectly on the same bases are formulated independently without coordination. It has been calculated that, on a house earning an annual rental income of Rs 6 lakh, the Income Tax, the Wealth Tax and the Property Tax liability alone would come to 63.43 per cent, not counting non-recurring levies like Stamp Duties and Capital Gains Tax. This is bound to provide a strong incentive to avoid or evade taxes, and to pay the price partly in black

money. Again, in the context of the Net Wealth Tax, the Committee recommends in para 7.5 that the rules regarding valuation of residential property should be re-examined because of the different valuation bases used in different taxation Acts. The Committee then recommends that simultaneously, efforts should be made to suitably adjust the rates of Stamp Duties on transactions of property and the level of Municipal Property Tax, with the objective of ensuring that the total burden of all taxes on property income is reasonable.

### **New Economic Policy and the Stamp Act**

In the discussion paper of the Finance Ministry (1993) on Economic Reforms, as adumbrated in later official pronouncements, the objective of economic reform is stated as bringing about rapid and sustained improvement in the quality of life of the people and fostering an economic environment which promotes rapid, broad-based development. This was undertaken in India in the context of macro-economic stabilisation and structural adjustment, and in the light of various policy measures agreed with the World Bank and IMF. The reforms covered the areas of fiscal imbalances, industrial policy and licensing system, foreign trade and payments regime, tax system, overhaul of the excise duty structure, financial sector changes, deregulation and privatisation of various services. Industrial licensing was abolished for all except a select list of hazardous and environmentally sensitive industries. MRTP control for investment and expansion was liberalised and access to foreign technology made freer. Private sector participation was allowed in most of the industries, and entrepreneurs were free to invest, modernise and expand subject only to locational controls in metropolitan cities. Import control was virtually abolished, and import duties have been reduced in stages. Partial convertibility of the rupee and a stable market determined exchange rate has provided an incentive for exports including service exports and remittances. Most sectors of the economy are now opened for foreign investment according to liberal guidelines issued by the Government of India.

The new policy aimed to attract foreign investment in priority industries upto or beyond 51 per cent of equity, by simplifying rules and procedures and by offering terms at par with other countries. Special measures were announced to encourage NRI investment in different sectors including real estate. Joint ventures in power and other core sectors with

foreign companies are being approved.

Extensive reform in direct and indirect taxes has been carried out in the light of the Report of Prof. Raja Chelliah Committee. The recent budgets have introduced major changes in the system of personal and corporate taxation, Wealth Tax, Capital Gains Tax, presumptive taxation of traders and professionals, streamlining tax concessions, reduction in Excise Duties and, simplification of Excise Duties, taxation procedures and enforcement provisions for presumptive purchase of undervalued properties.

Wide ranging reforms have been carried out in the banking sector in the light of the Report of the Narasimhan Committee on Financial Sector Reforms. The proportion of bank funds pre-empted through the SLR is being reduced progressively with the ultimate target of 25 per cent, and the CRR is being operated as an instrument of inflation control. The formerly regulated interest structure has been rationalised and simplified, and bank deposit rates are also deregulated. The interest rates on bank credit of over Rs.2 lakh have been deregulated. There are no minimum lending rates or ceiling on deposit rates. The banks have been allowed considerable flexibility in their investment management, with the option to hold corporate shares and debentures upto 5 per cent of the incremental deposits, subject to capital adequacy and income recognition norms. The commercial banks are expected to play a leading role in investment and trading in debt and equity instruments. Parallel with this, the Government has increased the rate of interest offered on its own market borrowing to market-related levels including the conversion of Treasury Bills into short term debt instruments. This will help to smoothen the creation of an active market and dedicated institutions for trading in Government securities and thereby facilitate the transition to a market oriented economy. The extension of tax benefit, on par with that available for the housing finance institutions, for infrastructure lending, announced in the current year's Budget, will give a boost to such lending, and improve the prospects for the securitisation of infrastructure and Municipal bonds also.

### **Capital market**

Similar reforms have been initiated in the capital market, with regulation of

the market by the independent authority Securities and Exchange Board of India. A National Stock Exchange has been set up to provide nationwide screen based trading and electronic clearing and settlement systems. Foreign institutional investors have been allowed to invest in the capital market subject to SEBI guidelines and benefiting from a liberalised tax regime. The Foreign Exchange Regulation Act has been amended to remove a number of constraints relating to companies with foreign equity operating in India, NRI investment, repatriation of profits etc. Private sector Mutual Funds are operating alongside public funds, even as a number of commercial banks have hived off their merchant banking divisions as subsidiaries. SEBI is enforcing comprehensive regulations governing various aspects of the capital market and intermediaries operating therein, with a view to improving trade practices, rules for disclosure, and measures of investor protection, even as SEBI helped in the introduction of new instruments like stock invest. The companies are able to raise the capital now without the need for any consent for making the issue or pricing it, subject only to the guidelines issued by the SEBI.

It is reported by SEBI and major economic institutions that not only is the volume of issues going up, but new instruments are hitting the market such as the Government-issued zero coupon five year bond, floating rate paper, short and medium term paper of Government, deep discount bonds, and securitised debt. A vibrant debt market in instruments of different rates, maturities and yields is developing, which will be nurtured by the proposed National Stock Exchange, and the Securities Trading Corporation (to be set up by RBI mainly for Government securities). The bond issues of Public Sector Undertakings with varying yields and maturities were found to be popular, and the market rates depend increasingly on rating and risk perception. The banks now can invest unlimited funds in Public Sector Undertakings' bonds. A number of institutions have undertaken issue of Eurobonds and global depository receipts. Trading in debentures is still limited, and overshadowed by equity trading, for want of market makers, problem of finding ready buyers, and risk perception. Securitisation of housing mortgages and other debts helps to impart liquidity to the debt market, and hopes are pinned on the issue of mortgage backed certificates by HDFC and ILFS, benefiting from the nominal duty in Bombay. There are many prerequisites to the success of securitisation and options, futures and forward markets, which are definitely instruments of the future. Steps were being taken to achieve an annual

flow of direct foreign investment of over \$ 2 billion, while the cumulative net foreign investment was already \$ 3 billion from January 1993 to December 1994.

### **Expansion of capital market**

Over the last two years, the number and value of public issues has gone up and there are more merchant bankers in the business. The market capitalisation of Bombay Stock Exchange has gone up from Rs.5400 crores in 1980 to Rs.446,900 crores in August 1994. The average daily turnover in BSE was Rs.390 crores. In 1980-81, the amount of capital raised (mainly by the corporate private sector) in the form of equity was Rs.200 crores. Over 6800 players are listed in the 23 Stock Exchanges, with the BSE accounting for the largest volume of trading. By 1992-93, the total amount raised through the securities market by public and private sector issuers had gone upto Rs.18700 crores, and in 1993-94 to Rs.21480 crores (for 1143 issues according to SEBI), or about 20% of the gross domestic savings. The West Zone topped the list with 339 issues and Rs 7736 crores with the North Zone in close pursuit. This included major issues by IFCI, SBI capital markets, PNB capital services, ICICI etc. The corporate sector is also entering the merchant banking sector, infrastructure bonds for power, railways and roads are becoming popular, and the USAID is supporting a project for bond-financed urban infrastructure. There are over 400 registered merchant bankers now. NHB is promoting the securitisation of housing mortgages to increase the flow of investment into housing. The players in the capital market include the entrepreneur/corporate entity/mutual funds; the investors including the foreign institutional investor and domestic financial institutions and investment banks; the host of intermediaries from brokers to the underwriter, merchant banker, portfolio manager, Trustee of Trust Deed, Banker to the Issue, Stockholding Corporation, Over the Counter Trading Corporation, and credit rating agencies, the regulators, viz., Government, SEBI and Stock Exchanges.

## **Approach and International Context**

It was noted by the Central Government and investors alike that the success of the reform process is conditioned by the extent of dismantling of unnecessary controls and approvals for industrial or real estate activity by the burden of State and Local Taxes as well as the procedures for their levy and collection, by the systems of approval and clearances for concluding transactions or for obtaining civic and other services, by the extent of simplification and rationalisation of documentation and rules, and by the transparency of administration and single window system which reduces harassment and scope for corruption. It is necessary also to reconcile the conflicting requirements of Central, State and Local laws. A detailed analysis of the international experience with the levy of Stamp Duties and similar levies on the transfer of real property is given in Appendix III and Appendix IV of Chapter IV as desired by the Department of Revenue. It is seen that the payment of Stamp Duties in developed countries are governed by public-friendly procedures, with no need to go through tortuous processes for the purchase and affixation of different types of stamps. The payment is effected through endorsement and stamping by the Stamp Office, or by franking (in the case of institutions and operators in bulk transactions of shares and property). The process of registration is customer-friendly, carries a nominal fee, and does not involve personal visits to the public office, and often the entire transaction can be handled through licensed agents or lawyers. There are detailed instructions and information available to the public on all aspects of the levy of Stamp Duties, exemptions, documents to be submitted and the authorities to be approached. The structure of exemptions favours low value transactions and low income households, and facilitates the expansion of housing finance facilities. There is full encouragement to self-assessment and voluntary compliance, also because of the low rates of duty. These are worthy of emulation in India. The Stamp Duties in developed countries are mostly confined to property conveyances and leases, and all other transactions have been exempted, except that in U.K., where the capital market instruments are still subject to duty. The rates of duty, however are not uniformly low in all countries, as seen from Appendix IV of Chapter IV. Generally, Stamp Duties form a small proportion of the transaction cost, often less than the legal and realtor costs for the parties. Unlike India, the payment of Stamp Duties is delinked from the act of registration in U.K., although the registering parties are obliged to forward a copy of the document to the Land Title Office.

The last mentioned obligation in fact helps in the maintenance of a credible land title and price information system, and in the annual notification of land values for different areas. These notified values form the basis for expropriation of land by public agencies, and for negotiated purchases, as well as for valuation of property for various purposes. There is little incentive or scope for understating the consideration in the instrument, as understatement would also result in the availability of lesser loan from the financial institutions for purchase of property, or for mortgage. The operation of the Stamp Act and the scope for its reform in *India* can be considered in the context of the foregoing narration.

## Appendix I of Chapter I

### Modifications to the Stamp Act, 1899

Recommendations of the Working Group led by Additional Secretary (Insurance)	Comments
1. Government should issue an order permitting the Insurance Companies not to affix the stamps on insurance policies issued by them. This would require an amendment to the Stamp Act, 1899 (section 35).	<p>The decision can be given effect to by what has been stated below at Recommendation No.4 and amendment to the Act would be needed only to the extent of permitting consolidated payment of stamp duty and permitting certification on each policy signifying reference to decision to Collector of Stamps on prior payment, or alternatively permitting franking on the policy. It would be necessary for LIC/GIC to approach the District Magistrate/Collector of Stamps to get this facility.</p> <p>It is proposed to exempt such policies under Section 35. The legality of exempting LIC and GIC under section 35 of the Act for not affixing stamps on policy instruments is not in doubt as such rational classification has been upheld by the Supreme Court (AIR 1953 SC 404, AIR (1963) 2 SC 353). However, the desirability of exempting only one class of transactions under Section 35 in a level playing field may be looked into.</p>
2. GIC may be asked to pay a uniform rate of 20 paise for every Rs.100/- of gross direct premium collected as stamp duty.	As regards recommendation 2 and 3 for effecting change in the rates of duty, the same would require amendment to Article 47 (Policy of insurance). The change can be effected by the Annual Finance Act also.
3. In the case of LIC, the stamp duty rate be 50 paise on each block of sum assured of Rs.1000/- or a fraction thereof.	

4. Both in the case of GIC and LIC, individual policies may be exempted from having stamps affixed on them without losing their evidentiary or other value for purposes of registration, authentication etc. Instead, the insurance company may be ordered to pay to each State/Union Territory Government stamp duty at the rates mentioned in recommendations (2) and (3) above, once every quarter in advance in the form of a consolidated lumpsum. This duty may be on the basis of the figures collected during the previous quarter. At the end of each financial year, the insurance company shall square up with each State Govt./Union Territory the difference between stamp duty actually payable and the stamp duty paid in advance.

The proposal made in this recommendation may not be legally tenable. The obligation to pay stamp duty in respect of insurance policies lies with the insurance company (GIC or LIC) which issues the policies and executes them in favour of the insured. This obligation is contained in section 17 of the Stamp Act. Since stamp duty has to be paid in respect of instruments which are chargeable to duty, stamp-duty cannot be paid on the basis of figures collected during a previous quarter. Stamp-duty has to be paid during or before the execution of an instrument. There can, therefore, be no part payment of duty for the present and payment of the difference in the future. The better course would be to pay 10 per cent amount in excess of previous year's duty and get certification of full duty, and arrange to pay any difference by mutual agreement on finalisation of accounts. The suggestion to amend Section 9(1)(b) of the Stamp Act would be of no help as it would go against the very scheme and purpose of the Act.

5. At present a flat rate of 20 paise is payable as stamp duty for each transaction exceeding Rs.20/-. It is recommended by the Group that while no stamp duty need be paid for amounts less than Rs.100/-, stamp duty at the following rates may be charged for amounts exceeding Rs.100/-:

Article 53 (Receipt) of the Schedule to the Stamp Act 1899 has been amended by the Finance Act, 1994 (w.e.f. 1.6.94) to provide Re.1/- stamp duty (revenue stamps) for receipts issued for any money or other property the value or amount of which exceeds Rs.500/-.

Above Rs.100/- and upto  
Rs.1 lakh - Re.1/-

Receipts for amounts upto  
Rs.500/- will not attract  
duty.

Rs.1 lakh and above - Re.1/- per  
Rs.1 lakh  
or part  
thereof

6. The stamp duty on share transfer may be increased from the existing rate of 50 paise per Rs.100/- to Re.1/- for every Rs.100/- or part thereof of the face value of the shares.

This recommendation has not been accepted by the Central Government. We have proposed a reduction of duty, subject to recoupment of the loss in revenue through the levy of service charge on designated institutions.

7. Stamp duty on promissory notes and Bills of Exchange should be abolished.

The Central Government has accepted the recommendation and notifications under Section 9 remitting the duties chargeable under Articles 13 and 49 of Schedule -I of the Stamp Act, 1899 have been issued in February 1994. The State Governments have objected to this unilateral decision and have also referred to the practice of avoiding duty on bills for more than 3 months by informal extension of period. We have proposed withdrawal of the notification and levy of uniform low rates.

8. There should be no change in the existing formula for stamp duty on letters of credit.

The recommendation has been accepted by the Central Government

Letters of Credit are presently chargeable with a duty of Re.1/-. Considering the widespread use of this instrument in the banking,

export-import and related business the duty could be increased to Rs.2/- without being too much of a deterrent. This was agreed by the VIII th Finance Commission.

9. In order to raise the revenue of the States, stamp duty on Bills of Lading should be increased from Re.1/- to Rs.10/- (Article 14 of Schedule I to the Act).

The Central Government has not fully accepted the recommendation and the increase in duty effected is from Re.1/- to Rs.2/-. The increase has been effected by the Finance Act, 1994 w.e.f. 1.6.1994.

10. Mortgage deeds for debentures should be registered in the State in which the registered office of the concerned company is located. The rate of stamp duty on this financial instrument may be fixed at Rs.10/- for every Rs.500/- or part thereof.

This has been commented upon under 11.

11. The Working Group has noted that under Article 27 to Schedule-I of the Indian Stamp Act, 1899 exemption is available in respect of debentures issued by an incorporated company or other body corporate in terms of a registered mortgage deed whereby the company or body borrowing makes over in whole or in part their property to trustees for the benefit of debenture holders. It has been brought to the notice of the Group by the representatives of State Govts. that many debenture issues take place resorting to this exemption clause, with the trust deed executed in places other than the registered office of the company. Such a trust deed is normally created along with the issue of debentures. Since the

The Central Government has decided to ask the NIPFP to examine this.

There is no mandatory requirement to execute the debenture trust only in the State having registered office of the company. It is a declaration and can be executed anywhere even outside the State where the registered office is situated. It is subjected to duty as a bond, under Article 64 of Schedule I of the Stamp Act. The objective of the exemption is that duty should be payable only once. If it is paid on the mortgage deed, no duty is necessary on the separate debentures issued in conformity with it. Since the rate of stamp on mortgage deed varies from State to State, practice of registering mortgage

duty is paid on the trust deed, no stamp duty becomes payable. Further, as the stamp duty on trust deed varies from State to State companies choose to register their trust deed with the state having the lowest stamp duty. In this manner States where actual issues of debentures take place are deprived of their legitimate revenue. The Working Group felt that there is a case for removing this lacuna. However, this may require amendment to the relevant schedule in the Stamp Act. The Working Group recommends that legality involved in deleting the exemption clause should be got examined and further appropriate action taken by the Government, company or other body corporate.

deed with the State having the lowest duty is rampant. To prevent such practice, two options are available. First, for the purpose of Article 27, rate of stamp duty against mortgage of property with the Trust should be made uniform; or alternatively provide a ceiling for stamp duty on mortgage deed as provided in other States like Bombay and Gujarat. If exemption provided in Article 27 of the Schedule is to be deleted and the issuing company is allowed to pay stamp duty only as provided in Article 27 main clause, there will be a setback for incorporated companies genuinely issuing debentures through the Trust in terms of mortgage deed under the exemption clause. Moreover, issue of debentures by the Trusts in terms of mortgage deed is a well established practice, deletion of which may upset the tradeability of debentures in capital market and the confidence of investors. The proposal to remove the exemption clause in Article 27 in respect of issue of debentures by a company or body corporate would burden the companies with additional financial liability. Thus the clause may remain in the present form, but the Central Government may prescribe uniform rates for mortgage of properties with the Trust created by the issuing company in order to prevent the type of distortions pointed out by the States. In that case, the mortgages would be registered in the States where the issuing company is incorporated.

## CHAPTER II

### Fiscal Importance of Stamp Duties and Registration Fees.

#### Revenue Importance

Despite the relatively high importance assigned to Sales Taxes and State Excise Duties, the Stamp Duties and Registration Fees (SD and RF) are an important source of revenue for the State Governments. Revenue from SD and RF would exceed Rs. 5000 crores in 1995-96, as seen from the Report of the Tenth Finance Commission, if all the reporting States are taken into account. The budgeted figures for 1993-94 and 1994-95 show significant increase in collections for a number of States. In terms of revenues, in the year 1992-93, SD and RF occupied the third position in Andhra Pradesh, Gujarat, Karnataka, Kerala, Maharashtra, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal, the fourth position in Haryana, Rajasthan, and Delhi, and, the fifth position in Madhya Pradesh and Orissa (Table 1). The relative ranking of SD and RF were more or less similar for all the States examined in Table 1, even for the earlier years (1980-81, 1985-86 and 1991-92) for which the data are presented, with a notable exception in respect of Maharashtra and Bihar. In Maharashtra, the relative ranking of SD and RF improved from a sixth position in 1980-81 as well as in 1985-86 to a third position in the recent years 1991-92 and 1992-93. In the case of Bihar, the data indicate a sharp increase in the relative ranking of SD and RF in the recent year 1992-93.

The relative revenue importance of SD and RF in the States' fiscal reckoning, therefore, indicates that we cannot easily project the idea of an abolition of these levies in totality. This view is reiterated by several State Governments where we visited. Many of them, in particular, Maharashtra and Tamil Nadu pointed out that their receipts from SD and RF have been significantly increasing in recent times. In Maharashtra, the duty has risen from Rs.54 crores in 1982-83 to Rs.484 crores in 1992-93, and reported as Rs.612 crores for 1993-94.

At this point two more aspects need special mention. First, in order to get a comprehensive idea of revenue from property transfers, attention should be focused not only on SD and RF but also on other Local Taxes on immovable property and urban land. Secondly, in some of the States, a part of the SD is passed on to the Local Bodies (after deducting collection expenses) in the form of a Surcharge on Stamp Duty or Municipal tax on transfer of property under the provisions of the Municipal and Panchayat Acts. The Surcharge or Municipal Transfer Tax ranges from 0.5 per cent in Maharashtra to 5 per cent in Delhi and Tamil Nadu and constitutes a component of devolution of resources to Local Bodies. In Tamil Nadu, for example, Rs 17.40 crores were passed on to the Municipalities under this head in 1992-93. This forms about 5 per cent of the total revenue from Stamp Duties in the State. In this regard it is important to note that this source of revenue for the Local Bodies is buoyant, and is bound to be recommended for enhancement by the State Finance Commissions set up to look into the finances of Urban and Rural Local Bodies.

#### **Pattern of growth**

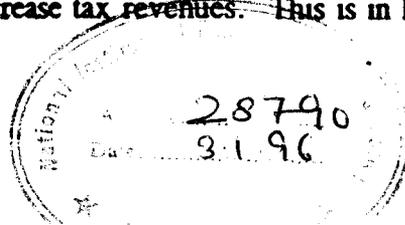
The total revenue from SD and RF in respect of the Selected States increased from Rs.467.31 crores in 1980-81 to Rs.3197.18 crores in 1992-93, representing a more than six-fold increase in the revenue (Table 2). However, it may be noted that the Duties are not uniformly exploited by all States. If the revenue from SD and RF collected in the individual States are examined for the years from 1980-81 through 1992-93, the following two aspects are easily noticeable. First, the revenue from SD and RF is relatively low in the low income States of Madhya Pradesh, Bihar Rajasthan, Orissa, and Assam and the same is noticed even in respect of the relatively high income States of Punjab, Haryana and Delhi. Revenue from SD and RF is relatively high in Maharashtra, Uttar Pradesh, and Tamil Nadu followed by the five States of Karnataka, Andhra Pradesh, Kerala, Gujarat and West Bengal. Second, the inter-State variation in revenues from SD and RF was increasing in most of the years examined. The coefficient of variation of SD and RF in respect of the sixteen Selected States increased from about 63 per cent in 1980-81 to 69 per cent in 1992-93. In this regard it may be seen from Table 2 that in the two years 1986-87 and 1987-88 the computed coefficient of variation showed a sharp increase compared to the other years examined.

In order to increase the level of SD and RF in the States like Madhya Pradesh, Rajasthan, Orissa, Bihar, Assam, Punjab, Haryana and Delhi, it is necessary to increase the rate of growth of revenues from these levies over a period of time. However, it is only in Rajasthan, Madhya Pradesh and Delhi among the low revenue States that the growth rates of revenue from SD and RF is relatively high if the period from 1980-81 through 1992-93 is examined (Table 3). The annual average compound growth rates of 20.93 per cent, 18.05 per cent and 17.72 per cent obtained respectively in Rajasthan, Madhya Pradesh and Delhi during the period were higher than the corresponding All Selected States' average growth rate of 17.68 per cent per annum. During the period under consideration, the other States where the growth rate of SD and RF exceeded the corresponding All Selected States' average growth rate were Maharashtra (23.23 per cent), and Karnataka (20.02 per cent); in Bihar the growth rate obtained (17.65 per cent) compared with the corresponding growth rate for All Selected States.

### **Buoyancy and Elasticity**

The aspect noted above, that the level and/or growth rate of SD and RF is relatively low in many States may signify the fact that either the tax structure of these States or the tax administration or the both, is/are not adequately adjusted to harness efficiently the potential yield from these levies. This indicates that in these States there is an urgent need to introduce reform measures to increase the revenue from SD and RF still further.

The effect of discretionary tax policy changes undertaken in the past thirteen years with regard to SD and RF seem to be of minor revenue importance in most of the States considered for the analysis. This is evident on a comparison between the estimated buoyancy and elasticity coefficients (Table 4). In this regard, noticeable difference between the two coefficients signifying a favorable revenue impact of discretionary changes, is seen in respect of only a few States; Andhra Pradesh, Assam, Kerala and Orissa. A contrasting point to note here is the view expressed by some of the States, in particular by Tamil Nadu that the Government prefers to rely on the elasticity of tax base i.e., the benchmark values rather than increase in the tax rates in order to increase tax revenues. This is in line with



the experience of other countries which maintain constant tax rates and allow the total revenue to move in correspondence with the growth in property values. The Tenth Finance Commission has made buoyancy estimates and buoyancy based revenue projections for Stamp Duties and Registration Fees for seventeen States, a brief note on which may be seen as Appendix I at the end of this Chapter. In the Report of the Commission, it is worth noting that the growth rate adopted for projections for this revenue source is generally as high as or even higher than the corresponding growth rates of other important State taxes like the Sales Taxes for most of the States.

### Incidence

A note on the combined incidence of transfer taxes such as the Stamp Duties may be seen as Appendix II of this Chapter. The per capita incidence of SD and RF is relatively low in the States of Assam, Bihar, Uttar Pradesh, Madhya Pradesh, Orissa, Rajasthan and West Bengal (Table 5). In all these States, the per capita SD and RF realised is lower than the corresponding All Selected States' average per capita in all/most of the years examined from 1980-81 through 1992-93. This aspect is indicative of the low level of tax effort undertaken in these States.

### Tax Effort

It is common to represent the tax effort of States in terms of the tax -SDP ratio. The computed tax-SDP ratio in respect of SD and RF of the Selected States is shown in Table 6. If the average tax -SDP ratio of All the Selected States is considered, the ratio showed an increase from 0.46 per cent in 1980-81 to 0.66 per cent in 1992-93. If the individual States are considered, the tax-SDP ratio obtained in the low income States of Rajasthan, Madhya Pradesh, Bihar, Orissa and Assam are consistently lower than the corresponding All Selected States' average; the situation is similar in respect of Gujarat, Maharashtra, West Bengal and Delhi. On the other hand, the tax-SDP ratio is consistently above the corresponding All Selected States' average in respect of Tamil Nadu, Kerala and Uttar Pradesh ; the situation is similar under most of the years examined in respect of Punjab, Haryana, Karnataka and Andhra Pradesh.

The relative tax effort of the States may also be represented by an index of utilization of tax potential. In this method the tax potential of each State is arrived by applying the All States' average tax rate on the proxy base, namely, the State Domestic Product. The utilization index of tax potential (UIT) is computed as the ratio of actual tax collections to the estimated tax potential. The utilization index of SD and RF computed for the whole period, from 1980-81 through 1992-93 as well as for the individual year 1992-93 bring out interesting inference (Table 7 and Table 8). For the whole period, in the majority of the Selected States - Gujarat, Maharashtra, Rajasthan, West Bengal, Madhya Pradesh, Bihar, Delhi, Orissa and Assam - the utilization index of SD and RF is less than unity which is indicative of inadequate tax effort in the State concerned. The relative tax effort as reflected by the UIT is relatively high in Tamil Nadu, Kerala, Haryana, Karnataka, Uttar Pradesh, Punjab and Andhra Pradesh in the whole period 1980-81 to 1992-93. In these States the index exceeded unity in the whole period. But in the recent year 1992-93, UIT exceeded unity just for Tamil Nadu, Kerala, Karnataka and Uttar Pradesh. This shows that the revenues from SD and RF could have been larger than present receipts in many of the States had the full potential of tax been uniformly exploited.

### **Components of Stamp Duties and Registration Fees**

Revenue from SD and RF may be disaggregated into: (1) revenue from SD and (2) revenue from RF. Revenue from SD may be further bifurcated into: (a) Judicial Stamp Duties (JSD) and (b) Non-Judicial Stamp Duties (NSD). The JSD is otherwise termed as Court Fees and is collected under different State Court Fees Acts. In respect of Court Fees, the stamps and stamp papers are sold through the Treasury or vendors, but the instruments are defined in the Schedule to the Court Fees Act.

If the aggregate revenue is separated into SD and RF, SD accounts for a relatively large share. If SD alone is considered, then NSD accounts for a larger share vis-a-vis the JSD.

In this regard, for the purpose of analysis, a few years' break-up of the relative percentage shares of NSD, JSD and RF in respect of the Selected States are

presented in Table 9. As may be noted from the Table, for the recent year 1992-93, if Bihar is excluded from the analysis, the share of NSD ranged between 44 and 89 per cent if all the Selected States are considered. For this year, if Assam and Uttar Pradesh too are excluded from the analysis, the share of NSD ranged from 58 per cent to 89 per cent. If the individual States are considered, their relative share of NSD ranged between, 54 and 85 per cent in 1980-81, 44 and 87 per cent in 1985-86, 42 and 90 per cent in 1990-91 and 43 and 89 per cent in 1991- 92. The ranges of the percentage shares of NSD referred to above in respect of the individual Selected States indicate that even though NSD constitutes the major component of the total SD and RF, there is noticeable inter-State variation in the percentage shares of NSD.

(i) **Instrument-wise Revenue from NSD**

Though the States do not maintain instrument-wise revenue figures, it was found from discussions that a major proportion of the revenue from NSD came from the purchase of stamps and stamp papers for conveyances and mortgages as well as instruments like developer agreement equated to conveyance. This is seen also from the fact that conveyances of various types, agreements of sale, leases etc. account for bulk of the registered transactions. (In States with no monetary ceiling on Registration Fees for sales, the Registration Fee revenues is also largely derived from conveyances). The figures in respect of Uttar Pradesh at Table 10 are quite revealing. In the State in 1992-93, 87 per cent of the total NSD revenues came from duty on conveyances. The available figures for Maharashtra for the year 1992-93 reveal that about Rs.296 crores (over 60 per cent) out of Rs.484 crores of NSD revenue came out of conveyance charges and mortgage.

It is normally held that conveyances account for 70 to 90 per cent of total NSD revenue in different States. States like Maharashtra have exploited this source better than others due to the gradual inclusion of all types of instruments involving transfer of property such as power of attorney, developer agreement on transfer of shares by the members of cooperatives. Its share has increased also due to annual increase in guideline values. In Maharashtra, the percentages of conveyance, lease and mortgage is stated to be 65:25:15. The high level of duty on conveyances in many States ranging from 10 to 15 per cent of the

consideration, or the market value as assessed by the Collector under the Stamp Act, is the target of criticism of most interest groups and is cited as a reason for widespread evasion of Stamp Duties. Hence the need for reform and rationalisation of duty on, as well as the proper definition of this particular instrument.

## **(ii) Stamp Duty on Capital Market Instruments**

Break-up of Stamp Duties in respect of the various capital market instruments are not available; the available information in this regard for Maharashtra indicate the following features.

In Maharashtra, in 1993-94 special adhesive stamps account for Rs.185 crores, non-judicial for Rs.112 crores and share transfer stamps for Rs.67 crores. Corresponding figures for 1990-91 are Rs.88 crores, Rs.36 crores and Rs.1 crore. This shows the extent of increase in revenue from share transfers. Bulk of the revenue from consolidated duty in Bombay is on account of the duty on share issues. The duty on debenture issue is normally exempted, once the mortgage deed is executed by the trust. The implications of this are analysed in detail in Chapter II.

## **Court Fees and Registration Fees**

A look at the Table 9 shows that in individual States the relative share of JSD ranged between 6 to 36 per cent in 1980-81, 5 to 18 per cent in 1985-86, 3 to 30 per cent in 1990-91, 3 to 31 per cent in 1991-92 and 3 to 35 per cent in 1992-93. The Table also indicates that the relative shares of RF in the Selected States ranged from 6 to 29 per cent in 1980-81, 5 to 47 per cent in 1985-86, 6 to 28 per cent in 1990-91 as well as in 1991-92 and 5 to 29 per cent in 1992-93. In this context it may be noted that there are some important Court decisions on the levy of Court Fees. Recently the Supreme Court (120 SC A. Shetty vs State of Karnataka) has directed that there should be a correlation between the services provided or expenses incurred and the level of Court Fees and suggested an initial slab of 2.5 per cent Court Fees for amounts upto Rs.15000 and a ceiling of ad valorem 7.5 per cent on higher slabs with a total monetary upper limit of Rs 75000. Following similar rulings of

the Court on Court Fees, Delhi and Maharashtra have imposed monetary limits on RF and Court Fees, and Karnataka has amended its Act. However, majority of States still retain ad valorem rates for Court Fees without imposing a monetary ceiling, and it is pointed out this is imposing a considerable burden on banks etc. instituting recovery suits.

As regards Registration Fees, Delhi and Maharashtra impose an ad valorem duty with an upper monetary limit of Rs 100 and Rs 1000 respectively, while Uttar Pradesh levies a maximum Registration Fee of Rs.251, in view of a Supreme Court judgement which related these Fees to the actual cost of collection. However, other States are collecting the Fees on an ad valorem basis of 1 to 2 per cent without any monetary limit

### **Conclusion**

To sum up, Stamp Duties and Registration Fees constitute a significant and growing source of State revenue, and the States are keen to exploit this source through better procedures for valuation of conveyances and by expanding the list of instruments for ad valorem duties. The Non-Judicial Stamp Duties is a more important component than the Judicial Stamp Duties though the latter also imposes significant burden on the litigants. The Stamp Duties and Registration Fees displayed buoyancy exceeding unity in most of the States, although the utilization index of tax potential is less than unity in a number of States. Thus, there appears to be greater potential for exploiting this source, as pointed out by many State Governments. Both the Finance Commission and the Department of Expenditure do not consider abolition of the Stamp Duties as feasible, as it is not possible to make good the revenue loss to the States through increased transfer or alternative tax sources. In the present context of growing fiscal deficits of State Governments, and constraints on the Central Budget for increased Plan or Non-Plan transfers to the States, any proposal for reform of Stamp Duties should leave existing revenues from this source undisturbed, and should allow for a growth rate of revenue at least equal to the rate of growth of Sales Tax revenue. In other words, proposals for remission of Stamp Duties on certain instruments and reduction of Stamp Duties on conveyances etc. should, side by side, build in revenue inflow from consolidated payments of Stamp Duties by companies and financial institutions in lieu of duties and increased volume of registered transactions

benefiting from better valuation and simplified procedures.

In this regard, it is also necessary to look at all the recurring and non-recurring levies on the transfer of land, property and financial assets to assess the total burden, as indicated by the Chelliah Committee. The tendency for undervaluation and lesser payment of Stamp Duties arises also from the desire to evade the payment of Capital Gains Tax, Wealth Tax, Gift Tax, Property Tax and other taxes on immovable property. and this leads to a vicious circle of black money generation. The maximum combined rates of all these levies should be brought down together with uniform basis for valuation.

Table 1.  
State Taxes as Percentages of Own Tax Revenues

States	1980-81										1985-86									
	Taxes on Income & Expenditure *	Land Revenue	Stamps & Registration Fees	Taxes on Immovable Property Other than Agricul-tural Land	State Excise	Sales Taxes	Taxes on Vehicles	Taxes on Goods & Passengers	Taxes & Duties on Electri-city	Other Taxes & Duties on Commodi-ties & Services	Taxes on Income & Expendi-ture *	Land Revenue	Stamps & Registra-tion Fees	Taxes on Immovable Property Other than Agricul-tural Land	State Excise	Sales Taxes	Taxes on Vehicles	Taxes on Goods & Passengers	Taxes & Duties on Electri-city	Other Taxes & Duties on Commodi-ties & Services
Andhra Pradesh	0.01	8.51	7.98	0.08	25.70	46.93	8.90	0.00	0.05	4.83	0.00	1.45	8.23	0.08	28.54	52.14	7.71	0.00	8.38	3.90
Assam	25.01	4.39	3.88	0.00	8.50	47.85	8.60	1.79	0.98	8.01	27.26	1.80	2.81	0.00	1.99	57.53	3.25	2.00	0.24	3.43
Bihar	0.01	4.08	5.72	0.00	8.45	66.98	4.31	4.00	3.52	2.90	-0.01	4.82	6.25	0.00	7.73	67.21	7.48	8.02	2.68	1.84
Gujarat	1.49	2.43	8.85	0.08	0.65	66.64	4.18	0.40	0.82	8.74	1.73	1.80	4.41	0.02	0.53	64.25	3.85	8.47	11.01	7.13
Haryana	0.00	1.88	7.85	0.01	18.37	44.82	4.10	14.08	8.00	3.03	0.00	0.78	7.45	0.00	22.12	46.71	2.99	13.18	4.48	2.33
Karnataka	3.81	1.35	0.79	0.00	18.80	49.65	6.81	0.03	2.00	6.78	1.28	0.73	8.25	0.00	17.44	55.14	6.99	2.38	4.43	4.37
Kerala	8.36	0.93	8.87	0.03	18.98	89.29	8.82	0.01	1.88	0.04	2.80	0.78	8.18	0.15	13.07	61.83	6.32	0.00	8.21	0.07
Madhya Pradesh	0.73	2.88	8.88	0.08	18.73	50.72	7.81	8.18	8.30	3.03	1.03	2.43	5.80	0.01	18.07	48.78	6.50	8.90	8.58	3.88
Maharashtra	2.82	1.42	8.78	0.00	7.85	66.32	4.56	1.58	8.18	3.00	3.18	1.57	3.98	0.00	8.89	63.30	4.03	3.85	5.87	5.97
Orissa	0.00	4.80	8.82	0.00	8.94	58.02	7.34	1.77	12.81	2.29	0.00	8.87	6.05	0.00	7.57	61.89	6.85	0.89	17.42	1.77
Punjab	0.00	6.88	10.87	0.00	28.88	44.70	8.08	7.55	4.31	2.88	0.00	0.48	7.72	0.00	29.28	46.73	3.17	5.23	6.08	1.36
Rajasthan	0.01	4.18	8.03	0.80	8.84	63.86	6.04	7.74	2.49	3.18	0.00	2.78	4.84	0.38	14.92	58.25	11.68	0.72	3.38	2.10
Tamil Nadu	0.87	-0.88	9.15	0.42	1.88	68.85	12.43	0.00	0.43	5.87	1.22	1.04	8.08	0.09	15.31	62.82	7.00	8.00	0.50	3.88
Uttar Pradesh	0.02	3.82	10.78	0.00	13.82	54.34	4.04	8.38	1.83	8.12	0.00	2.18	11.85	0.00	13.44	58.83	3.29	8.34	2.38	3.72
West Bengal	2.48	1.48	3.82	0.08	10.08	58.24	8.87	9.88	3.52	8.00	4.65	8.00	8.48	0.04	6.22	58.39	3.57	8.99	3.44	4.72
Delhi	0.00	0.11	3.01	0.00	17.32	68.01	2.58	0.00	0.00	10.98	0.00	0.03	3.34	0.00	20.20	68.18	2.52	0.00	0.00	7.73

\* Indicates Taxes on Agricultural Income, Hotel Receipts Tax and Other Taxes on Income and Expenditure.

Table 1, Contd.  
State Taxes as Percentages of Own Tax Revenues

States	1991-92										1992-93									
	Taxes on Income & Expenditure *	Land Revenue	Stamps & Registration Fees	Taxes on Immovable Property Other than Agricul-tural Land	State Excise	Sales Taxes	Taxes on Vehicles	Taxes on Goods & Passengers	Taxes & Duties on Electri-city	Other Taxes & Duties on Commodi-ties & Services	Taxes on Income & Expendi-ture *	Land Revenue	Stamps & Registra-tion Fees	Taxes on Immovable Property Other than Agricul-tural Land	State Excise	Sales Taxes	Taxes on Vehicles	Taxes on Goods & Passengers	Taxes & Duties on Electri-city	Other Taxes & Duties on Commodi-ties & Services
Andhra Pradesh	1.01	0.88	7.29	0.11	28.88	53.78	8.54	0.01	2.47	1.73	0.88	1.88	7.00	0.13	28.73	53.88	8.43	0.00	1.31	1.80
Assam	22.88	7.85	2.28	0.00	8.85	57.25	2.81	1.98	0.85	2.18	15.42	7.00	2.82	0.00	3.82	62.32	3.71	2.70	8.38	2.27
Bihar	0.00	1.80	9.84	0.00	10.83	68.87	7.34	0.01	1.58	1.58	0.00	1.55	11.84	0.00	8.38	64.10	8.57	8.00	2.38	1.38
Gujarat	1.35	1.27	8.77	0.01	0.48	68.49	3.91	2.81	13.01	2.15	1.18	1.33	5.34	0.01	0.43	68.58	4.20	3.52	15.74	1.70
Haryana	0.00	0.08	7.82	0.00	28.29	47.71	5.27	9.22	2.88	0.88	0.00	8.00	7.24	0.00	27.22	48.75	4.92	9.75	3.00	1.03
Karnataka	1.95	0.58	7.72	0.00	17.48	58.83	7.79	2.81	2.43	2.43	2.30	0.54	8.07	0.00	18.48	58.81	7.05	3.51	2.75	2.48
Kerala	2.10	0.88	6.08	0.24	12.88	87.03	5.88	0.00	2.48	0.17	0.88	0.63	10.05	0.40	11.78	68.18	5.83	0.00	1.17	0.18
Madhya Pradesh	0.50	1.48	7.22	0.00	17.88	45.08	5.88	7.54	13.43	1.02	0.08	1.73	7.27	0.00	18.18	45.38	8.78	4.38	12.72	1.03
Maharashtra	3.57	0.74	8.21	0.00	10.08	83.87	3.82	3.34	4.88	3.18	3.58	1.09	7.38	0.00	10.51	63.12	3.80	3.18	4.21	3.31
Orissa	0.00	3.08	8.29	0.00	8.23	88.88	8.83	0.00	14.88	0.75	0.00	3.58	6.33	0.00	8.24	58.32	10.12	0.00	12.78	0.84
Punjab	0.00	0.23	7.74	0.00	31.08	48.78	2.82	5.23	3.82	0.38	0.00	0.21	8.18	0.00	33.70	45.82	2.78	5.88	3.77	0.37
Rajasthan	0.00	2.10	7.85	0.88	23.01	53.20	8.88	0.00	3.45	0.85	0.00	1.73	8.82	0.82	23.88	53.40	8.72	0.00	2.88	0.83
Tamil Nadu	0.88	0.88	10.20	0.08	12.82	83.79	0.48	0.88	2.17	2.88	0.47	0.45	8.78	0.10	13.17	63.88	8.83	1.02	1.81	2.83
Uttar Pradesh	0.00	1.21	12.77	0.08	20.82	54.44	2.07	4.33	1.84	2.40	0.05	1.88	11.81	0.05	22.88	52.28	2.88	4.55	1.84	2.45
West Bengal	4.88	0.88	7.81	0.08	8.43	85.13	3.45	8.38	1.84	2.53	3.81	0.34	7.04	0.08	8.35	68.34	3.40	8.42	2.12	2.11
Delhi	0.00	0.01	4.81	0.00	18.88	68.41	3.31	0.00	0.00	5.11	0.00	0.00	3.80	0.00	20.80	68.79	2.88	0.00	0.00	4.88

Source: Computed from NFFP Data Bank, Budget Documents of the State Governments.

Note: \* Indicates Taxes on Agricultural Income, Hotel Receipts Tax and Other Taxes on Income and Expenditure.

Table 2.

## Revenue from Stamp Duties and Registration Fees: (1980-81 to 1992-93)

State/Years	(Rs. Lakh)												
	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93
Andhra Pradesh	4726.39	5524.88	5962.09	6377.48	6605.72	9091.28	9480.50	11611.39	14357.07	16658.51	19384.13	22884.33	24159.57
Assam	261.76	351.21	347.02	463.93	570.02	589.15	556.97	1052.01	786.63	1032.12	1014.06	1173.79	1354.72
Bihar	1590.74	1857.39	3280.46	3619.40	3770.60	4761.46	4649.77	5844.91	6099.66	6969.67	8710.58	10934.11	15560.30
Gujarat	2947.76	3766.91	3840.07	3987.97	4367.11	4737.69	5284.45	6766.60	6639.39	11013.61	12525.64	18804.02	18456.07
Haryana	1835.21	2536.66	2517.50	2808.25	3210.21	3739.19	4567.65	5022.69	7070.94	9254.64	10149.49	9771.47	10471.66
Karnataka	3247.42	3338.14	3706.44	4446.17	5311.69	5671.45	6921.61	9236.13	11693.15	13921.27	16077.61	22526.51	25231.15
Kerala	3326.61	3665.32	4204.58	4478.47	5431.97	6060.06	6617.34	6566.67	9541.12	11304.60	12199.51	15216.76	16960.67
Madhya Pradesh	2221.56	2672.83	3014.34	3649.02	3767.92	4667.97	5606.92	6693.16	7635.63	9120.50	11069.66	15176.41	16652.47
Maharashtra	4266.00	4932.35	5405.91	6099.71	7163.47	9407.61	13346.99	14645.66	16963.31	25766.69	26639.07	36977.65	46440.06
Orissa	762.03	927.53	1076.56	1250.57	1431.23	1726.61	2034.37	2217.37	2562.24	2797.66	3094.00	3542.99	4064.36
Punjab	3562.95	4675.52	5011.96	4500.53	3925.75	5170.96	5633.26	6927.66	6193.62	10660.61	11036.60	11946.64	14349.76
Rajasthan	1967.67	1524.14	1795.23	2076.90	2257.51	2740.67	3005.56	3994.32	4504.37	6637.61	6347.09	11650.79	11630.10
Tamil Nadu	6990.43	7312.94	6317.76	9124.77	10495.94	12734.01	16361.73	16556.79	21660.41	27756.14	30149.63	39027.62	41659.69
Uttar Pradesh	6945.41	6744.63	11279.35	11177.36	12376.74	15311.66	17760.43	25430.03	25176.49	31656.34	36037.04	44519.10	46046.77
West Bengal	2691.49	3479.34	3931.67	4235.94	4675.94	5614.27	6366.62	7370.63	10104.94	12016.77	14476.29	17426.55	17212.29
Delhi	705.00	909.00	1060.00	1193.00	1324.00	1645.00	2017.00	2473.00	3273.00	3465.00	3214.00	4766.00	4666.00
All Selected States	46730.57	56620.99	64774.96	69469.47	77126.02	93691.5	110433.4	136617.5	160462.4	200494.5	226126.6	264262.6	319716.2
Avg	2920.66	3536.61	4046.44	4343.09	4820.50	5666.22	6902.09	8551.09	10026.90	12530.91	14133.05	17766.43	19982.36
Std	1833.76	2249.36	2710.56	2736.72	3097.22	3660.26	4640.63	6226.30	6726.63	6637.21	9666.67	12307.65	13653.42
Coeff. var (%)	62.79	63.56	66.95	63.06	64.25	66.12	70.13	72.61	67.09	66.93	66.40	69.27	69.33

Source : NIPFP Data Bank, State Budget Documents

Note : Delhi figures are included in the Selected States

Table 3.

Growth Rates of Stamp Duties and  
Registration Fees (1980-81 to 1992-93)

(in percent per annum)

States	Growth Rates
Andhra Pradesh	15.48
Assam	13.94
Bihar	17.65
Gujarat	16.59
Haryana	16.77
Karnataka	20.02
Kerela	15.23
Madhya Pradesh	18.05
Maharashtra	23.23
Orissa	14.49
Punjab	11.98
Rajasthan	20.93
Tamil Nadu	18.16
Uttar Pradesh	17.39
West Bengal	17.14
Delhi	17.72
All Selected States	17.68

Source : Computed

Table 4.  
Buoyancy and Elasticity of Stamp Duties and Registration Fees  
(1980-81 to 1992-93)

States	Buoyancy Coefficient	T-values	Elasticity Coefficient	T-values
Andhra Pradesh	1.0078	29.6259	0.9458	43.2302
Assam	1.0399	12.4246	0.7188	7.8797
Bihar	1.2992	14.8771	1.2440	15.3915
Gujarat	1.2449	14.5272	1.1426	11.9262
Haryana	1.0921	17.3184	1.0921	17.3184
Karnataka	1.3431	31.6020	1.1402	30.7383
Kerala	1.2191	26.7712	0.4320	4.8022
Madhya Pradesh	1.2323	28.3404	1.2053	28.8948
Maharashtra	1.5319	30.6450	1.4266	27.3233
Orissa	1.1450	21.7193	0.9885	14.1247
Punjab	0.8530	11.9545	0.8316	11.2080
Rajasthan	1.3613	21.2010	1.2287	19.1839
Tamil Nadu	1.3121	40.2207	1.2838	34.5267
Uttar Pradesh	1.2651	24.8282	1.1434	20.7802
West Bengal	1.2149	32.4198	0.9840	15.3786
Delhi	1.1233	22.5015	1.1233	22.5015
All Selected States	1.2414	45.2375	1.1185	41.4992

Source : Computed

Table 5.

## Per Capita Stamp Duties and Registration Fees: State-wise

(Rs.)

State/Years	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93
Andhra Pradesh	8.72	9.97	10.53	11.03	11.52	15.06	15.37	16.75	22.30	25.33	26.62	33.05	34.45
Assam	1.31	1.73	1.69	2.24	2.72	2.78	2.60	4.65	3.50	4.65	4.52	5.17	5.90
Bihar	2.25	2.57	4.44	4.80	4.90	6.05	5.79	7.12	7.28	6.14	9.97	12.22	17.07
Gujarat	8.55	10.73	10.73	10.93	11.80	12.51	13.69	17.21	21.55	26.96	30.09	39.35	42.69
Haryana	14.01	16.92	16.34	19.99	22.32	25.40	30.32	32.57	44.79	57.27	61.36	57.71	60.42
Karnataka	6.65	6.73	9.51	11.19	13.12	13.75	16.47	21.56	26.60	31.31	35.49	46.61	53.65
Kerala	12.97	14.67	15.97	16.76	20.09	22.19	23.64	30.47	33.46	39.15	41.70	51.34	63.13
Maharashtra	6.11	9.10	9.74	10.74	12.32	15.79	21.69	23.77	29.65	39.36	42.71	53.85	66.69
Madhya Pradesh	3.49	4.41	4.53	5.36	5.44	6.55	7.89	6.96	10.01	11.69	13.90	16.60	20.16
Orissa	2.93	3.42	3.91	4.45	5.00	5.93	6.66	7.35	6.34	6.94	9.72	10.93	12.32
Punjab	21.11	27.05	26.46	25.09	21.49	27.79	30.77	35.66	41.66	54.31	54.09	57.47	67.76
Rajasthan	3.99	4.26	4.92	5.55	5.66	6.97	7.45	9.66	10.63	15.74	16.75	25.97	25.29
Tamil Nadu	12.27	14.76	16.56	17.93	20.34	24.34	30.84	34.50	40.11	50.16	53.75	66.62	72.56
Uttar Pradesh	6.16	7.61	9.60	9.30	10.07	12.17	13.60	19.32	16.70	22.99	25.56	30.69	31.24
West Bengal	5.23	6.16	6.61	7.17	8.06	9.42	10.13	11.43	15.33	17.84	21.03	24.76	23.92
Delhi	11.07	13.70	15.62	16.56	17.64	21.04	24.76	29.14	37.02	37.83	33.49	47.89	46.73
All Selected States	6.79	6.05	9.02	9.47	10.30	12.27	14.13	17.15	19.65	24.12	26.73	32.82	36.21

Source : Computed from NIPFP Data Bank, State Budget Documents.

Note : Figures pertaining to Delhi are also included in the All Selected States.

Table 6.

## Stamp Duties and Registration Fees as a Percent of State Domestic Product (at current prices) in Selected States

State/Years	(Percent)												
	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93
Andhra Pradesh	0.65	0.62	0.61	0.55	0.57	0.68	0.67	0.68	0.65	0.66	0.62	0.61	0.61
Assam	0.11	0.12	0.10	0.12	0.12	0.12	0.10	0.16	0.12	0.13	0.11	0.11	0.12
Bihar	0.25	0.25	0.40	0.38	0.33	0.39	0.33	0.38	0.33	0.36	0.38	0.43	0.53
Gujarat	0.45	0.48	0.45	0.35	0.37	0.39	0.38	0.50	0.45	0.53	0.56	0.63	0.57
Haryana	0.61	0.73	0.63	0.65	0.68	0.65	0.75	0.74	0.79	0.93	0.83	0.67	0.64
Karnataka	0.58	0.52	0.52	0.51	0.54	0.55	0.58	0.68	0.74	0.77	0.77	0.84	0.87
Kerala	0.67	0.95	0.89	0.81	0.88	0.93	0.90	1.04	1.04	1.06	1.00	1.12	1.26
Madhya Pradesh	0.32	0.38	0.35	0.36	0.37	0.39	0.45	0.42	0.41	0.43	0.41	0.52	0.52
Maharashtra	0.28	0.29	0.30	0.29	0.31	0.36	0.47	0.45	0.48	0.53	0.50	0.58	0.64
Orissa	0.24	0.25	0.29	0.26	0.30	0.29	0.33	0.34	0.30	0.31	0.32	0.29	0.31
Punjab	0.61	0.68	0.66	0.70	0.53	0.62	0.64	0.64	0.66	0.72	0.66	0.60	0.64
Rajasthan	0.34	0.31	0.32	0.30	0.32	0.36	0.36	0.42	0.35	0.49	0.47	0.61	0.53
Tamil Nadu	0.63	0.84	0.94	0.89	0.87	0.93	1.07	1.02	1.11	1.21	1.18	1.35	1.28
Uttar Pradesh	0.50	0.58	0.64	0.57	0.58	0.62	0.65	0.83	0.70	0.77	0.74	0.79	0.75
West Bengal	0.33	0.36	0.36	0.33	0.33	0.37	0.36	0.37	0.42	0.44	0.45	0.48	0.41
Delhi	0.31	0.33	0.34	0.36	0.36	0.35	0.38	0.41	0.45	0.42	0.33	0.42	0.37
All Selected States	0.48	0.49	0.50	0.46	0.47	0.51	0.55	0.59	0.57	0.63	0.60	0.66	0.66

Source : Computed from NIPFP Data Bank, State Budget Documents.

Note : Figures pertaining to Delhi are included in the All Selected States.

Table 7

Index of Tax Effort:  
Stamp Duties and Registration Fees  
(1980-81 to 1992-93)

(Rs Crores)

States	Stamp Duties & Registration Fees	Net State Domestic Product	Average Tax Rate (%)	Tax Potential	Utilisation Index of Tax Potential (UIT)	Rank on the Basis of UIT
Andhra Pradesh	1570.03	250053	0.63	1454.85	1.08	
Assam	95.34	79186	0.12	460.72	0.21	
Bihar	776.25	200190	0.39	1164.74	0.67	
Gujarat	1030.51	207132	0.50	1205.13	0.86	
Haryana	729.56	100271	0.73	583.39	1.25	
Karnataka	1313.35	184312	0.71	1072.36	1.22	
Kerala	1097.96	107027	1.03	622.70	1.76	
Madhya Pradesh	923.91	212593	0.43	1236.90	0.75	
Maharashtra	2242.99	467130	0.48	2717.84	0.83	
Orissa	275.12	91363	0.30	531.56	0.52	
Punjab	960.38	144396	0.67	840.12	1.14	
Rajasthan	621.54	140384	0.44	816.78	0.76	
Tamil Nadu	2495.72	224297	1.11	1304.99	1.91	
Uttar Pradesh	2924.63	413217	0.71	2404.16	1.22	
West Bengal	1102.25	271600	0.41	1580.21	0.70	
Delhi	309.74	81274	0.38	472.87	0.66	
All Selected States	18469.29	3174426	0.58	18469.29	1.00	-

Source: Computed

Table 8.

Index of Tax Effort:  
Stamp Duties and Registration Fees  
(1992-93)

(Rs Crores)

States	Stamp Duties & Registration Fees	Net State Domestic Product	Average Tax Rate (%)	Tax Potential	Utilisation Index of Tax Potential (UIT)	Rank on the Basis of UIT
Andhra Pradesh	241.60	39704	0.61	260.15	0.93	8
Assam	13.55	11736	0.12	76.90	0.18	16
Bihar	155.60	29342	0.53	192.26	0.81	10
Gujarat	184.56	32240	0.57	211.24	0.87	9
Haryana	104.72	16392	0.64	107.40	0.97	6
Karnataka	252.31	29122	0.87	190.81	1.32	3
Kerala	189.61	15082	1.26	98.82	1.92	2
Madhya Pradesh	168.52	32307	0.52	211.68	0.80	12
Maharashtra	484.40	75481	0.64	494.57	0.98	5
Orissa	40.64	12922	0.31	84.67	0.48	15
Punjab	143.50	22492	0.64	147.37	0.97	7
Rajasthan	118.30	22368	0.53	146.56	0.81	11
Tamil Nadu	418.60	32787	1.28	214.83	1.95	1
Uttar Pradesh	460.47	61270	0.75	401.46	1.15	4
West Bengal	172.12	41604	0.41	272.60	0.63	13
Delhi	48.68	13104	0.37	85.86	0.57	14
All Selected States	3197.18	487953	0.66	3197.18	1.00	—

Source: Computed

Table 9

## Breakup of Stamp Duties and Registration Fees

State/Year	1960-61				1965-66				1969-70				1971-72				1972-73			
	Stamp Duties & Registration Fees	Non-Judicial Stamp Duties	Judicial Stamp Duties	Registration Fees	Stamp Duties & Registration Fees	Non-Judicial Stamp Duties	Judicial Stamp Duties	Registration Fees	Stamp Duties & Registration Fees	Non-Judicial Stamp Duties	Judicial Stamp Duties	Registration Fees	Stamp Duties & Registration Fees	Non-Judicial Stamp Duties	Judicial Stamp Duties	Registration Fees	Stamp Duties & Registration Fees	Non-Judicial Stamp Duties	Judicial Stamp Duties	Registration Fees
Andhra Pradesh	4726.39 (100)	3603.96 (78.25)	490.43 (10.36)	631.98 (13.37)	9091.26 (100)	7199.30 (79.19)	793.23 (8.73)	1098.75 (12.09)	19364.13 (100)	15785.77 (81.52)	1573.12 (8.12)	2005.24 (10.36)	22664.33 (100)	18333.03 (80.82)	2093.20 (9.23)	2257.50 (9.95)	24158.57 (100)	19677.12 (82.27)	1648.13 (7.64)	2436.32 (10.08)
Assam	261.78 (100)	180.77 (68.42)	86.77 (33.15)	34.22 (13.07)	569.15 (100)	441.83 (77.99)	105.77 (18.95)	41.55 (7.05)	1014.06 (100)	425.63 (41.97)	303.30 (29.81)	265.14 (26.12)	1173.79 (100)	506.92 (43.19)	306.26 (31.20)	300.81 (25.81)	1354.72 (100)	811.11 (45.11)	354.54 (26.17)	399.06 (26.72)
Bihar	1560.74 (100)	942.38 (59.74)	180.60 (11.35)	467.77 (29.41)	4761.48 (100)	2112.72 (44.37)	414.50 (8.71)	2234.25 (46.92)	8710.58 (100)	982.63 (11.29)	4526.75 (51.97)	3201.00 (36.75)	10934.11 (100)	797.86 (7.30)	7818.41 (69.66)	2519.82 (23.05)	15590.30 (100)	2344.26 (15.07)	9387.10 (60.33)	3636.94 (24.87)
Gujarat	2947.78 (100)	2518.80 (85.36)	267.01 (9.05)	163.97 (5.56)	4737.99 (100)	4002.42 (84.48)	408.29 (8.56)	326.98 (6.94)	12525.64 (100)	10347.10 (82.61)	396.71 (3.18)	1779.83 (14.21)	16994.02 (100)	13692.30 (83.22)	418.14 (2.50)	2363.58 (14.26)	18456.07 (100)	15723.70 (85.20)	478.87 (2.56)	2253.50 (12.21)
Haryana	1835.21 (100)	1512.49 (82.42)	161.36 (8.79)	161.34 (8.79)	3739.19 (100)	3141.72 (84.02)	333.00 (8.91)	264.47 (7.07)	10149.49 (100)	9085.62 (89.52)	482.65 (4.78)	561.22 (5.73)	9771.47 (100)	8705.64 (89.09)	527.74 (5.40)	536.09 (5.51)	10471.66 (100)	9312.07 (88.93)	645.65 (6.17)	513.74 (4.81)
Karnataka	3847.42 (100)	2422.68 (62.80)	478.77 (12.47)	348.99 (9.08)	5671.48 (100)	4372.92 (77.10)	730.51 (12.66)	568.02 (10.02)	10677.01 (100)	10740.09 (100.80)	1629.64 (11.37)	3506.66 (31.82)	22528.81 (100)	15484.47 (68.73)	2287.12 (10.15)	4756.92 (21.12)	25231.15 (100)	17927.59 (71.05)	4992.86 (19.79)	2310.70 (9.16)
Kerala	3326.81 (100)	2549.18 (76.62)	293.74 (8.83)	513.90 (15.45)	6080.08 (100)	4463.69 (73.42)	637.13 (10.48)	979.24 (16.11)	12199.51 (100)	9467.79 (77.81)	879.48 (7.21)	1852.24 (15.18)	15218.78 (100)	12480.00 (82.00)	587.01 (3.86)	2151.74 (14.14)	18990.67 (100)	15471.28 (81.60)	1085.53 (5.73)	2404.10 (12.68)
Madhya Pradesh	2221.88 (100)	1787.74 (79.87)	239.22 (10.77)	214.82 (9.66)	4667.97 (100)	3678.59 (78.78)	489.23 (10.46)	502.15 (10.76)	11089.88 (100)	9077.99 (81.80)	914.66 (8.25)	1097.01 (9.89)	15178.41 (100)	12908.41 (85.07)	1104.79 (7.28)	1485.21 (9.85)	16652.65 (100)	10662.65 (63.27)	1326.74 (7.87)	4693.06 (28.06)
Maharashtra	4268.00 (100)	3120.67 (72.78)	729.99 (17.02)	437.04 (10.19)	9407.81 (100)	6994.82 (73.29)	1206.64 (12.63)	1306.45 (13.89)	26639.07 (100)	24375.36 (90.11)	1815.51 (6.84)	2648.18 (9.25)	36977.85 (100)	31180.14 (84.32)	1663.12 (4.60)	3914.26 (10.59)	48757.63 (100)	41858.89 (85.85)	2061.72 (4.27)	4818.98 (9.88)
Orissa	782.03 (100)	526.73 (67.23)	99.82 (12.73)	156.76 (20.05)	1728.81 (100)	1185.37 (68.57)	191.73 (11.09)	351.51 (20.33)	3094.00 (100)	2298.40 (73.32)	275.90 (8.92)	549.70 (17.77)	3542.99 (100)	2649.66 (74.79)	305.85 (8.63)	587.46 (16.56)	4094.36 (100)	3029.90 (74.47)	79.18 (1.92)	646.30 (15.90)
Punjab	3562.95 (100)	3036.45 (84.80)	213.30 (5.95)	331.20 (9.24)	5179.98 (100)	4450.52 (86.07)	307.41 (5.94)	413.05 (7.99)	11036.80 (100)	8172.94 (73.13)	1574.65 (14.26)	1391.01 (12.69)	11948.84 (100)	8999.84 (75.25)	1676.43 (14.05)	1278.57 (10.70)	14349.76 (100)	12007.82 (83.68)	754.65 (5.29)	1587.29 (11.05)
Rajasthan	1367.87 (100)	1160.81 (83.64)	136.26 (9.75)	91.80 (6.62)	2740.87 (100)	2397.69 (87.49)	215.55 (7.86)	127.43 (4.65)	8347.09 (100)	6118.19 (72.60)	489.03 (5.86)	1074.87 (12.40)	11850.79 (100)	9479.43 (79.99)	510.41 (4.31)	1690.95 (15.70)	11830.10 (100)	9953.52 (78.55)	551.96 (4.67)	2722.82 (23.79)
Tamil Nadu	5990.43 (100)	4718.00 (78.73)	560.31 (9.36)	684.12 (11.42)	12734.01 (100)	10405.07 (81.71)	913.13 (7.17)	1415.61 (11.12)	30149.83 (100)	25171.62 (83.18)	1563.36 (5.25)	3494.63 (11.59)	36027.62 (100)	33007.80 (91.62)	1723.92 (4.82)	4295.90 (11.01)	41856.99 (100)	35253.21 (84.22)	1992.56 (4.75)	4614.20 (11.02)
Uttar Pradesh	6945.41 (100)	3778.13 (54.40)	2485.79 (35.79)	681.56 (9.81)	15311.08 (100)	12782.62 (83.48)	1510.99 (9.86)	1018.77 (6.65)	38037.04 (100)	22163.75 (58.28)	4809.92 (13.35)	8963.39 (24.87)	44519.10 (100)	21768.38 (48.90)	10239.13 (23.00)	12511.71 (28.10)	48046.77 (100)	20367.50 (42.28)	18198.51 (35.17)	9462.78 (20.55)
West Bengal	2691.49 (100)	2220.73 (78.80)	300.06 (10.36)	370.70 (12.82)	5814.27 (100)	4914.63 (84.53)	269.95 (4.69)	609.68 (10.49)	14478.29 (100)	7199.35 (53.87)	2750.78 (19.00)	3928.18 (27.13)	17426.98 (100)	10975.15 (62.96)	3322.49 (19.10)	3122.49 (17.92)	17212.29 (100)	10000.88 (58.45)	3201.21 (18.60)	3950.19 (22.95)
Delhi	708.00	-	-	-	1845.00	-	-	-	3214.00	-	-	-	4768.00	-	-	-	4668.00	-	-	-

Note : For Maharashtra the Stamp Duties and Registration Fees for the year 1992-93 is the sum of the three components. The aggregate figure given in the Budget in this regard shows a small deviation from the sum of the components.

Table 10.

## Revenue from Non-Judicial Stamp Duties By Type of Instruments : Uttar Pradesh

(Rs.Lakh)

Years	Name of the Instruments											
	Conveyance		Mortgage		Lease		Power of attorney		Others		Total	
	Revenue	Percent	Revenue	Percent	Revenue	Percent	Revenue	Percent	Revenue	Percent	Revenue	Percent
1980-81	4975	90.00	110	1.99	111	2.01	55	0.99	277	5.01	5528	100.00
1981-82	6281	90.00	139	1.99	141	2.02	69	0.99	349	5.00	6979	100.00
1982-83	7050	89.12	155	1.96	160	2.02	72	0.91	474	5.99	7911	100.00
1983-84	8120	89.31	175	1.92	183	2.01	85	0.93	529	5.82	9092	100.00
1984-85	8550	87.91	166	1.91	192	1.97	94	0.97	704	7.24	9726	100.00
1985-86	11085	86.10	220	1.71	223	1.73	135	1.05	1212	9.41	12675	100.00
1986-87	12550	84.08	310	2.08	315	2.11	175	1.17	1576	10.56	14926	100.00
1987-88	16050	69.00	360	2.00	385	2.13	210	1.16	1029	5.71	18034	100.00
1988-89	19060	82.68	425	1.64	432	1.87	270	1.17	2665	12.43	23052	100.00
1989-90	24045	64.21	485	1.70	495	1.73	320	1.12	3208	11.24	28553	100.00
1990-91	28525	87.79	595	1.63	620	1.91	465	1.43	2289	7.04	32494	100.00
1991-92	34565	85.03	790	1.94	805	1.98	537	1.32	3955	9.73	40652	100.00
1992-93	37260	67.11	845	1.98	865	2.02	565	1.32	3237	7.57	42772	100.00

Source : Government of Uttar Pradesh

Note : The Totals do not tally with the figures given in the State Budgets.

## Appendix I of Chapter II

### A Note on the Estimates of Stamp Duties and Registration Fees by the Tenth Finance Commission

The Tenth Finance Commission estimated the States' revenue from Stamp Duties and Registration Fees for the five years from 1995-96 to 1999-2000. For this purpose the methodology used by the Commission in respect of the fourteen Major States, and, the States of Assam, Goa, Himachal Pradesh, and Jammu and Kashmir may be detailed as follows. The first task of the Commission was to estimate the revenue from Stamp Duties and Registration Fees for the base year 1994-95 as the Commission was not satisfied with the budget estimates provided by the State Governments in this regard. Therefore, the Commission worked out the trend growth rate of Stamp Duties and Registration Fees for each State, using the data for the period from 1982-83 to 1992-93. Then the computed growth rate for each State was applied to a State's actual revenue from Stamp Duties and Registration Fees pertaining to the year 1992-93, in order to derive the estimates for the base year 1994-95.

As a second step, a revenue series from Stamp Duties and Registration Fees for the sample period from 1980-81 to 1989-90 was regressed on the State Domestic Product and obtained the buoyancy estimate for each State. However, the Commission moderated the buoyancy coefficients of certain States where the computed coefficients were too low. From the buoyancy coefficient, a set of growth rates were derived for each State for the individual years from 1995-96 to 1999-2000, by using the formula:  $r = y*b$ , where  $r$  is the growth rate of revenue,  $y^*$  is the growth rate of SDP and  $b$  is the buoyancy coefficient. In fact the growth rates of revenue were derived on the basis of certain assumptions on the rate of growth of SDP and inflation. The Commission's buoyancy estimates and growth rate estimates in this regard are reproduced here in Table 1A. These growth rates and the base year Stamp Duties and Registration Fees already estimated were used to project the yield for the forecast years from 1995-96 to 1999-2000. The Stamp Duties and Registration Fees so estimated by the Commission in respect of the relevant individual States are showed in Table

2A. It should be noted that the buoyancy based growth rates were used for revenue projections only for the States mentioned at the beginning of this description excluding Goa. For Goa, due to data limitations the Commission adopted the rate of a neighbouring State. For six States of the North-East and Sikkim the Commission based its estimates on the growth rate of aggregate tax revenues.

Source: Government of India, Report of the Tenth Finance Commission (for 1995-2000), December, 1994, New Delhi , pp.8-9, 167-168.

Table - 1A

Buoyancy Estimates and Buoyancy Based Growth Rates of Stamps and Registration  
sg.wk1

State	BUOYANCY COEFFICIENT	1995-96	1996-97	1997-98	1998-99	1999-2000
1	2	3	4	5	6	7
Andhra Pradesh	1.074	13.425	12.888	12.888	12.315	11.814
Assam	1.117	13.963	13.404	13.404	12.846	12.287
Bihar	1.281	16.013	15.372	15.372	14.731	14.091
Gujarat	1.300	16.250	15.600	15.600	14.950	14.300
Goa	1.144	14.300	13.728	13.728	13.156	12.584
Haryana	1.248	15.600	14.976	14.976	14.352	13.728
Himachal Pradesh	1.000	12.500	12.000	12.000	11.500	11.000
Jammu & Kashmir	1.000	12.500	12.000	12.000	11.500	11.000
Karnatak	1.300	16.250	15.600	15.600	14.950	14.300
Kerala	1.300	16.250	15.600	15.600	14.950	14.300
Madhya Pradesh	1.165	14.563	13.980	13.980	13.398	12.815
Maharashtra	1.300	16.250	15.600	15.600	14.950	14.300
Orissa	1.156	14.450	13.872	13.872	13.294	12.716
Punjab	1.000	12.500	12.000	12.000	11.500	11.000
Rajasthan	1.286	16.075	15.432	15.432	14.789	14.146
Tamil Nadu	1.292	16.150	15.404	15.404	15.504	14.212
Uttar Pradesh	1.300	16.250	15.600	15.600	14.950	14.300
West Bengal	1.246	15.575	14.952	14.952	14.329	13.706

Source : Report of the Tenth Finance Commission, December, 1994, New Delhi,  
pp 91.

Table - 2A

## Estimates of Stamps and Registration Fees by the Tenth Finance Commission

(Rs.Lakh)

State	1995-96	1996-97	1997-98	1998-99	1999-2000	Total 1995-00
1	2	3	4	5	6	7
Andhra Pradesh	27765	31344	35383	39753	44450	178695
Assam	1722	1953	2215	2499	2806	11195
Bihar	24638	28425	32794	37625	42927	166409
Gujarat	28373	32268	36697	41525	46751	185614
Goa	743	859	993	1141	1304	5040
Haryana	16246	18679	21477	24559	27931	108892
Himachal Pradesh	1233	1381	1547	1725	1914	7800
Jammu & Kashmir	631	707	792	883	980	3993
Karnatak	39133	45238	52295	60113	68709	265488
Kerala	28784	33274	38464	44215	50538	195275
Madhya Pradesh	27480	31322	35701	40484	45672	180659
Maharashtra	80235	92751	107220	123250	140875	544331
Orissa	7119	8106	9231	10458	11788	46702
Punjab	21609	24202	27106	30224	33548	136689
Rajasthan	20633	23818	27493	31559	36024	139527
Tamil Nadu	45395	52433	60562	69560	79446	307396
Uttar Pradesh	73261	84689	97901	112537	128630	497018
West Bengal	35089	40335	46366	53010	60275	235075

Source : Report of the Tenth Finance Commission, December, 1994, New Delhi,  
pp 104 to 128.

## Appendix II of Chapter II Incidence of Transfer Taxes

Here the term incidence is used to refer the tax burden. It is necessary to look at the total burden of all remaining levies to place the impact of Stamp Duties in perspective. The burden usually falls on the purchasers in respect of Stamp Duties and Registration Fees, while it falls on the transferor in the case of Gift Tax and Capital Gains Tax. In practice, it may be the case that the division of the transfer duties between the buyers and the sellers depends on the elasticity of demand and supply of the transacted property. Given the supply, if the demand for the property is relatively inelastic, the buyer will agree to meet most of the tax burden, and the reverse would be the case if the demand were to be relatively elastic. In the case of differentiated housing markets and varying elasticities of demand and supply, it is even more difficult to conceptualise the exact division of tax burden; only empirical studies will be of help in this regard. However, no such empirical exercise is attempted here in view of the complexity of such a study and the time constraint. In what follows only certain observations are made on the incidence of transfer taxes.

It is likely that the transfer duties were borne in part by those owners who do not even trade their property. In the case of a tax on share ownership or transfer, to the extent that the price net of tax falls, all owners of the stock or shares pay the tax because their shares are worth less (by the principle of tax capitalisation). If the ownership of property is assumed to be inequally distributed and concentrated in the hands of the relatively rich, the burden of transfer duties in the case of financial instruments and high value property may fall more heavily on the wealthy.

The Chelliah Committee had estimated that the combined liability of Property, Income and Wealth Taxes on some urban real estate properties as high as 63.43 per cent of the total rental income. This does not however take into account one time basis tax on property transactions such as Gift Tax, Capital Gains Tax, levy on unearned land value increment by Development Authority, development charges, Stamp Duties and Registration Fees. The share of Capital Gains Tax in the sale value of a property in major cities ranged

until recently from 7 to 15 per cent and the combined burden of Stamp Duties and Capital Gains Tax may range from 19 to 27 per cent of the sale value depending on the State or city of transaction, and the applicable rate of duty. Even for gift and settlement transactions, the burden of tax, at the effective tax rate on the reported consideration, is augmented by the Stamp Duties and Registration Fees. Apart from these taxes, a portion of the purchase price is ab initio required to be paid to the Development Authority or State Government in case of transfers involving Government or private agency land held on lease. The total burden on account of one time levies is a function of the rate of duty and the reported purchase price. The tendency of the buyers and sellers to undervalue the property at the time of registration or to refrain from registering the sale arises, among other things, from the obligation to pay one-time levies such as Capital Gains Tax, Gift Tax and unearned increment fee on the sale deed. This is in addition to the practice of declaring the value for individual properties as less than Rs. 10 lakh even when the actual value of a property exceeds Rs.10 lakh, in order to avoid the risk of pre-emptive purchase under Chapter XXC of Income Tax Act. The declared value then determines also the amount of recurring levies and the burden of these levies. At the root of undervaluation lies of course the use of black money in real estate transactions, and the cascading effect of concealed incomes. This aspect has been explored in detail in a recent study of black money in real estate transactions, undertaken by NIPFP.

As regards the financial assets such as shares and debentures, the incidence of Stamp Duties is mainly on the issuing entities, although the duty is often passed on by the corporate sector to the allottees of shares and debentures. There is no Wealth Tax on financial assets as well. In comparison with real estate, the incidence of transfer taxes on financial assets is insignificant.

It is significant to note that if the incidence is compared between Stamp Duties and Property Tax, the former a transaction duty and the latter a levy on rateable value, the incidence of Stamp Duties is likely to be relatively high. This aspect highlights the relative revenue productivity of Stamp Duties. As against this, though bulk of the revenue from Stamp Duties originate in the urban property transfers, the revenue is appropriated by the State Governments, and this revenue is said to be about two and a half times the total current revenue of all Municipal Bodies.

## CHAPTER III

### **Instruments in the Indian Stamp Act and Related State Duties**

#### **Central Instruments**

As mentioned earlier, the Indian Stamp Act lays down that the rates of Stamp Duties in respect of the following instruments are to be prescribed by the Central Government, but the proceeds from them are to be collected and retained by the States: (1) bills of exchange, (2) promissory notes, (3) bills of lading, (4) letters of credit, (5) policies of insurance, (6) receipts, (7) cheques, (8) transfer of shares, (9) debentures and (10) proxies. These are instruments of importance in the financial sector and capital market. No duty has been levied since 1927 on cheques despite requests by State Governments to withdraw this exemption.

The Reserve Bank of India represented before the Eighth Finance Commission that any decision to raise Stamp Duties on the above instruments should be taken only after considering its likely impact on the economy, the revenues likely to be derived in relation to the extra cost of administration and the operating costs of the affected entities. It is because of the importance of these instruments to the national economy that they were placed in the Central List in order to prevent their competitive exploitation by the States, to avoid the adverse effects of high rates on these instruments on the efficient allocation of resources and for the smooth conduct of inter-State and international trading by levying on them uniform and low rates. However, the State Governments have been frequently representing for an upward revision of the rates on Central instruments, which have not been revised for a long time. In this context it is also important to note that an additional complexity is created by the practice of State Governments imposing dissimilar rates of Stamp Duties on certain instruments the subject matter of which is common with the Central instruments.

## Structure of Duties

Fixed Duties are levied in respect of bills of lading (Rs.2 per document), letters of credit (Rs.2 per document), proxies (30 paise per document), and receipts (Re.1 for every receipt of Rs.500 or more). Because of the specific nature of Duties on these instruments, it is likely that the yield from Stamp Duties on them are far less buoyant and elastic. On the other hand, either ad valorem rates and or a combination of ad valorem and specific rates are levied in respect of bills of exchange (with periods exceeding 3 months), issue of debentures, promissory notes, transfer of shares and insurance policies. Hence, the revenue potential of these instruments is likely to be high.

However, in the case of debentures, there is an exemption clause under Article 27 to permit the establishment of a Trust by the issuing companies, and the mortgage of the companies' property to the Trust, after which the debentures can be issued without the levy of Stamp Duties. In effect, the Central rate is replaced by the States' rate of Duties on the mortgage of property by a company to the Trust. It carries a rate of duty of 2 per cent ad valorem in Maharashtra with an upper limit of Rs.2 lakh. As noted in Chapter I, the Ranganathan Committee considered this issue and made some recommendations. Our views on this point may also be seen in Appendix I of Chapter I. The States are representing against this exemption clause as it encourages flight of companies to States with lesser rates of Stamp Duties on mortgage. The answer in our view is not to delete this clause, but to provide in the Schedule for uniform and low ad valorem rates on mortgage with a ceiling on total duty payable as in Gujarat. It may further be provided under Article 27 that the partially convertible debentures will be charged duty at debenture rates, with the proviso that when the debentures are converted into shares, the differential duty is payable by the shareholders at prevalent rates.

It should be noted that itemised revenue from Stamp Duties in respect of the various Central instruments are not available, but for remittances of Stamp Duties by the Life Insurance Corporation of India (LIC) and the General Insurance Corporation of India (GIC).

## Duties on Policies of LIC and GIC

The remittances of Stamp Duties by GIC in the selected years, 1985-86, 1986-87, 1987-88 and 1992-93, were less than Rs.3 crores or less than 0.5 per cent of the total Non Judicial Stamp Duties (NSD) of the Major States and Assam (Table 11). The Central Government has now decided, after considering the Ranganathan Committee Report, that the levy of Stamp Duties in respect of GIC may be at a uniform rate of 20 paise for every Rs.100 of gross direct premium. The estimated remittances by the GIC according to the proposed rate is worked out to be Rs.7.58 crores in 1992-93 (Table 12). Even if this figure is projected to 1999-2000 at the rate of 20.37 per cent (which is the point to point growth rate of GIC remittances, if the two years 1990-91 and 1992-93 are taken into account), the estimated payment goes up only to Rs.27.77 crores (Table 13), with an estimated predominant share going to States like Maharashtra and Tamil Nadu (Table 14). The percentage share of the estimated remittance in the estimated total Stamp Duties of a few States are showed in Table 15.

The remittances of LIC to the States on account of Stamp Duties show a steady climb from Rs.1.5 crores in 1980-81 to about Rs.16 crores in 1992-93. It formed less than 1 per cent of the total NSD receipts of the Major States and Assam (see Table 16). The Government has also decided on the basis of the Report of the Ranganathan Committee that LIC may pay a rate of duty of 50 paise per each block of sum assured of Rs.1000 or fraction thereof. We have worked out a hypothetical revenue series on the basis of this proposal, for the past years from 1980-81 to 1992-93 in Table 17. The revenue series so obtained was projected for the years from 1993-94 to 1999-00 on the basis of its growth rate for the period 1980-81 to 1992-93, in Table 18. The Table indicates that the estimated remittances of Stamp Duties by LIC can go upto Rs.102.96 crores by 1999-00 on the basis of the proposed rate structure. The Statewise totals of policy stamps (that is receipts from policy stamps) are given in Table 21. Tables 19 and 20 present the available data on actual receipts of policy stamps by the State Governments for selected years. In this regard our State-wise estimates of receipts from policy stamps for the individual years from 1993-94 to 1999-00 are given in Table 21.

At this stage, it is worth mentioning that there is a marked discrepancy between the sale of insurance stamps reported by the Government of Maharashtra (See Table 23) and the figure of expenditure on insurance policy stamps for the State reported by the LIC (See Table 19) for the common year 1992-93. For the year 1992-93, the sale of stamps reported by the Government of Maharashtra exceeded the corresponding figure on policy stamps by as much as Rs. 9.54 crores. This implies that the LIC may be effecting centralised purchase of stamps and later using the stamps in respect of other States also. In view of its revenue diversion effect, this aspect needs further examination and study by the Department of Revenue.

The official view seems to be that LIC and GIC be permitted to pay Stamp Duties in a consolidated lumpsum at the beginning of each quarter. At the present trend in the expansion of business of life and general insurance in India, it is pointed out that the States would realise rising revenue contributions from LIC and GIC through this procedure.

### Shares and Debentures

In the Chapter I, we have indicated the rising trend in the issue of shares and the growth of debt transactions, in the expanding capital market of the country. It is important to note that, in addition to the Duties under the Indian Stamp Act levied by the Central Government on the capital market instruments, Stamp Duties are levied under States' Acts on a number of transactions related to the subject of the above instruments like the issue of shares, agreement relating to the purchase of shares and debentures, clearance list of shares, merger and consolidation of companies, mortgage of property by Debenture Trusts, note or memorandum of share brokers, share warrant, assignment of debt, instrument of partition of shares etc. In the view of State Finance Secretaries, there is a significant potential for adding to this list. However, no instrument-wise details of Stamp Duties are maintained in this regard, except for the combined figures of sale of stamps for instruments relating to capital market in Maharashtra and Gujarat. The available data obtained from Maharashtra, reported in Table 23, are quite revealing. Being the central place of transactions in capital instruments, there has been a marked increase in revenue from Stamp Duties in the State on account of insurance (Rs.16.71 crore) and consolidated duty (Rs.27.10 crores) which is mainly on share

issues, in 1993-94 as compared to the immediately preceding year 1992-93. It is pointed out that the growth of revenue from Stamp Duties from share transfer stamps in Maharashtra is phenomenal, from Rs.1.44 crores in 1982-83 to Rs.67.47 crores in 1993-94, and is expected to have increased to about Rs.100 crores in 1994-95. The debentures are normally exempted from Stamp Duties after execution of the trust deed and mortgage.

While some estimates of the revenue from Stamp Duties in respect of debenture issues can be made on the basis of Central rates and the reported figures on issues by the RBI in the Report on Currency and Finance, the same is not possible with regard to the issue of shares because of the varying State rates and the differing definitions of the tax base in different States. For instance, Maharashtra levies ad valorem duty on share issue on the basis of the market value of the shares including the premium, while Delhi levies a flat charge on the single share certificate as provided in the Indian Stamp Act. This naturally encourages companies to undertake the issue of shares in States with low rate of Duties. The transfer of debentures carries a rate of 50 paise for every Rs.100 or part thereof of the consideration amount of debenture in Maharashtra with a maximum payable duty of Rs.10,000.

On the basis of the figures on issues of equity shares and debentures, as reported in the Reserve Bank's Report on Currency and Finance, Table 24 gives the estimates of Stamp Duties for the years from 1980-81 to 1991-92 for shares (at the rate of 0.5 per cent of the face value of one share) and debentures (at the rate of 75 paise per Rs.100). The estimated revenue has grown from Rs.3.45 crores in 1980-81 to Rs.80 crores in 1991-92 and forms in 1991-92, 4 per cent of the Non-Judicial Stamp Duties of the Major States and Assam. This revenue is projected in Tables 25 and 26 to 1999-2000 at the assumed growth rate of 23.92 per cent per annum and 30.09 per cent per annum respectively. In fact the growth rates, 23.92 per cent and 30.09 per cent relate respectively to the estimated Stamp Duties from Shares and Debentures (See Table 24) for the two periods 1985-86 to 1990-91 and 1985-86 to 1991-92. The estimated Stamp Duties from Shares and Debentures for 1999-2000 is Rs.272.49 crores under one assumption and Rs.656.78 crores under another (See Tables 25 and 26).

If the rates of Duties on issues of shares and debentures were levied at lower rates as proposed by us in Chapter V, the revenues work out to be Rs.64.31 crores in 1991-92 (Table 27). In this case, our projections of Stamp Duties for the period from 1993-94 to 1999-00 vary between: (a) Rs.62.96 crores and 290.14 crores; (b) Rs.116.66 crores and Rs.696.19 crores and (c) Rs.113.01 crores and Rs 613.17 crores, depending on the alternative growth rates of revenues assumed (See Tables 28, 29 and 30)

### **Overview of Capital Market Instruments**

It may be assumed that, on an average, the collection of Stamp Duties on Central instruments is not more than 10 per cent of total NSD revenue, although the percentage could be high in States with a developed financial sector. The perceived revenue loss from the abolition of Duties on these instruments would be higher for the economically better-off, or commercially more vibrant, States than others.

SEBI and Stock Exchange Officials stressed the important role of State Laws and the structure of Duties in providing speedy and flexible stock market transactions. For instance, in a recent policy document on the future of capital market in India, SEBI desires that fiscal support be extended, among other things by the system of Stamp Duties for the emergence of an asset-backed securities and debt market in India. It is argued that this will also give a boost to the expansion of housing finance. They felt that the States should not look upon the capital market instruments just as revenue sources, but as indices of economic growth. In the long run, the brakes on Stock Exchange operations, through transfer or origination tax procedures, would adversely affect the growth of the States' economies and revenues. A short term loss of revenue from Stamp Duties could be more than offset by the benefits of economic growth and expanded revenue base of not only Stamp Duties but also of other taxes. Instruments like the bills of exchange carried a combination of fixed and ad valorem rates, while some invited cascading rates at successive stages. It may be pointed out that a number of newly evolving financial instruments like the participation certificates or securitised debt and varieties of commercial paper, and, bank instruments have not fully developed due to the high burden of Stamp Duties, or confusion about the method of charging at the time of origination or further trading. Attention is invited to the observations on this

point in Chapter IV. It was pointed out that international financial centres with multinational investment of the type contemplated in Bombay and Hyderabad would develop only if various transactions could be carried out at least cost and delay and become scripless over a period. The Maharashtra initiative of reducing the rate of Stamp Duties on assigned debt and its trading, to nominal rates deserves to be followed by other States. At the same time, the transfer of beneficial interest from one investor to another in the proposed securitisation scheme will involve a transfer instrument liable for Stamp Duties at varying rates in different States (despite the nominal rates in Maharashtra, it is quite high in many other States). It would be advantageous for the Central Government to give the transfer of beneficial interest in the securitisation scheme the character of transfer of shares through an explanation, and provide for a uniform low and ad valorem rate on the transfer instrument.

### **Representations for Reform**

The demand was for a uniform structure of ad valorem rates in all the States for share issues, incorporation of companies and all capital market instruments. The rate on lease deed should be only with reference to the principal and premium and not the period of lease in the interest of developing a country-wide lease instrument. Lease on movable property should be exempted in order to develop the leasing business. With regard to share transfers, the hardship and delay associated with purchase and affixing of stamps on individual documents could be avoided by permitting the payment of composite or consolidated duty and the use of franking machines as in Bombay, and, by providing for the collection of Stamp Duties on share transfers through the proposed depository institution or the concerned company as proposed by ASSOCHAM. If the depository institution provides custodial services similar to the Special Vehicle Trust in securitisation, then the transfer of shares would be on par with the securitisation process, and the duty can be levied in the same manner. It is necessary of course for SEBI and Finance Ministry to work out immediately, with the help of State authorities, the payment of Stamp Duties to different States on different instruments so that the transition from Stamp Duties to quarterly service charges or composite fee is facilitated on a prorata basis. It should be mentioned in this regard that the demand from the financial sector is for the abolition of Duties on share transfer and the assignment of debt in the long run. However, this is bound to be resisted by States like Maharashtra which see these

instruments as highly buoyant sources of revenue. (Share transfer is in the Central List while the assignment of debt is in State List). However, even the Government in the U.K. now levies; Duties on share transfers, a Stamp Duty Reserve Tax on agreements in stock market instruments, tax on depository receipts and Unit Trusts, and the country hopes to abolish the Duties only after the introduction of scripless trading . In the view of experts, the financial liberalisation process is seen as calling, in the transitional phase, for ad valorem and low rates of Stamp Duties on capital market instruments on an uniform basis across the States, together with simplified and institution-based systems of payment of duty in the place of the present cumbersome and antiquated system. The requirement of stamping ,and its cancellation by the share transferee, for the legal validity of share transfer under Company Law etc has, however, to be reviewed on the lines suggested by us. The apparent loss of revenue from lowered rates can be made up through increased volume of transactions, service charges (to be shared with States), and increased revenues from taxation of incomes and capital gains. This has been the approach in the developed countries,most of whom have been progressively abolishing all Stamp Duties on capital market instruments.

The point to be noted is that the reform of Stamp Duties involves actions to amend both the Indian Stamp Act and States' Stamp Acts, and connected Central Acts like Companies Act, and, Income Tax Act and to improve procedures of stamping and registration. It is also necessary for the Central Government to review the levy of service charges on brokers and operators in the capital market in order to keep the overall cost of financial operations within tolerable limits, and further review problems related to other Central Laws. It may be pointed out in this context that the proposal of Indian Banks Association to increase various charges for bank services on instruments is likely to impose a greater burden on the transacting parties.

Another related suggestion by leasing companies and the banks is to abolish or to reduce to nominal levels, the rates of Stamp Duties on the leasing of movable property. The rate of Stamp Duties in this regard ranges from 3 to 10 per cent of the rent payable in Maharashtra and is reported to have affected adversely the business of leasing. No doubt, such a duty is not imposed in a number of States.

## Companies and the Stamp Act

The public or private companies face problems of high rates of Stamp Duties on their incorporation, issue of shares, merger and amalgamation, deeds of partnership etc. For a company undertaking the issue of Memorandum and Articles of Association, Stamp Duties in Maharashtra could be ten times that in Gujarat or Delhi, and this induces distortionary relocation of companies. The share certificate carries a nominal rate of duty in Delhi while duty is charged on market value and premium in Maharashtra. The deed of partnership is a popular form of incorporating industry or business, when it is intended to go in for a limited company only after the business grows further. The deed attracts a fixed rate of Stamp Duties in some States, but carries a duty in Maharashtra of Rs.500/- on capital employed upto Rs.50,000 and thereafter the rate is 1 per cent for every additional Rs.10,000 of capital employed upto Rs.1 lakh; if the capital employed exceeds Rs. 1 lakh, the rate of duty is Rs.500 for every additional Rs.1 lakh of capital employed. The rates in many other States in this regard are even higher than in Maharashtra. This not only deters the employment of capital, but the capital base is brought down on paper by employing funds as advance rather than as equity.

The Goswami Committee on Sick Companies (1993) and the FICCI have referred to the high rates of Stamp Duties in some States on properties transferred by sick companies as a part of mergers and amalgamations, even when the amalgamation is consequent to a High Court order or BIFR Award. For instance, in Maharashtra, the rates of Duties in this regard are as high as: 3 per cent of the value of moveable property and 10 per cent of the market value of immovable property and the rehabilitation of sick companies through the BIFR or by voluntary agreement is made less attractive. There is a case for the levy of Duties in such cases based on declared values. In this case the apparent reduction of revenues from Stamp Duties with regard to the sick companies should be compared with the prospect of increased revenues for the amalgamated companies and the social benefit of absorption of redundant labour.

## **Financial Institutions**

For the financial institutions, apart from the rate of Stamp Duties on securitised instruments and conveyances, the rate of Stamp Duties payable on equitable mortgage is critical. The rate of duty on equitable mortgage is only 0.05 per cent in Maharashtra and Madhya Pradesh on the amount of consideration subject to a maximum of Rs.50,000. The temporary solution of registering the Debenture Trust and creating the mortgage in a nearby State will not help, since, at the time of enforcement of mortgage of properties situated in the State the differential Stamp Duty rate has to be paid by an institution or individual who seeks to enforce default in payment. In this regard it is considered necessary to reduce the rate of duty on the mortgages to low levels on an All India basis, as proposed elsewhere in the Report.

## **Suggested Changes**

It appears that there is a case for reducing the rates of Stamp Duties on the above basis on transfer of shares, debentures and assigned debt in the interest of expanding capital market operations and of the introduction of secondary market in debt instruments. This will call for necessary amendments to Companies Act based on the requirement of proper stamping for share transfers. The abolition of duty on bills of exchange and promissory notes needs to be reviewed, as the present limit of three months only encourages informal arrangements for extension of the period of the bills to escape duty. However, these amendments in respect of the Schedule in the Indian Stamp Act have to be accompanied by agreement of the State Governments to levy uniform, nominal and ad valorem rates on financial and capital instruments, and to adopt simplified systems of collection of duty. This will take care also of the problem of partially convertible debentures and payment of Stamp Duties twice; at the stage of debenture issue and later at the stage of share conversion. The revenue loss can be made up by increased volume of transactions and resulting revenue growth from other related taxes.

As regards the policies of life and general insurance, the decision already taken by the Central Government can be enforced in the larger legal perspective of the amended

Section proposed by us. It would be difficult to sustain the decision to treat the unstamped policies as having evidentiary value only by amending the relevant Article of Indian Stamp Act, since similar instruments of public or private agencies have not been extended the same treatment. This particular amendment may be considered after a detailed review of instruments under the Stamp Act as undertaken in Chapter V.

It is submitted that, pending a detailed review of various factors presented in this Report, Government may not proceed with piecemeal amendments suggested by the Ranganathan Committee. The Government may also review the desirability of continuing the policy of selective exemption from Stamp Duties only for the issue of bonds and debentures by PSUs. This is likely to be challenged in the Court of Law and also goes against the concept of level playing in the capital market.

#### **Structure of Stamp Duties under The Indian Stamp Act**

The suggestion in the immediate future as regards the instruments in the Indian Stamp Act is not so much for total remission as for levy of ad valorem and low rates of Duties, uniformly across the States, and based on common definitions of the instruments and the value base. The disparities in the rates of Duties across the States cause many distortions and problems. The more important requirements for speedy and trouble-free transactions in these instruments are: firstly, the levy of low rates on all related financial and capital instruments, resting on the same value base and definition; secondly, the replacement of the existing antiquated and cumbersome payment procedures by systems of banking, composite payment, institutionalised payments, computerised transfers; and, thirdly, nominal rate of State Duties for the next ten years on emerging capital instruments and trading in debt instruments so as to enhance the liquidity in the market. The specific decisions on the Ranganathan Committee Report relating to LIC/GIC policies, Article 27 and registration of mortgages etc., may be examined in the context of this Report, while the decision on bills of exchange and promissory notes may be reviewed for evolving a rational duty structure. Finally, when the Stamp Duties on share transfers and debentures are remitted fully concurrently with the capital going scripless or progressively corporatised and computerised, at that time, on the lines of decision on LIC and GIC, composite payments at present levels of revenue should

be made to State Governments by the Stock Exchanges, Stock Holding Corporation or others designated by SEBI and RBI with annual increase in payments corresponding to the growth in volume of transactions.

The revised structure of Stamp Duties by us for the relevant capital market instruments, in the Schedule of the Indian Stamp Act and the States' Stamp Acts are given in Appendix III of Chapter V.

Table 11.

## Stamp Duties Paid by the General Insurance Corporation (GIC)

(Rs.Lakh)

Years	Stamp Duties Paid by GIC	Non-Judicial Stamp Duties ** (NSD)	Stamp Duties Paid by GIC as percentage of NSD
1985-86	209.65	72442.01	0.29
1986-87	235.17	85224.30	0.28
1987-88	271.23	105273.30	0.26
1992-93	290.78	223580.50	0.13
Average growth rate(%)*	1.4017	-	-

Source : (1) Report of the Working Group on Stamp Duties ( The Ranganathan Committee), Department of Revenue, Ministry of Finance, 1988 and (2) General Insurance Corporation of India.

Point to point growth rate is computed by making use of the data pertaining to the years 1987-88 and 1992-93. The formula used is as follows : Growth rate =  $1 - \text{anti log of } \{(\log t_n - \log t_1)/n\}$

Non-judicial Stamp Duties pertain to the 14 Major States and Assam

Table 12.

Estimated Stamp Duties on the basis of Gross Direct  
Premium Received by General Insurance Corporation

Years	Gross Direct Premium in India (Rs.Crores)	Estimated Stamp Duties * (Rs.Lakh)	Non-Judicial Stamp Duties ** (NSD) (Rs.Lakh)	Estimated Stamp Duty as a percentage of NSD
1989-90	2175	434.90	152341.60	0.29
1990-91	2796	559.14	162582.60	0.34
1991-92	3287	657.44	200859.60	0.33
1992-93	3792	758.40	223580.50	0.34
Average growth rate (%)@	-	20.37	-	-

Source : Computed

\* Stamp Duties is estimated by applying the rate of 20 paise for every Rs. 100/- or part thereof of the gross direct premium.

\*\* Total Non-Judicial Stamp Duties in respect of the Major States and Assam

@ Growth rate is computed by making use of the data pertaining to the years 1990-91 and 1992-93. The formula used is as follows :  
Growth rate =  $1 - \text{antilog of } ((\log t_n - \log t_1)/n)$ .

Table 13.

Estimated Stamp Duties :  
The General Insurance Corporation of India (GIC)

(Rs.lakh)

Years	Estimated Stamp Duties (GIC)	States estimated Non-judicial Stamp Duties * (NSD)	Estimated Stamp Duty as a percentage of NSD
1993-94	912.89	261455.04	0.35
1994-95	1098.84	305745.52	0.36
1995-96	1322.67	357538.81	0.37
1996-97	1592.10	418105.89	0.38
1997-98	1916.42	488933.02	0.39
1998-99	2306.79	571758.28	0.40
1999-00	2776.68	668614.13	0.42

Source : Computed

Revenue from the Stamp Duties estimated in respect of the Major States and Assam on the basis of the annual growth rate of 16.34 percent per annum for the period 1980-81 to 1992-93

Table 14.

Remittances of Stamp Duties by General Insurance Corporation of India: Actual and Estimated  
(Stamp Duties estimated on the basis of Gross Direct Premium)

States	Actual Stamp Duties Paid by GIC in Selected States				Estimated Stamp Duties								(Rs Lakh)
	1985	1985 (%)	1986	1986 (%)	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00		
Maharashtra	41.2	57.87	41.4	52.27	180.28	217.01	261.21	314.42	378.47	455.56	548.36		
Tamil Nadu	14.9	20.93	16.5	20.83	71.85	86.49	104.11	125.31	150.84	181.56	218.55		
Madhya Pradesh	3.7	5.20	4.6	5.81	20.03	24.11	29.02	34.94	42.05	50.62	60.93		
Punjab	7.7	10.81	11.3	14.27	49.21	59.23	71.30	85.82	103.30	124.34	149.67		
Orissa	1.2	1.69	1.7	2.15	7.40	8.91	10.73	12.91	15.54	18.71	22.52		
Rajasthan	2.5	3.51	3.7	4.67	16.11	19.39	23.34	28.10	33.82	40.71	49.01		
	71.20	100.00	79.20	100.00	344.89	415.14	499.71	601.50	724.02	871.50	1049.03		

Source : (1) Report of the Working Group on Stamp Duties (The Ranganathan Committee), Department of Revenue, Ministry of Finance, 1988 (for the basic data relating to the years 1985 and 1986)

Note : In 1986 the total Stamp Duties in respect of the above six States constituted 37.78 per cent of the total Stamp Duties paid by GIC. This percentage is applied to the estimated Stamp Duties in respect of GIC for the years from 1993-94 to 1999-00 in order to find the shares of six States. Having found the aggregate shares it is pro-rata distributed among the States according to their relative shares in 1986

Table 15.

Estimated Remittances of Stamp Duties by GIC as a Percentage of  
the Estimated Stamp Duties in Selected States

(per cent)

States/years	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Maharastra	0.4062	0.3914	0.3772	0.3635	0.3503	0.3376	0.3253
Tamil Nadu	0.2716	0.2790	0.2866	0.2944	0.3024	0.3107	0.3191
Madhya Pradesh	0.1604	0.1649	0.1695	0.1742	0.1791	0.1841	0.1892
Punjab	0.3694	0.4009	0.4350	0.4721	0.5122	0.5559	0.6032
Orissa	0.2118	0.2207	0.2300	0.2397	0.2498	0.2604	0.2714
Rajasthan	0.1478	0.1478	0.1478	0.1477	0.1477	0.1477	0.1477
Total (6 States)	0.3106	0.3121	0.3132	0.3138	0.3139	0.3135	0.3127

Source : Computed

Table – 16.

## Life Insurance Corporation of India : Policy Stamps

(Rs. lakh)

Years	Policy Stamps			Non– Judicial Stamp Duties ** (NSD)	Policy Stamps Total as percentage of NSD
	Business with in India	Business out of India	Total		
1980–81	150.62	0.57	151.19	34036.50	0.44
1981–82	177.53	0.76	178.29	43715.62	0.41
1982–83	211.74	0.85	212.59	50055.05	0.42
1983–84	214.34	0.99	215.33	53543.44	0.40
1984–85	223.39	1.70	225.09	58607.29	0.38
1985–86	343.43	1.76	345.19	72442.01	0.48
1986–87	341.31	0.89	342.20	85224.30	0.40
1987–88	580.07	2.42	582.49	105273.32	0.55
1988–89	875.35	2.46	877.81	114455.48	0.77
1989–90	1127.79	4.94	1132.73	152341.69	0.74
1990–91	1295.61	2.70	1298.31	162582.63	0.80
1991–92	1509.37	0.00	1509.37	200859.67	0.75
1992–93	1598.36	0.00	1598.36	223580.51	0.71
Growth rate (%) *	25.903	18.967	25.849	–	–

Source : Life Insurance Corporation of India,  
Annual Reports (various issues)

\* Growth Rate is for the period from  
1980–81 to 1990–91

\*\* Total Non–judicial Stamp Duties in  
respect of the Major States and Assam.

Table 15.

Estimated Remittances of Stamp Duties by GIC as a Percentage of  
the Estimated Stamp Duties in Selected States

(per cent)

States/years	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Maharastra	0.4062	0.3914	0.3772	0.3635	0.3503	0.3376	0.3253
Tamil Nadu	0.2716	0.2790	0.2866	0.2944	0.3024	0.3107	0.3191
Madhya Pradesh	0.1604	0.1649	0.1695	0.1742	0.1791	0.1841	0.1892
Punjab	0.3694	0.4009	0.4350	0.4721	0.5122	0.5559	0.6032
Orissa	0.2118	0.2207	0.2300	0.2397	0.2498	0.2604	0.2714
Rajasthan	0.1478	0.1478	0.1478	0.1477	0.1477	0.1477	0.1477
Total (6 States)	0.3106	0.3121	0.3132	0.3138	0.3139	0.3135	0.3127

Source : Computed

Table-16.

## Life Insurance Corporation of India : Policy Stamps

(Rs. lakh)

Years	Policy Stamps			Non-Judicial Stamp Duties ** (NSD)	Policy Stamps Total as percentage of NSD
	Business with in India	Business out of India	Total		
1980-81	150.62	0.57	151.19	34036.50	0.44
1981-82	177.53	0.76	178.29	43715.62	0.41
1982-83	211.74	0.85	212.59	50055.05	0.42
1983-84	214.34	0.99	215.33	53543.44	0.40
1984-85	223.39	1.70	225.09	58607.29	0.38
1985-86	343.43	1.76	345.19	72442.01	0.48
1986-87	341.31	0.89	342.20	85224.30	0.40
1987-88	580.07	2.42	582.49	105273.32	0.55
1988-89	875.35	2.46	877.81	114455.48	0.77
1989-90	1127.79	4.94	1132.73	152341.69	0.74
1990-91	1295.61	2.70	1298.31	162582.63	0.80
1991-92	1509.37	0.00	1509.37	200859.67	0.75
1992-93	1598.36	0.00	1598.36	223580.51	0.71
Growth rate (%) *	25.903	18.967	25.849	-	-

Source : Life Insurance Corporation of India, Annual Reports (various issues)

Growth Rate is for the period form 1980-81 to 1990-91

Total Non-judicial Stamp Duties in respect of the Major States and Assam.

Table 17.

## Estimated Stamp Duties as per the Proposed Rates : LIC

Years	Sum Assured in India (Rs.Crores)			Estimated Stamp Duties * (Rs.lakh)	Non-Judicial Stamp Duties ** (Rs.lakh) (NSD)	Estimated Stamp Duties (LIC) as Percentage of NSD
	Individual Insurance	Group Insurance	Total			
1980-81	2882.72	463.52	3346.24	167.31	34036.50	0.49
1981-82	3478.92	402.49	3881.41	194.07	43715.62	0.44
1982-83	3974.39	355.20	4329.59	216.48	50055.05	0.43
1983-84	4386.98	390.81	4777.79	238.89	53543.44	0.45
1984-85	5375.93	303.59	5679.52	283.98	58607.29	0.48
1985-86	7056.07	1008.15	8064.22	403.21	72442.01	0.56
1986-87	9067.45	1387.54	10454.99	522.75	85224.30	0.61
1987-88	12434.51	2081.83	14516.34	725.82	105273.32	0.69
1988-89	17222.84	2777.70	20000.54	1000.03	114455.48	0.87
1989-90	23219.53	2043.28	25262.81	1263.14	152341.69	0.83
1990-91	28139.07	3392.05	31531.12	1576.56	162582.63	0.97
1991-92	32064.44	3837.23	35901.67	1795.08	200859.67	0.89
1992-93	35956.82	2923.43	38880.25	1944.01	223580.51	0.87

Source : Computed

Note :

\* Stamp Duties estimated at the rate of 50 paise for every Rs. 1000/- or part thereof- of the sum assured

\*\* Total Non-Judicial Stamp Duties in respect of the Major States and Assam

Table 18.

Estimated Stamp Duties as per the Proposed Rates : LIC  
(Projections)

(Rs.lakh)

Years	Estimated Stamp Duties (LIC)	States' Estimated Non-judicial Stamp Duties * (NSD)	Estimated Stamp Duties: Percentage of NSD
1993-94	2466.74	261455.04	0.94
1994-95	3130.03	305745.52	1.02
1995-96	3971.68	357538.81	1.11
1996-97	5039.63	418105.89	1.21
1997-98	6394.76	488933.02	1.31
1998-99	8114.26	571758.28	1.42
1999-00	10296.13	668614.13	1.54

Source : Computed

\* Revenue from the Stamp Duties estimated in respect of the Major States and Assam on the basis of the annual growth rate of 16.94 percent per annum for the period 1980-81 to 1992-93

Table 19.

## LIC Policy Stamps: State - Wise Statement

(Rs. Lakh)

States	1985-86			1986-87			1992-93		
	Total Policy Stamps	Non-Judicial Stamp Duties (NSD)	Total Policy Stamps as Percentage of NSD	Total Policy Stamps	Non-Judicial Stamp Duties (NSD)	Total Policy Stamps as Percentage of NSD	Total Policy Stamps	Non-Judicial Stamp Duties (NSD)	Total Policy Stamps as Percentage of NSD
Andhra Pradesh	29.40	7199.30	0.41	42.82	7399.50	0.58	136.34	19877.12	0.69
Assam	4.21	441.83	0.95	9.78	417.73	2.34	41.99	611.11	6.87
Bihar	11.80	2112.72	0.56	18.41	1323.23	1.39	6.39	2344.26	0.27
Gujarat	27.96	4002.42	0.70	32.38	4483.04	0.72	116.50	15723.70	0.74
Haryana	6.85	3141.72	0.28	15.07	3892.85	0.39	22.52	9312.07	0.24
Karnataka	20.63	4372.92	0.47	27.19	5038.56	0.54	111.14	17927.59	0.62
Kerala	15.43	4463.69	0.35	20.86	4669.66	0.44	69.79	15471.25	0.45
Madhya Pradesh	17.60	3676.59	0.48	21.39	4605.72	0.46	98.78	10662.65	0.93
Maharashtra	54.67	6894.52	0.79	63.04	10888.97	0.58	240.91	41858.93	0.58
Orissa	7.74	1185.37	0.65	6.81	1404.72	0.48	29.08	3026.90	0.96
Punjab	7.12	4450.52	0.16	5.81	4830.73	0.12	48.59	12007.82	0.40
Rajasthan	13.27	2397.89	0.55	17.53	2537.99	0.69	77.76	9055.52	0.86
Tamil Nadu	36.17	10405.07	0.35	37.17	13358.54	0.28	140.46	35253.21	0.40
Uttar Pradesh	43.84	12782.82	0.34	40.59	14925.79	0.27	174.36	20387.50	0.86
West Bengal	25.46	4914.63	0.52	24.86	5427.27	0.46	114.15	10060.88	1.13
Delhi *	29.29	1645.00	1.78	40.81	2017.00	2.02	66.72	4868.00	1.37

Source: (1) Report of the Working Group on Stamp Duties (The Ranganathan Committee) Department of Revenue, Ministry of Finance, 1988 and (2) Life Insurance Corporation of India

Note: Figures for Jammu & Kashmir for 1985-86 are merged in Punjab and those for Goa in Maharashtra

\* For Delhi the figures relate to Stamp Duties and Registration Fees

Table 20

## Percentage Distribution of LIC Policy Stamps State-wise

(Rs)

States	1985-86				1986-87				1992-93			
	Individual Insurance	G & S Business	Total	Percent-age to Grand Total	Individual Insurance	G & S Business	Total	Percent-age to Grand Total	Individual Insurance	G & S Business	Total	Percent-age to Grand Total
Andhra Pradesh	2855351	84739	2940090	8.32	3902702	379624	4282326	9.99	13008693	625675	13634368	8.91
Bihar	1167714	12141	1179855	3.34	1688508	152452	1840960	4.29	469213	170162	639375	0.42
Gujarat	2049315	746663	2795978	7.91	2567469	670659	3238128	7.55	10618233	1031355	11649588	7.61
Haryana	836462	48991	885453	2.51	1275430	231110	1506540	3.51	2153262	99030	2252292	1.47
Karnataka	1937239	126212	2063451	5.84	2385912	333549	2719461	6.34	9143258	1970262	11113520	7.26
Kerala	1486654	76293	1542947	4.37	1979543	106133	2085676	4.86	6649874	328771	6978645	4.56
Madhya Pradesh	1298717	461433	1760150	4.98	1790245	348778	2139023	4.99	6942519	2935410	9877929	6.45
Maharashtra	4190814	1276204	5467018	15.47	5337869	965735	6303604	14.70	21058353	3033014	24091367	15.74
Orissa	764930	8914	773844	2.19	670902	10041	680943	1.59	2717399	190583	2907982	1.90
Punjab	693081	18645	711726	2.01	524082	56892	580974	1.35	4242157	617150	4859307	3.17
Rajasthan	1167105	160090	1327195	3.76	1585773	167025	1752798	4.09	7325040	450755	7775795	5.08
Tamil Nadu	2591628	1024943	3616571	10.23	3241017	476298	3717315	8.67	12315463	1729714	14046177	9.18
Uttar Pradesh	3966613	417120	4383733	12.40	3334749	724069	4058818	9.47	16456270	980065	17436335	11.39
West Bengal	2319746	226360	2546106	7.20	2007027	479373	2486400	5.80	10235221	1179444	11414665	7.46
Assam	416216	5264	421480	1.19	924177	54245	978422	2.28	4134555	64434	4198989	2.74
Delhi	1211964	1716971	2928935	8.29	1676368	2404775	4081143	9.52	6005617	666524	6672141	4.36
Goa	0	0	0	-	146922	13526	160448	0.37	874851	164271	1039122	0.68
Jammu & Kashmir	0	0	0	-	265813	0	265813	0.62	1407802	28782	1436584	0.94
Himachal Pradesh	-	-	-	-	-	-	-	-	968099	90520	1058619	0.69
Grand Total	28933549	6410983	35344532	100.00	35304508	7574284	42878792	100.00	136726879	16355921	153082800	100.00

Source: (1) Report of the Working Group on Stamp Duties (The Ranganathan Committee) - Department of Revenue, Ministry of Finance, 1988 and (2) LIC.

Note: Figures for Jammu & Kashmir for 1985-86 are merged in Punjab and those for Goa in Maharashtra.

Table 2\*

Estimates of State-wise Distribution of LIC Policy Stamps  
(According to Proposed Rates)

(Rs.Lakh)

States	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Andhra Pradesh	219.70	278.78	353.74	448.86	569.55	722.70	917.03
Assam	67.66	85.86	108.94	138.23	175.41	222.57	282.42
Bihar	10.30	13.07	16.59	21.05	26.71	33.89	43.00
Gujarat	187.72	238.20	302.24	383.52	486.64	617.49	783.53
Haryana	36.29	46.05	58.43	74.15	94.09	119.38	151.49
Karnataka	179.08	227.23	288.34	365.87	464.25	589.08	747.48
Kerala	112.45	142.69	181.06	229.74	291.52	369.91	469.37
Madhya Pradesh	159.17	201.97	256.28	325.19	412.63	523.59	664.38
Maharashtra	388.20	492.59	625.04	793.11	1006.37	1276.98	1620.35
Orissa	46.86	59.46	75.45	95.73	121.48	154.14	195.59
Punjab	78.30	99.36	126.07	159.97	202.99	257.57	326.83
Rajasthan	125.30	158.99	201.74	255.99	324.82	412.16	522.99
Tamil Nadu	226.34	287.20	364.42	462.41	586.75	744.53	944.73
Uttar Pradesh	280.97	356.52	452.38	574.02	728.37	924.23	1172.74
West Bengal	183.93	233.39	296.15	375.78	476.83	605.04	767.73
Delhi	107.51	136.42	173.11	219.65	278.72	353.66	448.76
Total (Selected States)	2409.79	3057.77	3879.98	4923.28	6247.12	7926.92	10058.42
Estimated Total	2466.74	3130.03	3971.68	5039.63	6394.76	8114.26	10296.13

Source : Computed

Note : Estimates are made by applying the proportions of Policy Stamps in 1992-93 to the estimated total Stamp Duties for the years 1993-94 to 1999-00

Table 22

Estimates of State-wise Distribution of LIC Policy Stamps  
As percentage of Non-Judicial Stamp Duties  
(According to Proposed Rates)

(Percentage)

States	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Andhra Pradesh	0.95	1.04	1.14	1.24	1.36	1.49	1.62
Assam	10.08	11.65	13.47	15.56	17.98	20.78	24.01
Bihar	0.42	0.52	0.64	0.78	0.96	1.17	1.44
Gujarat	1.03	1.12	1.23	1.34	1.47	1.60	1.75
Haryana	0.33	0.36	0.39	0.42	0.45	0.48	0.52
Karnataka	0.84	0.90	0.96	1.03	1.10	1.18	1.26
Kerala	0.63	0.69	0.75	0.82	0.90	0.99	1.08
Madhya Pradesh	1.27	1.38	1.50	1.62	1.75	1.90	2.06
Maharashtra	0.74	0.75	0.75	0.76	0.77	0.78	0.79
Orissa	1.34	1.47	1.62	1.78	1.95	2.15	2.36
Punjab	0.59	0.67	0.77	0.88	1.01	1.15	1.32
Rajasthan	1.15	1.21	1.28	1.35	1.42	1.50	1.58
Tamil Nadu	0.54	0.58	0.61	0.66	0.70	0.75	0.80
Uttar Pradesh	1.21	1.34	1.49	1.65	1.84	2.04	2.26
West Bengal	1.61	1.81	2.03	2.27	2.55	2.85	3.20
Delhi	1.88	2.02	2.18	2.35	2.53	2.73	2.94
Total (Selected States)	0.92	1.00	1.09	1.18	1.23	1.39	1.50

Source: Computed

Notes: For computational purpose the Revenue from Non-Judicial Stamp Duties of the individual States are projected on the basis of the growth rate observed for the years from 1980-81 to 1992-93, for Bihar the growth rate computed relates to the period 1980-81 to 1989-90. For computation of the percentages the Total Stamp Duties and Registration Fees is taken for Delhi.

Table 23.

## Sale of Stamps : Maharashtra

(Rs.Crores)

Years	Non- Judicial Stamps	Special Adhesive Stamps	Share Transfer Stamps	Brokers' Note	Insurance	Consolid- ated Duty (Mainly for share issues)
1990-91	36.24	88.14	1.28	0.05	0.90	7.71
1991-92	55.00	97.58	44.80	0.54	10.18	11.73
1992-93	111.36	142.16	70.23	0.35	11.95	10.42
1993-94	111.50	184.69	67.47	0.36	16.71	27.10

Source : Government of Maharashtra

Table 24.

## Estimated Stamp Duties from Shares and Debentures

(Rs. Crores)

Years	Equity and Preference Shares	Debentures	Total	Stamp Duty Estimated			Non-Judicial Stamp Duties * (NSD)	Estimated Stamp Duties as Percentage of NSD
				Shares	Debentures	Total		
1980-81	196.00	328.90	524.90	0.98	2.47	3.45	340.37	1.01
1981-82	205.40	416.90	622.30	1.03	3.13	4.15	437.16	0.95
1982-83	254.80	531.30	786.10	1.27	3.98	5.26	500.55	1.05
1983-84	319.50	609.30	928.80	1.60	4.57	6.17	535.43	1.15
1984-85	779.50	919.60	1699.10	3.90	6.90	10.79	586.07	1.84
1985-86	1082.50	1848.80	2931.30	5.41	13.87	19.28	724.42	2.66
1986-87	1599.00	2614.00	4213.00	8.00	19.61	27.60	852.24	3.24
1987-88	1440.00	723.00	2163.00	7.20	5.42	12.62	1052.73	1.20
1988-89	1487.00	3445.00	4932.00	7.44	25.84	33.27	1144.55	2.91
1989-90	1688.00	5879.00	7567.00	8.44	44.09	52.53	1523.42	3.45
1990-91	2552.20	3570.30	6122.50	12.76	26.78	39.54	1625.83	2.43
1991-92	3939.00	8049.90	11988.90	19.70	60.37	80.07	2008.60	3.99
Growth Rates	-			32.02	32.46	32.70		

Source : RBI, Report on Currency and Finance (various issues)

Note : Stamp Duty on Equity and Preference Shares as well as on Debentures were estimated by applying the stamp duty rates of 50 ps per Rs.100 and 75 ps per Rs.100, respectively.

Data on Shares and Debentures relate to Consent/ Acknowledgements of Proposals Granted by the Controller of Capital Issues to Non-Government Public and Private Limited Companies

Non-Judicial Stamp Duties Pertains to the Major States and Assam

Table 25.

Shares and Debentures : Estimated Stamp Duties  
(Estimate 1)

(Rs.Crores)

Years	Estimated Stamp Duties	States' Estimated Stamp Duties * (NSD)	Estimated Stamp Duties as Percentage of NSD
1993-94	75.24	2614.55	2.88
1994-95	93.24	3057.46	3.05
1995-96	115.55	3575.39	3.23
1996-97	143.19	4181.06	3.42
1997-98	177.44	4889.33	3.63
1998-99	219.89	5717.58	3.85
1999-00	272.49	6686.14	4.08

Source : Computed

Note : Stamp Duties estimated on the basis of the growth rate (23.922 Percent per annum) obtained for the period from 1985-86 to 1990-91

\* Revenue from Stamp Duties estimated in respect of the Major States and Assam.

Table 26

Shares and Debentures - Estimated Stamp Duties  
(Estimate 2)

(Rs. Crores)

Years	Estimated Stamp Duties	States' Estimated Stamp Duties * (NSD)	Estimated Stamp Duties as Percentage of NSD
1993-94	135.50	2614.55	5.18
1994-95	176.28	3057.46	5.77
1995-96	229.32	3575.39	6.41
1996-97	298.32	4181.06	7.14
1997-98	388.09	4889.33	7.94
1998-99	504.86	5717.58	8.83
1999-00	656.78	6686.14	9.82

Source : Computed

Note : Stamp Duties Estimated on the basis of the growth rate (30.092 Percent per annum) obtained for the period from 1985-86 to 1991-92

\* Stamp Duties Estimated in respect of the fourteen Major States and Assam.

Table 27.

## Estimated Stamp Duties from Shares and Debentures at the Proposed Rates

(Rs. Crores)

Years	Equity and Preference Shares	Debentures	Estimated Stamp Duties			Non-Judicial Stamp Duties * (NSD)	Estimated Stamp Duties as Percentage of NSD	
			Total	Shares	Debentures			
1980-81	196.00	328.90	524.90	0.20	2.47	2.66	340.37	0.78
1981-82	205.40	416.90	622.30	0.21	3.13	3.33	437.16	0.76
1982-83	254.80	531.30	786.10	0.25	3.98	4.24	500.55	0.85
1983-84	319.50	609.30	928.80	0.32	4.57	4.89	535.43	0.91
1984-85	779.50	919.60	1699.10	0.78	6.90	7.68	586.07	1.31
1985-86	1082.50	1848.80	2931.30	1.08	13.87	14.95	724.42	2.06
1986-87	1599.00	2614.00	4213.00	1.60	19.61	21.20	852.24	2.49
1987-88	1440.00	723.00	2163.00	1.44	5.42	6.86	1052.73	0.65
1988-89	1487.00	3445.00	4932.00	1.49	25.84	27.32	1144.55	2.39
1989-90	1688.00	5879.00	7567.00	1.69	44.09	45.78	1523.42	3.01
1990-91	2552.20	3570.30	6122.50	2.55	26.78	29.33	1625.83	1.80
1991-92	3939.00	8049.90	11988.90	3.94	60.37	64.31	2008.60	3.20
Growth rates (%)	-	-	-	32.02	32.46	32.56	-	-

Source : RBI, Report on Currency and Finance (various issues)

Note : Stamp Duty on Equity and Preference Shares as well as on Debentures were estimated by applying the stamp duty rates of 10 ps per Rs.100 and 75 ps per Rs.100, respectively.

Data on Shares and Debentures relate to Consent/ Acknowledgements of Proposals Granted by the Controller of Capital Issues to Non-Government Public and Private Limited Companies

Non-Judicial Stamp Duties Pertains to the Major States and Assam

Table 28

Shares and Debentures : Estimated Stamp Duties  
as per the Proposed Rates  
(Estimate 1)

(Rs Crores)

Years	Estimated Stamp Duties	States' Estimated Stamp Duties * (NSD)	Estimated Stamp Duties as Percentage of NSD
1993-94	62.961	2614.55	2.41
1994-95	81.220	3057.46	2.66
1995-96	104.774	3575.39	2.93
1996-97	135.158	4181.06	3.23
1997-98	174.354	4889.33	3.57
1998-99	224.917	5717.58	3.93
1999-00	290.142	6686.14	4.34

Source : Computed

Note : Stamp Duties estimated on the basis of the growth rate (29.00 Percent per annum) obtained for the period from 1985-86 to 1990-91

\* Stamp Duties estimated in respect of the Major States and Assam.

Table 29.

Shares and Debentures : Estimated Stamp Duties  
as per the Proposed Rates  
(Estimate 2.)

(Rs. Crores)

Years	Estimated Stamp Duties	States' Estimated Stamp Duties * (NSD)	Estimated Stamp Duties as Percentage of NSD
1993-94	116.66	2614.55	4.46
1994-95	157.11	3057.46	5.14
1995-96	211.60	3575.39	5.92
1996-97	284.98	4181.06	6.82
1997-98	383.81	4889.33	7.85
1998-99	516.92	5717.58	9.04
1999-00	696.19	6686.14	10.41

Source : Computed

Note : Stamp Duties estimated on the basis of the growth rate (29.00 Percent per annum) obtained for the period from 1985-86 to 1990-91

Stamp Duties estimated in respect of the Major States and Assam.

Table 30.

Shares and Debentures : Estimated Stamp Duties  
as per the Proposed Rates  
(Estimate 3.)

(Rs. Crores)

Years	Estimated Stamp Duties	States Estimated Stamp Duties * (NSD)	Estimated Stamp Duties as Percentage of NSD
1993-94	113.01	2614.55	4.32
1994-95	149.80	3057.46	4.90
1995-96	198.58	3575.39	5.55
1996-97	263.23	4181.06	6.30
1997-98	348.94	4889.33	7.14
1998-99	462.56	5717.58	8.09
1999-00	613.17	6686.14	9.17

Source : Computed

Note Stamp Duties estimated on the basis of the growth rate (29.00 Percent per annum) obtained for the period from 1985-86 to 1990-91

\* Stamp Duties estimated in respect of the Major States and Assam

## CHAPTER IV

### Reforms in Policies and Procedures

#### Introduction

In the earlier Chapter, we have looked at the need for changes in the structure and rates of Stamp Duties on different instruments in the Indian Stamp Act, given the pace of economic reform and the contribution to States' revenues by Stamp Duties and the Registration Fees. It was also noted that the provisions of the Indian Stamp Act and the States' Stamp Acts, on the one hand, and the Indian Registration Act, on the other are implemented by the State Governments, through the structure of regulations and administrative machinery devised by them. It is, therefore, necessary to examine the policies and procedures at the State level, especially those relating to: (a) the registration of conveyance deeds (whichever way conveyance deed is defined by the State Governments), (b) administrative aspects of the Stamp Act and the Registration Act, (c) the arrangements for the sale of stamps and stamp papers or alternative modes of payment of Stamp Duties, (d) pre-requisites for Registration and (e) capital market instruments. In this Chapter, we concentrate also on (a) the information and infrastructure needs of Stamp Duties and Registration Fees, and, (b) the complementary changes needed in other Laws and Procedures. Our observations on these, detailed in this Chapter, are to be read with the narrations in Chapter V, to bring out the changes necessary under the Stamp Acts and relevant Central Laws.

The International experience with Stamp Duties on property transactions and other instruments, and the comparative duty structure may be seen in Appendix I and Appendix II, respectively.

## **Policies and Procedures Relating to Conveyance Instruments**

### **(i) Major Problems**

Instruments of conveyance are important not only in view of their predominance as a source of revenue from Stamp Duties and Registration Fees but also because the structure of Stamp Duties and Registration Fees applicable to them, and the procedures for the collection of revenues from them affect a wide cross section of people and institutions.

A number of issues are being raised presently with regard to the procedures designed to the levy and collection of Stamp Duties and Registration Fees on conveyance instruments by the State Governments. In the first instance, the system of fixing the benchmark or guidance values for different areas is objected to by pointing out the arbitrariness involved in the decision making process. Secondly, the system of prescribing the benchmark or guideline values either by the authorities under the Inspector General of Registration or the Revenue Department, has not reduced the incidence of enquiry and delays. An interesting aspect to note in this context is that even where land price is not disputed as with Government lands, in many of the States, the conveyancing and the transfer of freehold rights involve considerable delay, harassment, repeated visits to different offices and the payment of substantial conversion charges. Thirdly, the unsatisfactory basis of valuation provides adequate scope for abuse of the considerable discretionary powers with the Registering Officers for impounding documents, or for reference of cases for enquiry by the Collector especially when these Officers are not adequately trained in the valuation procedures. Fourthly, the requirement of securing various approvals prior to registration, acts as a strong disincentive for registration of documents in view of the difficulties and delays associated with the securing of these approvals. Fifthly, the procedures for the levy and collection of Stamp Duties on conveyances is also complicated by the too many slabs in the conveyance rate schedule. Furthermore, the builders and flat owners, as well as financial institutions always complain about the high rates of Stamp Duties on conveyances in different States (in addition to the ad valorem Registration Fees without any monetary

limit in some States) ranging from 10 per cent to 16 per cent of the value of property involved in the transaction which they consider as a source of high burden.

(ii) Procedure for Valuation and the Rate Structure for Conveyances

In order to simplify and facilitate valuation procedure, we suggest the introduction of a scientific valuation system on the lines described in Appendix III of this Chapter. After introducing the system of valuation proposed by us, we suggest the rate of Stamp Duties inclusive of Surcharge should not be higher than 10 per cent of the value of property for the highest slab of the conveyance rate schedule.

In view of the urgency to reduce the burden of Stamp Duties on low income people a graduated slab system of the type adopted in Maharashtra will be useful, in which case a nominal duty is imposed on properties with values less than Rs.1 lakh, and ad valorem rates of duties ranging from 2 per cent to 10 per cent are levied on high-value properties; with properties valued above Rs.10 lakh carrying a maximum rate of duty of 10 per cent. In this regard, it is also desirable to levy differentiated rates of duties on conveyances according to the type of human settlement, as in Maharashtra, for the Municipal Corporations, Special Category Municipalities, smaller Municipalities and the Panchayat areas.

It may be noted that the immediate reaction of concerned officials in most States to any reduction in the present rate of Stamp Duties on conveyances and other property instruments is not of course favourable, as this is seen as a buoyant source of revenue, and cannot be easily substituted by alternative sources. In fact, Andhra Pradesh raised the conveyance rates recently to make up for the loss of revenue on account of prohibition. The Central Government will have to persuade the States about the economic logic of reduced duties, and the likelihood of increased revenues from Stamp Duties in the long run, if the present procedures of valuation and administration of the Act are rationalised.

A detailed note on valuation, encompassing the experience with the Wealth Tax, Chapter XXC of the Income Tax Act and the Property Tax, may be seen as Appendix III of this Chapter. The case for the use of Unique Premises Numbers is presented in Appendix IV.

## **Administration of the Stamp Act and the Registration Act**

### **(i) Reductions and Remissions**

Over time reductions and remissions emerged as an important part of the administration of Stamp Duties and Registration Fees. In the ensuing analysis, we highlight the policies for reductions and remissions of the Duties in Selected States with a view to illustrate its extensive use by the State Governments. The analysis in this regard concludes with the apprehension that the indiscriminate granting of reductions and remissions not only reduce the revenue productivity of the Duties but also do not seem to have a definite thrust of public policy..

The State of Andhra Pradesh provided exemptions of Stamp Duties and Registration Fees in favour of cooperative societies, house building societies, and EWS housing, documents relating to designated loan transactions of other cooperatives, banks, and financial institutions.

The State of Tamil Nadu has remitted the Stamp Duties chargeable under the Stamp Act in respect of the mortgage deeds executed by the small scale industrial units with the District Industries Centres for the loan granted to said small scale industrialists under the Interest Free Sales Tax Loan Scheme. It proposes to remit Duties in respect of the mortgage deeds to be executed by the slum dwellers in favour of Slum Clearance Board as security for the cash loan to be disbursed by the Tamil Nadu Slum Clearance Board with the loan assistance of Housing and Urban Development Corporation for house construction/house upgradation, under the Cash Loan Scheme. In the State, all mortgages of the Cooperative Housing Federation, including those of housing cooperatives are exempt from duty. The loss of revenue for the State on this account in

1993-94 is pointed out to be Rs.10.46 crores. The State has also remitted Stamp Duties and Registration Fees in respect of hypothecation agreements/guarantee deeds for a loan not exceeding Rs 10,000/- for any purpose connected with agriculture and other allied activities such as dairying, poultry, sheep rearing, fisheries and bee keeping. It has reduced the Stamp Duties in respect of gift deeds to be executed by the developers while handing over the open space reservation areas in Madras Metropolitan Area to Madras Metropolitan Development Authority and the stamp duty is chargeable on the gift deeds to only at a nominal rate of Rs 100/-. The State Government proposes to reduce Stamp Duties in respect of the sale deeds to be executed by the Tamil Nadu Housing Board and the Slum Clearance Board in favour of the allottees, by accepting the actual sale price charged by these Boards and the implied land values as the basis for the duty.

The State of Maharashtra has remitted Stamp Duties for a specified period in respect of any mortgage deed executed by any person for securing repayment of money advanced by way of loan by financial agency (specified), if such a loan is being advanced for purchasing fixed assets, such as machinery, and, land and buildings, for the purposes of starting any new industrial unit or for extending or expanding and diversifying any existing industrial unit in the talukas (specified) or starting any small scale industrial unit or for extending or expanding and diversifying any existing small scale industrial units in the talukas. In case of the Cooperative Housing Societies, conforming to prescribed guidelines, the Government has prescribed concessional Stamp Duties and Registration Fees on conveyances and agreements of sale relating to purchase of immovable property consisting of a unit or building or buildings for residential use executed by or on behalf of cooperative housing societies.

The Government of Karnataka has remitted Stamp Duties in respect of the instrument to be executed by the Karnataka State Cooperative Housing Federation, Bangalore, in favour of Life Insurance Corporation of India creating a floating charge on the present and future properties/assets of the Federation. The State has also remitted the Stamp Duties in the public interest in respect of the mortgage deeds executed by the beneficiaries to draw loans from the Government/Municipality/City Cooperatives under the "Low Cost Houses and Improvement of Houses in Urban Areas

for Economically Weaker Sections”.

The Government of Gujarat has remitted in the whole of the State the Stamp Duties in respect of mortgage deeds executed by any person on behalf of any industrial undertaking in favour of any of the financial institution (specified) and executed by or on behalf of any of the said financial institution, for securing repayment of any loan advanced or to be advanced to such industrial undertaking. The State has remitted the Stamp Duties on instruments of mortgage executed by the Gujarat State Cooperative Housing Finance Society Limited in favour of financial institutions, Housing and Urban Development Corporation and Life Insurance Corporation to ensure loan facilities to the Cooperative Housing Societies. The Gujarat Government also reduced the Stamp Duties with respect to instruments of mortgage of collateral security executed by the third party in favour of Gujarat State Financial Corporation for securing repayment of the loan advanced or to be advanced to such industrial undertakings.

Looking at the kinds of reductions and remissions in various States, there appears to be no specific policy or rationale for exemptions or concessional levy; and, the concession has been extended in some cases to financial institutions, cooperative societies, charitable or other various organizations, for no discernible reason..

It has been recommended by a number of State Taxation Enquiry Commissions that this power of remission or exemption has to be very selectively exercised, and the Government should be required to record the reasons in public interest, as provided in the Bombay Stamp Act. There is no justification of blanket exemption on mortgages for loans taken from several financial institutions regardless of the type/nature of the loan or the borrower. This has to be targeted at small loans, small houses etc., or else, the States will lose revenue for no justifiable reasons. In the case of the poor sections, it would be better to provide consolidated subsidies in land and services, as part of the housing policy, instead of scattered exemptions in different duties for transactions of Housing Boards etc., and this applies to concessions on charitable or compassionate grounds as well. In line with the approach adopted in the Chelliah Committee Report on Tax Reform, and the Bagchi Expert Committee Report on Property Taxes in Delhi,

tax concessions for specific groups should be discouraged, and the effort should be to provide transparent budget subsidies wherever warranted. In other words, the Stamp Act should not be used as a welfare measure.

**(ii) Lack of Uniformity in Procedures**

There are no uniform procedures with regard to the administration of Stamp Duties in different States even when there is ample scope for introducing uniformity in many respects. The procedures for (a) the payment of Stamp Duties and (b) for adjudicating the quantum of Duties vary among States. There are also different procedures in different States for the collection of Duties on Central Instruments. In the case of builder-flats, the agreement of sale is to be compulsorily registered with duty payable at conveyance rates and there is a further duty payable at the time of formation of the Society by the flat-owners, with a set off for the initial duty, after the reassessment of market value. It is admitted that there is no coordinated activity between the Income Tax Authorities and the Registering Authorities for sharing information on valuation and tax evasion.

It is surprising to note that, even for an identical instrument the procedures are such that different rates of duties are levied in the same State depending on the entities involved in the transaction. For instance, in Maharashtra, under the existing system, burden of Stamp Duties tends to vary, depending on: (a) whether the flat is purchased from a builder, and then the flat owners form a society or an Apartment Association, or (b) whether the cooperative purchases land and then constructs the flats for the members.

It may be mentioned that there is a demand in Maharashtra for the uniform treatment of all residential premises for the levy of Stamp Duties, be they allotted by a public agency or part of a cooperative, or promoted by commercial and industrial undertakings for ownership or rental, and for charging nominal rates of duty on the transfer of industrial premises in case of dissolution of partnership or change of partners.

(iii) Conveyance of Flats and Houses in the Private Market: Need for Transparent Procedures

People are not aware of the several procedures, such as the methods of securing the NOCs and procedures for adjudication, and are obliged to rely on Advocates and middlemen. Some of the purchasers avoid the entire process of registration and resort to power of attorney transactions, accompanied by supporting non-registrable documents such as the agreement of sale, irrevocable will and cash receipt. People are not deterred by the fact that this denies them access to formal sector finance and causes difficulty at the time of resale. Lack of awareness and helplessness on the part of tax payers may easily be illustrated by the fact that in Delhi, Madras and other places the builders often collect the Stamp Duties in advance from the flat purchaser, but do not pay it to the authorities, and also do not form the cooperative of flatowners in time. This enables some builders to collect illegal payments from the flatowners, every time the latter wishes to sell the flat. There are various ways in which the builders are reported to be evading Stamp Duties, such as the developer agreement with the landowner, and effecting of agreement of sale for the flats with the prospective purchasers or effecting only agreement of sale for the land with the purchasers and then claiming to act as the building contractor; formation of bogus companies with the landowners for the construction of flats and making payment for the land through shares in the company or flats; transfer of some of the flats to the landowners through collusive Court decrees for due performance of contract etc.

The States like Maharashtra strive to plug these loopholes to make the system effective and transparent through redefinition of the term conveyance, agreement etc. Since the development agreement between the builder and the landowner is now deemed to be conveyance in most States except Delhi, there is payment of Stamp Duties involved at all stages of initial development, initial sale to the purchaser, and the ultimate formation of the cooperative, and all this is because of the tendency of the States to exploit every stage of the real estate transaction, and the tendency of the builders to evade the duty at every stage. This often results in double duty for the same transaction, and it is only in Maharashtra that the setoff is given for duty paid at earlier stages, or for

non-materialised sales, following the U.K. practice. These practical problems are addressed in the amendments proposed in this Report.

## **Problems in the Purchase of Stamps and Alternative Arrangements**

### **(i) An overview of the Present Problems**

The Housing Finance Institutions (HFIs), the cooperatives, flat-owners and the capital market institutions referred to the problems of procuring stamps and stamp papers of various denominations from the stamp vendors and the Treasury. They pointed out the inconveniences associated with the requirement of providing tedious details to the vendors, long queues before the vendors and Treasury, and the consequent delays in the conclusion of transactions or the disbursement of loans to the borrowers, or the conclusion of transactions. They referred to instances of corruption, demand for speed money, involvement of middlemen and the harassment by the registration staff as sometimes, the Sub-Registrars do not accept the adjudication of the other officials, such as the Superintendent of Stamps as in Bombay, or the NOC given by the Appropriate Authority under the Income Tax Act, and they insist on referring the case to the Collector for adjudication on value. At the same time, the documents are required to be lodged with the Sub-Registrar within four months of execution, and the stamps are valid only for a period of six months from the date of purchase. If the NOCs cannot be obtained within the period, then the parties are obliged to buy the stamps again. Since the parties purchase the stamps and stamp papers prior to the lodging of the document with the Sub-Registrar, large sums are locked up without any interest, firstly, due to the delay in securing the NOCs and secondly, because of the delay in the adjudication of value of the instrument. In Tamil Nadu, investigations are carried out at the level of the Sub-Registrar on the veracity of the details mentioned in the document presented for registration, and this leads to delay. This practice in the State has also been challenged in the High Court.

There is often only one office in big cities for the adjudication of duty or for affixing stamps on bulk instruments of banks etc. and there is a huge backlog of

applications from transacting parties.

There are shortages and problems in the purchase of small value stamps for repetitive non-standard operations. This was highlighted in Press reports in Delhi. There are only limited outlets for the sale of stamps even in big cities, and there are limits in most States on the monetary value of stamps which can be sold by the vendors. Often, stamps of particular or most denominations are out of stock, or the stamp vendors are not available, and no alternative arrangements are made by the Government. This creates an artificial scarcity of stamps, and malpractices on the part of stamp vendors and lower functionaries are periodically unearthed.

In most of the States, there is no provision for the payment of stamp duty, in case of shortage of stamps. For instance, it was stated that the position was so serious in Calcutta that the share transfer deeds had to be sent in huge quantities to Bombay for getting them affixed with stamps. The high value stamps can often be purchased only from the Treasury, or through endorsement by the Collector. The financial institutions and bulk customers were obliged to make repeated visits to the Stamp Office to get the documents stamped. It was represented that the requirement of pasting adhesive stamps on each individual share transfer document or debentures was antiquated, and involved enormous manual work when millions of share transfers were to be effected, as was seen in the case of massive purchases of shares by the FII s and FI s last year.

(ii) An Alternative to the Present System

The present situation calls for urgent steps for the use of alternative methods for the payment of Stamp Duties otherwise than through the affixation of stamps. Maharashtra State has realized the need of replacing the requirement of affixing stamps in respect of large customers by the system of franking machine and the payment of composite duty, but other States have not followed this admirable example. Tamil Nadu hopes to amend the rules for this purpose. The duty can be paid through chalan in nationalised banks as in the case of income tax, and the chalan can be recognised by

Registering Officer for endorsing the payment of duty.

It is possible, at the same time, as in the U.K., to allow companies and builders involved in regular dealings in immovable property, to open revolving credit accounts with Sub-Registrars' Offices or the Treasury, to which the required payment of Registration Fees and Stamp Duties may be debited. This will both save them the trouble of having to procure and affix stamps repeatedly, and reduce the workload of Stamp Offices.

**(iii) Reducing the large Varieties of Stamps**

There was a demand from representative bodies like the ASSOCHAM for reducing the large varieties of non-Judicial stamps for different purposes, in the interest of simplification, lesser printing costs, and the avoidance of delay due to the non-availability of particular varieties of stamps. It is possible to devise a description of stamps as only revenue stamps, impressed stamps and special adhesive stamps by amending the Rules. This has of course to be adopted uniformly on an All India level in the interest of economy in production of the stamps of desired description by the Nasik Press. The question of dispensing with very small denomination stamps by All India level amendment of the Schedules may also be considered. This will help to reduce the printing costs, avoid periodic shortages of stamps and the incidental corruption, and benefit the consumers.

**(iv) Need to Dispense with Impressed Stamp Paper**

There are also reported loss of stamps and stamp papers en route from the Nasik Press to the State headquarters and in the course of storage in the Government godown. It is possible, in due course of time, to dispense with the printing of impressed stamp paper, as all documents to be registered can be written on ordinary paper, and the necessary Stamp Duties paid by cash or draft into the Treasury or the system rationalised so that the fact of payment of duty can be endorsed by the Sub-Registrar

on the document. The adhesive stamps can be continued, pending use of franking machines, only for isolated transactions in non-registrable documents. The nationalised banks can also be authorised to cancel stamps and send the documents to the Registering Officer for record.

The time for payment of duty from the date of execution may be made extendable by the competent official, on demonstrated non-availability of arrangements for the payment of duty by the public.

(v) Need for More outlets

At present there is considerable pressure on, and delay in, the Government Treasuries, especially in small towns, for the sale of stamps and stamp papers. Adhesive stamps are not issued on all days. A strong plea was made for the opening of more outlets for the sale of stamps and stamp papers, permitting the opening of outlets in the Stock Exchanges, universalisation of the practice of franking machine and payment of quarterly composite duty by the dealing institutions, greater control over the vendors, streamlining the certification process for payment etc. The Postal Department is seen as more people-friendly than the Treasury Office. It can sell all types of stamps, impressed stamp paper (non-judicial and hundi), adhesive labels of all descriptions (revenue, insurance, foreign bills agreement, broker's note, share transfer, notarial) and also Court Fees. A uniform commission of 3 per cent on general stamps and 2 per cent on Court Fee stamps can be given. They can also instal franking machines for the payment of Stamp Duties. However, the past dispute between the Department of Posts and the State Governments over the payment of commission for the sale of revenue stamps is yet to be resolved. It is necessary for the Finance Ministry and the Department of Posts to enter into meaningful dialogue with the State Governments to offer the postal network for the sale of stamps.

## **Pre-requisites for Registration and the Suggested Reforms**

### **(i) No Objection Certificates (NOCs)**

In Delhi, various types of NOCs are required before the registration of documents. The required clearances are (a) NOC under Urban Land Ceiling Act from competent authority; DDA or L&DO (for lands leased by them), ADM(HQ), or DC's Office (for free hold property), and Delhi Government (for lands leased by them); (b) status report on land acquisition or regularisation of unauthorised colony from Tehsildar (LA); and (c) NOC from Income Tax Office under Section 230A and clearance of Appropriate Authority for properties with apparent consideration over Rs 10 lakh under Chapter XXC of Income Tax Act. With varying local requirements, these pre-requisites are enforced in other States as well. It takes much time and expense to obtain various NOCs from the Appropriate Authority before registration of documents. Because of their legal illiteracy, the registrant seeks to expedite it through middlemen who further play a misleading role in the registration transactions.

In Karnataka, the Stamp Act calls for the submission of a number of documents alongwith the conveyance document such as the patta or property tax extract, conversion of land use, NOC from competent authority of ULC, clearance of Income Tax under Section 230A and Chapter XXC, and affidavit about compliance with provisions of public policy (which is a special feature of registration in this State). In Uttar Pradesh, it has been found in Bareilly, Allahabad and Lucknow that competent authorities under Urban Land Ceiling Act does not acknowledge the receipt of the notice under Section 26 and 27 of the Act without which Registering Officer even refuse to accept the document for registration though no fault of the registrant. Consequently, the parties are willing to pay whatever Stamp Duties is demanded rather than suffer the delay in registration.

In Bombay, it has been suggested that, since the Registering Officer cannot refuse to accept a document, if not accompanied by necessary "No Objection Certificates", such lodged documents accumulate in the Sub-Registrars' office, and create congestion in the already cramped premises. The Inspector General of Registration called for amendment

in the Registration Act to enforce the return of the registrant within four months for registration after lodging the document, failing which the document can be destroyed. A similar demand was made by Deputy Commissioner in Delhi. This, however, presumes prompt issue of NOCs by various authorities.

## **(ii) Suggested Reforms**

In order to facilitate speedy registration, an alternative could be to oblige the registrants to send copies of the documents to be registered to different specified authorities as in Karnataka, along with copies of affidavit filed with the Sub-Registrars, and to enable penal proceedings to be initiated for false statements within six months, including cancellation of registration, leaving it to the concerned Departments to initiate action. In that case, the Registering Authorities can accept the documents for registration along with the necessary affidavit and check only the title, correctness of stamping and the facts mentioned in the instrument. We have proposed suitable amendments to the Registration Act to enable the introduction of this practice.

In this context, it is necessary to reiterate that the concerned Departments must efficiently enforce the provisions of their statutes without shifting the responsibility to the registration process. It may also be noted that legally also, any registered transaction will operate only inter vivos and cannot in any way create obligations on public authorities to relax laws relating to land, property, planning and the like.

At this stage, it may also be mentioned that the States like Karnataka, Tamil Nadu, Bombay, Uttar Pradesh, Delhi and West Bengal suggested the monetary limit for Section 230A and Chapter XXC of the Income Tax Act to be raised. The builders in Delhi want the limit to be raised to Rs 50 lakh in metro towns and Rs 30 lakh in other areas under Chapter XXC. They demanded the limit for clearance under Section 230A enhanced to Rs 5 lakh with a provision for future indexing as in the case of Capital Gains Tax

### (iii) Registration Fees

In Bombay, Registration Fees is payable at one per cent of the value of property, but limited to Rs. 5000 as also in Delhi and Uttar Pradesh where the limit is Rs 500 and Rs 251 respectively. (This is a welcome provision, not followed in other States most of which levy one per cent of the value of property as Registration Fees on all conveyances without any upper monetary limit for the amount of fees). In Karnataka an ad valorem Registration Fee of two per cent is charged on conveyance without any monetary ceiling, while fixed rates are charged on other instruments. Reliance is placed by Karnataka and Tamil Nadu on the 1989 High Court Order of Madras permitting ad valorem Registration Fees so long as the revenue from Registration Fees does not exceed the cost of collection. This has however the effect of raising the effective rate of Fees on the conveyance of properties, and hence the State Governments should be persuaded to accept a voluntary limit on Registration Fees, the objective being mainly to ensure that total revenues from this source meets the cost of the entire establishment, including a provision for essential modernisation. Meanwhile, it is no doubt possible for the States with nominal Fees like Maharashtra, Uttar Pradesh and Delhi to revise Registration Fees and adjudication fees commensurate with the increasing cost of establishment.

## **Procedural Reforms in respect of Instruments of the Capital Market**

### (i) Share Transfer and Settlement

There are many problems associated with the share settlement transaction, arising from the present legal requirements under the Companies Law and market imperfections. The requirement of affixation of stamps and their cancellation by the transferee of shares before lodging with the company, sometimes gives an opportunity to the company to delay share transfer on the ground of deficient or improper stamping. The institutionalisation of the investor side of the securities market through the entry of private FIs and mutual funds has created its own problems, as they create a lot of paperwork for the transfer of shares.

The Government may consider making it obligatory for the concerned company to pay the Stamp Duties, and ensure stamping by franking machine, after collecting the amount from the party on share transfers, and the companies can be given the facility of franking for this purpose. The Government may also issue orders under the Companies Act to permit combined transfer deeds, and under the Stamp Act to permit the payment of consolidated Stamp Duties thereon. The aim is to create share certificates in bigger lots for financial institutions, mutual funds etc.

The high rates of Duties on the issue of share certificates in Maharashtra has led to the practice of the companies opening a small branch in a place like Delhi where the rate of duty is low for issuing the shares. At the same time, it does not help all purchasers as the recipient of such shares in Maharashtra (where high rates of Duties prevail) have to pay the differential duty before the transfer of shares is effected in the State. The problem has to be addressed in terms of uniform duties on share issues.

#### **(ii) Instruments pertaining to Amalgamations**

Another problem, raised both by the trade bodies and the Goswami Committee, is the practice followed in Maharashtra of treating the amalgamation order passed by the High Court as a conveyance deed, and of levying Stamp Duties on all the assets vesting in the amalgamated company by virtue of the Court Order. This discourages rehabilitation of sick companies. In such cases, there is a case for levying Duties on the basis of the book value quoted in the Court Order or the Order of the BIFR. This is apart from the need to reduce the high rates of Duties on such conveyances, as noted by the Goswami Committee.

#### **(iii) Debt Instruments**

The Central and State Governments are supportive of the steps to introduce trading in debt instruments as funds will increasingly be shifted from short term bills to securitised debt once active trading starts. The practice of different companies, in shifting the location of operations in respect of shares, is followed for debentures also

by the creation of a Trust in a preferred State under Article 22 of the Stamp Act. The company properties are mortgaged to this Trust for creating a security for the purpose of issue of debentures. The companies' objective is to undertake the issue of debentures in States with low rate of Duties both on the issue of debentures and the mortgage of properties. Maharashtra and Gujarat have imposed upper monetary limits on the total amount payable as Stamp Duties on mortgages in order to induce their companies not to shift their issuing operations to other States. The situation is somewhat similar to the industries taking advantage of the concessions for the location of industries, and the States trying to win over more and more industries by concessions. The demand of the industries is for all the States to impose uniform and low ad valorem rate of Stamp Duties on mortgages of Debenture Trusts, along with uniform procedures of assessment.

#### **(iv) Securitisation and Secondary Market**

SEBI, ICICI and the financial institutions referred to the importance of developing a secondary market in housing and other debt instruments in order to impart liquidity to the primary lenders and to increase investments financed by bonds and debentures in areas like housing and infrastructure. This calls for a uniform mortgage and debt paper, nominal rates of Stamp Duties, clarifications by CBDT, speedy foreclosure provisions (especially for housing), necessary exemptions under the ULC Act for holders of the pass through certificates representing the interest in immovable properties, and sufficient number of active players in the market. The SEBI is reported to be drafting Legislation to allow securities certificates to be immobilised basically in a depository so that ownership may be transferred electronically by book entry. A number of public sector financial institutions already operate through the Stock Holding Corporation. It may be possible for the States to waive the Stamp Duties on such electronic transfers, subject to the depositories agreeing to pay by way of quarterly service charges an amount equivalent to the revenue loss.

The National Stock Exchange may start handling debt instruments on a large scale, while trusts for housing finance and infrastructure, of the model proposed by HDFC and ILFS, can hold the pool of housing or infrastructure loan mortgages for the issue of

pass through certificates. The FIs issuing asset backed loans need not carry them to term, thus allowing risk sharing and rapid expansion of their lending. This will give a boost to housing finance. The commercial banks, LIC, Mutual Funds, Provident Fund organization etc., can invest in the securitised debt because of the perception of lesser risk and assured streams of revenues, and this perception will be strengthened by the collaboration of competent private parties or BOT (Build Operate Transfer) arrangements. The high rate of duty of 3 per cent on the assignment of debt, in most States, deters the creation of securitised debt, but the recent move by the Maharashtra Government to reduce this duty for instance to 0.1 per cent (and 0.01 per cent on subsequent transfers) is expected to give a boost to trading in debt instruments in Bombay, and this can be imitated by other States. A monetary limit of Stamp Duties on such instruments, say of Rs.50,000 can also be agreed to. It is expected that ICICI and other financial institutions will also start playing an active role in this field. Similar concession for asset reconstruction companies will help in the transfer by financial institutions non-performing assets to a separate subsidiary which will concentrate on recovery from the borrowing companies by special efforts.

It has been pointed out, the nominal rate of duty in securitisation will actually lead to additional revenue for State Government by generating substantial financial transactions in an area, where no trade exists now. No doubt, nominal rate of Stamp Duties on securitised debt instruments is only one component of the package of measures, fiscal and institutional, needed by the investors. Other measures requiring support are the handling of stock market custodial and transfer operations through the proposed Depository Institutions, with the long term objective of scripless trading through computerised records, and brisk trading in debt instruments. As noted earlier, this would, inter alia, call for enabling provisions for the payment of composite duty, or service charges in lieu, and the acceptance of the computer printout as a dutiable instrument.

## **Information and Infrastructure Facilities for Stamp Duties and Registration Fees.**

### **(i) An Overview**

As agreed by many of the State Government Officials, it is necessary to strengthen the State administration and improve available facilities for office accommodation, storage and record keeping, improving information and communication, amenities to the public etc., for the effective and responsive execution of the Stamp and Registration Acts. Many offices of the Sub-Registrars operate from rented premises, often very cramped, and without adequate water supply and sanitary facilities for the public. There has been on the one hand little effort to relate the workload to the required staff and on the other hand there has been no major effort to make necessary changes in Rules and procedures to reduce the workload itself. There has been little investment of funds or institutional effort in the training and skill upgradation of the Officials concerned with the interpretation of increasingly sophisticated financial and capital instruments, or coping with efforts by the parties to circumvent the Law. It has been primarily looked upon as a revenue earning Department, and there has been no systematic effort to address the harassment and problems of the public and institutions arising from the routinised administration of the existing legal provisions.

### **(ii) Information to the Public and Institutions**

It is necessary to disseminate information on Stamp Duties and Registration Fee procedures for the user public, and adopt people-friendly systems. Tamil Nadu has widely disseminated information for the public on Stamp Duties and Registration Fees in the local language and the guideline values are available to the public on demand. As against this, in some States, there are no display boards, especially in smaller towns, even on the rates of Duties and procedures, and the public has to take the help of middlemen or lawyers to ascertain the rates of Duties. The set of excellent pamphlets and publicity literature of the type available in the U.K. deserves to be produced and widely distributed in different States. This is necessary even in respect of the financial and capital market instruments because of the burgeoning number of investors in the country

and the conflicting interpretations of the instruments charged for the Duties. The procedures for acceptance of composite Duties from the institutions have to be speeded up. A microfilm index of registered documents for the last 30 years and a microfilm reader on the analogy of libraries may be provided to each District Registrar to facilitate title search and issue of encumbrance certificate. Wide publicity may also be given to the guideline values of land and properties in different parts of a State.

(iii) Maintenance of Records

In Bombay, microfilming facilities are available for the maintenance of registered documents, but the return of the original, after taking a microfilm of the document and the photocopy, involves huge delays. Besides microfilming, the Gujarat Government is considering the acquisition of computers with compact discs and scanning. It is pointed out that once the computerisation is done, it is possible to store the annual registration of 22 to 24 lakh pages in 12 discs and then copies can be furnished in a month's time. This was considered superior to storage by microfilms. Gujarat has already computerised storage of data in 7 Districts under Ahmedabad zone and is generating records on transaction-wise registration and payment of Stamp Duties. This will be extended to all the other Districts soon. It was stated that, in Maharashtra, in view of the practice of maintenance of microfilmed records at Pune, all requests for copies of documents had to be referred to the photo registry office in Pune and it takes several months to get a copy. This creates problems for getting mortgage finance also. It is, therefore, desirable to take two copies of the registered document at the time of registration as in Delhi and to authorise the Sub-Registrar to give a copy later. However, to prevent tampering with the document, stored in the Registrar's Office, microfilm or compact disc of the document has to be centrally maintained. A positive of the microfilm can be given to District Registrar who can also be provided with a microfilm reader.

The Management Information System in most States for the administration and supervision of the Act is poor, and instrument-wise transactions and revenue realisation are not compiled at the level of the Sub-Registrar and the regional/State level. Details of sale of stamps through the Treasury are not available even in respect of instruments

carrying high rates of Duties. The sale of stamps in respect of instruments, such as those relating to the capital market and not requiring registration, takes place through the Treasury or the Collector's office, and instrument-wise sales are not compiled in most places. This hampers the estimate of the revenues from such instruments for calculating the burden and incidence of Stamp Duties. The information is mostly not computerised, except for a few States, and the dispersed data does not facilitate effective management interventions.

In Delhi, the proposal to transfer all previous year records to the Central record room and to microfilm them is yet to take effect. Microfilming will avoid possibility of tampering with the documents and will ensure better preservation of records since the present arrangements for their storage and retrieval are unsatisfactory. It is necessary to improve the information system by computerisation and Centralised record keeping, and cover also the data on sale of stamps from the Treasury and the stamp venders in order to get a full idea of the purchase of stamps for various purposes.

(iv) Unified Professional Cadre

It is necessary to think in terms of a unified single line professional cadre for registration and stamping, as in Tamil Nadu, with at least 50 per cent direct recruitment for the post of Sub- Registrar, and merit based promotions for the promotees to this level. It would be advisable to disassociate the District Collectors from the registration of documents, except for assistance in the annual exercise of determination of land values. Periodical training of all levels of staff in the provisions of the relevant Acts, including Central Laws, and in valuation procedures is essential. The hierarchical set up need to be buttressed by staff specialised in the determination of land and property values, adjudication of disputes relating to instruments and rates, and in financial and capital market operations. The Department should maintain effective coordination with other Central, State and Municipal taxing agencies, including the Appropriate Authority, and this effort would no doubt be spurred from the side of the CBDT on the basis of the observations of the PAC on the working of Chapter XXC of the Income Tax Act.

## Amendments in Other Laws and Procedures

Since the ultimate objective of the reforms in Stamp Duties and Registration Fees is to facilitate the smooth and increased transactions by the public and institutions, it is necessary to look at the changes necessary in the Central Legislations also in order to improve the benefits flowing from amendments in Stamp Act and State level procedures. The exercise can be linked to the Project Large undertaken by the Finance Ministry, with the support of UNDP. These include:

- i) Amendment to the Company Law to waive the requirement of 'duly stamped' share transfer forms for the legality of transfer of shares, taking due note of the recent Supreme Court judgement in the Kothari Company case, and to examine the scope for vesting the obligation of stamp duty payment on the company with whom the share transfer forms are lodged, to facilitate the formation of special vehicle trusts for holding assigned debt, and to clarify their status in relation to I.T. Act so as to absolve the trust of tax liability, and further not to treat the amount raised by securitisation of loan as a deposit under Section 58A and other relevant provisions of Companies Act; and further consider the exemption of the securitisation instrument from the relevant provisions of the Capital Issues Control Act;
- ii) To amend the Indian Evidence Act to provide, on the lines of similar provisions of the Central Excise Act, 1944, that the microfilm of a document and a computer print-out of a depository institution or the NSE are deemed to be documents admissible as evidence; and thus relieve the financial institutions of the problem of having to produce all original records in the Court in foreclosure and other suits;
- iii) To amend the Income Tax Act to eliminate the requirement of clearance under Section 230A to be produced prior to registration of documents and to raise the limit on par with Chapter XXC in the meantime;

- iv) To consider appropriate amendments to Chapter XXC of the Income Tax Act on the lines proposed in this Report, in the interest of uniform administration of the Stamp Act, Registration Act and Income Tax Act, for the common objective of curbing undervaluation of property, but with least harassment to the public;
- v) The CBDT may consider issue of circulars to facilitate securitisation of mortgages and debt:
  - a) that the assignment of debt to the Special Vehicle Trust does not amount to transfer of income without the transfer of assets under Section 60 of Income Tax Act, and hence the income is liable for taxation in the hands of the investors and not in the hands of the securitising institution;
  - b) that the totality of investors holding the participating certificates or other instruments issued by the Trust ,or designated financial institutions, will not be treated as Association of Persons, to be taxed at higher rates under Section 164 of the Income Tax Act, but as individuals liable for taxation at lesser tax rates, as may be applicable to them; or else, no individual would choose to invest in the securitised instrument, and the commercial viability of the entire instrument would be destroyed;
  - c) that the exemption from the requirement of deduction at source would apply in relation to interest payable by borrowers to institutions even after securitisation;
- vi) to amend the Indian Registration Act to provide for compulsory registration of Power of Attorney involving possession of land, and of Agreement of Sale;

- vii) to delete Section 30(1) of the Act permitting registration of outside documents in the Office of the Registering Officer in any of the four metropolitan cities of Delhi, Madras, Bombay and Calcutta;
- viii) to require the registering parties to take back the lodged documents within a stipulated period, failing which the Sub-Registrars would not be liable for safe custody of the documents.
- ix) to extend the facility of equitable mortgage throughout each State under Section 58(f) of Transfer of Property Act.

### **Summary of Proposals**

It is, in short, proposed that

- a) The Government of India, in consultation with the State Governments, prescribe uniform rates of duties for all Central instruments and related State instruments, as explained in the Report, and provide uniform definitions of instruments;
- b) the Government of India also enact uniform machinery provisions for the Stamp Act under its concurrent powers, while enacting corresponding amendments to the Registration Act and other relevant Central Acts as well;
- c) persuade the State Governments to reduce the rates of duties on conveyances, defined comprehensively as in Maharashtra, to a maximum rate of 10 per cent of the value of property inclusive of Surcharges, (leaving intact the present practice in a number of States of devolution of part of the Stamp Duties to the elected Local Bodies) and devise a graduated structure of rates from 1 per cent to 10 per cent, with nominal rate of duties for low value conveyances;

- d) to provide a monetary ceiling on Registration Fees and to provide for uniformly low rates of Stamp Duties in all States on equitable mortgages in respect of financial institutions, along with a more comprehensive definition of conveyances and agreements of sale;
- e) to prescribe ad valorem and low rates of duty on financial and capital market instruments under Central and State Stamp Acts, uniformly and on All India basis and uniform definition of instruments; reducing the large varieties of stamps, and simplifying the duty slabs;
- f) the process of registration and stamping be delinked, as in the developed countries, for instruments in the State List;
- g) the registration process be delinked from the requirement of submission of various approvals under Section 230A and Chapter XXC of Income Tax Act; and the registration be done within the framework only of the Indian Registration Act; in short, casting the onus of legality of transaction and liability for penal action on the transacting parties and the responsibility for the enforcement of different Laws on the respective competent authorities.
- h) to enable self-assessment of Stamp Duties on conveyances according to publicised guideline values, and to provide for adjudication (not enquire) only upon the request of the registrants;
- i) to provide for annually or biennially notified and widely publicised values of lands and buildings in different areas on the basis of scientific valuation, and public consultation;
- j) to ensure widespread dissemination of the Rules and procedures, and rates of duty, to institute people-friendly, efficient systems of registration and

payment of duty, and coordinated working of different Departments such as Income Tax, Municipal Corporation, Registration Department etc.

- k) to reduce the workload of Registering Officers by:
  - 1) authorising public agencies and Local Bodies to collect Stamp Duties and issue lease/sale deeds for properties allotted by them, to individuals/cooperatives/institutions, and to deem such documents to be registered under delegated powers;
  - 2) introducing the practice of consolidated payment and franking for designated public and private institutions as much as possible, subject to audit, and further permit the opening of credit accounts as in the U.K. by bulk customers;
  - 3) reducing the number of instruments by regrouping and streamlining the Schedule;
  - 4) permitting the acceptance of payment of duty through bank chalan at all times;
  - 5) waiving the visit of the registrant to collect the documents after registration, but ensuring its despatch by post, as is done by the Passport Office;
- l) to reduce the different types of stamps, and categories, thereby reducing delay as well as cost of printing for the Government;
- m) to institute a transparent system for the exemption of certain transactions from Stamp Duties in the public interest, and to make the exemptions a part of the Schedule itself, and widely known to the people.

**International Experience with Stamp Duties on Property  
Transactions and Other Instruments**

The Stamp Act originated in Holland and England as a revenue raising measure and then spread to other countries, and many of the Acts in developing countries are based on the English Act of 1891. It is, therefore, useful to look at the current experience of the developed and developing countries in respect of Stamp Act.

**The U.K.**

In the U.K., the Stamp Act of 1891, was amended by a large number of subsequent Finance Acts, making additions, amendments and repeals, and various revenue Acts imposing fresh duties, granting exemptions from duty, constitute the general law on the subject. No Court Fees are levied. The procedure for stamping is public-friendly, with the parties having the choice of paying the stipulated duty and collecting the document by post, or getting the duty adjudicated by the Adjudication Office, and again getting the document by post. The duty is paid only by impression on the documents and no stamps are used. Some specified documents like those seeking exemption or relief from duty, require compulsory adjudication. Documents, with purchase price less than £60,000, or with no liability to pay stamp duty or on registered land, need not be sent to the Stamp Office. All stamped or not-required to be stamped documents are sent to the Land Registry Office for depositing and a copy has to be sent to the District Valuation Officer also. The Registering Office also checks the correctness of duty paid. Ninety five per cent of residential sales are registered. The Act provides for exemptions and relief in respect of a number of documents subject to scrutiny by the Commissioner.

In popular perception, stamp duty is hardly considered a burden, and there is no attempt to evade the duty by undervaluation. An important feature of Stamp Act in the UK is the frequent changes in the structure of duties, and constant efforts at repeal and

rationalisation in response to public demand and market forces, which is totally unlike the Indian experience.

A comprehensive review of the Act was undertaken in 1983 which recognized the contribution of the tax to national revenues, and hence aimed to modernize and harmonize the Stamp Duties, while examining the scope for removing the duty in some areas. Most of the revenue was found to come from transfer of land and houses, sale of stocks and shares, insurance policies, issue of shares, and leases. It was found possible to repeal duties on gifts, supplements, contract notes, agreements of sale, many nominal fixed duties, share exchange on the occasion of a takeover etc. The reforms of 1985 removed over 40 per cent of the documents requiring stamping. Stamp Duties continued to be levied on takeovers and mergers, share capital transactions or alterations in the company's capital position. There is no duty on mortgages except where they form part of sale consideration. The Stamp Duty Commissioners adjudicate on the duty to be paid including cases of reconstruction or amalgamation of companies. Certain types of conveyance such as the transfer of property upon divorce, or by liquidator of a company or voluntary dispositions are exempt from duty. However, conveyance or transfer of sale of property valued at over £60,000 carried a duty of 1 per cent against 0.50 per cent for stocks and shares. The Stamp Duties can be paid in person, through post or through licensed conveyancers. The duty has remained at the present level for over 10 years.

At present, the Government of the U.K. levies 0.5 per cent stamp duty on individual share transfers; 1.5 per cent duty where the U. K. shares are converted into depositary receipts and a stamp duty reserve tax, at the same rate as stamp duty for share transactions outside the stamp duty net. There are also fixed duties on bearer shares, share transfers other than sales and/or units under Unit Trust scheme. Keeping in view the small amount of collections from Stamp Duties on instruments other than land and buildings, it was decided in 1991 to abolish duties on instruments such as life insurance policies, Unit Trust instruments, and bankers composition. The Government of the UK also decided in principle to abolish the duties on the sale of stocks and shares despite their constituting 40 per cent of total revenue, because of the practical difficulty in

effecting calculations and collections of the Stamp Duties on transactions in stocks and shares which are nowadays conducted through computers and no documents are prepared. The duty on pre-issue of shares had been abolished in 1923 itself. It was felt by the Government that the levy of Stamp Duties on the transactions which take place frequently, and require speed in the disposal of transactions on computers, would be a hindrance to trade in stocks and shares. However, the abolition of duty on these instruments has not so far taken place and would come into effect from the date the new system of computerization and scripless trade comes into force. As of now, however, share transfer is valid only if it is duly stamped. The legal implications of common European practices in the stamping of instruments are being examined. At present, 60 per cent of the revenue from Stamp Duties is derived from land and property, and 40 per cent from stocks, shares and debentures.

Thus, as of now, in the UK, Stamp Duties are effectively leviable only on sales and leases of lands and buildings share transfers and specified capital market instruments. The abolition of duty on most instruments is expected to provide relief to a large number of people and eliminate the need for presentation of over 40 per cent of documents to the Stamp Office for stamping. The exemption of properties of less than £60,000 has provided relief to large number of sale transactions. The effective system of valuation by the independent valuation unit in the Internal Revenue Department and the publicised values of land and buildings deter undervaluation. The more important reason is the reliance of all purchasers on housing finance and their stake in correct valuation in order to get access to full finance. Appeals against valuation by the District Valuer go to a professionally staffed Valuation Court, then, if required, to the Lands Tribunal and the House of Lords. Greater reliance is placed on capital value than annual rent for rates. All valuations in the UK for the purpose of compulsory land tax is based on the values of land and buildings for different areas published by the Valuation Office under Internal Revenue.

Since the Indian Stamp Act of 1899 was based on the British Act, it is worthwhile looking at the innovative practices and changes in the U.K. for adoption in India.

1) The instruments exempted from Stamp Duties cannot be taken as duly stamped unless the duty is adjudicated through a reference to the competent Revenue Authority. Cases of doubtful payment are also referred by the U.K. Stamp Offices for adjudication.

2) The U.K. Act follows a comprehensive definition of conveyance under section 54: including every instrument, and every decree or order of any Court or Commissioner whereby any property, or any estate or interest in any property upon the sale thereof, is transferred to, or vested in, a purchaser. Even Development Agreement of builders is charged to duty.

3) Under Section 59, full ad valorem duty is charged on agreements for sale of any equitable estate or interest in any property whatsoever. Further, where the purchaser has paid such duty on agreement before obtaining a conveyance, the duty payable on conveyance would be adjusted against the duty paid already. A similar provision is available on agreements for leases also.

4) Even the properties acquired by expropriation or pre-emptive purchase order are liable to duty unlike in India.

5) It is obligatory for the transferee or lessee to produce all instruments relating to land to the Commissioner within 30 days after the execution of the instrument. This helps the District Valuers in the assessment of land values for the determination of compensation of land under compulsory purchase, and other fiscal purposes.

6) In order to ensure that no evasion of Stamp Duties takes place by resorting to the exemption clause for properties having less than £ 60,000 value, the law provides that every instruments must carry a certificate that the transaction does not form part of a larger transaction, or a series of transactions, in respect of which the amount or value, or aggregate amount, exceeds the prescribed value. This is relevant for cases involving Chapter XXC of IT Act or ULC Act in India. The British law also covers cases of

multiple exchange of property and payment in kind.

7) The British law provides for payment of Stamp Duties even on mere transfers or conveyance of property without a proper sale deed, and for the refund of duty in case it is proved to the Commissioner's satisfaction that the sale did not go through. This provision will cover thousands of Power of Attorney or Agreement of Sale transfers in India.

8) There is a provision for charging full and ad valorem Stamp Duties on leases of dwelling units given for self use of assesseees given by Local Authorities, Housing Associations etc. They can charge premium with reference to market value of the house and some rent, and, at the same time, the residuary right of reversion of the lessor is also agreed to be transferred later on to the lessees. This duty is charged on the market value at the time of lease. No stamp duty is later required to be paid by the lessee at the time of the residuary right of reversion. This is a sensible provision and would remove the difficulties in India of converting leasehold into freehold rights.

#### **Netherlands and Sweden**

The Stamp Duties are levied mainly on the lease and sale of land and property. Sweden levies a real property tax based on assessed value or 75 per cent of market value. There is a uniform assessment process for all taxes through the National Tax Board. There is a six year cycle of reassessment of family houses, farm properties and rented houses. Since the market value is fixed objectively, Sweden is able to follow a target tax rate of 1.5 per cent of market value. New residential property is exempted for 5 years from property tax and is charged 50 per cent of tax for further 5 years.

#### **The U.S.A**

In the USA, most State and Local Authorities levy mortgage recording and real property transfer taxes and the document is not acceptable as evidence unless stamped. Together, they account in different states for 0.8 per cent to 5 per cent of the sale or

mortgage consideration. In New York, for example, the real property transfer tax is 2.625 per cent if purchase price is more than \$ 500,000 or a combined 5.4 per cent. As the purchaser has to bear the tax, the projected sale price has to be reduced to take care of this. Transfer taxes are also imposed upon the transfer, assignment or surrender of a leasehold interest in real property. Thus, recording and transfer taxes impose significant tax liabilities in many types of transactions. Apart from this, the local real property taxes impose significant real operating expenses annually on real estate projects and households. The investors in real estate or the seller faces possible Capital Gains Taxes upon the disposition of the property. These taxes are imposed at Federal and State levels. New York imposes 10 per cent Real Property Transfer Gains Tax on the gain derived from the transfer of value over \$ 1 million, and the rules for calculating the tax base are more stringent. However, the State Gains Tax is deductible for Federal tax. Unlike the practice in some Indian States, the transfer of property by way of gift, or consequent to a Court Order is not dutiable, nor is mortgage of property of a Financial institution liable to duty. California cities levy a real property conveyance tax and the collections go to a special fund in the Municipality, and used to finance community facilities, fire protection, parks, public works, roads etc., 48 per cent of the revenue is to be spent in the ward where the property is located.

The payment of duty, of course, is very convenient, as it can be done through the authorised conveyancers or relators.

## Australia

Australia is a federal country and the States exercise fiscal jurisdiction over Stamp Duties. Because of the problem of the same transaction attracting different rates of duties in different States, the parties especially overseas investors seeking to execute conveyance and other instruments faced the problem of additional tax burden besides delays. This was aggravated by each State seeking to develop a stamp duty regime, designed to maximise revenue by ensuring that instruments or transactions entered into, especially by persons carrying on business in a particular State, do not avoid Stamp Duties in that State. Coupled with this was the shift in emphasis from instruments to

transactions. The State may allow duty exemption for one instrument, such as home debenture, but other States may levy duty and allow a tax credit.

The Federal Government and the States have recognised the need for stamp duty harmonisation, without much adverse effect on State revenues. The approach to the uniform framework envisages:

- a single liability to stamp duty, whichever the State where the transaction was entered into, or wherever the parties resided.

- taxpayers would have to submit instruments only to their particular State for assessment of duty and the relevant authority would remit the duty to other States where required.

- the States would agree on uniform Stamp Acts and uniform rates.

- in circumstances where the subject of an instrument is located in more than one jurisdiction, then duty on conveyance, lease, mortgage etc. would be imposed only in a particular jurisdiction to the extent the property is located therein.

- Given the global trend for the removal of Government imposts on securities transactions, all States would abolish stamp duty on securities transactions; meanwhile, the practice of brokers paying duty on share transfers would continue.

- steps would be taken to resolve the extra-territorial power assumed in various State Stamp Acts for the levy of duty on instruments having a territorial connection to a particular State, as this had led to multiple duties on a single transaction, as well as on insurance policies; meanwhile, the practice of offering reduction of duty payable in the State based on the duty paid in another state would continue.

In the State of New South Wales, the stamp duty is payable on written

legal documents as well as certain unwritten transactions such as the acquisition of business without a written agreement. Duty is required to be paid within two months of signing a dutiable document or entering into a dutiable transaction.

The following rates of duty applicable in the States are worth noting:

Leases of property	-	0.35 per cent of the total rent payable, but conveyance rates on the value of the premium.
Conveyances	-	1.25 per cent to 5 per cent according to slabs.
Mortgages	-	0.03 per cent

Stamp Duties can be paid for each instrument, or by way of monthly return by approved persons in business.

## Malaysia

Malaysia levies ad valorem Stamp Duties at the Federal level under the Stamp Act, 1967. An instrument of transfer for landed property is fit for registration only if it is duly stamped.

There is a Valuation Division under the Ministry of Finance, established in 1957 with a professional cadre of Valuation Officers and subordinate staff, and working under the Director General of Valuation. It has State and District branches. It has units in charge of:

- a) Valuation and Property Services (Inspectorate)
- b) Technical and Research
- c) Training

The Valuation Division provides the following services for different divisions of Finance Ministry:

- i) Estate Duty is payable on the capital value of movable and immovable property; the Valuation Division helps to inspect and value the properties, reach an agreement with the applicant and report to the Collector the market value for the levy of duty.
- ii) Real Property Gains Tax is levied on gains made on the sale of all landed property, including gifts, exchange of properties, and transfer without monetary consideration, as assessed by the Division.
- iii) Land Acquisition Act involves the determination of compensation by the Collector of Revenue with the help of the Valuation Division, and the Division also helps Acquiring Bodies.
- iv) Housing Loans to Government employees involves valuation of the property pledged by the applicant.
- v) Insurance investigation of market value.
- vi) Capital Issues Committee and Committee on Foreign Investment take the Division's help to value the real assets of a domestic or foreign company floating the shares, or intending to effect a merger or takeover.
- vii) Valuation of attached properties for sale.
- viii) Assessment of annual value of Federal buildings for the purpose of negotiating with the Local Authorities' contribution to be paid by the Government in lieu of property tax.
- ix) Assistance to Government utilities for purchase of land, acquisition of

other companies, compensation for easement for electric and water utilities.

- x) Compliance of Federal Government real property under ownership and occupation in order to give an idea of the value of property owned by different levels of Government.
- xi) Assistance to Local Bodies in revaluation of all the properties for the purpose of assessing the annual value or improved value of the land property, and for levying consolidated annual rates (not exceeding 35 per cent ), sewerage improvement rates (5 per cent) and drainage rates (5 per cent).

In addition to the above, the Valuation Division functions under the Collector of Stamp Duty for assessing the value of any property which is the subject of transfer or settlement, and which is referred by the Deputy Collector of Stamp Duty to the Collector of Revenue for obtaining a valuation certificate. This activity represents about 13 per cent of the workload of the Division.

It would be seen that the use of a professional unit for valuation under various statutes by Federal and State Governments harmonizes valuation parameters and procedures and helps to minimise delay and litigation.

### Jamaica

Jamaica presents an instance of another former British colony administering the Stamp Act. The Stamp Duties constitute an important part of the indirect tax system, yielding, in 1983-84, 13.8 per cent of total indirect taxes, or 7.3 per cent of all taxes, or 1.7 per cent of GDP. Stamp Duties were, in revenue terms, almost as important as Import Duties, and more important than Excise Duties and Sales Tax. Stamp Duties in Jamaica has three different sources, tax on property and transfers (amounting in collections for 23.4 per cent), tax on customs inward wararants (52.2 per cent) and a

variety of levies on contracts and transactions (24.2 per cent). The Property Transfer Tax which is a tax distinct from stamp duty is also collected through the Stamp Office.

The Government is reported to be seriously considering the abolition of a large number of Stamp Duties on contracts and other transactions such as notes, cheques, insurance policies licences, deeds, bonds and contracts listed in over 34 pages. In the county 24 items are subject to low and fixed rates, while 12 items are taxed at graduated rates. There have been few changes in the duties on domestic transactions in recent years. Many of the rates are low, some of the items are archaic, and the law is complicated by numerous fine distinctions and exemptions. As Prof. Bird notes (in his Article on the "Reform of Indirect Taxes in Jamaica", Syracuse NY 1985), the stamp duty in Jamaica, as in most other countries, is an archaic, cumbersome collection of specific and ad valorem taxes, applied to a conglomeration in a confused and confusing way. The duties are still collected by affixing stamps on the documents and the Stamp Office is swamped in paper work. Increasingly, the tax is collected by composition, although this had led to a lot of leakage.

The cost of collection for stamp duty is reported to be higher than that for other taxes. It is often easy to avoid the duty by changing the form of business arrangements, by mis-stating values, or by using fake stamps, and the fines for violation are low. The Stamp Duties are often evaded on small transactions. The proposal is to abolish the duty on share transfers, credit instruments, cheque, insurance policies, transfer of securities etc. in order to strengthen the private capital market, as the Stamp Duties tend to lower the price and the volume of traded assets. It is suggested that the duties on bills of exchange, bonds, conveyances, leases, mortgages, settlements etc. can be replaced by levying cost of service fees, collected by composition. A general recommendation of experts in Jamaica is to abolish Stamp Duties on most instruments and to simplify the system.

## Colombia

The Colombian stamp tax is an irregular collection of fixed and ad valorem taxes applied to a conglomeration of bases, and classified into 17 broad categories or 100

sub-classes. Most documents must be prepared on stamped paper. The tax came into being to raise revenue and hence it is evaluated on the criteria of revenue productivity, simplicity, certainty, convenience of payment and economic effects.

The revenue from Stamp Duties form a small constant share of about 5.3 per cent of total National Government Current Revenues or 0.5 per cent of GDP. The small yield is combined with a high collection cost. The compliance cost in terms of time, effort and money to the taxpayer, for obtaining the stamps and stamped pages, is considerable, involving repeated visits to the vendor. The need to get stamps of a particular denomination or so many sheets of stamped paper delays transactions considerably, especially in smaller places often facing shortage of stamps. Besides, the basic validity of the document is not impaired by improper stamping unlike in India or the UK, and it is possible for the parties to affix the stamp at the time the document is submitted as evidence. It is often not certain how much stamp duty is to be paid on a particular transaction. Thus, on all criteria of a good tax, the Colombian Stamp Duties is seen to fall down, and it needs drastic overhaul and simplification. It is suggested by many that the duty be abolished on credit instruments and insurance premia. As in Jamaica, the tax can be replaced by service charges.

The proposal before the Government is to consolidate and codify the Law, to reduce the number of dutiable documents and to require the specified documents to be duly stamped to be valid. The stamps/stamp papers can be sold through Post Offices, and the Government may allow for payment of duty on many instruments otherwise than through stamps.

## Egypt

The Stamp Duties were introduced in Egypt in 1939 and has been expanded in scope by various amendments. In 1989-90, the duties totaled LE 1050 million, or 7 per cent of total tax revenues, next only to Corporate Income Tax. The duty is applied to all Government payments including salaries and payments for the purchase of goods and services, and this amounts to 30 to 40 per cent of stamp revenue. In this regard the duty is effectively a very low rate of Income Tax, and is recommended

by many, for abolition. In terms of revenue importance, next comes the stamp duties on various documents such as commercial papers and maritime documents, on which usually fixed rates are applied. Barring bills of exchange and promissory notes which are dutiable at ad valorem rates (at 0.6 per cent), the majority of instruments attract only nominal rates of duties. It is pointed out that in the country Stamp Duties on the above instruments involve a high cost of compliance and it has a regressive impact.

Stamp duties are imposed on a wide range of non-financial services including utility services, telecommunications, postal services, transport services, advertising etc. The rates distinguish between industrial and non-industrial uses. Stamp duty is imposed on travel by railway, plane and ship. It is also imposed on Government issuances of administrative licences and permits. It is pointed out that these can easily be substituted by high license fees.

Stamp duty is imposed at the time of incorporation of companies, increase of authorized capital, on the issues of shares and debentures (0.8 to 12 per cent) and on the buying and selling of securities (0.2 per cent). The duties on shares and debentures are seen as a disincentive to investment in the corporate sector and they discriminate against traded securities (as the rates apply to the market value of traded securities, but to the book value of others). There is a duty on the sale and purchase of shares. There are ad valorem duties on letters of credit, loans and advances, and specific duties on opening of bank accounts, bank statements, cheques and bank guarantees. These duties create undesirable distortions in the conduct of financial transactions, undermine the effect of financial liberalization, and add to the cost of banking transactions. There are varying rates of Stamp Duties from 0.8 to 20 per cent on insurance premium, usually falling on the purchaser of policies.

In 1984 the Government gave effect to the State Financial Development Duty under which Stamp Duties apply to permits, passports and visas, arms licences, vehicle registration and driving licences.

The proposal before the Egyptian Government is to reform the archaic stamp

taxation by identifying the deficiencies of duplication, distortion and high compliance costs. The stamp duty is one of several taxes on transaction and adds to the aggregate burden. The duties on financial services impedes the economy and the capital market. The procedure of affixing stamps on each document is seen as a costly nuisance to taxpayers.

## Indonesia

Indonesia imposes Stamp Duties on instruments mentioned in the 1985 law on Stamp Duty.

The duty is exempted on specified instruments like receipts for all kinds of tax, salary receipts, certificates for delivery of goods, letters of distribution of profit or interest etc.

The Law specifies the precise point of time for the duty. For documents made out by one party, for example, it shall be the moment of delivery of the document. The duty is to be paid by the recipients or parties that obtain benefits from the documents.

The duty is to be paid by using stamps and stamp paper or by other means as stipulated. The duty is payable on -

- a) agreements or other evidence of actions of civil nature  
- fixed duty of Rs.1000/-
- b) deed of notaries - fixed duty of Rs.1000/-
- c) for papers mentioning sums more than 1 million Rupiahs relating to receipts, opening bank accounts, cheques and drafts, the rate of duty is Rs.1000; the rate of duty is Rs.500 for amounts between Rs.100,000 and Rs. 1 million and no duty is levied on amounts less than Rs.1 lakh.  
Documents executed abroad are levied duty upon their arrival in Indonesia.

The Act provides for penalties upto 200 per cent of the duty for underpaid or unpaid duty, and imprisonment upto 7 years for stamping documents otherwise than legally. The Postal Department is authorised to stamp documents having low duty. Gummed stamps and stamp papers are to be obtained from Government Offices.

The objective of the Law on Stamp Duties in the country is stated to be

- a) to raise revenue,
- b) to ensure that the levy of the duty is in line with the needs and development of the situation in Indonesia; and
- c) to ensure that the provisions are simple and easy for the public to follow.

### **Bangladesh**

Bangladesh follows the 1899 Stamp Act and this Act was first revised in 1980. Stamp duty is levied on the declared value of the property. It is required to establish the legality of the transfer deed and the evidence of the purchaser's title to the property. The Sub-Registrars are not expected to verify the actual value of the property, and are only concerned with the collection of Stamp Duties and Registration Fees corresponding to the declared value. If he suspects undervaluation, he can refer the document to the Deputy Commissioner who determines the sale value, based on the comparable price of similar properties. However, the individual is not penalised if undervaluation is detected and he has only to pay the balance duty.

The steepness and progressivity of Stamp Duties makes evasion through undervaluation attractive. The duty varies from 6 per cent on the first slab of less than 10,000 Takas to 17.5 per cent for values above 100,000 Takas. The registration fee is a fixed amount for different slabs ranging from 1 Taka to 70 Takas upto a value of 4000 Takas and then for values above 4000 Takas, a duty of 70 Takas for each additional 500 Takas.

The Central Government also levies on behalf of Local Governments IPTT or tax on immovable property transfer, based on the reported value of all lands and buildings which are exchanged. The tax is imposed at the rate of 1 per cent on the reported value and the revenues go to the Local Bodies in urban and rural areas. It formed 4.2 per cent of Urban Local Bodies' revenues in 1980-81. There is also a tax on holdings and mutation of title.

The Government also levies a tax on capital gains, and further requires the Registering Officer to obtain a tax clearance certificate prior to registration. In practice, there is little coordination in the levy of Capital Gains Tax, Stamp Duties, and tax on immovable property.

The combined burden of IPTT, Stamp Duties and Registration Fees ranges from 8.2 per cent for a property worth 1000 Takas to 15 per cent for a property valued at 100,000 Takas and about 20 per cent for a property worth 1 million Takas. This combined burden affects the payment of even lower IPTT rates or Capital Gains Tax. The total transfer charges can be substantial even for small properties.

### Overview

The following significant observations may be noted on the basis of the experience of developed countries with a view to help formation of sound proposals for reform of Stamp Duties in developing countries:

- 1) The stamp duty is confined largely to property transfers and leases above a certain value, and the trend is for exempting capital market transactions and financial instruments from stamp duty, especially in the context of globalised and scripless dealings.
- 2) The burden of stamp duty of around 1 per cent in property transfer is seen as more acceptable to the public as it constitute an insignificant item of the cost though it can be an important source of revenue for the Government.

- 3) The payment of duty is largely on the basis of self-assessment, supported by speedy adjudication, wherever necessary, and the payment is recorded by impressing on the documents.
- 4) The payment of stamp duty is delinked from the registration of the document and registration is made a simple process of lodging the document and its return by post. It is further linked to the registration of title and encumbrances (a cherished objective of our housing policy yet to be realised), and to the universal, scientific system of valuation.
- 5) The tendency to undervalue the consideration is minimised due to the high reliance on institutional finance and the implication for capital gains.
- 6) The positive role played by real estate agents and lawyers in helping the people with payment of duty, title search and registration.
- 7) A uniform system of valuation for all Central and Local taxes with valuations done by an independent, professional unit, and appeals only to professionally staffed Courts.
- 8) Encouragement to secure greater access to finance for housing and industry by exemptions from stamp duty all housing mortgages, mortgage of industrial property, court orders on mergers or splits of enterprises, gifts and settlements (in full, or upto a certain value).
- 9) Client-friendly system and easily obtained advice on payment of duty and procedures.
- 10) Use of tax proceeds, as in some U.S. cities for financing city level improvements and public works.

## Appendix II of Chapter IV

### Property Transfer Taxes in Some Countries

Property transfer taxes based upon purchase price or market value is levied in a number of countries, and almost always paid by the purchaser. The rates are imposed with varying exemptions and rate progression differences.

Countries	Rate (in per cent)
Austria	8
Australia Federation	1.4 to 6 in different States of the
Cayman Islands	7.5
Dominican Republic	5.5
Ecuador	5
Egypt	2 to 12
France	8.5
Germany	2
Greece	12
India	8 to 16
Israel	4.5
Jamaica	7.5
Malaysia	2
Portugal	17
South Africa	2
Sweden	2
Thailand	2.5
Tunisia	1 to 14.6
U.K.	1 (for properties of value above £ 60,000 for sales and leases)
USA	0.5 to 5.5 in different States plus city tax on transfer
Zimbabwe	3 to 5.7

In addition to this, most of these countries levy Capital Gains Tax or Land Betterment Tax.

The time taken for conveyancing is less than a week in Thailand, Greece and Jordan; 10 to 12 weeks in Australia, Denmark and England, 4 to 6 months in Germany, Jamaica and Israel.

The transaction costs for conveyance in developed countries include: Real Estate Broker's Fee, Transfer Fees, Taxes and Stamp Duty, Attorney's Fees for Title Search and Evaluation, Survey Cost, Appraisal Fees, Owner's Title Insurance, Document Preparation Fees, Loan Application Origination Fee, Settlement and Escrow Fees Hazard Insurance Premium, Lender's Insurance, Loan Payment Insurance, Credit Report Fees.

Further, the following taxes may apply: Capital Gains Tax, Inheritance or Estate Tax (called CTT in UK), tax on devolution of joint owner's interest to surveyor/seller, other Local Taxes on transfer and holding of property.

The overall fees may typically be:

	Estate Agency (in percent)	Attorney, Conveyances etc. (Figures of 1988 for Comparison) (in percent)
Argentina	4	5
Austria	3	4
Australia	3	2.5
Brazil	-	3
Channel Islands	2	3
Denmark	1.73	2.3
Ecuador	-	6
Finland	5	
Egypt	-	7 (5 percent paid by seller)
Germany	5	1
Israel	2	2
India	4	3
Indonesia	-	2
Jamaica	5	-
Korea	2	5
Singapore	2	2
Sweden	3	
Thailand	6	
Trinidad	3.1	2.5
U.K.	2.5	3
U.S.A.	6	6
France	5	10.5

The time taken for foreclosure ranges the in US from one month to one year in different States, and the cost foreclosure can range from 25 per cent of loan balance to 1 per cent of loan balance.

## Appendix III of Chapter IV

### Note on Valuation

The Chelliah Committee (1991) rightly points out that valuation has been a major problem, particularly with regard to real estate and wealth and wealth in the form of business assets in unincorporated enterprises and unquoted shares of smaller companies. The Committee called for an examination of the rules regarding valuation of residential properties. The Wanchoo Committee on Direct Taxes (1971) had much earlier pointed out the absence of a proper valuation machinery in the Income Tax Department as being responsible for helping the tax dodgers, facilitating the utilization of black money in investments, and providing scope for reduction of liability for direct taxes, whether on income, capital gains, wealth or gifts. Correct valuation of assets can contribute to an effective administration of Income-Tax, other direct taxes and Stamp Duties, and for capturing the incremental values in urban property. Understatement of purchase consideration for the purpose of registration not only causes loss of revenue from Stamp Duties, but also results in evasion of Income Tax and Wealth Tax in the hands of the purchaser, while the vendor escapes his liability for Capital Gains Tax.

The Wanchoo Committee had recommended an adequate machinery through provision in the Stamp Act for the valuation of properties brought for registration, as a complementary measure to the Income Tax Act, besides recommending in the Income Tax Act provision for pre-emptive purchase to help deter investment of black money in immovable property. It may be noted that this measure proposed for Stamp Act is distinct from the effort of States to levy high rates of duty on conveyances.

In the original scheme of the Indian Stamp Act, and the practice in Delhi itself, there is a provision only for impounding of instruments not duly stamped, but the stamp duty is required to be determined with reference to the terms of the document, and not on the basis of any extraneous value like the guidelines on prevailing prices of lands given to the Sub-Registrar. It will take time for the Central and State Governments to set up an institution like the Valuation Office under the Inland Revenue Department in the UK, as the publicly

recognized organization for ascertaining the value of land and interests in land for all Government purposes generally. Meanwhile, a number of States have enacted amendments to State Stamp Acts to empower the Sub-Registrar to refer cases of suspected understatement of market value in the deeds brought for registration to the Special Deputy Collector or District Registrar or Competent Authority for determining the market value of the property, and to levy the deficient stamp duty.

### **State Stamp Act Provisions to Check Undervaluation**

In States like Tamil Nadu, Maharashtra, Gujarat and Uttar Pradesh, the Registering Officers have been provided with guideline values or ready reckoners indicating the approximate value of the properties of all the survey numbers of all the villages and townships. The manner of determination of these indicative values varies from State to State, and the ready reckoners have been the subject of High Court orders pursuant to parties questioning the adoption of these values by Sub-Registrar for referring the document before or after registration for inquiry.

In Tamil Nadu, the revision of guideline values is done annually by a Local Committee or Officials for Municipal areas and Metropolitan areas, and every two years for other places. The revision is based on the growth trend of recorded sales, the highest recorded value and local inquiry with reference to location, land use, proximity to roads and amenities, and, covers also unapproved layouts. The PWD plinth rates of construction for different structures are added to the land value to get the total property value. The list can be obtained by the public on demand. There is a provision for appeal against the guideline value.

In Maharashtra and Gujarat, the values are fixed by valuation cell under the IG (Registration), but unlike Tamil Nadu, the values are kept confidential. The values are not also updated.

In Uttar Pradesh, the District Magistrate is expected to forward to the District Registration Officer every year the statement of circle rates, soil classification, and the average

price of land for each circle, and this statement is expected to be affixed outside the Registering Office. The minimum market value of an immovable property shall be deemed to be not less than the valuation arrived at on the basis of this statement. In case of doubt, the Registering Officer refers the matter to Collector for enquiry.

Karnataka has set-up Local and District Committees to fix the values in the first phase in 66 Tehsils and the lists will be available in a year. These values are, however, used mainly by the Registration Department, while other Departments in charge of levy of Urban Land Tax, Property Tax, Vacant Land Tax etc. use their own systems of valuation. Unfortunately, the consideration mentioned in the Agreement of Sale, accepted as correct by the Appropriate Authority (AA) under Chapter XXC, is accepted for registration purposes only if the value is above the guideline value and thus there is no coordinated approach by two fiscal authorities. There is also no system of reporting all registered sales over Rs. 5 lakh to the Appropriate Authority as often requested by him.

### **Consequences of Enquiries**

Despite the sound revenue objective of checking evasion of Stamp Duties, the present provisions to check undervaluation have often led to delays in registration, as the inquiry to fix market value takes considerable time with further appeals. Concerned Officers in Uttar Pradesh consider this as the most immediate area of reform. Tamil Nadu has a two stage inquiry, first for land value and then for construction. The High Court cases in Maharashtra, questioning the use of ready reckoner by the Sub-Registrar to fix the duty payable, has led to an accumulation of over 23 lakh cases for inquiry, meanwhile, the maximum disposal by the competent authority is 80,000 cases per year and 20,000 new cases get referred each year.

The Courts have generally objected to the exercise of powers by the Sub-Registrar to determine the market value with reference to the ready reckoner or to go behind the terms of the document. They have also questioned the finality of the guideline values when the Sub-Registrar is authorised by law to refer the matter for enquiry to fix the actual market value.

In West Bengal, the present provision vests considerable discretion for the assessment of market value of the registered property in the Sub-Registrar, and calls for his judgement on the highest price of similar property in the same locality as a basis for not accepting the consideration stated in the document. The Sub-Registrar is also authorised to refer the case to the Collector for enquiry. The entire procedure has been criticised by the State Association of Valuers. Delhi presents another extreme with no legal provisions for referring the instruments for valuation. The practice followed in Delhi for reviewing the consideration mentioned in the document with reference to the benchmark acquisition values for agricultural lands, as notified by Delhi Govt., has, in the absence of legal provisions, been set aside by High Court as being without any basis.

### **Suggested Changes**

It was agreed by the State Governments that it was possible to refine the present system of annual determination of guideline value by following more scientific principles, employment of professional valuers and by providing opportunity for the private builders and experts to represent about the draft statement of values. It is interesting to note that neither Chapter XXC nor the States' Stamp Acts lay down the principles for the determination of the market value of the property. Section 269 of IT Act only says that the assistance of valuation officer may be taken to determine the fair market values of property, but does not provide the basis for such determination. This is the problem with the recent amendment in West Bengal Stamp Act also. Schedule III of Wealth Tax Act however details the procedures for the valuation of immovable property and assets.

The Gujarat Taxation Enquiry Commission Report of 1980 examined the provisions in this regard in different States. They drew attention to the fact that the high rates of stamp duty are rendered ineffective because they are applied to values which are below market values; while those who honestly pay the stamp duty on the correct valuation of properties are at a disadvantage. The approach recommended, as in property tax, is to break the circle of ever increasing rates of duty on an eroded tax base. The committee felt that, merely changing the basis of the duty to market value in the law, will not automatically lead to any benefit, but only lead to fruitless litigation as in Maharashtra and Gujarat, especially when the

parameters for determination market value are not laid down by law. The recently promulgated amendments to Hyderabad Municipal Corporation act, and the bylaws on property taxation in Andhra Pradesh provide the procedures and the legal basis for fixing the zonal rates per sq mtr on the basis of public enquiry and consultation with the public. This has been upheld by the Andhra Pradesh High Court.

Countries like the UK, Sweden and Japan follow the system of annual determination of values of lands and buildings in different areas by an expert valuation organization under the Inland Revenue Department with the help of professional valuers and this is adopted for all purposes including stamp duty. The extent of appeal against valuations by adjudicating office for stamp duty in the UK is reported to be less than 2 per cent on such valuation. Malaysia has established a Valuation Division staffed by professionals under the Ministry of Finance for providing expert help on valuation for a variety of taxes, for land acquisition, fixation of rents for Government agencies, assessing capital gains etc.

### **Wealth Tax**

The Income Tax Department has set up Departmental valuation cells to make available technical assistance to the Officers of the IT Department, and statutory powers have been given to the Valuation Officers in determining the value of assets in the case of income tax, wealth tax and gift tax. Two Chief Engineers (Valuation) for North and South on deputation from CPWD supervises the work of Valuation Officers in the grade of SE's, EE's and Appraisers according to powers of appraisal delegated to them. The 70 valuation units in 13 valuation districts examine cases referred to them by Assessing Officers as per Section 16A of Wealth Tax Act and Rule 3A may also assist the Appropriate Authority under XXC in a number of places outside the major cities. They disposed of 7774 IT cases and 4514 other direct tax cases during 1992-93. They follow the rules prescribed in Schedule III of the Act as accepted principles of valuation of land and buildings by rent capitalization method for immovable property. They also collect information on sales statistics and local auctions. The Rules permit the assessee to use professional valuers.

The method for valuation of immovable property laid down in the Act is a multiple of the net maintainable rent, i.e. 12.5 per cent for freehold and 8 or 10 per cent for leasehold property. For owner-occupied houses, the gross maintainable rent is determined on the basis of municipal assessment of annual rent and for the rented property, on the basis of rent received or receivable or municipal rateable value. The value once calculated is frozen at the level so long as the ownership or occupancy does not change. In cities like Delhi 60 per cent of the aggregate area is the specified area and the value of property is increased by a prescribed scale for increase in unbuilt area over the specified area. The net maintainable rent is arrived at by deducting Municipal Taxes and 15 per cent of gross rent and other prescribed items from the gross maintainable rent. The value of property is increased by 20 per cent to 40 per cent for the extent by which the unbuilt area exceeds the specified area from 5 per cent to 20 per cent of aggregate area. The amount of unearned increase in land value that is liable to be recovered by the Government or Local Authority is deducted from the value declared in the return. In case the declared value is less than the fair market value, the Income Tax Officer is authorised to refer the valuation of the property to the Valuation Officer who will then conduct an enquiry and pass an order. The assessment can then be revised by the Income Tax Officer.

The Chelliah Committee has commented on valuation proceedings under Wealth Tax Act, while drawing attention to the high burden of taxation on income and wealth in financial assets other than housing. The CBDT Officials are, however, of the view that Schedule III of the Act required no change till an equally objective valuation base for land is designed.

#### **Experience with Chapter XXC of Income Tax Act**

As regards the powers of preemptive purchase of innumerable properties in certain cases of transfer, the provisions of chapter XXC of IT Act were inserted in October 1986 with a view to countering tax evasion and the circulation of black money in real estate. The provisions are made applicable to properties proposed to be transferred through a written agreement in Form 37 I for an apparent consideration exceeding Rs 10 lakh in each case in the metropolitan cities of Bombay, Calcutta, Delhi and Madras, and 24 other cities. During

1992-93, 3468 cases (including 2348 from Bombay) were received and 78 properties were purchased with a value of Rs 4229.95 lakh. There were 27 cases where the consideration exceeded Rs. 27 lakh. Seven Appropriate Authorities have been constituted with jurisdiction over 28 cities.

The Finance Bill 1993 introduced amendments to Chapter XXC of IT Act consequent to the Gautam case decision of Supreme Court. This envisages the grant of reasonable opportunity to the affected parties against the passing of the purchase order, the issue of show cause notice by the Appropriate Authority following enquiry regarding valuation etc. and the final speaking order for presumptive purchase. The amount of apparent consideration will be paid to the seller within one month, and thereafter the property is auctioned. The parties desiring to register any conveyance exceeding Rs 10 lakh have to furnish to the Sub-Registrar the certificate of NOC from the Appropriate Authority. 18467 such NOC's were issued from October 1986 to December 1992.

The operation of Chapter XXC was reviewed by the PAC in its 52nd Report to Lok Sabha submitted in April 1993. It was observed that the Department had not even fully realised by the auctions the budget expenditure on purchase of properties from the sales proceeds of 467 properties. PAC was of the view that the scheme had failed because of the spate of litigations before the High Court, lack of safeguards against deliberate understatement of consideration value less than Rs. 10 lakh by split or individual transactions, failure to tackle cases of auction sales or transfers through builders, serious delay in the disposal of purchased properties due to lack of statutory time limit for disposal of purchased properties, and the purchase orders being passed only for 812 out of 22811 cases till 31.12.92. The PAC noted the lack of coordination and mutual exchange of information between the IT Department, Appropriate Authority and the Registering Officers. The Sub-Registrar does not accept the value agreed to by Appropriate Authority. Even where the Registrar or Appropriate Authority had fixed market values higher than the apparent consideration, steps were not initiated by IT Department to levy capital gains/gift tax. There is no regular system of obtaining from Registering Officers details of registered transactions including developer agreements, and to build up compatible values of land and buildings.

Another area of lack of coordination was with the State ULC Authorities, in that purchase orders were passed in respect of properties hit by ULC Act, and thus the transferor benefited from the receipt of amount much higher than the compensation under ULC Act. It was considered possible for Appropriate Authority to collect relevant information during the course of statutory hearing and prevent the private parties from deriving any unwarranted benefit. It was also necessary to fix the reserve price for auction reasonably higher so as to discourage cartelised bids in auctions. The scheme is being revised in the light of experience with amendments to Chapter XXC of the Income Tax Act in the Budget for 1993.

The Public Accounts Committee in its 87th report, reiterated the earlier recommendations in order to make the scheme effective in countering tax evasion such as: extension of the scheme to the entire country, plugging the loopholes such as deliberately keeping the stated consideration below the prescribed limit, subdividing the property and selling a part for less than Rs 10 lakh, bringing Power of Attorney within the ambit of the scheme, more intensive scrutiny of cases to ascertain the correct market price etc.

Even after the recent statutory amendments, the scheme of Chapter XXC is exposed to litigation after the purchase order, and the properties cannot be put to auction if there is a High Court stay. A major pending issue, as noted by the PAC, is the avoidance of the Act by declaring a value less than Rs 10 lakh or of piecemeal sale of property and the lack of mechanism to check this. The budget proposals for 1995-96 have proposed amendments to the scheme to check evasion. Meanwhile the Government is amending the Act to provide for the prescription of different monetary limits for different areas covered by the Chapter, in a value range of Rs.5 lakh and above. It is felt that if the limit is raised to Rs 50 lakh and the sales are recorded at Rs 49 lakh, the IT Department would still benefit from larger revenues on capital gains tax. The Department is also looking into cases of transfers by way of lease/sub-lease, power of collusive court orders etc.

In the course of discussions with the Officials of CBDT it was pointed out by them that the enforcement of Chapter XXC has resulted in the reporting of higher consideration than earlier for sale or gift, and consequent increase revenue from Stamp Duties. The Authority values the properties in Form 37 I on the basis of land and building

method with DCF analysis for owner-occupied properties, using land rates from comparable areas in the records of the Authority, or the record of Income Tax Office, or auction sales of public agencies, or data from Registrar's office. They do not use private valuers. The valuation mentioned in the show cause notice or purchase order has generally been upheld by the courts. There is a dispute as to whether discounting of value should be from the date of agreement of sale or the date of preemptive purchase order.

In writ petition 4240 of 1993 of Lucknow High Court (Daya Engineering Works Vs Union of India), the Court observed that the circle rates provided for under the rules made under the State Stamp Act were framed only for the limited purpose of providing guidelines and were not conclusive on the question of valuation of an instrument. They were relevant only for the purposes of payment of stamp duty and may also not be treated as determinative of market value for the purpose of the Income Tax Act. This was supported by the provisions of Rule 345 of Uttar Pradesh Stamp Act Rules where if the Registering Officer has reason to believe that the correct valuation could not be arrived at without recourse to local enquiry, he may, after registering the instrument refer it to the Collector for the determination of market value for the instrument and the duty payable thereon. This reference may be done even if the property is valued in accordance with the principles given in the statement.

The Appropriate Authority (AA) uses the capitalized value of rent for protected tenancies besides the value of balance floor space index (FSI). For unprotected tenancies, the land and building or rental method is used. The fourth category is partly occupied and partly tenanted, and the last group is the commercial property. AA members usually inspect the property before passing the order. NOC's are given in 3 days without enquiry where public agencies are concerned. There is no prescribed procedure for valuation in the Act unlike in Wealth Tax where the valuation order itself is appealable. It was made clear by CBDT that the grant of NOC is not guarantee of proper valuation in the sale agreement, as often it is decided not to exercise the right of purchase due to unsuitability of property, poor location etc.

Further, the provisions of XXC cannot be invoked after registration of the deed, and the PAC has drawn attention to cases of such registration after accepting stamp duty at higher values. The AA members agreed that XXC was being evaded by understatement of consideration, or by splitting the transactions (which has been held as legal by the Courts) in terms of part of premises or among members of the family. It is necessary to authorize the AA to undertake a test check of registered transactions and to oblige the Sub-Registrar to send details of registration of properties above Rs 5 lakh to the AA and then the AA should have powers to call for enquiry into documents registered with stamp duty paid for a value of over Rs 10 lakh. A decision on coordinated operation of CBDT and State Governments was taken in a meeting of the Department of Revenue in 1994 and this has to be followed up. Contrary to the recommendation of the PAC for the AA to issue the NOC or purchase order only after getting the certificate of competent Authority under Urban Land Ceiling Act, the High Court of Calcutta has held in one case that the AA cannot insist on clearances under ULC Act, land Reforms Act, approval of Charity Commissioner for Trusts etc. In the light of the favourable judgment by the Bombay High Court on this issue, this has to be appealed in Supreme Court and the law has to be amended to enable the AA to reject Agreements of sale for want of such supporting documents, and to call for evidence in order to check any concealment or division of property in order to defeat the provisions of Chapter XXC. The instances of stay order on auctions after passing purchase orders should be brought down, as it represents cash outgo without any inflow and the AA has to maintain the property under litigation at the cost of Government.

In order to curb the practice of evading the requirement of submitting agreements of sale to the AA through the strategem of splitting the sale transaction into a number of smaller transactions by splitting the sale premises, the law can be amended to provide the requirement of submission of a certificate, as in the British Stamp Act, that the transaction in the agreement is not part of a series of transactions or a larger transaction, the aggregate value of which exceeds the prescribed monetary value under Section 269 UC. This certificate can be insisted upon at the time of registration, and then forwarded to AA by the Sub-Registrar. The AA can suo moto investigate suspicious cases and can be empowered to subject such transactions to the pre-emptive purchase rule.

## **Gift and Capital Gains Tax**

There is no concept of fair market value in Capital Gains Tax after the 1988 amendment. However, it uses the concept of cost of construction and does not go behind the land value stated in the return by the assessment, as it is difficult to justify the higher land value insisted upon by the Department. The same principles of valuation are used for Gift Tax. It is felt by CBDT that despite the low revenue, this tax should remain as it helps to check undervaluation and benami or inter vivos transfers of property for notional consideration. It is levied for gifts above Rs 20,000 at the rate of 30 per cent. It is levied in cases where the property is transferred otherwise than for adequate consideration, or in cases of non bonafide releases or forfeitures of debt or for extinguishment of tenancy for nominal consideration. There is a rebate in tax for stamp duty paid.

## **Property Tax Tax in Urban Areas**

Property Tax is a major source of municipal revenue ranging from 30 per cent in the case of octroi States to 70 per cent in the case of non-octroi States. It is not intended here to discuss the structure of the tax in different States, the rates, exemption provisions etc. The relevant issue from stamp duty and a common valuation base is the tax base for property taxes, which is also being keenly debated in different States. Almost in all the States Municipal Laws define the tax base as the annual rent at which a property might reasonably be expected to let from year to year after allowing for permissible deductions for repairs and maintenance. Problems have arisen in fixing operational form to this definition, in the context of the standard rent in State Rent Control Laws, the different treatment of self-occupied and rented properties, taxation of vacant land and taxation of Government property. This is aggravated by the failure to revise assessments over long periods. Faced with an inelastic tax base, cities like Bombay and Ahmedabad have imposed very high rates of general tax and service taxes.

Successive Court judgments have concluded that the standard rent as defined in Rent Control Laws must be taken as the upper limit of municipal assessment of ratable value. This has circumscribed the tax base, created a distortion in the relative contribution of limited old

and new properties to municipal services, discouraged maintenance by landlords, and reduced the buoyancy of revenues. Apart from their impact on the housing supply, rent control and the related judicial decisions on the property tax base for controlled properties, have had a highly adverse effect on the equity and elasticity of property taxation. Dissatisfaction with the annual rental value as the tax base has brought forth suggestions for its replacement such as the adoption of capital value or site value base, and to delink rateable value from standard rent and to base it instead on the basis of certain factors bearing on property values.

Capital value may be superior to annual rental value as it will reflect the value of property in alternate uses, and can be calculated in terms of the cost of land and building as envisaged in Chapter XXC and the guideline value for Stamp Act. Its utility will be eroded to the extent of some ills of undervaluation that plague Stamp Act and Income Tax Act, limited market transactions, and inadequate expertise in valuation.

The Supreme Court has struck down standardization of assessment based on simple criteria (e.g: State of Kerala Vs K Kutty Naha AIR 1969), and has advocated reliance on the class of building, nature of construction, purpose of use, its situation, age, access to services, its capacity for profitable use and other relevant circumstances. This has led to the proposals for elaborate methods to divide a city into homogeneous zones, and fixing the rateable value as plinth area rates on the basis of the factors mentioned above. The Andhra Pradesh Government has amended the relevant Municipal Acts and Rules to provide for the sample survey of prevailing rents, division of each city into homogeneous zones, categorization of properties on the basis of structural features, age etc., and the fixation of rates per sq. mtr after public enquiry. This has been upheld by the State High Court. A similar system of zonal values is of legally notified principles. Allowances are made in the assessment for owner occupied premises.

Delhi has published bylaws basing the assessment for rented premises on the basis of agreed rent or rent receivable in relation to prevalent rents, and assessing owner occupied premises with reference to 10 per cent of cost of land and construction at the time of initial assessment, rateable value will be revised every 3 years. For rent controlled premises, the rateable value will be limited by standard rent or rent receivable. In case

amendments are made to Rent Control Laws being on the lines of the Bill now before Parliament, then, apart from exemption of future constructions for 15 years and premises with over Rs 3500 PM rent, the present rents will be brought to market levels gradually, and existing rents can be revised annually in accordance with the notified cost index. The municipal rateable values can then move in step with the cost index.

### **Approach to Uniform Valuation for Different Acts**

In the case of all taxing Acts, the need for improving valuation and assessment practices has been recognized. Surprisingly, unlike Income Tax, professional valuers have played little role in property transactions or the stamp duty at the State level and the municipal staff or the Registering Officers are not adequately equipped with valuation expertise. The creation of a Central Valuation Organization in West Bengal, 1979, with both valuation and appellate powers, represented the first serious effort to set up a Statewide machinery for valuation. However, the Board's progress has been limited, arising partly from political developments, partly from local opposition and partly from complicated methodology. Part of the problem stems from municipal unwillingness to surrender powers for valuation to a Central Organization. This again points to the scope for Statewide parameters for valuation of land and buildings, implemented through city or district level valuation cells, as in U.K. and Malaysia as an input for assessment of market value and rentals for different taxing Acts.

It is possible in that case also to move towards assigning a unique number of each house or land parcel based on cadastral mapping (as attempted in Brazil and Phillipines) and to link property transaction in a chain of reporting for property tax, conveyance registration, various provisions of Income Taxation etc. The valuation cell can perform various functions assigned to it as in Malaysia and can take the help of professional valuers as in the UK, or as attempted by CVB in West Bengal. It can also take the help of various related Central and State Organizations, and notify annual values of lands and buildings. As in U.K. each registering party and the stamp office can be legally compelled to notify the District Valuing Officer about all sale or mortgage transactions. The assessment of Wealth Tax and Gift Tax on the basis of citywide notification without enquiry in each individual case, will however require amendments to the relevant Acts and Schedule. The computerization of transactions

under different tax statutes linked to LAN, for the purpose of operating a central data base, will bring in compatibility and help to track down evasion, wrong reporting etc. It is possible to merge over a period the valuation cells of IT Department, Town Planning Department, CVB etc. in the interest of economy and harmonized professional approach. If the financial institutions were also to adopt these values for deciding on the value of property for the sanction of loans to individuals and enterprises, then there would be a loss attached to undervaluation in the shape of forgone loan.

### **Determination of Statewide Property Values**

In the course of discussion with State officials, it was found that there was general agreement on the need for a more scientific and legally acceptable determination of the values of lands and buildings in different parts of the State on the basis of publicised parameters, and after local enquiries providing for opportunity to the public, builders and institutions to give their views. The legally notified system followed for property taxation in Andhra Pradesh towns can be adapted with suitable changes. Central to this concept is the establishment of central valuation division with a qualified professional staff as in the U.K. or Malaysia. It would then be possible for the parties to pay the duty by self assessment on the basis of the notified values, and the enquiry can be legally provided for only in case the parties justifiably feel that the property carries a lesser value. The notified value for this purpose should be the date on which the permission of a competent authority under a ULC Act or Revenue Department or Income Tax Department for clearance was applied for together with agreement of sale, since the party cannot be penalised for delay in the grant of approval by competent authorities in the form of higher market value.

### **Consequential Changes**

The Registering Officer himself will have no discretion to refer the case for enquiry except on written request of the parties, and has to accept the stamped document for registration. The requirement of stamps or stamped paper can be minimised through the alternative of payment in cash and franking. The NOC's required for registration can be replaced by a single affidavit as in Karnataka, with severe penalties for false statements, and

with a proviso to the effect that the registration of the document per se does not override the requirement of compliance with the provisions of ULC Act. Mutation certificate can be granted only after producing necessary certificates from competent authorities under ULC Act, 230A and XXC of IT Act, Revenue Acts etc.

The transparency and definitive nature of the guideline values will help to minimise litigation on valuation, since it is seen from the case law on XXC of IT Act that the courts accept valuation on the basis of rational principles. The citizen will gain from the huge saving on time to enquiries by the Collector and on the return of the registered document, as well as the saving on money blocked up in prepaid duty. A harmonious case law on valuation under different taxing Acts would develop, provided a single organization is responsible for uniform valuation.

A parallel step is to increase the incentive for correct declaration of value by the parties by enabling access to housing finance to the maximum extent of the stated consideration as in developed countries.

## Appendix IV of Chapter IV

### The Case for Use of Unique Premises Numbers for Widening the Tax Net in India

1. It was found during the study that the Union Ministry of Finance is extremely anxious to widen the tax net and even door-to-door campaigns have been considered in order to identify those who are liable for payment of taxes. This has become important in the context of presumptive taxation of traders and professionals.
2. In the matter of levy of taxes in India, whether Central, State or Local it is well known that absence of tax mapping is a critical issue apart from a system for the registration of land titles on the lines of Singapore.
3. As a part of a research study on property tax in Calcutta sponsored by the Ministry of Urban Development, Government of India, an attempt was made to cross check from official records as to what degree are the Municipal Assessment Registers complete.

In India, considering secondary data sources the Census enumeration documents and property tax assessment registers are the main sources of information which can be used for tax mapping purposes. Both these record data on premise wise basis.

The premises number is important even from the point of view of all statutory and regulatory functions which any level of Government, performs or for provisions of services such as of telephones, electricity, water supply etc.

Guided by these considerations, the study under reference undertook the task of cross-checking data from various sources and it was found that:

- (1) whereas the Census Authorities use the Municipal premises numbers, cross checking of the census data with the assessment lists for property tax purposes revealed that about 15 per cent entries were missing either side.
- (2) about 34 per cent of factories which had up-to-date registrations under the Factories Act could not be traced in the Assessment Registers.

4. Expanding the scope of this finding, it may be pointed out that the premises number is the most common denominator of all statutory, regulatory or even revenue records.

Also if the use category of each premises is identified with such premises number and the unique premises number so far developed is used for all purposes, numerous reform proposals for tax mapping and regulatory purposes would become possible.

In such a case, the Central and the State revenue authorities would be able to conduct their tax mapping exercise on computers and supplement the same through field checks rather than undertaking extremely difficult, time consuming and costly field surveys.

The electricity undertakings which charge different rates for domestic, commercial and industrial uses would be able to prevent the leakages which are now common due to difficulties in field level checks where corrupt practices also play a role.

5. This idea needs to be seriously considered by State Governments and different Ministries of the Government of India, including the Ministries of Home and Finance - the latter being extremely anxious to widen its tax net. This can be pursued along with the proposal in this study for uniform system of valuation.

Calcutta Municipal Corporation

Wardwise Statement Showing Gaps in Records Maintained Under  
The Factories Act and for Trade Licenees vis-a-vis The  
Records Maintained by The Assessment Department of  
Calcutta Municipal Corporation

Ward No.	No. of Factory Premises as Indicated from Registration Records Under Factories Act	No. of Premises Identified Under Column 2 in Whose Cases Corresponding Addresses Found in Assessment Records	No. of Premises with Trade Licenees Identified from Records of Corporation's Licence Departments	No. of Premises Identified Under Column 4 in Whose Cases Corresponding Addresses Found in Assessment Records
1	41	24	844	312
3	20	16	741	254
7	13	9	510	357
8	10	7	552	417
9	11	6	620	475
10	17	10	896	541
11	16	13	594	429
12	40	26	540	370
14	46	20	1153	126
15	58	35	654	394
16	16	8	503	289
17	31	20	1029	638
18	21	16	699	449
19	13	19	505	380
20	17	12	593	464
21	16	7	470	202
23	3	3	428	381
24	14	11	363	243
26	15	14	791	632
27	11	10	687	529
29	14	7	587	152
31	32	29	554	229
32	20	16	489	150
33	39	16	740	261
34	33	23	880	285
36	16	8	195	41
TOTAL	586	385	16559	9000

Source: Calcutta Municipal Corporation

## CHAPTER-V

### **Proposed Amendments to the Indian Stamp Act, States' Stamp Acts and Other Relevant Acts**

#### **Scheme of the Act**

The Scheme of the Stamp Act is to levy Duties by making it obligatory to stamp documents of various types that are most commonly used in commercial and legal transactions. The Indian Stamp Act, 1899 as amended by the Central Government from time to time is applicable to the whole of India except Jammu and Kashmir, in respect of rates of Duties on instruments enumerated in Entry 91 (Union List) of the Seventh Schedule to the Constitution of India. All matters relating to the mechanism of collection and management of Stamp Duties in respect of instruments mentioned in the Schedule are the subject of Entry 44 of the Concurrent List, but, in this regard the State Legislatures have amended various Sections and added new Sections as applicable to their States. There has been no significant amendment at all of the Central Act. With the various States making amendments to the Indian Stamp Act as applicable to them, many States have now different mechanisms of collection and administration of Stamp Duties. The States' Acts have become over time more complex and they lack transparency and simplicity, and further they are seldom perceived as client-friendly.

Subject to minor variations in individual States, the procedures followed for stamping and registering of documents are basically similar, except in Delhi, where there is no legal provision for reference to Collector for the determination of market value. Procedures followed in this regard are mentioned below.

#### **Present Procedure for Payment of Stamp Duties and Registration Fees**

Where through any document, any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, and such documents are documents specified in the Schedule of the Stamp Act, then they are chargeable with duty of the amount indicated in that Schedule. The Stamp Duties on such instruments

are payable by means of stamps - adhesive or impressed, obtained from the Treasury, or authorised stamp vendors, or other outlets provided by the Government for the purpose. Stamps so obtained are required to be cancelled in the manner provided under Sections 12 and 13 of the Stamp Act. Instruments which come within the perview of Stamp Duties are to be stamped either before or at the time, of their execution. Instruments other than bills, and, notes executed out side India, may be stamped within three months after they are first received in the country. Instruments so executed and stamped may be presented for registrtrion with in four months from the date of their execution subject to Sections 24, 25 and 26 of the Registration Act. The facts and circumstances affecting the chargeability of any instrument with duty and considerations, if any, has to be stated fully and truly in the document presented for registration. Section 29 provides for the payment of duties by persons.

Section 31 of the Stamp Act provides for adjudication by the Collector as to the proper Stamp Duties to be paid on instruments, (whether executed or not and whether previously stamped or not) on an application by a person. For the purpose of adjudication, a Collector or an authorised officer may call for the abstract of documents, and, if necessary, affidavits and other evidences. Instruments not duly stamped are not admissible as evidence for any purpose, nor shall be acted upon by any Public Officer (Section 35).

Under the Registration Act, all documents are not compulsorily registrable. Section 17 deals with the type of documents which need compulsory registration and Section 18 enumerates documents which may be optionally registered. Documents are presented for registration to the Sub-Registrar having territorial jurisdiction (Section 28) or to the Registrar of the former Presidency Towns and the Registrar of the Delhi District who may receive and register any document referred to in Section 28 (See Section 30). Registration of document requires the physical presence of the registrant, or his representatives, assigns or authorised agents as provided in the Registration Act. The Registering Officer will then scrutinise the document for proper Stamp Duties and particulars mentioned in the document. He may also check whether or not the market value of the property, (by virtue of legal provision or as authorised by executive orders)

is truly set forth in the instrument of conveyance, mortgage, exchange etc. If the Registering Officer suspects under valuation of property, he may, before registering the instrument, refer the true copy of the instrument to the Collector or a Competent Authority for determining the market value and the correct duty payable (this reference provision is not there in Delhi). In case the reference is made after registration, the deficient duty if any is recovered subsequently from the parties. The Registering Officer also may enquire whether or not such document was executed by the person by whom it purports to have been executed and satisfy himself as to the identity of the person appearing before him as a representative, assign or agent, and the right of such person so to appear. The Registering Officer may also examine the 'No Objection Certificates' from various authorities (as discussed in the Chapter IV). After such scrutiny, and subject to consequential steps, the Registering Officer will endorse on every document, the day, hour and place of presentation, and the signature of the person presenting the document for registration.

Requisite Registration Fees is to be paid by the person presenting the document for registration and a receipt for such document is issued by the Registering Officer. The document admitted for registration is copied in the appropriate Book according to the order of its admission. In the Book the Registering Officer will copy and file memorandum of the document in the entries of the indexes prepared by him. In this regard, Book 1- " Register of non-testamentary documents relating to immovable property"-and Book 2-" Record of reasons for refusal to register"-and the indexes relating to Book No.1 are always open for inspection by any person and copies of entries in such Books can be obtained on application.

On every document admitted for registration, the Registering Officer will endorse the signature and address of every person admitting the execution of the documents, the signature and address of every person examined and any payment of money or delivery of goods made in the presence of the Registering Officer.

After the procedure above is complied with, the Registering Officer will endorse thereon a certificate containing the word "registered" together with the number and page of the Book in which the document has been copied and then such certificate is signed, sealed and dated by him which has the effect of saying that the document has been duly registered in the manner provided in the Registration Act. The endorsement and certificate referred above thereupon be copied into the margin of the Register Book, along with copy of the map or plan (if any) and thereafter the document presented for registration will be returned to the person who presented the same for registration or a representative, assign or agent as the case may be.

The procedure for registration is different in Gujarat and Maharashtra. After making the entries of the contents of the document in the indexes of Books, the original document is sent to the Government Photo Registry (at Pune in the case of Maharashtra) for microfilming and photocopying. After the receipt of the original document with the authorised photo copy, the original is delivered to the party. The Sub-Registrar retains the photo copy and then the procedure described above is followed on the photo copy. In Delhi, the Registering Officer requires two copies of the document presented for registration, and after entering the contents of the document in the indexes as mentioned above, original document is returned and the copy of the same is kept for the registration process. Encumbrance certificate is issued on the request of parties only in some States.

#### **Proposals for Concurrent Legislation by Central Government**

In exercise of its concurrent powers the Central Government can enact amendments in the Indian Stamp Act with a view to incorporate the progressive changes effected by some State Legislatures relating to machinery provisions, and other improvements. In this regard, the Central Government may also adopt uniform and easily enforceable provisions applicable to all States. This was recommended by the Law Commission in its 67th Report, and this view is generally supported by State officials in the course of our discussions. It is necessary in this process of comprehensive amendment of the Indian Stamp Act to insert new provisions on valuation and give shape to many

suggestions for reform referred to in our Report. However, the full benefit of these changes will be realised only if parallel amendments are effected especially in the Indian Registration Act, Income Tax Act, and the Companies Act.

In this context our proposals cover:

- (a) amendments of the Schedule of the Indian Stamp Act with regard to the rates of Stamp Duties and suggestions for inserting new instruments in the Schedules of the State's Stamp Acts.
- (b) amendments to machinery provisions, and
- (c) introduction of new provisions.

In what follows the changes and amendments suggested by us are briefly described, while the details in this regard are specified and elaborated in the relevant Appendices.

### **Definitions**

Section 2 is the Definition Section of the Stamp Act, the interpretation of the terms contained therein are useful only for the purpose of this Act, however cross reference to other Acts and also legal controversies relating to the Conveyance, Market value etc. like makes the definitions vague and non-exhaustive. Proposed amendments to the Definition Section is presented here as Appendix I.

### **Rate Structure for States' Schedules and Central Instruments**

Section 3 is the charging Section, which imposes Stamp Duties on several instruments specified in the Schedule to the Act. Instruments so specified are arranged in alphabetical order; on some of them ad-valorem rate of duties are imposed, on a few instruments fixed rates are levied and on others a combinations of ad-valorem and fixed rates are charged. In various States different rate structures are prescribed either by adding a separate Schedule to the Act or amending the rate structure in the main

Schedule to the Act. Uniform rates of Stamp Duties proposed in respect of important State instruments are presented in Appendix II. The suggested rates in respect of Central instruments and those instruments in the States' Schedule that are important from the point of view of capital market, may be seen in Appendix III. Suggested rates of Stamp Duties on a few instruments that are included in the States' Schedule but are not mentioned in Appendix II and Appendix III are showed separately in Appendix IV.

### **Ammendments to the Machinery Provisions**

The suggested amendments to the machinery provisions are presented in Appendix V. These amendments pertain to Sections 9, 10, 13, 17, 27, 31, 33, 35, 38, 49, 53 and 56 of the Indian Stamp Act.

### **Introductions of New Sections**

A new Section 3 B is suggested for exempting from the perview of Stamp Duties the stamped documents originated in a foreign country as a matter of reciprocity and to avoid double taxation. The other new Sections on operative provisions suggested are:

Section 9A. Provision for consolidated payment of duty on receipts:

Section 10A. Provision for franking machines:

Section 10B. Provisions to reduce the workload of Revenue and Registration Departments by providing exemption from registration of documents issued by housing agencies, local authorities etc.,

Section 30A. Provision to specify the person from whom duty on an instrument is due including the person liable to pay duty under Sections 19, 29 or 30 or on an agreement;

Section 48A. Provision for the valuation of property and reference for enquiry;

Section 62A. Provision to debar prosecution where the Court of first instance had admitted an instrument after a specific decision that the instrument was duly stamped or that no stamp was required;

Section 64A. Provision for recovery of deficient stamp duty;

Section 68A. Provision for penalty for breach of provisions of Section 73A Sub-Section(2); and,

Section 73A. Provision for Collector's power to authorise an officer to enter premises and inspect certain documents.

The new Sections proposed are elaborated in Appendix V.

### **Other Suggestions**

In order to avoid certain ambiguities that may arise in the simultaneous administration of the Indian Stamp Act, 1899 and the Registration Act 1908, that can cause delays for registration of documents, the suggested amendment to the Indian Registration Act, is presented in Appendix VI. The basic conflict here is that the authorities vested with power under the two Acts may not coincide in some States, and this has to be resolved by creating an integrated administrative structure.

In view of, (a) the recent judgement of the Honourable Supreme Court in P.M.Ashwathanarayana v. State of Karnataka, AIR 1989 SC 100, and (b) other points raised during meetings with the Officials, we propose amendments to the Court Fees Act, 1870; the proposed amendment in this regard are indicated in Appendix VII.

Agenda for reforms on other Central Tax Related Acts may be seen in Appendix VIII with a view to elicit further action by Central Government.

Appendix IX and Appendix X present the rate structure of Stamp Duties in selected States.

## Appendix I of Chapter V

### Definitions

#### S.2(A.1). Air Rights

Lack of space for horizontal expansion, spiralling land costs and the emergence of real estate business, has shifted the trend towards high-rise structures, multistoried buildings and selling of "air rights" in metropolitan cities and other areas. The owners of existing buildings authorise builders and developers to construct upper floors for sale and use, independent of the existing buildings. Such transactions of selling of "air rights" are effected without execution of any documents with compulsory registration and thus no stamp duty is paid in absence of such provisions in the Act. It may be noted that in Bombay, transfer of "air rights" are compulsorily registrable. In view of this "air rights" needs to be defined specifically for the purposes of this Act and new article for the stamp duty to be paid advalorem is desired to be inserted and definition of "conveyance" be enlarged to include "air rights".

#### S.2(1). Banker

The word Banker has not been defined specifically. The 67th Report of the Law Commission of India recommended that the definition of banking from the Banking Regulation Act, 1949 may be imported. It is desirable to import such definition for the purpose of removing any ambiguity and also to add "within the territories of India" for the reason that foreign banks are also opening branches in India under licence from Government of India pursuant to privatisation of banks. Such definition of banker may be read as follows:

" 2(1) Banker - Banker means an association, a company or a person who accepts, for the purpose of lending or investment, deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or

otherwise within the territories of India".

Similar definition has also been substituted by the Bombay Stamp Act, 1958.

### **S.2(2). Bill of Exchange**

For the purpose of Stamp Act it will be also relevant to see the Negotiable Instruments Act 1881. Under S.17 of the Negotiable Instruments Act the holder has option to treat Negotiable Instruments as Promissory Note or Bill of Exchange. Also, stamp duty payable on promissory note is less than Bill of Exchange. Though under Section 6 of the Negotiable Instruments Act the higher duty has to be paid, even then it requires clarification for which purposes an explanation may be added. The 67th Report, Law Commission of India recommended the explanation as follows:

" Explanation: The provisions of Section 17 of the Negotiable Instrument Act, 1881, apply for the purposes of this Act as they apply for the purposes of that Act".

### **S.2(3). Bill of Exchange payable on demand**

It is to be noted that for the purposes of the stamp duty, Letters of credit were, prior to Act 5 of 1927, governed by Article 13(a) which specified a charge of one anna on them. But, there is now a specific and separate provision in Article 37 to the Schedule of the Stamp Act where duty payable on the letter of credit is two rupees. Therefore, the inclusion of such letters in the definition clause of Bill of exchange payable on demand is of no effect as regards the rate of stamp duty. The 67th Report, Law Commission of India recommended that the definition should refer to Section 19, Negotiable Instrument Act, 1881, as to the meaning of "on demand" and also letters of credit should be excluded from the definition and should be included in Section 35, proviso (a), Exception, if the Exception is to be retained.

It is, therefore, desirable that "Bill of Exchange payable on demand" as defined under Stamp Act should be amended on the lines of the recommendation of the 67th Report, Law Commission of India. It may be noted that the Government has recently remitted all duty on usance bills of exchange with a duration of less than three months.

#### **S.2(5). Bond**

S. 2(5)(b) & 2(5)(c) use the expression "attested" but the definition of "attested" has not been given anywhere in the Stamp Act. It is suggested that term "attested" may be defined in the context of Stamp Act and may be inserted in definition section, or may be added as an explanation as suggested by 67th Report of Law Commission of India and also on the lines as amended by the Bombay Stamp Act, 1958 on the basis of the above said recommendations of the Law Commission.

Explanation added by the Bombay Stamp Act, 1958 is reproduced here as follows:

" Explanation - Notwithstanding anything contained in any Law for the time being in force, for the purposes of this clause "attested", in relation to an instrument, means attested by one or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark or of the signature of such other person, and in which each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary".

#### **S.2(8) Clearance List**

In view of the insertion of new Article "Clearance list" in the Schedule to the Indian Stamp Act, it is desirable to insert the definition of the Clearance list as defined in the Bombay Stamp Act, 1958.

The Bombay Stamp Act, 1958 define Clearance list as-

(8) " clearance list "means a list of transactions relating to contracts required to be submitted to the clearing house of an association in accordance with the rules or bye-laws of the association:

Provided that no instrument shall, for the purposes of this Act, be deemed to be a clearance list unless it contains the following declaration signed by the person dealing in such transaction or on his behalf by a properly constituted attorney, namely:-

" I/We here by solemnly declare that the above list contains a complete and true statement of my/our transactions including crossed out transactions and transactions required to be submitted to the clearing house in accordance with the rules/bye-laws of the association. I/We further declare that no transaction for which an exemption is claimed under Article 5 or Article 43 in Schedule 1 to the Bombay Stamp Act, 1958, as the case may be, is omitted."

Explanation- Transaction for the purpose of this clause shall include both sale and purchase.

#### S.2(10). Conveyance

An explanation may be added on the lines of Bombay Stamp Act, Uttar Pradesh Stamp Act, and also the recommendations of the 67th Report of the Law Commission of India, in order to avoid a transfer of property by co-owner having defined share therein to another co-owner of the property under guise of release or like. Explanation added under the Bombay Stamp Act, 1958:

Explanation - An instrument whereby a co-owner of any property transfers his interest to another, co-owner of the property and which is not an instrument of partition, shall, for the purposes of this clause, be deemed to be an instrument by which property is transferred inter vivos."

More recently as a result of 1985 amendment to Bombay Stamp Act, judgements of the Bombay High Court in the case of State of Maharashtra V. Mahavir Lalchand Rathod, 1992 (2) Bom. C.R. 1., Hanuman Vitamin Food P. Ltd. V. State of Maharashtra and Others, 1989 (2) Bom. C.R. 460., State of Maharashtra V. M/s M.S. Builders (Private) Limited, 1992(1) Bom. C.R. 568 and subsequently with the amendment of 1993, the scope of the definition of 'conveyance' under the Bombay Stamp Act, 1958 has been very much widened. Agreement for sale, consent decree where property is conveyed and also transfer of shares in a co-operative society are also now covered by the definition of the conveyance.

The definition of 'conveyance' as amended by the Bombay Stamp Act, 1958 is reproduced here as follows: (This is on the lines of the provisions in the British Stamp Act also).

" (g) 'conveyance' includes, -

- i) a conveyance on sale,
- ii) every instrument,
- iii) every decree or final order of any Civil court,
- iv) every order made by the High Court under section 394 of the Companies Act, 1956 (1 of 1956) in respect of amalgamation of companies,
- v) sale of air rights;

by which property, whether movable or immovable or any estate or interest in any property is transferred to, or vested in, any other person, intervivos, and which is not otherwise specifically provided for by Schedule I.

It may be noted that Indian Stamp Act as amended by West Bengal Government by the Act XV11 of 1990, has also inserted Explanation (ii), apart from the Explanation (i), as inserted by the Bombay Stamp Act, 1958 as follows:

" (ii) whereby a partner transfers his share in the property of the partnership business to another partner or to other partners, whether separately or together

with transfer of other business assets on retirement or dissolution or whereby contributes to the capital of the partnership firm by transferring his right and title to, or interest in any property, is for the purpose of this clause an instrument by which property is transferred".

The Gujarat Government also amended the definition of conveyance on the line of the Bombay Stamp Act by the Gujarat Ordinance No. 4 of 1994. Now an agreement to sell an immovable property or power of attorney with the transfer of the possession of immovable property, are also covered by the definition of 'conveyance'.

The above definition of 'conveyance' may be adopted in the Central Stamp Act.

It may be noted that this expanded definition is only for the purpose of levy of stamp duty on specified instruments, and does not dilute the operating provisions of the law of property.

#### **S.2(12-A). Government Securities**

In view of the amendment effected in Bombay, Gujarat, Karnataka and also the terms "Government securities" mentioned in the various Articles of the Schedule to the Stamp Act, it is desirable to import such definition as follows:

(12-A) " Government security" means a Government security as defined in the Public Debt Act, 1944 (Central Act XVIII of 1944).

#### **S.2(12-B). Immoveable Property**

The Indian Stamp Act, 1899 does not provide the definition of immoveable property. Immoveable property has been defined in the Interpretation Clause of the Transfer of Property Act, 1882 and Section 3(26) of the General Clauses Act, 1897. Therefore to remove any ambiguity in terms of the immoveable property, it is desirable to define immoveable property specifically for the purpose of the Stamp Act. The

Bombay Stamp Act, 1958 defines immovable property as follows:

(ja) " immovable property" includes land, benefit to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

It may be noted that above said amendments effected in the Bombay Stamp Act has been bodily lifted from the Section 3(26) of the General Clauses Act, 1897. Proposed amendments in this regard may read as follows:

" immovable property" means immovable property as defined by the Section 3(26) of the General Clauses Act, 1897."

#### **S.2(14-A). Instrument of Gift**

Keeping in view the definition of the Gift as defined by Section 4 of the Gift Tax Act, 1958 and by Section 122 of the Transfer of Property Act, 1882 and also amendment effected in State of Maharashtra and Gujarat, it is desirable to define "Instrument of Gift" as follows:

(12-B) " Instrument of Gift" includes, where the gift is of any moveable property but has not been made in writing, any instrument recording whether by way of declaratin or otherwise the making or acceptance of such oral gift.

The insertion of immovable property under the definition of the 'Instrument of Gift' by the Maharashtra Government by Act 13 of 1974, s.2, is not warranted for the reason that the transfer of immovable property through instrument of gift could be effected only by a registered instrument signed by or on behalf of donor and attested by atleast two witnesses. (Section 123 of the Transfer of Peroperty Act, 1882). Therefore gift of any immovable property not made in writing and not registered as stated above has no legal sanctity nor registration of such instrument will be considered as registration of instrument of gift.

## S.2(15). Instrument of Partition

In view of the amendments effected in the States of Maharashtra, Gujarat, Karnataka, West Bengal and Uttar Pradesh, it is desirable to suitably amend the definition of "Instrument of Partition" as follows:

- (15) " Instrument of Partition" means any instrument whereby co-owner of any property divide or agree to divide such property in severalty and includes-
- (i) a final order for effecting a partition passed by any revenue authority or any Civil Court;
  - (ii) an award by an arbitration directing a partion, and
  - (iii) when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partion or otherwise, the terms of such partition amongst the co-owners.

## S.2(16). Lease

The term "lease" has not been defined specifically. In view of the recommendations of the 67th Report, Law Commission of India and also amendment effected in the Bombay and West Bengal Stamp Act, it is desirable to suitably amend the definition of lease as follows:

- (16) "lease" means a lease as defined in Section 105 of the Transfer of Property Act, 1882, a lease of immoveable or moveable (or both) property, and includes also-
- (a) a patta;
  - (b) a Kabuliyat, or other undertaking in writing, not being a counterpart of a "lease", to cultivate, occupy or deliver rent, for, immovable property;
  - (c) any instrument by which tolls of any description are let;
  - (d) any writing on an application for a lease intended to signify that the application is granted;

- (e) any agreement to lease;
- (f) a decree or final order of any Civil Court in respect of a lease:

Provided that, where subsequently an instrument of lease is executed in pursuance of such decree or order, the stamp duty if any, already paid and recovered on such decree or order shall be adjusted towards the total duty leviable on such instrument.

#### **S.2(16-A). Marketable Security**

Because of change in political scenario and also as India is a sovereign country, it is suggested that the words "United Kingdom" may be omitted from the definition. The words "or without India" may be substituted in place of the words "or in the U.K." for the reason that Indian securities are being sold/purchased in major Western countries such as Germany, Japan, etc. and the proposed amendment would be in the interest of globalisation of Indian economy.

(16-A) "Marketable security" means security of such a description as to be capable of being sold in any stock market in India or without India.

#### **S.2(16-B). Market value**

Keeping in view the amendments made in various States in regard to stamp duty to be paid on the market value of the property and also the expression 'fair market value' defined in the Income Tax Act and 'market-value' defined in the Bombay Stamp Act, it would be desirable to define 'market value' as defined in the Bombay Stamp Act, 1958 as follows:-

"Market-value" in relation to any property which is the subject matter of an instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument, or the consideration stated in the instrument whichever is higher".

This definition has to be related to the annual guideline value as in Tamil Nadu, but preceded by a scientific system of enquiry, assessment and public enquiry as in the case of property tax under A.P.Municipalities Act, so that valuations in all Acts like Wealth Tax, Property Tax, Stamp Act are related to a single benchmark.

#### **S.2(17-A). Moveable property**

In view of the insertion of the new clause (12-B), it is desirable to insert the definition of moveable property as defined in the Section 2(pa) of the Bombay Stamp Act, 1958 with certain amendments as follows:

(17-A) "moveable property" includes standing timber, growing grass, fruit upon and juice in trees and property of every other description, except immoveable property.

#### **S.2(21). Power of Attorney**

In view of the recommendations of the 67th Report, Law Commission of India and also amendments effected in the Bombay Stamp Act, 1958, it is desirable to expand the definition of power of attorney as follows:

(21) "power of attorney" includes any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it and includes an instrument by which a person, not being a person who is a legal practitioner, is authorised to appear on behalf of any party in any, proceeding before any Court, Tribunal or Authority.

#### **S.2(22). Promissory Notes**

The high rate of duty on Bonds has always encouraged the use of promissory notes even in cases where bonds would be more appropriate instruments for carrying out

the transactions. In consequence, ignorant persons pay a heavy price because of inadmissibility of instruments in evidence. The line of division between promissory notes and bonds in this regard is thin. To avoid such controversy it is desirable that attested documents should be excluded from the definition of promissory notes. This has been done by Government of India through a notification.

#### **S.2(22-A). Public Officer**

Under Stamp Act in various sections there is mention of public officer but nowhere the expression 'public officer' has been defined in this Act. It is suggested that the expression 'public officer' be defined for the purposes of that Act. Public Officer as defined in Section 1(17) of the Civil Procedure Code, 1908 may be inserted.

#### **S.2(25). Soldier**

The definition of soldier in the Stamp Act with respect to Army has been incorporated at the time when enactments relating to Navy and Air Force were not passed. At the time of passing of Act with respect to Navy and Air Force, the definition of 'soldier' of this Act remained unamended. It is, therefore, desirable that definition of 'soldier' may be enlarged and it may also be mentioned that Indian Army Act, 1911 has been repealed and re-enacted in the Army Act, 1950. It is, therefore, suggested that the Army Act, 1950 may be substituted.

**Appendix II of Chapter V**  
**Major Instruments for Revenue Collection**

**5. Agreement or Memorandum of an Agreement :**

Keeping in view amendments effected in Bombay, Gujarat, Karnataka, Tamil Nadu, Uttar Pradesh and West Bengal, and moreover with the widening of the scope of the definition of conveyance it is desirable to suitably amend the Article 5. It is also to be proposed that full advalorem duty be paid even on mere transfer of possession of immovable property, in the absence of a sale deed. The Income Tax Act, 1961 for the purposes of Chapter XXC also recognises such transfer as transfer of the immovable property. Proposed amendment in this regard may read as follows:

- |  |   |
|--|---|
| a) if relating to the sale of a bill of exchange ;   | 25 paise to be substituted in place of two annas.   |
| b) if relating to the sale of a Government Security;   | Subject to a maximum of 50 Rupees (in place of 10 Rs.) 25 paise (in place of one anna) for every Rs. 10,000 or part thereof of the value of the security at the time of its purchase or sale, as the case may be. |
| c) if relating to the purchase or sale of shares, scrips, bonds debentures, debentures stocks or any other marketable security of a like nature in or of any incorporated or other body corporate- |   |

(i) when such agreement or memorandum of an agreement is with or through a member or between members of stock exchange recognised under the Securities Contracts (Regulation) Act, 1956;

Twenty Five paise for every Rs.10,000 or part thereof of the value of security at the time of its purchase or sale as the case may be.

(ii) in any other case;

Twenty Five paise for every Rs.10,000 or part thereof of the value of the security at the time of its purchase or sale, as the case may be.

(d) If relating to a sale or lease-cum-sale of an immovable property

The same duty as a conveyance (No.23) for the market value.

(e) if relating to mortgage-

(i) when possession of the property or any part of the property comprised in such agreement or records thereof or memorandum is given by the executant thereof or agreed to be given;

The same duty as a conveyance (No.23) for the amount secured by such agreement, records thereof or memorandum.

(ii) when possession is not given or agreed to be given as aforesaid;

The same duty as a clause (b) of Article 40.

<p>(f) if relating to giving authority or power to a promoter or developer by what ever name called,for construction on,development of,or sale or transfer (in any manner whatsoever) of, any immovable property.</p>	<p>The same duty as a Conveyance (No.23)for the market value.</p>
<p>(g) Deposit of title deeds or instruments to financial institutions and commercial banks for loans;</p>	<p>0.5 percent of market value of the property, subject to maximum of Rs.50,000.</p>
<p>(h) if not otherwise provided for.</p>	<p>Five rupees</p>

#### Exemptions

(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under article 43;

(b)made in the form of tenders to the Central Government for or relating to any loan;

Explanation.1- For the purpose of clause (d) and (f), the provisions of section 47A shall apply mutatis mutandis to

such agreement, records thereof or memorandum as they apply to an instrument under that section.

Explanation.11-For the purpose of clause (d) and (e), where subsequently conveyance or mortgage, as the case may be, is executed in pursuance of such agreement or memorandum the stamp duty, if any, already paid and recovered on the agreement or record thereof or memorandum shall be adjusted towards the total duty leviable on the conveyance or mortgage, as the case may be. If the agreement does not materialise for any reason the duty is liable to be refunded as per prescribed procedure.

#### 18. Certificate of Sale

- |  |                                    |
|--|------------------------------------|
| a) where the purchase money does not exceed Rs.10/-                  | 25 paise ( in place of two annas)  |
| b)where the purchase money exceed Rs.10/- but does not exceed Rs.25/ | 50 paise ( in place of four annas) |

### 23. Conveyance

One of the important factors responsible for the undervaluation of the property and avoidance of transactions through instruments is high rate of stamp duty in various States. Keeping in view of open market economy and liberalisation of Indian economy it is desirable that uniform rate schedule of duty going up to 10% including surcharge on transfer duty be applicable to all States after the valuation base is rationalised on the basis of market rates and scientific practices.

Provision to require a certificate in the case of sale of properties as in U.K., by purchaser and seller that the transaction is not part of a series of transactions for larger properties is desired. This will be an additional steps to exonerate the parties from the provisions of obtaining 'No Objection Certificates' under Urban Land Ceiling Act and Chapter XXC of the Income Tax Act.

Conveyance rate may be suggested as follows:

23. Conveyance [as defined by section 2(10)] not being a transfer charged or exempted under (No. 62) -

On the true market value of the property which is the subject matter of the conveyance-

(a) if relating to the moveable property/assignment of debt, for every Rs.500 or part thereof;

Fifty paise.

(b)if relating to land or non-residential premises situated within the limits of:-

- |   |                     |
|---|---------------------|
| (i) any rural areas, for every Rs. 500 or part thereof;   | Fifteen rupees.     |
| (ii)transitional areas,for every Rs. 500 or part thereof;   | Twenty five rupees. |
| (iii) Muncipal Councils (other than those of such Muncipal Councils falling within the limit of Metropolitan area) and Cantonments, if any, adjacent to such Muncipal Councils, for every Rs.500 or part thereof; | Thirty rupees.      |
| (iv) Muncipal Councils falling within the limit of Metropolitan area and Cantonments,if any, adjacent to such Muncipal Councils, for every Rs.500 or part thereof;  | Thirty five rupees. |
| (v) Muncipal Corporation (other than Muncipal Corporation falling within the limit of Metropolitan area) and Cantonments, if any, adjacent to such Muncipal Corporations, for every Rs. 500 or part there of,     | Forty rupees.       |
| (vi) Muncipal Corporations falling within the limitof Metropolitan area and Cantonments, if any, adjacent to such Muncipal Corporations, for every Rs.500 or part thereof,  | Forty five rupees.  |

## Explanation

For the purposes of clause (b)-  
(a) " Metropolitan area" means  
"Metropolitan area" as defined  
by the clause (d) of article 243P  
of the Constitution of India.

(b) transitional area, Muncipal  
Council and Muncipal  
Corporation means transitional  
area, Muncipal Council and  
Muncipal Corporations as  
provided under article 243Q of  
the Constitution of India.

(c) if relating to both moveable and  
and immoveable property;

The same duty as clause  
(a) and (b).

(d) if relating to residential premi-  
ses consisting of building or unit-

(i) where the value of which does  
not exceed Rs.1,00,000;

One hundred rupees

(ii) where it exceeds Rs. 1,00,000  
but does not exceed Rs.2,50,000;

One percent of the value

(iii) where it exceeds Rs. 2,50,000  
but does not exceed Rs.5,00,000;

Rs. 2,500 plus 4 percent  
of the value above Rs.  
2,50,000.

(iv) where it exceeds Rs. 5,00,000  
but does not exceed Rs.7,50,000;

Rs. 12,500 plus 6 percent  
of the value above Rs.  
5,00,000.

(v) where it exceeds Rs 7,50,000  
but does not exceed Rs.10,00,000;

Rs. 27,500 plus 8 percent  
of the value above Rs.

(vi) where it exceeds Rs.10,00,000.

7,50,000.

Rs.47,500 plus 10 percent  
of the value above Rs.  
10,00,000.

Provided that a "certificate of value" is given stating that the transfer is not part of a larger transaction, or a series of transactions

### Exemption

Assignment of copyright by entry made under the Copyright Act, 1957 (14 of 1957).

Explanation.1- For the purposes of clause (d),-

(i) "unit" includes a flat, apartment tenement, block or any other unit by whatever called;

(ii) where a building consists of units used for both residential and non-residential purposes, then the concession in duty shall be available in respect of the value of those units in building which are used for residential purposes,

and the duty payable in respect of the units in the building which are used for non-residential purposes shall be at the rates specified in clause (b) and (c) on the value of such units;

(iii) the duty payable shall not exceed the amount of duty payable on such conveyance under clauses (b) and (c).

Explanation.11- For each property a certificate of value should be given stating that the transfer is not part of a larger transaction or a series of transactions, for a total price than the slab for which the duty is proposed in the deed for assessment.

Explanation.111- For the purpose of payment of stamp duty it does not matter what type of assets are received in payment i.e., cash, shares, assumption of debt etc.

Copyright Act 1957 be substituted in place of 'Indian Copy Right Act, 1947'.

It may be noted that in exercise of powers under clause (a) of section 9 of the Indian Stamp Act, 1899, the then Governor General in Council vide Notification No.1, dated 16.1.1937, remitted the stamp duty chargeable under Art.23 (Conveyances) and 62 (Transfers) of Schedule 1 on instruments evidencing transfer of property between companies limited by shares in certain cases. It is presumed that such order of the Governor General in Council is still valid. In view of this, the cases of stamp duty as remitted by above order may desired to be inserted as follows:

(e) Instruments evidencing transfer of property between companies limited by shares-

(i) where atleast 90 % of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or Nil.

(ii) whereby the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 % of the issued share capital of the other; or Nil.

(iii) where the transfer takes place between two subsidiary companies of each of which not less than 90% of the share capital is in the beneficial ownership of a common parent company. Nil.

Provided that in each case a certificate is obtained by the parties from the officer appointed in this behalf by the

Local Government concerned that the conditions above prescribed are fulfilled.

### 31. Exchange of property

With adoption of the market value concept, it is desirable to amend the second column of the schedule.

31. Exchange of property-Instrument of

The same duty as a Conveyance (No 23) for a market value equal to the market value of the property of the greatest value which is the subject matter of exchange.

Explanation-For each property a certificate of value should be given stating that the transfer is not part of a larger transaction, or a series of transactions for a total price more than the slab for which the duty is proposed in the deed for assessment.

### 33. Gift

If amendment suggested for levying stamp duty on 'market value' of property is accepted then market value of the property which is subject matter of conveyance may be inserted as it has been done in Tamil Nadu, Karnataka & Bombay Stamp Acts with proviso that " where an instrument of gift contains any provision for the revocation of

the gift, the value of the property which is the subject matter of the gift, shall for the purpose of duty be determined as if no such provision were contained in the instrument"- like the Karnataka Stamp Act.

### 35. Lease

Required to be amended on the line proposed by the 67th Report, Law Commission of India.

67th Report, Law Commission of India recommended that an explanation to be added with respect to the word 'fine' used in clauses (b) and (c) of the article which does not mean any pecuniary penalty but appears to be intended to denote the amount paid by the lessee on entry or the fee paid for renewal of the lease and also to remove any ambiguity because of controversial decisions of several High Courts between the term 'rent fixed' used in clause (b) and 'rent reserved' in clause (b) to (c) recommended to replace the word 'rent reserved' by the word 'rent fixed' in clause (b) and (c) on the lines of clause (a). Since 'agreement to lease' has not been specifically included in the definition of lease in section 2 it was recommended by the Law Commission to add another explanation to the effect that "an agreement to lease shall not be chargeable as a lease unless there is an immediate and present demise. In view of the adoption of the concept of market value approach for the purposes of lease, it is desired that the full market value at the time of entering into the lease agreement should be declared in the lease deed by the lessor as in U.K., or alternatively further certificate to that effect. Keeping in view 67th Report, Law Commission of India, and Karnataka, U.P., Bombay, Delhi, West Bengal, Tamil Nadu Stamp Acts it is desirable to revise the present article as follows:

35. Lease for immovable property, including an under lease or sub-lease and any agreement to let or sub-let-

(a) where by such lease the rent is fixed no premium is paid or delivered -

(i) where the lease purports to be for a term of less than one year;

(ii) where the lease purports to be for a term of not less than one year but not more than three years;

(iii) where the lease purports to be for a term exceeding three years and not exceeding ten years;

(iv) Where the lease purports to be for a term exceeding ten years and not exceeding twenty nine years;

(v) where the lease purports to be in excess of twenty nine years or in perpetuity.

The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.

The same duty as a Bond (No. 15) for the amount or value of the average annual market rent reserved plus the amount of premium.

The same duty as a Conveyance (No. 23) for a market value equal to the amount of the average annual market rent reserved plus the amount of premium.

The same duty as a Conveyance (No. 23) for a market value equal to amount or value of the five years average annual market rent reserved plus the amount of premium.

The same duty as a Conveyance (No. 23) on the market value of the property\* which is the subject matter of the lease.

(b) where the lease is granted for the fine or for money advanced or to be advanced and where no rent is fixed;

The same duty as a Conveyance (No.23) for a market value equal to the amount or value of such fine or premium or premium or money advanced or to be advanced as set forth in the lease.

(c) where the lease is granted for a fine or premium or for money advanced or to be advanced in addition to rent fixed.

The same duty as a Conveyance (No. 23) for a market value equal to the amount or value of such fine or premium or money advanced or to be advanced as set forth in the lease in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid.

Provided that.in any case when an agreement to lease is stamped with the advalorem stamp required for a lease and a lease in pursuance of such agreement is subsequently executed,the lease shall not exceed five rupees.

Provided also that market value of immoveable property on the date of lease is included as part of the lease instrument or

endorsed upon the such lease instrument or firmly attached to the lease instrument (if prepared separately).

### Exemption

Lease executed, in the case of a cultivator and the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year or when the average annual rent reserved does not exceed one hundred rupees.

In this exemption a lease for the purposes of cultivation shall include a lease of land for cultivation together with a homestead or tank.

Explanation.I- When a lease undertakes to pay any recurring charge, such as Government revenue, the landlords share of cesses or the owners share of municipal rates or taxes which is by law recoverable from the lesser, the amount so agreed to

be paid by the lessee shall be deemed to be part of the rent.

Explanation.II- Rent paid in advance shall be deemed to be premium or money advanced within the meaning of this article even if there is provision to set it off towards any instalments of rent.

Explanation.III- An agreement of lease shall not be chargeable as a lease unless there is an immediate and present demise.

Explanation.IV- The market rent of a lease for immovable property at any time is the rent which the lease for immovable property might reasonably be expected to fetch at that time in the open market.

In view of this, where immovable property taken on lease from the public agencies or alike, the market value of the land at the time of lease is required to be specified in the lease and the stamp duty paid thereon, in that case the payment of stamp duty at the time of transfer or conversion of leasehold rights into freehold rights may be exempted by the Government by rule or order as provided under section 9 of the Act. This would avoid problems of the type faced in the registration of freehold DDA land. Stamp duty so or otherwise exempted are necessarily required to be presented before the registering officer as in UK. [It may be noted that in UK on the purchase of a leasehold property stamp duty is payable on the premium and average annual rent which depends upon the

length of the lease. It may also be noted that in UK stamp duty is levied even on the compulsory acquisition of property by the Government or pre-emptive purchase of property by the Income Tax Department.]

#### 40. Mortgage deed

Keeping in view of the amendments proposed in the Bombay Stamp Act, it is desirable to propose the amendment as follows:

40. Mortgage deed, not being an agreement relating to deposit of Title Deeds, Pawn, Pledge or Hypothecation (No.6), Bottomry Bond (No.16), Mortgage of a Crop (No.41), Respondentia Bond (No. 56) or Security Bond (No.57)-

(a) when possession of the property or any part of the property comprised in such deed is given by the mortgager or agreed to be given;

(b) when possession is not given or agreed to be given as aforesaid.

The same duty as a Conveyance (No.23) for a consideration equal to the amount secured by such deed.

The same duty as a Bond (No.15) for the amount secured by such deed.

Explanation.1-A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to

give possession within the meaning of this Article.

Explanation.11 - For the purpose of mortgage deed executed under the Article 27 of the Schedule i.e., Debenture, stamp duty to be paid as provided in that Article.

(c) when a collateral or auxillary or additional or substituted security or by way of further assurance for the above mentioned purpose where the principal or primary security is duly stamped.

The same duty as a Bond (No. 15) for the amount secured subject to a maximum of Rs.100.

#### Exemption

Instruments executed by persons taking advance under the Land Improvement Loans Act,1883 (19 of 1883), or the Agriculturists Loans Act,1884 (12 of 1884), or by the securities as security for the repayment of such advances.

In view of amendment proposed in Art.6 of this Act, it is suggested that exemption (2) be omitted.

#### 45. Partition

Keeping in view amendments effected in proviso (b) of the Bombay, Karnataka, Tamil Nadu Stamp Acts, it is desirable to substitute "twenty five times the annual revenue" in place of "five times the annual revenue" in proviso (b) of the Article 45.

#### 46. Partnership

In view of the amendments affected in Bombay, West Bengal and Gujarat, it is desirable to amend the Article as follows:

##### 46.Partnership-

##### A-Instrument of-

##### (a) wherein the share capital-

(i) does not exceed Rs.10,000;

One hundred rupees.

(ii) of every Rs.10,000 or part there of in excess of Rs.10,000;

One hundred rupees.

(b) where the partnership firm increases its share capital again, on the increased amount of every Rs. 10,000 or part thereof;

One hundred rupees.

(c) for small scale units [as defined by the Government of India from time to time].

Subject to a maximum of one thousand rupees, one hundred rupees for every Rs.10,000 or part thereof of the amount of the capital of partnership

**B. Dissolution of-**

(a) where any immovable property is taken as his share on dissolution partnership by a partner other than a partner who brought that property as his share or contribution to partnership;

The same duty as a Conveyance (No.23) on the market value of such property

(b) in any other case.

One hundred rupees.

**48. Power of attorney**

Keeping in view the amendments effected in regard to the rate structure of different states, it is desirable to suitably amend the rate structure as follows:

48. Power-of-attorney [as defined by section 2(2)], not being a Proxy (No.52)-

(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;

Ten rupees

(b) when required in suits or proceedings under the Presidency Small Cause Court Act, 1882(15 of 1882);

Ten rupees.

(c) when authorizing one person or more to act in a single transaction other than the case mentioned in

Ten rupees.

clause (b);

(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally;

Fifty rupees.

(e) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;

Ten rupees for each person authorized subject to a minimum of rupees forty.

(f) when given for consideration and authorizing the attorney to sell any immovable property.

The same duty as a Conveyance ( No. 23) on the market value of the property.

Keeping in view of various practices of transferring property through power of attorney and amendment effected in this regard by Maharashtra and U.P. Governments, it is desirable to insert new clauses as follows:

(ff) when irrevocable authority is given to the attorney to sell immovable property

The same duty as a conveyance ( No. 23) on the market value of the property.

(fff) when given to a promoter or developer by whatever name called, for construction, development of, or or sale or transfer (in any manner whatsoever) of, any immovable property.

The same duty as a conveyance ( No. 23) on the market value of the property.

(g) in any other case.

Five rupees for each person authorised.

Explanation.1 - For the purpose of this Article more persons than one when belonging to the same firm shall be deemed to be one person.

Keeping in view 67th Report, Law Commission of India and as amended by the Bombay Stamp Act it is desirable to insert explanations as follows:

"Explanation II;- The term 'registration' includes every operation incidental to registration under the Registration Act, 1908 (XVI of 1908).

Explanation III:- Where under clause (f), duty has been paid on a power of attorney relating to any property, no duty shall be chargeable on a conveyance of that property executed in pursuance of the power of attorney or between the granter of the power and the grantees, except in so far as the consideration for the conveyance exceeds the consideration for the power of attorney.

## 58. Settlement

Keeping in view of amendments effected in the Bombay Stamp Act, it is desirable to suitably amend the article as follows:

Instrument of (including a deed  
or dower)

The same duty as a Bond (No15)  
for a sum equal to the amount  
settled or the market value of  
the property settled.

Provided that, where an  
agreement to settle is stamped  
with the stamp required for an  
instrument of settlement, and an  
instrument of settlement in  
pursuance of such agreement is  
subsequently executed, the duty  
on such instrument shall not  
exceed five rupees.

### Exemption

Deed of dower executed on the  
occasion of, or in connection  
with, marriage between  
Muhammedans, whether executed  
before or after the marriage.

B.-Revocation of-

The same duty as a Bond (No15)  
for a sum equal to the amount  
settled or the market value of  
the property concerned as setfo-



## Appendix III of Chapter V

### Central Instruments and Instruments Important from the Point of View of Capital Market

#### 10 Articles of Association of a company :

Keeping in view amendments effected in Bombay Stamp Act, it is desirable to have similar amendments as follows:

10. Article of Association of a company where the company has no share capital or nominal share capital or increased share capital.	One hundred rupees for every rupees 1,00,000 or part thereof.
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Exemption : "Section 25 of the Companies Act, 1956" be substituted in place of "section 26 of the Indian Companies Act 1882"

#### 13. Bill of Exchange

The scheme prescribed by the article for calculation of duties is complex. It is, therefore, desirable that simple provision be devised to avoid complications, keeping in view the needs of Financial Institution and Foreign Investors in the open market economy and also to reduce stamp duty payable on Article 6 and 13. It may be noted that the proper stamp duty chargeable under Article 13 and 49 of the Schedule I to the Stamp Act in respect of a usance promissory notes payable otherwise than on demand where payable not more than three months after date or sight has been remitted by the Central Government where such promissory notes are drawn or made by a commercial bank or a co-operative bank for bonafide commercial or trade transactions.

The rationale for exemption of payment of stamp duty for the period of 3 months and the retention of the Bill of Exchange payable at more than one year after date or sight is not clear and the present position may lead to some abuses as pointed out by State Governments.

It is, therefore, desirable to propose the amendment of the article as follows:

Bill of Exchange [as defined by S.2(2)]  
not being a Bond, bank note or currency  
note:

(a) where payable not more than one year  
after date or sight-

if the amount of the bill or note does  
not exceed Rs.500/-

Five rupees

if it exceeds Rs.500/- but does not ex-  
ceed Rs.1000/-

Ten rupees

and for every additional Rs. 1000/- or  
part thereof in excess of Rs.1,000/-

Ten rupees

(b) where payable at more than one  
year after date or sight-

if the amount of the bill or note does  
not exceed Rs.500/-

Ten rupees

if it exceeds Rs.500/- but does not exc-  
eed Rs.1000/-

Ten rupees

and for every additional Rs.1,000/- or  
part thereof in excess of Rs.1,000/-

Twenty rupees

#### 14. Bill of Lading

The exemptions (a) "Indian Ports Act, 1908" be substituted in place of the 'Indian Ports Act, 1889'.

The Central Government has in its Finance Bill of 1994 substituted "Two rupees" in the second column for the words "One rupee". It may be noted that revenue derived from the Bill of Lading may be meagre with respect to other instruments and it has also been suggested by the various states to remit the duty on article- Bill of lading.

#### 19. Certificate or other document

In Bombay, advalorem rate of 10 paise for every one hundred rupees or part thereof are charged on the value of the shares, scrip or stock, where as in Delhi only twenty five paise are charged as duty on certificate or other document evidencing the right or title of the holder of shares, scrip or stock. This led to the practice of opening of branch office at Delhi and issuing shares from Delhi where stamp duty be paid is minimal. It may be noted that in Bombay before 1988 stamp duty to be paid is Rs.1 per certificate. To prevent such practices amendment on the line of Bombay Stamp Act is desirable.

Proposed amendment may be read as follows:

19. Certificate or other document evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate or to become proprietor of shares, scrip or stock in or of any such company or body.

Ten paise for every one hundred rupees or a part thereof of the face value of the shares, scrip or stock.

It may be noted that inclusion of joint share-holders in share certificate is being treated as a transfer and thus subject to the payment of stamp duty, where as, no beneficial interest in the shares are transferred to the joint share holder except in the case of the death of the first share holder. The true nature of a joint share holder is thus merely that of a nominee. In view of this, the following explanation or exemption may be proposed:

Explanation: Holder of shares, having no beneficial interest in the shares, as joint shareholders, is not deemed to be a transfer within the meaning of this article.

or (alternatively)

Exemption: Nominee holding shares in the name of joint share holders without having any beneficial interest in the shares.

## 27. Debenture

Keeping in view the suggestions of different states and also recommendations of a Working Group set up under the chairmanship of Additional Secretary (Insurance), it is desirable to amend the article as follows:

27. Debenture (whether a mortgage debenture or not), being a marketable security transferable-

by endorsement or by separate instrument of transfer or by delivery regardless of consideration of each debenture.

Three rupees seventy five paise for every Rs.500/- or part thereof

Explanation 1.- The term "debenture" includes any interest coupons attached there to but the amount of such coupons shall not be included in estimating the duty.

Explanation 2.- Debentures shall include partially convertible debentures also, and the legality of conversion of the designated portion of debenture into shares at a later date will not be affected by the deficiency of stamp duty so long as the difference of the between the debenture and share issue is paid within the one month of such conversion.

#### Exemption

The debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed stamped in respect of the full amount or debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debentures-holders:

Provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed. The mortgage deed for this purpose will carry a uniform advalorem rate of 2% subject to a monetary ceiling of Rs1,50,000 notwithstanding the rates for mortgages in general levied by the State Government, and shall be registered in the state in which registered office of the concerned company is situated.

This will mean that in all cases there will be an incentive for debentures to be issued at the place the company has its registered office. Registration of mortgage deeds at the place of registered office of the company will present no legal difficulty.

36. Letter of allotment of shares

Keeping in view the advalorem rate Proposed for article 19, it is desirable to remit the stamp duty on letter of allotment of shares where stamp duty loss will be compensated with the adoption of advalorem rate on share certificate or other document.

37. Letter of Credit

37. Letter of Credit, that is to say, any agreement by which one person authorizes another to give credit to the person in whose favour it is drawn.

Two rupees

It may be noted that the Central Government has in its Finance Bill of 1994, substituted "two rupees" in the second column for the words "one rupee".

But at the same time, it may be stated that revenue derived from the instrument-Letter of Credit may not be substantial where its retention for the purpose of duty collection be justified. It is, therefore, desirable that stamp duty be remitted.

### 39. Memorandum of Association of Company

Keeping in view the amendments effected in the Bombay Stamp Act it is desirable to have similar amendments as follows:

a) If accompanied by articles of association under Section 26 of the Companies Act, (in place of Section 37 of the Indian Companies Act, 1882)	Fifty rupees (in place of fifteen rupees)
b) If not so accompanied	The same duty as is leviable on Articles of Association (No. 10) according to the share capital of the company

In Bombay it has been stated that imposition of such stamp duty according to the share capital of the company imposes huge burden on the company, and hence the reduced duty.

### 43. Note or Memorandum

It has been suggested by the Private Sectors for the removal of special treatment to Public Sector Undertakings as provided in separate States Stamp Act on Government Security where the maximum limit for the payment of stamp duty is fixed. In view of the

liberalisation and level playing field, it is desirable that similar stamp duty also to be paid by Public Sector Undertakings on Government Security.

Proposed amendment may be read as follows:

<p>43. Note or memorandum, sent by a Broker or Agent to his principal intimating the purchase or on account of such principal or a Government security or a share, scrip, stock, bond, debenture stock or other marketable security of a like nature.</p>	<p>50 paise for every Rs. 10,000 or part thereof for the face value of the security, at the time of its purchase or sale, as the case may be.</p>
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**47. Policy of Insurance**

Keeping in view the recommendations of the Working Group set up under the Chairmanship of Additional Secretary (Insurance) and also accepted by the Government, it is desirable to amend Division D of Article 47 and to insert Division DD in the Article as follows:

<p>D- Life Insurance or Group Insurance or other insurance not specifically provided for, except such a <u>General Insurance of Corporation Premium</u> and a Re-Insurance is described in Division DD and E respectively of this article</p>	<p>----- If drawn singly</p>	<p>----- If drawn in duplicate for each part</p>
<p>for every sum issued of Rs. 1,000 /- and also for every Rs.1,000/- or part thereof in excess of Rs.1,000/-</p>	<p>----- Fifty naye paise</p>	<p>----- Twenty naye paise</p>

Exemption clause for Postal  
Life Insurance be deleted.

N.B. If a policy of Group Insurance is renewed or otherwise modified whereby the sum insured exceeds the sum previously insured on which stamp duty has been paid the proper stamp must be borne on the excess sum so insured.

DD. General Insurance Corporation Premium for every Rs.100 of gross direct premium

Twenty paise

#### General Exemption

Letter of cover of engagement to issue a policy of insurance provided that, such a letter or engagement bears the stamp prescribed under the Act for such policy, nothing shall be claimable thereunder nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

Explanation- Life Insurance Corporation, General Insurance Corporation and its subsidiaries shall be permitted to pay to each state/Union Territory Government stamp duty at the

rates mentioned above, once every quarter in advance in the form of a consolidated lumpsum, on the basis of the duty paid during the previous year, subject to reconciliation of accounts immediately following the financial year, subject to this, they will be exempted from having stamps affixed on the policies, provided a certificate of prior payment of duty is impressed on such policies.

It may be noted that in Annexure on Modifications to the Stamp Act, 1899, of Chapter I, legality of the quarterly advance payment of stamp duty in consolidated sum has been discussed. Explanations suggested above is in regard to the recommendations/suggestions of the Working Group (Insurance) and its acceptance by the Government. In this regard suggested amendments to the section 9(1)(b), the section on composition of duty and new proviso (f) of section 35 may also be referred.

#### 49. Promissory Note

In regard to increase in the rate of duties, the 8th Finance Commission suggested that the existing rates are adequate and the fact that the duty is paid advalorem in respect of promissory notes, payable otherwise than on demand provides adjustment to inflation. Even then, in view of suggestions from different States and also views expressed by different states to the 8th Finance Commission, it is desirable to enhance the rate and also suitably amend the articles as follows:

(a) When payable on demand

(i) when the amount or value does not exceed RS.500

Fifty naye paise

(ii) when the amount or value exceeds Rs.500/- but does not exceeds Rs.1,000/- and also for every Rs.1,000\ or part thereof in excess of Rs1,000/-

One rupee

(b) when payable otherwise than demand

The same duty as a Bill of Exchange (No.13) for the same amount payable otherwise than on demand.

52. Proxy

It may be noted from the text of the Article that only certain local authorities in respect of election are mentioned. It is, therefore, desirable that proxies in respect of elections of all local authorities should be brought within the scope of article 52.

Proper stamp duty of one rupee be substituted in place of thirty paise

It may be noted that stamp duty fixed of proxy is only 30 paise and for this reason revenue derived from such article is negligible. It may be desirable to remit the stamp duty on article- proxy.

53. Receipt

Receipt [as defined by section 2(23)]  
for any money or other property the

One rupee

amounts or value of which exceeds  
Rs.500/-

It may be noted that the Central Government by its Finance Act of 1994 substituted "500 rupees" in place of "20 rupees" in the first column and "one rupee" in place of "20 paise" in the second column of the schedule.

59. **Share warrants**

59. Share Warrants to bearer the Companies Act, 1956.

The same duty as a Bond(No.15) for a consideration equal to the nominal amount of the shares certified in the warrant.

**Exemption**

Share warrant when issued by a company in pursuance of the Companies Act, 1956, to have the effect only upon payment as composition for that duty, to the Collector of Stamp revenue of-

(a) one and a half percentum of the whole subscribed capital of the company, or

(b)if any company which has paid the duty or composition in full subsequently issues an addition to its subscribed capital - one and a half percentum of the

additional capital so issued.

Companies Act, 1956 be substituted in place of "Indian Companies Act, 1882

## 62. Transfer

Keeping in view the amendments effected in Bombay and West Bengal Stamp Act, and also rate structure provided in different states, it is desirable to amend the present Article as follows:

62. Transfer ( whether with or without consideration)-

(a) of shares in an in-corporated company or other body corporate.

Ten paise for every hundred rupees or part thereof of the face value of the shares.

Explanation: Where the transfer of shares takes place between a parent company and a subsidiary companies by way of consolidation, merger or splitting as approved by the Competent Authorities under the Companies Act, is not deemed to be a transfer within the meaning of this article.

or (alternatively)

Exemption: Transfer of shares between a parent company and a subsidiary company or between

two subsidiary companies as approved by the Competent Authority under the Companies Act.

(b) of debentures, being marketable securities whether the debentures is liable to duty or not, except debentures provided for by section 8;

Ten paise for every rupees hundred or part thereof of the consideration amount of the debenture subject to a maximum of ten thousand rupees

(c) of any interest secured by bond, mortgage deed or policy of insurance;

The duty with which such bond mortgage-deed, or policy of insurance is chargeable, subject to a maximum of one hundred rupees.

(d) of any property under section 22 of the Administrators General Act, 1963;

The same duty as a Bond (No15) subject to a maximum of hundred rupees.

(e) of any trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary.

The same duty as a Bond (No15) subject to a maximum of hundred rupees.

### Exemptions

Transfer by endorsement-

(a) of a bill of exchange, cheque

or promissory note;

(b) of a bill of lading, delivery order, warrant for goods or other mercantile document of title to goods;

(c) of a policy of insurance;

(d) of securities of the Central Government.

It may be noted that the word share in the second column of clause (a) is a grammatical error and in article 62(a) in the second column, for the singular "share", the plural "shares" should be substituted, so as to be in conformity with first column of 62(a) and also the words "The Administrator - General's Act, 1963, section 22" be substituted in place of "the Administrator- Generals' Act, 1874"

#### 64. Trust

'Not exceeding fifteen rupees' in second column be replaced and substituted by "not exceeding twenty five rupees."

## Appendix IV of Chapter V

### Others Instruments

#### 15. Bond & Bottomry Bond

To simplify rate structure, it may be desirable to suitably amend the article as it has already been done by Bombay and Karnataka Stamp Act as follows:

15. Bond [as defined by Section 2(5) not being a Debenture (No. 27) and not being otherwise provided for by this Act, or by the Court Act, 1870 (7 of 1870)]

for every Rs.500 or part thereof

One percent, subject to a maximum of Rs.50,000

#### Exemption

Bond when executed by any person for the purpose of guaranteeing that the local income derived from private subscriptions to charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

16. Bottomry Bond, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.

The same duty as a Bond (No. 15) for the same amount.

## 20-A. Clearance List

Keeping in view the amendments effected in Bombay Stamp Act, it is desirable to have similar amendment as follows:

20-A(1). Clearance List, relating to the transactions for the purchase or sale of Government Securities submitted to the clearing house of a stock exchange.

0.1 per centum, in respect of each of the entries, in such list on the value of the securities calculated at the making up price or the contract price as the case may be.

(2) Clearance List, relating to the transactions for the purchase or sale of a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporated company or other body corporate, submitted to the clearing house of a stock exchange recognised under the Securities Contracts (Regulation) Act, 1956 ( XLIII of 1956).

0.1 per centum, in respect of each of the entries in such list on the value of the securities calculated at the making up price or the contract price, as the case may be.

(3) Clearance List, relating to the transactions for the purchase or sale of a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporated company or body corporate, submitted to the clearing house of a stock exchange, not recognised under the securities contract (Regulation) Act, 1956. (XLIII of 1956).

0.1 per centum, in respect of each of the entries in such list on the value of the securities calculated at the making up price or the contracted price, as the case may be.

## 22. Composition Deed

The question that whether "inspectors means those appointed from among the creditors themselves to supervise the debtors business and whether they have to be approved by the Court is not beyond doubt and it is presumed that the inspectors are nominated by creditors, nevertheless 67th Report Law Commission of India recommended for the suitable amendment of the article to make it more explicit and rate of stamp duty may also need to be revised.

22. Composition-deed that is to say instrument executed by a debtor whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of

0.1 per centum

the debtor's business, under the supervision of inspectors nominated by the creditors or under letters of licence, for the benefit of his creditors

**44, 50 & 51. Note of protest by the Master of a ship/protest of Bill or Note/Protest by the Master of a ship.**

Following rates of stamp duty may be proposed.

44. Note of Protest by the Master of a ship.	Ten rupees
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50. Protest of Bill or note that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a Bill of Exchange or Promissory Note.	Ten rupees
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51. Protest by the Master of a ship, that is to say, any declaration of the particulars of her voyage drawn-up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship.	Five rupees
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ip when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.

#### **54. Reconveyance of mortgaged property**

In view of the amendments effected in Bombay, Karnataka and West Bengal, it is desirable to suitably amend the article as follows:

**54. Reconveyance of mortgaged property**

The same duty as a conveyance ( No. 23) on the market value of the property, subject to maximum of Rs 100.

**Appendix V of Chapter V**  
**Suggested Amendments to the Machinery Provisions**  
**of**  
**The Indian Stamp Act, 1899.**

**Chapter II - Stamp Duties**

**S.3. Instruments Chargeable with Duty**

**First Proviso:**

Section 29 provides that in the absence of an agreement to the contrary, "the expense of providing the proper stamp duty shall be borne"- by specified persons. This section does not state that the specified person "shall pay the duty," - though the marginal note to the section reads- "Duties by whom payable". To avoid controversies arising from the fact that the language of section 29 is not identical with that of section 3, Law Commission of India in its 67th Report recommended for the insertion of the following words at the end of the first proviso-

" or where the Government has undertaken to bear the expenses of the stamp duty".

It may be noted that the similar amendments were effected in the Bombay Stamp Act, 1958 by Mah.27 of 1985. This may be effected in the Indian Stamp Act also.

**Second Proviso:**

Three Acts referred in proviso, the Merchant Shipping Act, 1894, Act 19 of 1938, the Indian Registration of Ships Act, 1841 has been repealed and re-enacted as the Merchant Shipping Act, 1958 which requires to be substituted in place of above said repealed Acts.

**New Section 3A**

Whether exemption provided under any one article in the first schedule is to be regarded as applicable to that particular article only or such exemption is to be treated as a general one.

To remove doubts, if any, 67th Law Commission Report recommended the insertion of new Sections as follows:

" 3A - Where by virtue of an exemption provided for under an article in Schedule 1, an instrument is exempted from duty, the instrument shall, in the absence of an express provision to the contrary, be exempted from duty under every other article also."

#### **New Section 3B**

Keeping in view the new economic liberalisation policy and financial reforms it is desirable that new section may be inserted with respect to documents having already been properly stamped under the law of a foreign country which may be exempted in this country on the basis of reciprocity for limited purpose for the reason that approach to open market economy will result into the growth of international commerce where occasions of stamped documents under the law of a foreign country is likely to increase. With the insertion of such provision under the Stamp Act, double taxation under two convention countries may be avoided.

The Indian legal system has also provided separate provision relating to relief against double taxation under the Income Tax Act, the Estate Duty Act and the Trade Marks Act.

In this regard 67th Report, Law Commission of India recommended the insertion of the following section in the Act:-

" 3B i) with a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to instruments executed in India the same concessions as can be granted under this section in respect of instruments executed outside India, the Central Government may, by notification in the official gazette, declare such country to be a convention country for the purposes of this Act.

ii) Where an instrument is executed in a convention country and is brought into the territories to which this Act extends, the instrument shall, if duly stamped in the

convention country under the law of that country be deemed for the purposes of this Act, also to be duly stamped.”

#### **S.4. Several instruments used in single transaction of sale mortgage or settlement**

67th Law Report, Law Commission of India recommended with respect to transactions relating to sale, mortgage or settlement under Section 4 to be extended to all transactions and also exemption of one rupee for each of the other instruments required for completing the transaction. Recommended section:

4(i) where in the case of any transaction, several instruments are employed for completing the transaction only the principal instrument should be chargeable with the duty prescribed for it in Schedule I, and each of the other instruments shall, instead of being chargeable with the duty prescribed for it in that schedule, be exempt from duty.

#### **S.5. Instruments relating to several distinct matters**

Under Section 35 of the Indian Stamp Act, if the instrument comprising or relating to several distinct matters chargeable with the aggregate amount of the duties under S.5 of the Stamp Act has not been properly paid, the entire instrument would be treated as not duly stamped and as not admissible in evidence. It is, therefore, suggested that in cases where the instrument consisting of as many separate instruments as there are distinct matters and the duty paid is sufficient in regard to any such distinct matter then such instrument with respect to such distinct matter be admissible in evidence for the purpose of proving such distinct matter only but not for all of them. In this regard a proviso (b) may be added for such admissibility.

#### **S.6. Instruments coming within several descriptions in Schedule I**

To save Section 17 of the Negotiable Instruments Act, 1881 it is suggested that a saving provision in the form of explanation may be inserted to the effect that this Section will not affect the provisions of Section 17 of the Negotiable Instruments Act, 1881.

#### **S.8. Bonds, debentures or other securities issued on loans under Act II of 1879.**

The Local Authorities Act, 1879 has been repealed and replaced by the Local Authorities Act, 1914 which needs to be substituted.

Provision of Section 8(2) needs to be deleted for its irrelevancy in the present context of the transactions prior to 26th day of March, 1897.

#### **S.9. Power to reduce remit or compound duties**

Above said power has been excessively delegated to the Government in the sense that there is no limitation or safeguards on the power of the Government in this regard. It is, therefore, submitted that some check in the exercise of power by the Government is desirable. The insertion of the criterion of "Public Interest" in relation to grant of a reduction or remission by notification will serve the purpose to some extent.

The Bombay Stamp Act, 1958 on the line of the 67th Report, Law Commission of India, amended section 9 of the Act where the words "if satisfied that it is necessary to do so in the public interest" were inserted by Mah. 27 of 1985. It may be noted that the Gujarat Taxation Enquiry Commission, 1980 also recommended the insertion of the criterion of 'public interest' in relation to the grant of a reduction or remission by notification under section 9.

#### **Composition of Duty**

In Annexure on Modifications to the Stamp Act, 1899, of Chapter 1- Introduction: Legal and Economic Context, it has been stated that recommendation/suggestions of the Working Group (Insurance) in regard to quarterly advance payment of duty may not be tenable for the reason stated therein and also for the reason stated in section 35.

Since, the Working Group set up under the Chairmanship of Additional Secretary (Insurance) recommended and also accepted by the Government that Insurance companies

should not affix stamps on policies issued by them instead of which, the insurance companies should pay to each State/Union Territory Government, stamp duty once every quarter in advance in the form of a consolidated lump-sum. This facility can however be extended to other incorporated companies also. The duty paid in advance may be on the basis of the figures collected during the previous quarter. At the end of each financial year, the insurance company shall square up with each State Government/Union Territory the difference between stamp duty actually payable and the stamp duty paid in advance. In view of this, section 9(1)(b) of the Indian Stamp Act requires to be amended and also a new proviso to be inserted in section 35 for the admissibility of the policies and other designated instruments in evidence.

This section 9(1)(b) may be read as follows:

" (b) provide for the composition or consolidation of duties in the case of issues by any insurance company, incorporated company or other body corporate or of transfers (where there is a single transferee whether incorporated or not) of policies, debentures, bonds or other marketable securities."

It may be noted that section 9(1)(b) does not speak regarding incorporated company as company registered under the Companies Act, 1956. Therefore Insurance Company or any statutory company also comes under the wider interpretation of the term incorporated company or alternatively it requires amendment for clarificatory purpose that incorporated company means incorporated company registered under the Companies Act so that suitable amendment for the insertion of insurance company may be suggested.

The Central Government through recent Finance Bill of 1994 has inserted the words "or of transfers (where there is a single transferee whether incorporated or not)" after the words "or other body corporate" under section 9(1)(b). It is therefore desirable to insert above said amendments under the Indian Stamp Act.

## **New Section 9A**

In view of the recommendation of the 67th Report, Law Commission of India and on the line of Section 9.A of Maharashtra Stamp Act and S.9A of Karnataka Stamp Act following new section may be inserted:

" S.9A.The Government may by order published in the official gazette, provide for consolidation of duties in respect of any receipts or class of receipts given by any person (including Government) subject to such conditions as may be specified in the order".

## **S.10. Duties how to be paid**

Sub-sections may be added or new Section like Section 10-A of U.P., Pondicherry, Madhya Pradesh, Rajasthan Stamp Act may be inserted with respect to payment of duty in cash, in the event of a shortage in the availability of non-judicial stamps. Since non-availability of non-judicial stamps is of frequently recurring nature. In this regard 67th Report, Law Commission of India recommended addition of subsection 10(3) and (4) which are here again suitably amended as follows:

" (3).Notwithstanding anything contained in sub section (1), where:

- (i) the State Government, in relation to any area in the State, or
- (ii) the collector, in relation to any area in the district under his charge,

is satisfied that on account of temporary shortage of stamps in any area, duty cannot be paid, and payment of duty cannot be indicated on instruments, by means of stamps, the State Government, or, as the case may be the Collector, may, by Notification in the Official Gazette, direct that, in such area, the duty may be paid in cash or by demand draft or by pay order in any Government treasury or sub-treasury or any other place as the State Government may, by notification in the Official Gazette, appoint in this behalf and the receipt or challan therefor shall be

given by the Officer incharge thereof. Such receipt or challan shall be presented to the registering officer who shall after due verification that the duty has been paid in cash or by demand draft or by pay order make an endorsement to that effect, after cancelling such receipt or challan.

(4) An endorsement made on any instalment under sub-section (3) shall have the same effect as if the duty of an amount equal to the amount stated in the endorsement had been paid in respect of, and such payment had been indicated on such instrument by means of stamps, under sub-section (1).

In this regard section 10 of the Bombay Stamp Act may be looked into where the amendment has been effected on the line of the 67th Report, Law Commission of India.

It is felt further that this dispensation of payment by cash or bank draft or challan of nationalised bank may be permitted generally without any proviso, as an alternative to use of stamps.

#### New Section 10A

67th Report, Law Commission of India recommended the use of franking machines. It is well known that such machines are allowed for postal stamps.

In this regard section 10A(b) of the U.P. Stamp Act and Karnataka Act provides for the certification of the instrument by the endorsement by means of franking machine where the amount of duty is paid in cash. It may be noted that in Bombay the requirement of affixing adhesive stamp on each individual share transfer document or debenture has been substituted by the system of franking machine. This may be enacted in the Indian Stamp Act as it will meet a major demand of financial institutions and companies.

## **New Section 10B**

In view of emergence of real estate business and corporate sector entering into such businesses and also builders/ developers regularly deals in the business of immovable property, opening of credit accounts with the Sub-Registrars or the District Treasury for the purposes of charging stamp duty may be permitted or alternatively payment of duty in cash as suggested above. In UK there is the practice of opening credit accounts with the stamp office with prior arrangement otherwise stamp duty is required to be paid in cash on the counter. This would obviate the need for maintenance of huge records, reduce work loads and savings of expenditure on printing and sale of stamps/stamp papers.

Registration fee under the Registration Act is charged in cash which is to be paid independently on the consideration amount stated in the documents. In view of above discussions, it is desired that registration fee to be charged be denoted by stamps or stamp papers and shall form as part of the stamp duty which need not be separately charged in cash. It is also suggested that registration fee denoted to be part of stamp duty be charged on percentage basis on the consideration amount with fixed maximum limits.

## **New Section 10C**

In view of the large number of instruments relating to public agencies, and to reduce the workload of sub-registrars, it is desired to provide for exemption of documents issued by housing agencies, local authorities etc. from registration and to deem the same to be duly stamped and if it is so done and attested by an officer of that agency, after realising the duty from the parties.

" S.10B. Any instrument chargeable with a duty, when issued by the Banks, Co-operatives, Financial Institutions, Housing Agencies, Local Authorities or Government as notified in the Gazette and where duty on such instrument has been paid to these agencies, and such Banks, Co-operatives, Financial Institutions, Housing Agencies, Local Authorities or Government as the case may be certifies such instruments to be duly stamped, the instrument so certified shall than be deemed to

be duly stamped for the purposes of this Act.

### **S.11. Use of Adhesive Stamps**

In Clause (a) of Section 11, the amount ten naya paise should now be increased to 20 naya paise. In this regards large number of States has increased.

Clause (c) of Section 11 needs to be deleted for the reason that the Advocates Act, 1961 specifically deals with the matter referred in S.11(c).

It is suggested that special adhesive stamps of different descriptions under rule 17 of the Indian Stamp Rules, 1925 to be affixed on certain instruments may be reduced to following types of stamps i.e., Special Adhesive stamp, Revenue stamp and Court Fee stamp.

As to clause (b), it has been held that the words drawn or made out of India govern the entire clause and are not confined to promissory notes. This is not, at first sight, apparent from the section. It is, therefore, 67th Report, Law Commission of India recommended to reframe clause (b) as follows:

(b) bills of exchange drawn or made out of India and promissory notes so drawn or made.

### **S.13. Instrument stamped with impressed stamps how to be written**

To make the Section self-contained and to remove the controversy in regard to writing on the reverse of the stamp paper, 67th Report, Law Commission of India recommended to revise the Section 13 as follows:-

" S.13. Every instrument written upon paper stamp with an impressed stamp shall be written in such manner that the stamp may appear on the face or reverse of the instrument and cannot be used for or applied to any other instrument

Explanation 1 - Where two or more sheets of paper stamped with impressed stamps are used to make up the amount of duty chargeable in respect of any instrument, either a portion of such instrument shall be written on each sheet so used, or the sheet on which no such portion is written shall be signed by the executant or one of the executants, with an endorsement indicating that the sheet is attached to another sheet on which the instrument is written.

Explanation 2 - Where a single sheet of paper, not being paper bearing an impressed hundi-stamp, is sufficient to admit of the entire instrument being written on the stamped paper so much plain paper may be sub-joined thereto as may be necessary for completing the writing of such instrument, provided a substantial part of the instrument is written on the sheet which bears the stamp before any part is written on the placing papers sub-joined, but the fact that the plain paper is not signed by the executants shall not render the instrument not duly stamped."

#### **S.15. Instrument written contrary to Section 13 or 14 deemed unstamped**

The expression "deemed unstamped" raises a doubt as to its (instruments) admissibility under Section 35 and under Section 41. It is, therefore, desirable that the expression "not duly stamped" may be substituted.

#### **S.17 Instruments executed in India**

The interpretation of the existing phrase "before or at the time of execution" in Section 17, lands the courts in difficulty. It is, therefore, 67th Report, Law Commission of India recommended that the words "at the time of execution or immediately thereafter" be substituted.

It is suggested that Section 17 of Bombay Stamp Act 1958 may be adopted which in effect says that "Section 17 Instruments executed in State - All instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution or immediately thereafter on the next working day following the day of execution".

### **S.19. Bills and notes drawn out of India**

It is obligatory on the first holder in India to affix a stamp on the foreign bill or note and to cancel the same before he does any of the acts set out in the section. On this point English law is different where the bonafide holder can cancel the stamp itself, if it was not cancelled when the foreign bill came into his hands. Therefore, 67th Report, Law Commission of India recommended the section to be suitably amended because the primary object of the requirement of cancellation is to ensure that the stamp is not used again. The object is achieved as much by the English provision as by the Indian Section. Also, there are conflicting decisions among various High Courts on the point that whether an instrument bearing an Indian stamp should again be stamped with an Indian stamp when it is presented for acceptance or payment or endorsement, transfer or otherwise negotiated the same in India. In this regard 67th Report, Law Commission of India recommended for addition of an explanation to section 19 to the effect that where the promissory note already bears an Indian stamp, it shall not be necessary to stamp it again.

#### **S.19-A. Payment of duty on certain instruments liable to increased duty under Section**

In view of the practices of registration of documents outside the State where stamp duty to be paid is lower than the duty to be paid in the State where the property is situated, (and thus causing loss of revenues to that State and also the understatement of the value of property) it is desired that the proposed new section may be inserted on the line of the Uttar Pradesh and Tamil Nadu Stamp Act as follows:

19-A. Payment of duty on certain instruments liable to increased duty under section 3 - Where any instrument has become chargeable in any part of India other than any particular State with duty under the stamp law in force in that part and thereafter becomes chargeable with a higher rate of duty in that particular State under section 3, then-

(i) notwithstanding anything contained in section 3 the amount of duty chargeable on such instrument shall be the amounts chargeable on it under Schedule I less the amount of duty, if any, already paid on it in that part;

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped in the permitted manner for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument was an instrument received in India for the first time at the time when it became chargeable with the higher duty.

**19-B. Payment of duty on copies, counter parts or duplicates when that duty has not been paid on the principal or original instrument**

19-B. Payment of duty on copies, counter parts or duplicates when that duty has not been paid on the principal or original instrument - (1) Where any instrument is registered in any part of India other than any particular State and such instrument relates, wholly or partly to any property situate in that particular State, the copy of such instrument shall, when received in that particular State under the Registration Act, 1908, be liable to be charged with the difference of duty as on the original instrument.

(2) The difference of duty shall be calculated having regard to-

(a) the extent of property situate in that particular State; and

(b) the proportionate consideration or value or market value of such extent of property.

(3) The party liable to pay duty on the original instrument shall upon the receipt of notice from the registering officer, pay the difference in duty within the time allowed by such registering officer.

(4) Where deficiency in duty paid is noticed from the copy of any instrument, the Collector may suo moto or on a reference from any court or any registering officer, require the production of the original instrument before him within the period specified by him for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector, shall be deemed to have been produced or come before him in the performance of his functions and the provisions of section 48-A shall mutatis mutandis apply:

Provided that no action under this sub-section shall be taken after a period of four years from the date of registration of such instrument.

(5) In case the original certificate is not produced within the period specified by the Collector, he may require the payment of deficit duty, if any, together with penalty under section 40, on the copy of the instrument, within such time as may be prescribed.

#### **S.26. Stamp where value of subject-matter is undeterminate**

Inter-relationship between Section 26 and Section 35 has raised controversy for the reason that under Section 26 "nothing shall be claimable" do not reflect the true intention of judicial construction because the Section is silent as to whether this prohibition can be relaxed where the deficiency of stamp can be supplied under Section 35. Hence the trouble is the disharmony in wording between Section 26 and 35. It is, therefore, desirable that this disharmony may be rectified and also to read Section 26 as subject to Section 35.

#### **S.27. Facts affecting duty to be set forth in instrument**

Under-valuation of property will be dealt latter on where the reason for incorporation of clause (2) under this Section will also be discussed which clause would be on the line of clause 2 of S.27 U.P. Stamp Act and other State's Acts. Clause 2 of Section 27 in effect says that where duty is not chargeable on the value set forth in the instrument but ad valorem duty on the value of property, particulars specified therein (U.P Act) truly set forth in the

instrument and also Sub Section (3) of Section 28 of the Karnataka Stamp Act may be inserted.

The revised Section may be on the following lines:

i. Facts affecting duty to be set forth in instrument - The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein.

ii. In the case of instruments relating to immovable property chargeable with an ad valorem duty on the value of the property, and not on the value set forth, the instrument shall fully and truly set forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.

iii. In the area where Section 48A is in force, the instruments referred to in the said section shall fully and truly set forth the market value of the property which is the subject matter of the instrument and such other particulars as the Government may by rules prescribe.

### **S.30. Obligation to give receipt in certain cases**

The provision in this Section for mandatory receipt duly stamped to be given upon receiving money exceeding Rs. 20/- has become otiose in view of the obligation to give stamped receipts for amounts exceeding Rs. 500/- under Finance Act, 1994.

### **New Section 30-A**

As to the "person from whom the duty is due" within the meaning of Section 48, is silent and the answer has to be sought from other provisions, though in limited number of

cases, person by whom duty is payable has been referred in Section 19 & 29 and 30 but still it is not exhaustive enough to include every instrument mentioned in the schedule.

It is, therefore, desirable that new Section may be inserted to the effect that apart from the person by whom duty is payable under Section 19 or 30 or under an agreement, the executant of the instrument may be liable to pay.

67th Report, Law Commission of India recommended the insertion of a new section on the following lines:-

" S. 30A. For the purposes of this Act, the person from whom duty on an instrument is due is:-

- a) the person liable under Sections 19, 29 or 30, or under an agreement, or
- b) where clause (a) does not apply, the executant of the instrument."

### **Chapter III - Adjudication as to Stamps**

S.31. After sub-section (2) of section 31 of the Indian Stamp act, the new sub section (3) has been added in the Bombay Stamp Act, 1958 and the Rajasthan Stamp Act, 1952. Sub section (3) of Rajasthan Stamp Act reads as follows:

" 3) Where the Collector has reason to believe that the market value of the property has not been truly set forth in the instrument brought to him for determining the duty under sub section (1), he may after such enquiry as he may deem proper and after giving a reasonable opportunity of being heard to the person bringing the instrument, determine the market value of such property for the purpose of duty."

It is desirable that sub section (3) may be inserted in section 31 of the Indian Stamp Act on the above said line.

## Chapter IV - Instruments not Duly Stamped

### S.33. Examination and impounding of instruments

In Sub-Section (1) Officers of Police are excepted from impounding the instruments. It is desirable that such exception may be extended to other officers connected with the investigation of offences e.g. Customs Inspector or the like. It is also suggested that production of such documents before the public officer "in the performance his functions" should be inserted.

In Section 33(2) proviso (a) in place of Chapter XII or Chapter XXXVI of the Cr.P.C. 1898, "Chapter IX and Sections 145 to 148 of the Cr.P.C. 1974 may be substituted in view of the re-enactment of Cr.P.C. Section 33(3) requires to be modified and in place of State Government, "appropriate government" may be substituted and where Central Government has the authority what offices shall be public offices and persons to be incharge of public offices to be determined by Central Government.

Keeping in view of sub-sections (4) & (5) of Section 33 of UP Stamp Act and Rajasthan Stamp Act, the following sub-section (4) & (5) may be inserted.

" (4) When a person incharge of a public office, during the course of inspection or otherwise, detects from an instrument or copy thereof or when it appears there from the person referred to in sub-section (1) that the instrument is not duly stamped, such person shall forthwith make a reference to the Collector in that matter.

(5) The Collector may, suo motu or on such reference, call for the original instrument from the exempting parties for ascertaining whether it is duly stamped and the instrument produced shall be deemed to have been produced or come before him in the performance of his functions. In case the original instrument is not produced within the period specified by the Collector, he may require the payment of the proper duty or the amount required to make up the same together with the penalty under Section 40".

**S.35. Instruments not duly stamped inadmissible in evidence etc.**

As suggested by 67th Report of the Law Commission of India and for the reasons stated therein, it is desirable that the exception in regard to documents chargeable with a duty not exceeding 10 naya paise, a bill of exchange and promissory notes should be removed from Section 35, proviso clause (a), as the courts are constrained from admitting the documents in evidence. Thus, instruments mentioned above like other instruments will also be admitted in evidence on the payment of deficient stamp duty together with penalty, as provided for the other instruments in clause (a) of the proviso of section 35.

It has been suggested that the prohibition as regards instruments chargeable with a duty of one anna or half an anna only or a bill of exchange or a promissory note had resulted in great hardship to people in India. Moreover with the advent of banking facilities, promotes, as means of negotiation have become otiose and scarce in the commercial circles while they have become the common instrument of transaction amongst ignorant villagers. It is, therefore, suggested by the 67th Report of Law Commission of India also that proviso (a) to section 35 should be amended by deleting the words "not being an instrument chargeable with a duty not exceeding ten naya paise only, or a bill of exchange or promissory note."

In this regard Proviso (a) of Section 34 of the Bombay Stamp Act, 1958 may be looked into which in effect says that:

" a) any such instrument shall subject to all just exceptions be admitted in evidence on payment of:-

- i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make such duty, and
- ii) a penalty of five rupees, or ten times the amount of deficient portion thereof, whichever is higher."

Thus Bombay Stamp Act has deleted the words "not being an instrument chargeable with a duty not exceeding ten naya paise only or a bill of exchange or promissory note". Similarly on the line of Bombay Stamp Act and 67th report, Law Commission of India it is suggested that above said recommended changes may be effected in section 35 of the Indian Stamp Act.

It may also be noted that there are occasions when proceedings may be held up in court, pending determination of the stamp duty in a precise manner or pending the payment thereof after decision. Occasionally, the amount of stamp duty itself depends on a deep and detailed examination of the exact nature of the instrument. Such determination is not always easy, as is shown by the experience of courts regarding certain group of instruments. For example, promissory notes and bonds compete with each other when the instrument is ambiguous. Similarly, pledge and mortgage present the same problem in the case of immovable property. The genus of "agreement" appears in the Stamp Act along with a number of species of agreements. It is not easy to locate the precise entry in the Stamp Act under which an agreement can be regarded as falling. Therefore, it is suggested that section 35 should be amended so as to empower the court to admit the document provisionally, pending determination or payment of stamp duty, with the rider that if the duty is not paid, the plaintiff, even if he obtains a decree, shall not be entitled to execute the same (if the plaintiff is in default regarding stamp duty), this being, of course, an alternative to be adopted only when the formalities regarding payment etc. are likely to take long time.

It has also been noticed that even when liability is admitted under a document, court finds itself unable to give a decree on the basis of a document, if unstamped. It is suggested that in such cases the court should be given a power to pass a decree in terms of the admission, without looking into and deciding the question of deficiency in stamp duty, if any. It may also be desired to provide that if a document which is not the basis of the cause of action is not duly stamped, the suit shall nevertheless proceed and, at the time of passing the decree in the suit, the court shall intimate the fact of deficiency to the collector who may take such action as he thinks fit.

It may also be noted that the instruments properly stamped in one state when received in another state which provides higher rate of duty on such instruments are not admissible in evidence as properly stamped unless the difference of duty chargeable under that state has been paid. It is suggested that section 35 may suitably be amended to empower the court to admit the document in evidence provisionally for the purpose of further legal proceeding, pending determination or payment of difference of stamp duty.

### **Administrative Policies**

The suggestions/recommendations of the Working Group set up under the Chairmanship of Additional Secretary (Insurance), if accepted, may require the insertion of a new proviso '(f)' to section 35 which in effect says that -

" (f) Nothing herein contained shall prevent the admission of any instrument of policy in evidence in any court when stamp duty on such policy instrument has already been paid in advance in the form of a consolidated lumpsum."

Here it is important to note that such special treatment of exemption from admissibility of document in evidence cannot be extended only to LIC & GIC which may be questioned in Court of Law as violative of article 14 of the Constitution. Therefore amendment to the Act may be limited to the extent of permitting consolidated payment of duty and certification on each instrument of policy by endorsement which have some evidentiary value as duly stamped instrument under section 35.

### **S.38. Instruments impounded how dealt with**

To take precautionary measure in regard to sub section (2) of Section 38, i.e. loss, destruction or damage of original before the Collector takes action under S.40, 67th Report, Law Commission of India recommended that the original should be kept by the impounding officer and a copy should be sent to the Collector. Recommended proviso may be inserted in section 38(2):-

" provided that where the person who produced the instrument, or any party interested, is prepared to pay the cost of preparing a copy of the instrument, then:-

a) an authenticated copy of the instrument shall be got prepared by the person impounding the instrument;

b) Only the authenticated copy shall be sent to the Collector;

c) the Collector shall take action on the authenticated copy as if it were the instrument in original; and

d) any certificate to be endorsed with reference to the instrument by the Collector under clause (a) of sub section (1) of section 40 or under sub section (1) of section 42 shall be endorsed on the authenticated copy, ordinarily within 30 days of receipt of the instrument by the Collector and when that copy is received back by the person impounding the instrument that person shall copy the certificate on the original instrument and also authenticate such copy of the certificate"

In this regard sub section (2) of section 37 of the Bombay Stamp Act may be looked into. It is, therefore, suggested that a precautionary measure, on the line of above said recommendation, to prevent the loss of revenue due to loss, destruction or damage of original instrument may be adopted.

#### **S.40. Collectors powers to stamp instruments impounded**

In view of the discussions under Section 35, it is also desirable to delete the words "not being an instrument chargeable with a duty not exceeding ten naya paise only or a bill of exchange or promissory note". In this regard Section 39(i) of the Bombay Stamp Act 1958 may be looked into. It is suggested that S.40(1) should be read as follows:

" S.40(1) When the Collector impounds any instrument under Section 38 or receives any instrument sent to him under Section 38, sub section (2), he shall adopt the following procedures:"

**S.41. Instruments duly stamped by accident**

In view of the above discussions it is desirable to delete the words "not being an instrument chargeable with a duty not exceeding ten naya paise only or a bill of exchange or promissory note".

**S.42. Endorsement of instruments on which duty has been paid under Sections 35, 40 & 41.**

In the proviso to Clause (b) "order 13, rule 9, of the Code of Civil Procedure, 1908" shall be substituted in place of Section 144, Clause 3, Code of Civil Procedure, 1882.

**S.45. Power of Revenue authority to refund penalty or excess duty in certain cases**

In section 45(2) the substitution of "one year" for "three months" is desirable, since the period should be uniform under both the sub-sections.

**S.47. Power of payer to stamp bills and promissory notes received by him unstamped**

Section 47 is so worded that maker of an unstamped promissory note chargeable with a duty not exceeding ten naya paise, himself will affix adhesive stamp when such promissory note is presented for payment which he ought to affix the same before or at the time of execution of such pronote and then the maker of unstamped promissory note deducts the value of the stamp so affixed or paid from the amount in discharge of his note meaning thereby taking advantage of his own wrong. This is the obvious error calling for rectification.

#### **S.48. Recovery of duties and penalties**

Because of obscurity and uncertainty of the position in regard to Section 29 and similar Sections on the one hand and Section 48 on the other hand (as previously mentioned in Section 30A) it is desirable that such obscurity and uncertainty be removed and the person by whom duty is to be paid will be a person liable to pay under Sections 19, 29 or 30 as the case may be. Where none of the above mentioned section applies, then against the person executing the document in question. It is, therefore, desirable to insert Section 48A which will also serve the purpose of this Section.

#### **New Section S.48-A**

This Section is to be inserted on the line of Section 45-A of Karnataka Stamp Act or to say Section 47-A of U.P. Stamp Act or other various States Act.

Undervaluation of the property is reported to be rampant and pervasive to the extent of 90% of the actual value of the property, as mentioned in the report of One Man Commission (Zachariah Mathew ... Chairman). It is, therefore, desirable that some valuation machinery be set up for estimation of the market value of the property for the reason that considerations set forth in the instrument is far below the market value of the property and in consequence of which there is substantial loss of revenues to the States. To prevent the undervaluation of the property amendments have been made to the Stamp Act in Andhra Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh to charge stamp duty according to the market value of the property instead of considerations set forth in the instrument and in the other States stamp duty is required to be paid on the basis of the amount or value of consideration set forth in the instrument. But problems arise where one part of property falls in one State where stamp duty on market value of property is applicable and other part falls on the another State where stamp duty on considerations set forth in the instrument is applicable. It is, therefore, desirable that stamp duty on the basis of market value of the property should also be adopted by other States so that uniformity in this regard could be accomplished and undervaluation of property also be prevented. Therefore, valuation cell has to set up for the purpose of proper valuation of property and

annual notification of value of land and property. If consideration set forth in the instrument is less than the market value of the property then stamp duty on the market value of the property will be chargeable, and if considerations set forth in the instrument is higher than the market value of the property then stamp duty on such amount will be chargeable. In this regard it is relevant to have specific provision on the line of Section 32A of the Bombay Stamp Act, 1958 keeping in view of evasion of stamp duty through instrument of agreement to sell, power of attorney etc, and also an explanation to be inserted in Article 23 of the schedule which deals with conveyance similar to that of article 25 of the schedule of the Bombay Stamp Act.

We may provide for

- a) appeal against guideline or benchmark value in general on the lines of the provisions in Municipal Acts for property tax;
- b) reference to Collector or Valuation Officer in specific case of registration upon application by the party (or on a reference from a public officer) only in cases where there is dis-agreement on levy of duty as per the guidelines as provided in Section 17A of Wealth Tax Act.
- c) allow for the use of professional Valuer certificate as in Wealth Tax Act as well as approved building plans;
- d) specific time period for completion of enquiry and summary procedure;
- e) Self assessment of duty on the basis of the notified values.

We should provide through the amendment to Wealth Tax and Gift Tax Acts for separate but similar provisions or rules on the determination of guideline value in supersession of schedule III of Wealth Tax Act. The idea is to provide for self-assessment of the duty as per published rates of value and registration on that basis with minimum enquiry.

Separate provisions on the valuation cell on the model of Wealth Tax Act can be enacted, and the parties may be obliged to send a copy of the registrable document to the District Valuation Officer.

The Hon,ble Supreme Court decided in *Jiwajee Nagnatham v. Revenue Divisional Officer* (1994) 2 S.C.J. 195, that though the Legislature of A.P. enacted section 47-A, which empowers the registering officer to refer the documents to the Collector, where he has reason to believe that market value of the property is understated for the proper valuation of the property and stamp duty payable thereon and on receipt of such opinion Collector may call the vendor to pay the additional duty paid thereon as per the rules prescribed and the vendor if dissatisfied may appeal to the High Court. But section 47-A confers no express power to the Government to determine the market value of the property and to maintain Basic Valuation Register for levy of stamp duty for registration of an instrument etc. Since Basic Valuation Register has no statutory foundation, therefore, it has no statutory force or base. It was also reiterated in catena of cases. In view of this, it is desired that similar provisions may be inserted with express power conferred to the Government to determine the market value of the property and the principles to be followed in such determination so that rules framed for the market valuation of the property derives their validity from the above said suggested provisions and same may not be struck down in the absence of said provisions. Proposed section in this regard may read as follows:

- (1) The State Government shall provide principles to be followed for the determination of the market value of property and shall also provide for the maintenance of Basic Valuation Register, as prescribed by rules made under this Act.
- (2) If the Registering Officer registering any instrument of conveyance, exchange, gift, certificate of sale, deed of partition or power of attorney to sell immoveable property when given for consideration, deed of settlement or transfer of lease by assignment, finds the value of the property stated in the instruments below the estimated market value notified by the State Government and Basic Valuation Register as provided in sub-section (1), he shall require the person liable to pay the duty, or the difference of duty as emanating from values prescribed in the Basic Valuation Register and the amount of duty already paid.

Provided that if any person liable to pay the duty refused to pay such duty as required by the registering officer under this sub-section or request in writing to refer such instrument to the Collector for determination of the true market value of the property, the registering officer shall refer such instruments for the same.

(3) If any person referred to in section 33, before whom any such instrument is produced or comes in the performance of his function, finds the value of the property stated in the instruments below the value of the property as provided in sub-section (2), he shall, after performing his function in respect of such instrument, refer the instrument along with a true copy of such instrument to the Collector of the District for the proper duty payable on the instrument.

(4) On receipt of the instrument or the true copy of the instrument as the case may be, under sub-section (2) or (3), the Collector of the District shall, after giving the parties concerned a reasonable opportunity of being heard and in accordance with the rules made by the State Government in that behalf, determine the true market value of the immovable property which is the subject matter of the instrument and the proper duty payable thereon. Upon such determination, the Collector of the District shall require the party liable to pay the duty, to make the payment of the amount required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall also require such party to pay in addition, a penalty which shall not be less than such difference and not more than twice the amount of such difference; and on such payment, the instrument received under sub-section (2) or (3) shall be returned to the officer or person referred to therein:

(5) The Collector of the District may, suo motu or on receipt of information from any source, within four years from the date of registration of any instrument referred to in sub-section (2), not being an instrument or the instruments in respect of which the proper duty has been determined by him under sub-section (4), call for the true copy or an abstract of the instrument from the registering officer and examine it for the purpose of satisfying himself as to the correctness of the market value of the immovable property which is the subject matter of such instrument and the duty payable thereon: and if, after such examination, he has reason to believe that the market value of such property has not been truly and fully setforth in the instrument he shall proceed as provided in sub-section (4).

(6) Any person aggrieved by any order of the Collector determining the market value under sub-section (4) or sub-section (5) may appeal against such order to the Chief Controlling Revenue Authority. All such appeals shall be preferred within such time

and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

Provided that no order shall be passed under this section which adversely affects any person, unless such person has been given a reasonable opportunity of being heard.

(7) The order passed under sub-section (4) and no appeal is preferred under sub-section (5) and the order passed under sub-section (5) shall be final and shall not be called in question in any Civil Court or before any other authority whatsoever.

(8) It shall be lawful for the Collector of the District to refer for determination of the true market value of the immovable property which is the subject matter of such instrument and the proper duty payable thereon to an officer not below the rank of-

(i) Tahsildar;

(ii) Town Planner borne on the cadre of the Director of Town Planning of the State;

(iii) Valuation Officer appointed for the purpose by the State Government and such other officer as the State Government may, from time to time, by general or special order in the Official Gazette, specify.

## Chapter V - Allowances for Stamps in Certain Cases

### S.49. Allowance for spoiled stamps

Under the proviso appearing below Clause (d) of Section 43, the grant of refund is conditional. The condition that the instrument could or would not have been given or offered in evidence creates some problems, where refund is applied for under Clause (d)(1), which applies where the instrument has been afterwards found to be absolutely void in law from the beginning. To avoid such hardship 67th Report, Law Commission of India recommended the amendment as follows:

" (1) has been afterwards found by the parties to be absolutely void in law from the beginning:

(1A) has been afterwards found by the court to be absolutely void in law from the beginning under Section 31 of the Specific Relief Act 1963".

"provided that:-

(i) in the case of an executed instrument other than one falling under sub-clause (1A) of clause (d), no legal proceeding has been commenced in which the instrument could or would have been admitted or offered in evidence, and

(ii) the instrument is given up to be cancelled, or has been already given up to the court to be cancelled".

In this regard it will be pertinent to look into the Section 47 of the Bombay Stamp Act 1958 which amended its relevant clause on the line of recommendation of 67th Report, Law Commission of India. It is, therefore, desirable to have similar amendments under Section 49 of the Indian Stamp Act.

#### **S.50. Application for relief under Section 49 when to be made**

Section prescribes the time limits were found to be not reasonable and cause considerable hardship. It is, therefore, suggested that the period under Section 50 should be one year from the date of discovery of circumstances giving rise to the claim for refund.

#### **S.52. Allowances for misused stamps**

Period of six months be extended to "one year" in view of previous amendments in regard to period which has already been suggested.

#### **S.53. Allowance for spoiled or misused stamps how to be made**

Section 53 appears to have some obscurity in the sense that whether this Section applies also where the allowance is made in case of printed forms under Section 51 and also

the grant of refund in cash is discretionary which needs to be mandatory for the reason that a party may not have any use of stamps and also deduction of 10 naya paise for each rupee or fraction of a rupee appears to be high. 67th Report, Law Commission of India recommended the amendment of the Section as follows:

" 53(1) In any case in which allowance is made for spoiled or misused stamps under Section 49 or Section 52, or in respect of printed forms no longer required under Section 51, the Collector may give, in lieu thereof:-

- a) the same value in money, deducting, subject to the provisions of sub-section (2), five paise for each rupee or fraction of a rupee, or
- b) if the applicant so requires, other stamps of the same description and value; or
- c) if the applicant so requires, stamps of any other description to the same amount in value.

(2) deduction under clause (a) of sub section (1):-

- i) shall be calculated on the total value of the stamps;
- ii) shall not exceed five rupees, and
- iii) shall not be made where the allowance is granted under Section 51."

In this regard Section 51 of the Bombay Stamp Act 1958 may also be looked into, for the reason of amendments on the line of above said recommendations.

#### **S.54. Allowances for stamps not required for use**

In this Section also the provision as to deduction should be amended on the same lines as in Section 53, as recommended by 67th Report, Law Commission of India.

## **Chapter VI - Reference and Revision**

### **S.56. Control of and statement of case to Chief Controlling Revenue Authority**

It is found that the Collectors power to adjudicate on the instrument under Chapter III- Adjudication as to Stamps, is final where no appeal lies to the Chief Controlling Revenue Authority under Chapter VI- Reference and Revision. There may be cases where collectors under chapter III adjudicates arbitrarily and malafidely. To prevent such practices and also for the reason of proposed amendment for the insertion of new section 64A for recovery of deficit stamp duty, it is desirable to suitably amend the section 56(1) by the insertion of the words "Chapter III" as follows:

56. Control of, statement of case to, Chief Controlling Revenue Authority-(1)The powers exercisable by a collector under Chapter III, Chapter IV and Chapter V and under clause (a) of the first proviso to section 26 shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

It may be noted that the Government of Maharashtra by Mah.27 of 1985 inserted the word "Chapter III" in the section 53(1) of the Bombay Stamp Act, 1958.

In Section 56(3) after the words "such authority", the words "after giving the parties a reasonable opportunity of being heard" are desired to be added to follow the principle of natural justice, i.e. audi alterum partem rule.

### **S.57. Statement of case by Chief Controlling Revenue Authority to High Court**

It is desirable that where substantial question of law is concerned it shall be obligatory on the part of Chief Controlling Revenue Authority to refer such cases to High Court and also Chief Controlling Revenue Authority should formulate the question on which the opinion of the High Court is sought.

The manner of mentioning of separate High Courts gives more complicated and complex pictures. It is, therefore, desirable that a suitable definition of the expression "High Court" should be substituted on the lines of the definition in the Contempt of Courts Act.

#### **S.59. Procedure in disposing of case stated**

In sub-Section (2) the words "disposal of the case" are inappropriate in regard to cases where the matter has been already disposed by the lower authority. It is, therefore, desirable that these words should be replaced by the words "shall pass such orders as are necessary for disposal of the case conformably to the judgement".

### **Chapter VII - Criminal Offences and Procedure**

#### **S.62. Penalty for executing, etc, instrument not duly stamped**

The word 'accepting' in Section 62(1)(a) does not mean receiving but means executing as an acceptor. It is, therefore, desirable that "executing as an acceptor" may be inserted in place of "accepting". Moreover Section 43, proviso specifically provides that a prosecution cannot be started in the absence of proof of a dishonest intention to evade the payment of stamp duty where penalty has been provided. Therefore, it is desirable to bring uniformity between Section 43 and S.62, a proviso similar to that effect may be inserted in present section. 67th Report, Law Commission of India also recommended amendments on the above said points. In this regard Bombay Stamp Act 1958 also made amendments of Section 59 to that effect.

#### **New Section 62A**

67th Report, Law Commission of India recommended for insertion of new Section which in effect says that where the court of first instance had admitted an instrument after a specific decision that the instrument was duly stamped or that it did not require any stamps, there shall be no prosecution. New Section 59A has also been inserted in the Bombay Stamp Act on the line of above said recommendation.

**Section 64, Penalty for omission to comply with provisions of Section 27.**

Fine which may extend to Rs. 5000/- provided in penalty provision of section 64 has not been revised since this Act came into force. It is, therefore, desirable to increase the fine specified in section 64 of the Indian Stamp Act.

**New Section 64A**

After Section 64, S.64A has been inserted for recovery of amount of deficit stamp duty by Tamil Nadu and similarly S.64B has been inserted by U.P. It is desirable that to remove any ambiguity regarding recovery of amount of deficit stamp duty from person liable to pay duty under this Act a specific provision to that effect is necessary. It is, therefore, suggested that Section 64A may be inserted on the line of Section 64A of Tamil Nadu Stamp Act which in effect says that:

**S.64A. Recovery of amount of deficit stamp duty - (1) where any person liable to pay duty under this Act is convicted of an offence under Section 64, in respect of any instrument (not being an instrument specified in Entry 91 of List I in the Seventh Schedule to the Constitution, the magistrate shall in addition to the punishment which may be imposed for such offence, recover summarily and pay to the Collector, the amount of duty, if any, due under this Act from such person in respect of that instrument and the Collector shall thereupon certify by endorsement on instrument that proper duty has been levied in respect thereof:**

Provided that if the person referred to in this sub-section has already paid any amount towards the duty payable under this Act in respect of the instrument in relation to which such person was convicted, the magistrate shall recover only the difference in the amount of duty.

2. The amount recoverable under sub-section (1) shall be recovered by the Magistrate, as if it were a fine imposed under the Code of Criminal Procedure 1973.

It may be noted that under Chapter VI, Reference and Revision, of the Gujarat Stamp Act, new section 53A has been inserted by the Gujarat Ordinance No. 4 of 1944 which provides for the recovery of deficit stamp duty by the Chief Controlling Revenue Authority within a period of six years in respect of the instrument which had been incorrectly certified by the Collector under the several sections of the Stamp Act and also provides reasonable opportunity of being heard to the party before the recovery of the deficit duty from the concerned party.

It is, therefore, desirable to insert such provisions under the Indian Stamp Act for the reason that Collectors' power to adjudicate on the instrument under Chapter III is final where no appeal lies to the Chief Controlling Revenue Authority under Chapter VI of the Indian Stamp Act. Simultaneously suitable amendments in section 56 of Indian Stamp Act is also required. In this regard amendment effected in the Bombay Stamp Act may also be referred.

#### S.65 Penalty for refusal to give receipt and for device to evade duty on receipts

In Section 65(b) the amount twenty rupees should be replaced by one hundred rupees in view of Section 30 as proposed.

#### **New Section 68A**

It is suggested that New Section 68A be inserted to provide penalty provisions for breach of Section 73A, sub section (2) which is another new Section proposed to be inserted. Said Section 68A would be on the line of Section 62A of Gujarat Stamp Act which in effect says that-

**Inserted by "Gujarat Ordinance 19 of 1965**

**S.68A. Penalty for breach of provisions of Section 73A sub- section (2) - Any person who commits a breach of the provisions of sub-section (2) of Section 73A shall on conviction be punished:-**

- i) for a first offence with fine which may extend to five hundred rupees;
- ii) for a first offence, with fine which may extend to one thousand rupees, but which shall not be less than two hundred rupees; and
- iii) for a third and subsequent offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees."

It may be noted that fine fixed in the year 1965 need to be substantially increased.

#### **S.70. Institution and conduction of prosecutions**

Powers conferred under Section 70(2) to Chief Controlling Revenue Authority to stay any such prosecution is not appropriately vested for the reason that it goes against the principle of Judicial Review which is the basic feature of the Constitution. It is desirable that an Executive Officer should not be given the power of staying judicial proceedings.

#### **S.71. Jurisdiction of Magistrates**

Needs to be deleted for the reason that there are no third class magistrates under revised code of criminal procedure, 1973.

#### **S.72. Place of Trial**

It is desirable to substitute "metropolitan area" for "presidency town" in view of the phraseology adopted in the new Code of Criminal Procedure.

### **Chapter VIII - Supplemental Provisions**

#### **New Section 73A**

In view of discussion made in Section 68A and also for effective functioning of administration, it is desirable that new Section 73A on the line of Section 73A of Gujarat and UP Stamp Act be inserted which in effect says that:-

## **Gujarat Amendment**

**S.73A. Collector's power to authorise officer to enter premises and inspect certain documents -**

(1) The Collector may where he has reason to believe that all or any of the instruments specified in Entry 91 of List I in the Seventh Schedule to the Constitution of India have not been charged at all or incorrectly charged with duty leviable under this Act, authorise in writing any officer to enter upon any premises where he has reason to believe that any registers, books, records, papers, documents or proceedings relating to or in connection with any such instruments are kept and to inspect them and to take such notes and extracts as such officer deems necessary, and if necessary, to seize them and to impound them under Section 33.

(2) Every person having in his custody or maintaining such registers, books, records, papers, documents or proceedings shall, when so required by the officer authorised under sub- section (1), produce them before such officer and at all reasonable times permit such officer to inspect them and take such notes and extracts as he may deem necessary"

## **S.78. Act to be translated and sold cheaply**

In the place of "vernacular languages", "languages of the State" be substituted. Twentyfive paise as mentioned in present Act needs to be revised to fifty paise.

## Appendix VI of Chapter V

### Proposed Amendments to the Indian Registration Act

This note elaborates observations in the Chapter on Reform in Policies and Procedures. It is felt that reforms in the registration process have to be considered along with reforms in Stamp Act, because the two Acts are administered together in all the states.

The purpose of Registration Act is to provide information to the people dealing with property as to the nature and extent of the rights affecting that property in order to prevent forgeries and procurement of conveyances or mortgages by fraud or undue influence. The real purpose of registration is to secure that every person dealing with property may rely with confidence upon the statements contained in the register as full and complete account of all transactions by which his title may be affected, unless indeed he has the actual notice of some unregistered transaction which may be valid apart from registration. Thus, the object of registration is to protect the parties against prior transactions.

It may be noted here that various Acts like Income Tax Act, Urban Land Ceiling Act, Land Reform Laws etc. or executive instructions require certain certificates to be given or clearances to be obtained from various Authorities under respective Acts by the registrant before the registration of the documents, object of which Acts may be different from the objects of the Registration Act and consequently registering officer under the Registration Act cannot register the documents without prior clearance of competent authorities under these central and state laws. It is reported in different states that these approvals take anywhere between six months to one year, and involve repeated visits, expense and exposure to official apathy. It is worth noting that the registered transactions only operate inter-vivos among the registering parties and do not confer legality or commit the competent authority to regularise the transaction under any of the offending laws.

In view of the economic liberalization and current financial reforms, the transactions through various instruments subject to cumbersome and time-consuming procedures of registration provided under the Registration Act and other Acts need to be simplified. This is apart from the ad valorem or fixed registration duty. The 34th Report of the Law Commission has analysed some provisions of the Act in detail.

There are administrative problems of time taken for getting back the document lodged for registration, especially for conveyances and delays in getting back the document after necessary copying is done by the registration office. The problems related to valuation, securing stamped papers, adjudication etc. have been dealt with separately in the report.

The following amendments are proposed in the light of suggestions made by state governments and our own analysis in relation to the operation of Stamp Act and registration process. General amendments to the central Act will obviate the need for individual states to move amendments as done at present and curb the distortionary tendency for documents to be executed out of state. It is no doubt necessary to discuss these proposals with the Law Ministry.

#### **Section 2[4] District Court**

District Court has not been defined specifically. It is, therefore, desirable that for the purpose of this Act, definition of District Court as defined in Civil Procedure Code, 1908, may be imported to remove any ambiguity and also suggested by Bombay, Uttar Pradesh and Delhi.

#### **Section 2[5] Endorsement and Endorsed**

A suggestion has been made by the 34th Report, Law Commission of India that definition should cover an entry in writing made by registering officer on a sealed cover deposited under the Act, as the registering authority has to make an endorsement on covers intended for deposit also. Keeping in view of the above said Report it is desirable to amend the definition as follows:

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act and to an entry in writing made by the registering officer on a sealed cover deposited under this Act.

#### **New Clause 2[5A] Execution**

The execution shall mean that the deed was executed with all the formalities necessary for its completion. It has to be a valid execution and not merely signing of the document. It means something more than mere writing on a document and signing. It has been held in *Central Warehousing Corporation, New Delhi v. Registrar for Registration of Documents-cum-Collector, Hissar, 1990 (1) Punj.L.R. 571* that "though the word 'execution' has not been defined in the statute but it has been accepted that execution consists in signing a document which has been written, read over and understood, and it does not mean merely signing a name upon blank paper-sheet. Execution where applied to document means the last act or the series of acts necessary to complete it. Thus the execution of the deed is signing by the parties, the attesting by the witnesses and the delivery of the same. The execution includes a process which is to be gone through to complete a document. All the formalities necessary for the validity of a legal act have to be complete or give validity to by performing what now requires to be done as by signing, sealing etc. It means something more than signed. In this regard 34th Report, Law Commission of India suggested that "For the present purpose sealing and delivery have not much relevance. Hence the non-mention of those requirements may not cause much difficulty. What is sought to be stressed is - mere proof of admission of signature should not amount to execution and therefore, the proposed definition, has the beneficial object of preventing fraud". Similar suggestions had also been given by the 6th Report, Law Commission of India. The definition of "execution" may also be important for the sections dealing with presentation of documents for registration, for example, Section 32(a) and (c) and, more particularly Section 34(3) and 35 dealing with proof of execution and also for the reason that the person executing the document has understood the contents of the document to prevent the fraud. In view of this, the definition of "execution" as proposed and developed by the 34th Report, Law Commission of India on the expression "execution" suggested by the 6th Report, Law Commission of

India may be reworded as follows:

'Execution' in relation to a document presented for registration means execution by a person who has understood the contents thereof, as ascertained by the registering officer.

#### **Executant/Persons Executing the Document:**

The judicial opinions on the expression "persons executing the document" were diverse. They may mean persons actually signing the document by their own hands or persons executing the document by hand of another duly authorised to sign on their behalf. In *Mohammad Ewaz v. Britz Lal*, 4 I.A. 166; I.L.R. 1 All 465; 3 Sar. 735, their Lordships considered that it was the person who actually executed the deed who was the party to appear before the Registrar. Sir Montague E. Smith, while construing the provisions of section 34, Registration Act of 1877 observed that:

"There the persons described are the persons executing the document, not those who, on the face of the deed, are parties to it or by whom it purports to have been executed, but those who have actually executed it."

Though these observations have been taken as obiter, nevertheless they have been taken to imply the same.

It was only in the year 1928, their Lordships of the Judicial Committee in *Puranchand Nahatta v. Mon-motha Nath Mukherjee*, A.I.R. 1928 P.C. 38; 55 I.A. 81; I.L.R. 55 Cal. 532; 108 I.C. 342 settled the meaning of the expression "persons executing the document" where Lord Sumner observed that:

"The appellant contends that in these words 'the persons executing the document', executing means and means only actually signing. Their Lordships cannot accept this. A document is executed when those who take benefit and obligations under it have put or have caused to put their names to it. Personal signature is not

required and another person duly authorised may, by writing the name of the party executing, bring about his valid execution and put him under the obligations involved. Hence the words 'persons executing' in the Act cannot be read merely as persons signing. They mean something more, namely, the persons who by a valid execution enter into obligation under the instruments."

Thus the expression "persons executing the document" contained in sections 20, 24, 29, 32, 34, 35 and 71 needs to be defined as follows:

" Persons executing the document means persons actually executing and includes persons who by a valid execution enter into obligation under the instruments."

or

" Persons executing the document means persons actually executing and includes a principal who executes by means of an agent, acting under a valid power of attorney."

### Section 2[7] Lease

Lease has not been defined specifically. To remove any ambiguity and to have precision it is desirable to adopt the definition of Lease as defined in section 105 of the Transfer of Property Act, 1882. It has also been suggested by West Bengal, Bombay, Tamil Nadu and Delhi. It is also desirable to omit the words "and an agreement to lease" as recommended by the Sixth Report as well as 34th Report, Law Commission of India for the reason that an agreement to lease creates a present and immediate interest in the land i.e., one which effects on actual demise and operates as a lease which is a well settled law as interpreted by the Privy Council in *Hemanta Kumari v. Midnapur Zamindari Co.* (1919), 46 I.A. 240; I.L.R. 47 Cal. 485 and also affirmed by the Supreme Court in *Triveni v. Lilabai*, (1959) S.C.R. 833; A.I.R. 1959 S.C. 620.

Amended definition may read as follows:

" (7) Lease means a lease as defined by the Transfer of Property Act, 1882, and includes also a counterpart kabuliyat and an undertaking to cultivate."

#### **New Clause 9A Prescribed**

It is desirable to insert new clause in definition section as recommended by the 6th Report and 34th Report, Law Commission of India as follows:

" 9A. "Prescribed" means prescribed by rules made under this Act."

#### **Section 17(1)(b) & (e). Documents of which registration is compulsory.**

Section 17(b) deals with non-testamentary instruments affecting immovable property of the value of one hundred rupees and upwards. The 34th Report, Law Commission of India had received comments to the effect that in the present context of high prices this limit is ridiculously low, and to give practical relief it should be raised to five hundred rupees. But above said suggestion was not appreciated for the reason that this could not be effected without amending the Transfer of Property Act, 1882. Keeping in view the depreciation of rupee value, suggestions have been received from the Karnataka, Tamil Nadu, Bombay, Delhi, Gujarat and West Bengal that it is necessary to raise the limit of rupees 100 to present day value of Rs.100 of 1882, and relevant provision of the Transfer of Property Act, 1882 may be amended and that similar enhancement may be proposed for clause (e) of section 17(1).

It may, however, be noted that Uttar Pradesh Government by U.P. Act 57 of 1976 omitted the words " of the value of one hundred rupees and upwards" which has the effect that every non-testamentary instruments covered under section 17(1)(b) is to be compulsorily registered irrespective of the value of the immovable property. We are of the view that similar amendments may be proposed in the Act considering that for evidentiary and titular purposes, registration will have significance independent of the monetary value. Compulsory registration of non-testamentary instruments involving transfer of possession or encumbrance on property will also help in the long run to promote registration of titles as in U.K.

### Section 17(1)(d)

Section 17(1)(d) requires registration of leases from year to year etc subject to the existing proviso where under the State Government can grant exemption from the operation of this clause in any district etc where the period of lease does not exceed Rs 50. 34th Report, Law Commission of India, 1967 received comments where it has been suggested that the limits of Rs 50 may be replaced by Rs 100. But same has not been recommended by the 34th Report. But it is desirable to provide for compulsory registration of all leases keeping in view the suggestions from various States and a similar suggestion in respect of rented premises contained in the model Rent Control Law placed before both Houses of Parliament.

It may be noted here that exemptions provided under the proviso of section 17(1) has been omitted by the U.P. Government by U.P. Act 57 of 1976.

### Section 17(2)(v)

One of the comments submitted to the 34th Report, Law Commission of India suggested for the compulsory registration of documents in regard to section 17(2)(v) and section 17(2) Explanation in certain cases. Section 17(2)(v) and explanation provides that a document which merely creates a right to obtain or other document affecting immovable property is not to be registered, and in particular a document purporting or operating to effect a contract for the sale of immovable property does not require registration merely because it recites payment of earnest money or purchase money etc.

It is noticed in a number of field studies that transactions in the nature of agreement to sell, re-sell and re-purchase are entered into in the following ways to evade registration of sale.

An antedated agreement is used to avoid stamp duty on sales by-

- i. first having a sale deed drawn up for a nominal amount;
- ii. then executing an unregistered agreement to re-purchase or sell; and

iii. then executing a final release of the agreement to re- purchase for a substantial consideration. This is in addition to other actions like irrevocable power of attorney, will and a registered money receipt in order to seal the transaction in the mind of the purchaser.

The real consideration for the transaction is the sum total of the consideration expressed in the various deeds (sale and release) but payment of stamp duty is evaded by stamping the final document as a "release" and by making use of the unregistered document as a ground for the release.

Such documents should, it is said, be made (compulsorily) registrable so that three beneficial results would ensure:

- (a) funds of the public, who may enter into a contract for the purchase of property in respect of which an agreement to sell already exists, may be prevented;
- (b) suits for specific relief would be brought down;
- (c) the state revenue will benefit.

It has, therefore, been suggested that section 17(2)(v) and explanation may be accordingly amended.

34th Report, Law Commission of India, however did not accept the suggestion for reason that the removal of general exemption would cause unnecessary hardship; it is a moot point whether the last mentioned release of the rights following the agreement for re-purchase does not itself require registration; in any case, the question of fraud on the Stamp Act cannot be conclusive in a consideration of the Registration law.

It is however proposed that, in the light of representation from State Governments and changed circumstances emerging after the 34th Report, with much larger real estate transactions, speculation and undervaluation, the compulsory registration of Agreement of Sale is desirable, provided the requirement of various clearances is waived. It may be noted that the Maharashtra Ownership of Flats Act provides for the compulsory registration of Agreement of Sale for the promoter.

It may be suggested that agreement to sell, power of attorney or alike may be compulsorily registered where it affects immovable property and which for the purpose of registration and Stamp is deemed to be a conveyance so as to general exemption provided under section 17(2)(v) explanation may not be attracted or section 17(2)(v) and explanation be suitably amended. A proposal to this effect for Delhi is pending with the Home Ministry.

It may be noted that Uttar Pradesh Government by U.P. Act 57 of 1976 deleted Explanation provided in section 17(2).

### **Section 18. Documents of which Registration is Optional**

In view of the amendments proposed in the clause (b) & (c) of the section 17(1), section 18(a) & (cc) may be suitably amended and we endorse the same.

It may be noted that Uttar Pradesh Government by the U.P. Act 57 of 1976 has deleted section 18(a), (b) & (cc).

### **New Section 22 A.**

### **Elimination of the need to furnish certificates at the time of registration**

The Registration Act does not state anywhere that the presenter of instruments has to furnish the certificates provided under section 230-A of the Income Tax Act, section 26 & 27 of the Urban Land Ceiling Act and other Acts. The registration process can be made extremely easy if the requirement of furnishing above certificates is taken away. This would not require any amendment to the Registration Act. It is to be noted that the mere registration of an illegal transaction does not per se make the transaction legal, but the contrary notion in the minds of the public has to be corrected.

Keeping in view the amendments effected by the Government of Karnataka and Bombay in their opinions from the various states and also in view of section 6 of the Transfer of Property Act, 1882 and section 23 of the Indian Contract Act, 1872, it is to be examined if insertion of provision for public policy may be necessary since section 6 of the Transfer of Property Act encompasses section 23 of

Indian Contract Act where considerations or objects of agreement opposed to public policy is unlawful and void. Apart from the fact that insertion of section 6 of the Transfer of Property Act, which covers public policy in the Registration Act. The insertion of specific provision of public policy in the Registration Act may still be proposed so that the State's power of notification in regard to documents opposed to public policy may also be derived from the Registration Act. At the same time, insertion of section 6 of the Transfer of Property Act may also require the insertion of provisions of other Acts in the Registration Act, where the registering officer derives power of refusal to register the documents or to refer the documents to certain Competent Authorities or alike from the other Acts viz., Income Tax Act, Urban Land Ceiling Act etc., the list of which may be further added on account of future amendments under the various Acts which may require amendments to the Registration Act after every such amendments. Thus instead of insertion of such provisions of various Acts to the Registration Act, a general provision for refusal to register the documents forbidden by law may be suggested in Registration Act which will obviously includes section 6 of the Transfer of Property Act, 1882. In view of this, it is desirable to insert new section 22A as follows:

22A- (1) The State Government may, by notification in the Official Gazette, declare that the registration of any documents or class of documents is opposed to public policy.

(2)(i)(a) Notwithstanding anything contained in this Act, the registering officer shall refuse-

(a) to register any document which is forbidden by law including those forbidden under section 6 of the Transfer of Property Act, 1882; and/or

(b) to register any document to which a notification issued under sub-section (1) is applicable:

Provided that the person executing the document or class of documents filed affidavit to the effect that document or class of documents has not been presented for registration in contravention of the clause (a) of this section, and/or the document or class of documents presented for registration is not opposed to public policy in terms of the provision of the said notification under clause (b) of this section.

(ii) The registering officer may provisionally register the document under proviso of sub-clause (i) of this section, and may also within one month forward a copy of such document to the designated Competent Authority under the relevant Acts for necessary scrutiny.

(iii) Such Competent Authority on receiving a copy of such document shall report within six months of the provisional registration to the registering officer of any violation of the law or public policy after providing opportunity for due representation by the parties, under the relevant Acts.

(iv) The registering officer on receiving such report may cancel the provisional registration and inform the same to the parties and if no report is received from the Competent Authority within the prescribed period, such provisional registration may be confirmed.

It may be noted that Bombay Government had issued notification barring the registration of documents relating to permanent alienation of agricultural land without the sanction of the Collector. Government of Karnataka in exercise of the power under section 22A of the Registration Act, 1908, have also issued notification declaring registration of various documents as opposed to public policy where agreement to sell, sale, lease, mortgage with possession or other wise of any land is in contravention of the provisions of the Urban Land (Ceiling and Regulations) Act, 1976, the Land Acquisition Act, 1894, the Bangalore Development Act, 1976, etc.

Once this is enacted, the relevant provision under section 230A of Chapter XXC of Income Tax Act requiring submission of a certificate prior to registration can be deleted. The state/ Central Government may also cancel the requirement of certificate for compliance with ULC Act, Land reform laws etc.

## Section 28.

The practice of registration of document related to property in the neighbouring State where a small portion of the property is situate affect the revenue of the State where major portion of the property is situate. The neighbouring State often do not report the registration to the State where major portion of the property is situate. It is desired that the registration should take place in the State where

major portion of the property is situated and to oblige the two neighbour States to keep each other informed of all such registrations as provided in section 65, 66 & 67 which is a mandatory provision where forwarding a copy of non-testamentary document, memorandum, endorsement and certificate (if any), together with a copy of the map or plan (if any), mentioned in section 21 and filing of the same in Book No.I are special duties of Sub-Registrar and Registrar.

In view of this section 28 may be amended as follows:

28. Place for registering documents relating to land - Save as in this part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), (d) and (e), section 17, sub-section (2), in so far as such documents affects immovable property and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or major portion of the property to which such document relates is situate.

#### Section 30(2) and 67

With respect to section 30(2), 31st Report, Law Commission of India, had already submitted a separate report on the subject. It may be noted here that among various suggestions submitted to 34th Report, Law Commission of India, it has also been suggested that sub-section (2) of section 30 be deleted, the reason given being that there was no justification for giving a wider jurisdiction to the registrar in Presidency Towns but same has not been elaborately discussed in 34th Report.

The matter was discussed with the officials of concerned States in a recent meeting convened by the Department of Revenue.

It is noted that Andhra Pradesh Stamp Act has deleted section 30(2) and 67 in their application to the State of Andhra Pradesh which has the effect of reducing the practical utility of section 30(2) in Andhra Pradesh in the sense that registration of a document would be valid in all States other than State of Andhra Pradesh. UttarPradesh, West Bengal and other States also suggested for the deletion of section 30(2) from the Indian Registration Act. The State of Tamil Nadu expressed its views that the facility of registration of document before the Registrars of Delhi, Calcutta, Bombay and Madras need

not be extended to other cities. Delhi in this regard is of the view that such facility should be withdrawn. The State of Maharashtra opined that the facility of registration of a document irrespective of situation of property be extended to all the State capitals in the country. Pertaining to this one of the officials of the Registration Department stated that after the introduction of market value as the basis for calculation of stamp duty, it is not desirable to register the document relating to property in one State before a District Registrar of another State, because the latter would not be aware of the facts whether the consideration is duly set forth in the document. However, there is no objection if a District Registrar at the capital of the State registers documents relating to property anywhere in the State.

Uttar Pradesh expressed its view that the power of registration of document in President Towns in respect of the situation of the property should be withdrawn as it affects the stamp revenue of the State and also this facility is being misused to circumvent the provisions of the Stamp Act in force in U.P. The State of Andhra Pradesh expressed its views that such a provision may facilitate large scale transactions in the cities which are included in sub-section 2 of section 30, but it adversely affects the number of registrations of the Registration Offices, in the jurisdiction of which the property is situated. Further there are several State enactments which have an overriding effect on the Registration Act, 1908 and it is the responsibility of the registering officers to ensure compliance with the provisions of those laws. The stamp duty rates also differ from one State to another. The registering officer of any particular city may not be aware of all these things. Hence, Andhra Pradesh, Karnataka, Madhya Pradesh, Rajasthan have already deleted the sub-section 2 of section 30 from the Registration Act, 1908 in so far as it is applicable to those States.

The sub-section is thus proposed for deletion on the ground that it encourages evasion of State laws and State duty and confers no real benefit on registrants. The deletion will build up State level MIS on transactions and avoid confusion on differing practices of valuation and registration as well as varying duties. It was enacted in the context of poorly developed registration system in different States and to benefit the public, and has little relevance now. However, the State government may authorise the registering officer in the State capital to register documents relating also to property situated elsewhere in the State.

Thus, with the adoption of the concept of the market value of the property, different rates of stamp duty payable on the instruments applicable to different States, non precision of the guide line values for the valuation of the market value of the property, loss of revenue to the State where property situated in the State registered the documents outside the State in which the property is situate, complicating effect of the amendments to State's Registration Act on the Indian Registration Act for deleting the provisions of sub-section 2 of section 30 applicable to their State, administrative problems in appropriating the difference of stamp duty and registration fees when the documents relating to the property situated within the State registered outside the State under the provision of sub-section 2 of section 30, and brought to the State in which the property situate and also for the reasons stated by the above said States, it is desirable to delete sub-section 2 of section 30 and section 67 of the Indian Registration Act. Attention is however invited to notes on section 67.

### **Section 33 (Power of Attorney):**

In the course of our visit to various States one of the suggestion forwarded was that the power of attorney for property transactions should have been executed before the same registering officer who is competent to register the transaction. In our view such course may negate the clause (b) and (c) of the sub-section (1) of section 33 where for the convenience of the principal it has been provided that-

" 33.(1) For the purposes of section 32, the following powers of attorney shall alone be recognised, namely:-

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power of attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power of attorney executed before and authenticated by a notary public, or any Court, Judge, Magistrate, Indian Consul or Vice Consul or representative of the Central Government:

In view of the current economic reform and open market economy such suggestions may not be appreciated where effect of such amendment restrict the principal's power of authorization of presenting documents for registration by the agent.

Retaining only the provisions of clause (c) of sub-section 1 of section 33 brings the anomalous situation where authorization of presenting the document for registration through power of attorney executed within the country but outside the state cannot be accepted and the same can be accepted through such authorization of power of attorney executed outside the country.

If the above said suggestions of execution of power of attorney before the same registering officer who is competent to register the transaction be accepted then the section with proposed amendment may read as follows:

**33. Powers of attorney recognizable for purposes of section 32.-(1)** For the purposes of section 32, a power of attorney shall be recognised only if the principal at the time of executing the power of attorney resides in any part of India in which this Act is for the time being in force or not in force and such power of attorney has been executed before and authenticated by the Registrar or Sub-Registrar competent to register the document under this Act:

Provided that, if the principal at the time aforesaid does not reside in India, a power of attorney shall be recognised for the purposes of section 32, if executed before and authenticated by a notary public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representatives of the Central Government.

Provided further that such power of attorney shall be valid for a period upto one year from the date of authentication.

Provided also that the following persons shall not be required to attend at a Registration office or Court for the purpose of executing any such power of attorney as mentioned in clause (a) for this section, namely:

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend, and who have been so certified by an authorised Medical Practitioner;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in Court.

Explanation-(1) In this sub-section, "India" means India as defined in clause (28) of section 3 of the General Clauses Act, 1897 (X of 1897).

#### Section 49.

Practices of mutating the title of property, on the basis of unstamped and unregistered documents by the Municipalities/City Survey Officers were found in the state of Uttar Pradesh and other states. To prevent such practices of mutation by the concerned authorities, it is desirable to insert the explanation to section 49 of the Indian Registration Act, 1908 to the effect that such mutation does not confer any legal title to the person in whose favour titles of the property are mutated.

#### Section 64, 65, 66 and 67.

To prevent the persons in other States from being duped for the absence of entry of registration in Book No.I where there is delay in sending the copy of the documents to the Registrar of the State in whose district property is situate, the Tamil Nadu Government through executive orders ensured that the registered document be sent to the District Registrar in whose district such property is situate and the Registrar on receiving the same shall file in his Book No.I and shall report such filing to the Sub-Registrar registering the document, and then only the document is returned to the persons presenting the documents for registration. The State of West Bengal, by amendments, introduced the concept of provisional registration where the Sub-Registrar provisionally register the document and refers the documents to the Inspector General of Registration and effect final registration only after getting the latter's consent and after recovering the suggested stamp duty. It may be noted that in West Bengal, Inspector General of Registration simultaneously hold the post of Commissioner of Stamp Revenue in

the Directorate of Registration and Stamp Revenue. Insertion of the provisions of provisiona registration in the Registration Act requires amendment to the section 64, 65, 66 and 67. (Also see Proposed new section 67-A as suggested by the 34th Report, Law Commission of India.)

Amendment to section 64, 65, 66 and 67 as proposed by Tamil Nadu can only protect the genuine party from being duped in the State where property is situate because of non entry of the registration of document in Book No.I, but will simultaneously cause lot of delay and hardship to Registrar and Sub-Registrar where property situate in more districts than one and document to be registered under sub-section (2) of section 30. Because, Registrar on receiving the copy of the document, endorsement, certificate, map or plan mentioned in section 21 from the State to which document for registration is presented cannot register the document and has to send the same to each Sub-Registrar subordinate to him in whose sub-district part of the property is situate and then such Sub-Registrar shall file it in his Book No.I and shall report of such filing to the Registrar to whom such Sub-Registrar is sub-ordinate and then Registrar on receiving the same shall file it in his Book No.I and shall report such filing to the Registrar to whom document for registration is actually presented. Following of such cumbersome procedures will also cause delay in the registration of documents and further harrasments to the parties registering the documents. If amendment to above said section on the line of Tamil Nadu and West Bengal is desired at all, then proposed amendment to section 64, 65, 66 & 67 may read as follows:

64. Every Sub-Registrar after the presentation of a non- testamentary document relating to immovable property not wholly situate in his own sub-district shall forward a copy thereof and of the endorsement and certificate (if any) thereon, to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate and such Sub-Registrar shall file it in his Book No.I and shall report of such filing to the Sub-Registrar to whom such document for registration is presented and then only Sub-Registrar shall register the document.

65. (1) Every Sub-Registrar after the presentation of a non- testamentary document relating to immovable property situate in more districts than one shall forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any), mentioned in section 21, to the Registrar of every district in which any part of such property

is situate, other than the district in which his own sub-district is situate.

(2) The Registrar on receiving the same shall send it to the each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate and every Sub-Registrar receiving the same shall file it in his Book No.I and shall report of such filing to the Registrar to whom such Sub-Registrar is subordinate and on receiving of such report the Registrar shall also file the same in his Book No.I and shall report of such filing to the Sub-Registrar to whom such document for registration is presented and then only Sub-Registrar shall register the document.

66.(1) The Registrar after the presentation of any non- testamentary document for registration relating to immovable property shall forward the copy of such document to each Sub- Registrar sub-ordinate to himself in whose sub-district any part of the property is situate.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any), mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall forward it to each of the Sub-Registrars subordinate to him with in whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any copy of such document under this section shall file it in his Book No.I and shall report of such filing to the Registrar to whom such Sub- Registrar is sub-ordinate and on receiving of such report the Registrar shall also file the same in his Book No.I and shall report of such filing to the Registrar to whom such document for registration is presented and then only the Registrar shall register the document.

67. The Registrar after the presentation of any document for registration under section 30, sub-section (2), shall forward a copy of such document and of the endorsements and certificate thereon to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar on receiving such copy shall follow the procedure prescribed for him in section 66.

(2) The Registrar on receiving the report of such filing as provided under section 66, shall register the document.

We are however in agreement with the 34th Report, Law Commission of India on this point.

#### **New section 67(A)**

34th Report, Law Commission of India recommended for the insertion of a new provision in the Act enabling the sending out of "short notices" in cases where a copy of the document could not be sent as required by section 65(2), 66(2) or 67 and also to prevent the persons in other States from being duped for absence of the document (where there had been a delay in sending a copy, as in the case of lengthy documents).

#### **Recommended section 67(A)**

" 67(A)(1) Where the registering officer is unable to despatch a copy of document under sub-section(1) of section 65, sub-section(2) of section 66 or 67 (hereinafter referred to as the requisite copy) on the day on which the document is admitted for registration, he shall send on that day a short note about the document in the prescribed form, giving particulars of the nature of the document, the names of the parties (including the executants and claimants), and a description of the property affected, the Registrar to whom the requisite copy is to be sent under any of the sections referred to in this sub-section.

(2) The Registrar receiving such note shall take action there on as if it were the requisite copy of the document, and such note shall be deemed to be the requisite copy until the requisite copy is received by the Registrar.

(3) When the requisite copy of the document is received by the Registrar, an endorsement to the effect that the copy cancels the short note shall be made on the copy and on the short note.

## **New Section 82A.**

Keeping in view the amendments proposed for the insertion of new section 22A under the Indian Registration Act, 1908 it is desirable to insert separate section to provide penalty provision for the breach of section 22A(2).

82.A. Penalty for filing false affidavit: Who ever intentionally files any false affidavit before any registering officer under section 22A(2) of this Act, shall be punished with imprisonment for a term which may extend to seven years or fine and registration of such document or class of documents shall also stand cancelled after giving an opportunity of being heard to the parties.

## **Delinking of Stamp duty from Registration Act**

The question of delinking stamp obligation from registration formalities has been uniformly voiced by many states. It is their view that the divesting the sub-registrar of the powers of impounding understamped documents or referring the same to the Collector of stamps for adjudication can render the task of registering instruments far easy than at present. Infact, much of the delay occurs at the Registration office because instruments are referred to Collector of stamps or impounded due to inadequacy in stamps. It has been suggested that the Registration office has merely to register an instrument and if the bench-mark stamp duties are indicated in relation to instruments, the Sub- Registrar has simply to verify whether the instrument has been stamped in accordance with the bench-mark duties. If the instrument is not so stamped he can direct the presenter of the document to remit the stamp duty. If this is done, then delay involved in registration of documents can be totally curbed. If this suggestion is accepted and implemented, the relevant sections of the Registration Act dealing with impounding of instruments, reference to Collector of stamps etc will have to be deleted.

## **Administrative set up under the Registration Act**

The Act is silent on the state administrative set up for registration though the manual describes the hierarchy. The hierarchy of administrative set-up under the Indian Registration Act,

1908, Inspector General of Registration is the head of the Registration Establishment and Registrar and Inspectors of Registration Offices are subordinate to the Inspector General of Registration. Further, Sub-Registrars and Registering Officers are subordinate to the Registrars. In more states collectors or ADMs function as ex-officio Deputy Registrars. There are different appellan authorities under Stamp Act and Registration Act.

In the State of Uttar Pradesh, one or more Additional Inspectors General of Registration and Deputy Inspectors-General of Registration may be appointed to exercise and perform all or any of the powers and duties of the Inspector General of Registration. The U.P. Government has also appointed Assistant Inspector-General of Registration subordinate to the Inspector General of Registration. Registrars appointed subordinate to the I.G. Registration and Sub-Registrars subordinate to the Registrars.

In the State of Tamil Nadu also, Deputy Inspectors General of Registration are appointed subordinate to which Assistant Inspector General of Registration and then District Registrars and Sub-Registrars subordinate to the Registrars.

It may be noted that in some states, authority under Stamp Act and Registration Act has been divided among revenue department and registration officials with frequent conflicts and delay and that there is no single line of command. It has been suggested by various States to adopt the administrative set up as provided in the Tamil Nadu Registration Act with full accountability of all to the officials concerned to the Inspector General of Registration. The proposed valuation can be a part of this establishment or brought under State Revenue or Finance Department. Specific provision can be provided in the Act.

The proposed administrative structure can be incorporated in the machinery provisions of the Act.

### **Registration Fees**

Under section 78 of the Indian Registration Act, 1908, the State Government has power to fix fees for the registration of documents and for other purposes specified therein. The State

Government in Maharashtra fixed one percent advalorem of the value of the property subject to maximum of Rs.5,000. Tamil Nadu also has fixed one percent advalorem and Karnataka two percent advalorem without any monetary limit. Whereas Uttar Pradesh and Delhi, the maximum limit fixed is Rs.500 and 100 respectively. In this regard judgement of High Court of Madras in *M/s Park View Enterprises and others v. State of Tamil Nadu*, AIR 1990 Mad. 251 may be noted. It has been contended in this case that the levy of 1% as registration fees, is not commensurate with the services rendered by the Registration Department and hence unjustified, unconstitutional and at worst such registration fees can only be nominal but not exceeding Rs.100/- as laid down by the Supreme Court in *Chief Commissioner of Delhi v. Delhi Cloth and General Mills Ltd.*, AIR 1978 SC 1191. The High Court of Madras endorsed the view of Hon'ble Supreme Court in the *Delhi Municipality v. Mohd. Yasin*, AIR 1988 SC 617, which after referring to the earlier decisions in *H. H. Swamiji v. Commr. Hindu Religious and Charitable Endowments Department*, AIR 1980 SC 1, and *Southern Pharmaceutical and Chemicals Trichur v. State of Kerala*, AIR 1981 SC 1863, held that "the primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences, which is the true test for determining the character of the levy, and that is undergoing a transformation, and a court would not assume the role of a Cost-Accountant, and it would not be expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. What is after all required is a broad relationship, and quid pro quo in the strict sense is not the one and only true index of a fee. Hence, the figures furnished shows that the percentage evolved is nominal and had remained static for years, and at a time when quite often the salary structure of the staff is being steeply increased, it cannot be but held that this levy of fee is just and reasonable".

In view of variation in the manner of fixing fees for the registration of documents, uniformity, revenue collection and judgements above referred, it is considered desirable to provide one percent advalorem registration fee with maximum monetary limit.

## **Appendix VII of Chapter V**

### **Court Fees and Its Rationalisation**

The levy of the fee under the Court Fees Act, 1870 are not taxes but charges for the administration of justice.

The enactment of the Court Fees Act, 1870 provides for the payment of advalorem court fees on the documents mentioned in the Schedule I and fixed court fees on the documents mentioned in the Schedule II of this Act. It may be noted that the levy of fees in all Courts except Supreme Court are under the legislative competence of the Legislature of State under Article 246, Entry 3, List II of the Seventh Schedule to the Constitution where State has exclusive power to make law. Different States have enacted Court Fees and Suits Valuation Acts. The duties are prescribed in the Schedule for various instruments.

#### **Relevant Entry**

Entry 3, List II (State List) read as follows:

3. Officers and servants of the High court, procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

Relevant Entry 77 of List I (Union List):

77. Constitution, organisation, jurisdiction and power of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practice before the Supreme Court.

In regard to imposition of advalorem court fee on the plaints, written statements, pleading, set off or counter claims or memoranda of appeals presented to any Court, without prescribing any upper limit, the Hon'ble Supreme Court in P.M. Ashwathanarayana v. State of Karnataka, AIR 1989 SC 100 proposed suggestions necessary in regard to the

rationalisation of court- fees under the Rajasthan Act and the Karnataka Act in view of the general importance of the matter to the administration of justice. It has been held that the levy of Court fee at rates reaching 10% ad valorem operates harshly and almost tend to price justice out of the reach of many distressed litigants. The prescription of such high rates of court fees even in small claims as also without an upper limit in larger claims is perilously close to arbitrariness, an unconstitutionality. To rationalise the levies, the Supreme Court proposed that the States should realise the desirability of levying on the initial slab of the subject matter - Rs. 15,000/- a nominal court fees not exceeding 2½% subject further to an upper limit which, having regard to all circumstances, could be envisaged at Rs. 75,000/-. After that limit is reached, it is appropriate to impose on gradually increasing slabs of the value of the subject matter, progressively decreasing rates, say from 7½% down to ½% in graduated scales.

It may be noted that the Government of Maharashtra has prescribed the upper limit of Rs. 75,000/- whereas West Bengal prescribed the limit of Rs. 10,000/-, and Gujarat Rs. 15,000.

In view of the above said judgments of Ashwathanarayana Setty case, the Government of Karnataka has already effected the amendments to the Schedule I of the Karnataka Court Fees and Suits Valuation Act, 1958. Similar amendments may be proposed to the Court Fees Act, 1870 which with suitable amendments may be read as follows:

1. Complaint, written statement, pleading, a set off or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue Court except those mentioned in section 3

Whether amount or value of the subject in dispute -

(i) does not exceed Rs. 15,000

2½ per cent

(ii) exceeds Rs.15,000 but does not exceed Rs. 27,000;	Rs. 375 plus 3½ percent of the amount exceeding Rs.15,000
(iii) exceeds Rs. 27,000 but does not exceed Rs. 39,000	Rs. 795 plus 4½ percent of the amount exceeding Rs.27,000
(iv) exceeds Rs. 39,000 but does not exceed Rs. 51,000	Rs. 1335 plus 5½ percent of the amount exceeding Rs.39,000
(v) exceeds Rs. 51,000 but does not exceed Rs. 63,000	Rs. 1995 plus 6½ percent of the amount exceeding Rs.51,000
(vi) exceeds Rs.63,000 but does not exceed Rs. 75,000	Rs. 2775 plus 7½ percent of the amount exceeding Rs.63,000
(vii) exceeds Rs. 75,000 but does not exceed Rs. 5,00,000	Rs. 3675 plus 6½ percent of the amount exceeding Rs.75,000
(viii) exceeds Rs.5,00,000 but does not exceed Rs. 10,00,000	Rs. 31,300 plus 5½ percent of the amount exceeding Rs. 5,00,000
(ix) exceeds Rs. 10,00,000 but does not Rs. 20,00,000	Rs. 58,800 plus 4½ percent of the amount exceeding Rs. 10,00,000
(x) exceeds Rs. 20,00,000 but does not exceed Rs. 30,00,000	Rs.1,03,800 plus 3½ percent of the amount exceeding Rs. 20,00,000
(xi) exceeds Rs. 30,00,000 but does not exceed Rs. 45,00,000	Rs.1,38,000 plus 2½ percent of the amount exceeding Rs.30,00,000
(xii) exceeds Rs.45,00,000 but does not exceeds Rs. 60,00,000	Rs.1,76,300 plus 1½ percent of the amount exceeding Rs.45,00,000
(xiii)exceeds Rs.60,00,000 but does not exceeds Rs. 75,00,000	Rs. 1,98,800 plus ½ percent of the amount exceeding Rs.60,00,000

(xiv) above Rs. 75,00,000

Rs. 2,06,300 plus ½ per-  
cent of the amount excee-  
ding Rs. 75,00,000

The Hon'ble Supreme Court in Ashwathanarayana Setty case also held that the singling out of a class of litigation viz., applications for grant of probate and letters of administration for levy of advalorem court-fee without the benefit of the upper limit prescribed in respect of all other suits and proceedings is discriminatory and is violative of Article 14 of the Constitution of India.

The stamp paper and stamps are sold through licensed Vendors. Impressed stamp paper (court-fee) of higher denomination can be obtained from the Treasury. In Delhi Stamp Vendor can sell judicial stamp paper upto the limit of Rs. 500 whereas in the West Bengal limit is Rs. 100. It has been suggested that the Stamp Vendor may be authorised to sell the stamp paper of higher denominations so as to reduce the harassment of the clients in procuring stamp paper of such denominations from the Treasuries. In view of the judgments of Ashwathanarayana Setty case and rate structure reduced in Karnataka, the law departments apprehend a rush of injunction suits, and thus are suggesting for higher separate duties for injunction suits to prevent frivolous suits. It has also been stated that a number of small places face shortage of court-fee stamps and suggested alternative provision for the payment of court fee stamps through bank challans, drafts etc and certified by court officials on the document.

It may be noted that in all civil litigations there is invariably an objection taken by the opposite party that the suit or matter has not been properly valued and the requisite court fee has not been paid. Every judge has therefore to first determine whether the suit has been properly valued and the proper court fee has been paid. If there is any deficiency in the court fee, he has to direct the party liable to pay up the said amount. In many cases, however, the objection as to deficient court fee is found to be baseless with the result that court time and the litigant's time is unnecessarily wasted. Reforms in the procedure could be effected obliging the suitor to confirm on affidavit that the suit has been correctly valued in accordance with the Suits Valuation Act and the appropriate court fee has been paid in accordance with the Court Fees Act.

It may be noted that section 35 of the Court Fees Act, 1870 similar to section 9 of the Stamp Act, 1899 empowers the Appropriate Government to reduce or remit the court fee in respect of all or any of the fees mentioned in the two schedules in the whole or any part of the territory under it. It is pertinent to point out that the Government of Goa has remitted the court-fees payable in respect of all the fees mentioned in the two schedules of the Court Fees Act.

## Appendix VIII of Chapter V

### Agenda Related to Central Tax Related Acts

#### I. Valuation of Property.

Chapter XX-A of the Income Tax Act, 1961, ceased to apply to transfers made after 30th Sept., 1986 and after that Chapter XX-C comes into operation. Constitutional validity of Chapter XX-C of the Act questioned before the Hon'ble Supreme Court in *C.B.Gautam v. Union of India*, where vires of Chapter XX-C has been upheld but read rebuttal provision in section 269UD and opportunity to be heard to the parties concerned. Chapter XX-C does not specifically provide principles for the determination of the market value of the property nor procedure to be followed for the valuation of the property. Similarly in the absence of principles for the determination of the market value of the property and express provision in the Stamp Act, market value determined in the Stamp Act of various States has been struck down by the various High Courts and Hon'ble Supreme Court. For the purpose of Capital gain tax, valuation of the asset is to be referred to the Valuation Officer and the principles to be followed for the determination of the value of property according to the principles provided in the Wealth Tax Act, 1957. Similarly, Gift Tax Act, 1958, provides valuation of the asset on the basis of principles followed in the Wealth Tax Act. The Wealth Tax Act based its valuation on the basis of net maintainable rent. The Municipal Act define the tax base as the annual rent at which a property might reasonably be expected to let from year to year but with limitation that the rateable value thereof shall not increase the annual amount of the standard rent fixed by the Rent Control Act. This has circumscribed the tax base, in consequence of which there is patent anomalies in the valuation of the property determined. In view of the complexity of the valuation of the property because of interdependence of the various tax related Acts, uniform valuation procedure applicable to all taxing statutes may be desired.

Sections to be amended and inserted in this regard are mentioned below:

**Income Tax Act, 1961.**

S.45. Capital Gains.

S.55A. Reference to Valuation Officer.

S.230A. Restrictions on registration of transfer of immovable property in certain cases.

S.269UA. Definitions.

(cc) " fair market value"

S.269UD. Order by appropriate authority for purchase by Central Government.

A new proviso before the first proviso, which will explicitly state the situation, where the appropriate authority may order for the purchase by the Central Government i.e., significant undervaluation of the property to the extent of 15% or more.

Amendments to deal with

- a) conferment of powers on appropriate authority to investigate transactions with declared value less than the notified limit or where different monetary limits for different cities to be prescribed as introduced in the Finance Bill of 1995 but to be of higher considered on the basis of records of sub-registrar office or the notified guideline value, and
- b) splitting transactions.

S.269UDD. Reference to Valuation Officer.

Central Valuation Authority and Annual Notification of Guideline Values.

S.269UE. Providing for certificate as in UK that the transaction does not form part of a series of transactions or a larger transaction whose value exceeds the prescribed amount.

**Wealth Tax Act, 1957.**

S.16A. Reference to Valuation Officer.

Schedule III of the Wealth Tax Act to be amended with reference to Uniform Valuation base.

**Gift Tax Act, 1958.**

S.15. Assessment.

Schedule II of the Gift Tax Act.

**Indian Stamp Act, 1899.**

S.47-A. Valuation of the property and other provisions related to Stamp Act and Registration Act as considered by this Institute in the study of Stamp Act, Registration Act and other related Acts and common provision in Indian Stamp Act.

**Municipal Corporation Act.**

Provisions provided for the determination of rateable value for the purposes of property tax.

Provisions for duty on transfer of property as surcharges and the base on which such surcharges is to be levied.

**II. Securitisation of Mortgages.**

i) In view of securitization of debt and other related instruments and for its more

transparency and tradibility in the financial market, it is desired to introduce certain clarification and direction or amendment in the Income Tax Act to the effect that-

(a) that the body of investors who hold instruments issued by public Financial Institutions for securitization will not be taxed as an "Association of persons" under section 164 of the Income Tax Act, 1961, but be taxed as individual assesses;

(b) that the scheme of securitization shall not tantamount to transfer of the income without the transfer of assets under section 60 of the Income Tax Act, 1961, and the special vehicle created for the issue of participation securities will not be taxed for the holding of the securitised debt instrument;

(c) that the provisions relating to exemption from deduction of tax at source shall apply in regard to interest payable by Borrower to Institutions even after securitization of their loans; and

(d) that no deduction of income tax at source on payment of interest on such instruments.

ii) Nominal stamp duty on securitisation of mortgages as in Bombay.

### III. Amendments in other Acts.

Proposed amendments in other laws for-

a) preventing undervaluation and generation of black money-

i) section 26, 27, 28 and other relevant provisions of Urban Land Ceiling Act, 1976.

ii) section 54, paragraphs 2 & 3, 59 and 107 of the Transfer of Property Act, 1882.

iii) section related to standard rent, fair rent and market rent in the Rent Control Act

and measures of reform suggested in the Model Rent Control Legislation (Government of India, 1992d).

iv) relevant provisions of Land Acquisition Act.

v) section 30, 64, 65, 66, 67 and other related provisions of the Indian Registration Act, 1908.

vi) relevant provisions of Municipal Laws relating to property tax and surcharges.

vii) section 10, 48A-Valuation of understated property and stamp duty to be paid thereon and other relevant provisions of the Indian Stamp Act, 1899.

b) section 17, 18 and other relevant provisions of Registration Act to enable compulsory registration of all documents, easier procedures for registrants, plugging loopholes in evading payment of registration fees, stamp duty and taxes levied under various tax related Acts through power of attorney, agreement to sell etc.

c) amendments to Stamp Act to give effect to 67th Report of Law Commission of India, rationalisation of rate schedules, rational definitions, incentives to capital market operations, reduction of burden etc., as outlined in our report.

d) reforms in procedures of officers concerned with Stamp and Registration Acts, XXC of Income Tax Act, Wealth Tax Act, Municipal Valuation etc.

**Appendix-IX**  
**RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES**

SL No	DESCRIPTIO OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- 1A	ANDHRA PRADESH † Schedule- 1A	BIHAR † Schedule- 1A	MADHYA PRADESH † Schedule- 1A
1	ACKNOWLEDGEMENT	One anna	20 paise	1. a. 20 paise b. 50 paise c. Rs. 1/- d. Rs 1/- Maximum Rs 50/- 2. Rs. 1 for every Rs 100 or part these of	20 paise	20 paise	35 paise	Rs. 1/-
2	ADMINISTRATION BOND	A. Same duty as a bond B. Rs. 5/-	A. Same duty as a bond B. Rs. 100/-	A. Same duty as a bond B. Rs. 50/-	A. Same duty as a bond B. Rs. 50/-	A. 3/4th duty as a bond B. Rs. 30/-	A. Rs 2 10 B a + a bond for the por- tion for portion ex- cess of Rs 1000/-	The same duty as a bond the same duty as on
3	ADOPTION DEED	Rs. 10/-	Rs. 45/-	Rs. 100/-	Rs. 50/-	35 Rs/-	42 Rs/-	Rs. 100/-
4	AFFIDAVIT	Rs 1/-	Rs. 10/-	Rs 10/-	Rs 10/-	10 Rs/-	Rs 4 20	Rs 4/-
5	AGREEMENT OR MEMORANDUM OF AN AGREEMENT	A two annas B maximum Rs 10/ one anna for every Rs. 10000/- or part thereof C eight annas	A 75 paise B maximum Rs. 55/-, 35 paise for every Rs. 10000/- or part thereof	A Rs 1/- B Maximum Rs 1000 Rs 1 for every Rs 10,000/- or part thereof C i. Rs. 1 for every Rs. 1000/- or part thereof	A 50 paise B i. maximum Rs 50/-, 25 paise for every Rs 10,000/- or part thereof	A Re 1/- B Maximum Rs. 75/- 50 paise for every Rs. 10,000/- or part thereof	A 45 paise B maximum Rs 31 50 35 paise for every Rs 10,000/- or part thereof	A Rs 1/- for every Rs 10,000/- or part thereof B Rs 5/-

\* Rate structure of stamp duties on 1994

† Rate structure of stamp duties on 1990

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT. 1899	KARNATAKA *	BOMBAY *	WEST BENGAL. * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH S Schedule- IA
			C. i. 20 paise for every Rs 2500/- or part thereof D. Rs 10/-	ii Rs. 1/- for every Rs. 1000/- or part thereof D) Rs 1/- E. Rs. 1/- F. Rs. 1/- G) Rs 1/- G-a same duty as conveyance G-b((i) same duty as a conveyance (ii) same duty as clause (b)of art40 G-c. same duty as conveyance G-d(i)(A)Rs 1,000/- B. Rs. 100/- ii) A. Rs. 500/- B. Rs. 50/- iii)A. Rs. 200/- B. Rs. 20/- G-e same duty as art 36 H. Rs 20	ii 50 paise for every Rs 5000/- or part thereof C. Rs 1/- for 1000 Kgs of agricultural produce or part thereof. D) Same duty as a conveyance F. Rs 10	6----- AGREEMENT OR MEMORAN- C Rs 1 60/- DUM OF AN AGREEMENT NOT OTHERWISE PROIDED FOR a. Rs 10/- b. Rs. 20/- c. Rs. 50/- d. Rs. Rs.100/- e. Rs 50/-		
	AGREEMENT RELATION TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE	2 A. Same duty as a Bill of exchange B 1/2 duty payable on Bill of exchange	Different rates	i) Rs. 50 ii) Rs 500 iii) Rs 2000 iv) Rs 5000 v) Rs 10000 vi) Rs 35000 vii) Rs 50000e	Different rates	7 Different rates	Different rates	Different rates

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL. * Schedule- IA	ANDHRA PRADESH \$ Schedule- IA	BIHAR \$ Schedule- IA	MADHYA PRADESH Schedule- IA
				2 a) Same duty as per bond b) Half the duty payable under or sub clause (a)X0				
7.	APPOINTMENT IN EXECUTION OF POWER	Rs.15/-	Rs.75/-	A. Rs.100 B. Rs.250	Rs 50	8 Rs.60/-	Rs.52.50	Rs.45/-
8	APPRAISEMENT OR VALUATIONS	A. Same duty as a bond B. Rs.5/-	A. Same duty as a bond B. Rs.30/-	Same duty as a bond maximum Rs 50/-	A. Same duty as a Bottomry bond B. Rs 50/-	9 A. Same duty as a Bottomry bond. B. Rs.30/-	A. Same duty as a Bottomry bond. B. Rs.15.75	A. Same duty as a Bottomry bond. B. Rs 50/-
9	APPRENTICESHIP DEED	Rs.5/-	Rs.15/-	Rs.50/-	Rs 15/-	10 Rs.15/-	Rs.15.75	Rs.15/-
10.	ARTICLE OF ASSOCIATION OF A COMPANY	Rs.25/-	Rs.200/-	Rs.1000/- for every rupee 5,00,000/- or part thereof	A. Rs 150/- B. Rs 300/-	11 Rs.300/-	Rs.150/-	A. Rs.50/- B. Rs.250/- C. i. Rs.250/- ii. Rs 500/- iii. Rs.750/- v. Rs.1,250/- vi. Rs.5,000/-
11	ARTICLE OF CLERKSHIP	Rs.250/-		Rs.750/-	Rs 250/-		Rs.525/-	Rs.350/-
12.	AWARD	A. Same duty as a bond B. Rs.5/-	11 A. Same duty as a bond.	Same duty as a bond subject to a maximum of	A. Same duty as a bond B. Rs.50/-	12 A. Same duty as a bond	A. Same duty as a Bottomry Bond.	A. Same duty as a bond B. i. Rs.1000-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTIO OF INSTRUMENTS	THE INDIAN * STAMP ACT. 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH S Schedule- IA
			B. 1. Rs.1000-5000- Rs 40/- 2. Rs.2/-	Rs.100/-		B. 1. Rs.1000-5000- Rs 50/- 2. Rs.2/- maximum Rs 200/-	B Rs 15.75 and Rs 1.50 subject to a maximum of Rs 105	5000- Rs.50/- and Rs 2/- C Rs 50/-
13	BILL OF EXCHANGE	B (ii) Rs.2.50/- Rs.5/- Rs.5/- (iii)Rs.3.75/- Rs.7.50/- Rs.7.50/- (iv) Rs.5/- Rs.10/- Rs.10/- C Rs.10/- Rs.20/- Rs.20/0						
14	BILL OF LADING	Rs.2/-						
15	BOND		12 Different rate	13 Rs 20 for every Rs 500 or part thereof	Different rate	13 a. Rs 3/- for every Rs 100 or part thereof b. same duty as under clause (a) for first Rs.1000 and Rs 15 for every Rs.500 in excess of Rs.1000	Different rate (percentage wise)	Different rate

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No	DESCRIPTIO OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH S Schedule- IA
16	BOTTOMRY BOND	Same duty as a bond	13 Same duty as a bond	14 Same duty as a bond for the same amount	Different rate	14 A. Rs.3/- for every Rs.100/- or part thereof B. Same as A Rs.15 for every Rs.500/- or part thereof in excess of Rs.1000/-		Same duty as a bond
17	CANCELLATION	Rs.5/-	14 Rs.100/-	15 Rs.40/-	Rs.25/-	15 Rs. 30	Rs.21/-	Rs. 20/-
18	CERTIFICATE OF SALE	a two annas b 10-25 annas c same as conveyance	15 a Rs.1/- b 10-25 - Rs.1.50 c same as conveyance	16 Same duty as on conveyance under clauses (b), (c) or (d) of Art.25 on the market value of the property	Same as conveyance	16 a Rs.1/- b 1.50 paise c same as conveyance	a 45 paise b 85 paise/- c same as conveyance	17 A Rs.250/- 17 B CERTIFICATE OF PRACTICE Rs.500 18 same as conveyance
19.	CERTIFICATE OR OTHER DOCUMENT	two annas	16. 50 paise 17. Certificate of enrolment Rs. 335	17 Rs.1	30 paise	17 Rs.1/-	30 paise	Rs.1
20	CHARTER PARTY	Rs.1/-	18 Rs. 6/-	18 Rs.20/-	Rs. 5/-	18 1. Rs.5/- 2. Re.1.	Rs. 4.20	Rs.3/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH S Schedule- IA
21	OMITTED			CLEARANCE LIST 19/20/21/22/23				
22	COMPOSITION DEED	Rs. 10/-	19 Rs. 45/-	24 Rs. 100/-	Rs. 50	19 Rs. 35	Rs. 31.50	Rs. 40
23	CONVEYANCE	eight annas-Rs 10/- Rs.5 for every Rs.500 or part thereof in excess of Rs 1000/-	20 1. Rs.5 - 100 Rs.50 for every Rs.500 or part thereof in excess of Rs 1000/-  2 Rs 60 for every Rs 1000/- and Rs.30 for every Rs 500 or part there- of in excess of Rs 1000/-	25 1 a) Rs.15/- b)Rs35.i-a)Rs15 ii) Rs 20/- iii) Rs 25/- iv-a)Rs. 50/- v) Rs 40/- vi) Rs 50/- c) Same duty as is payable under clause (a) and (b) d) i) Rs 100/- ii) 1% of the value iii) Rs Rs 2500 plus 4% of the value of above Rs 2,50,000 iv) Rs 12,500 plus 6% of the value above Rs 5,00,000 v) Rs 27,500 plus 8% above Rs 7,50,000 vi) Rs 47,000 plus 10% above Rs 10,00,000	Ten per cent of the market value	a Rs.2.50 P b Rs.5 for every Rs.100 or part thereof c Rs.25 for every Rs.500/- or part thereof in excess	20 Rs 3.15/- - Rs.31.50 Rs.8.50 for every Rs.500 or part thereof in excess Rs.1000/- and does not exceed Rs.5000 2½% where exceed Rs.500/- but not exceed Rs.50,000 Rs.50,000 3½% where it exceed Rs.5000/-	Seven and half per cent of such market value

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL. * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH S Schedule- IA
				2. Same duty as is payable under sub-clause (1)				
24	COPY OF EXTRACT	i) eight annas ii) Rs.1/-	21 i) Rs.5/- ii) Rs.10/-	26 Rs.10	i) Rs.10/- ii) Rs.10/-	21 i) Rs.10/- ii) Rs.20/-	i) Rs.1.60 ii)Rs.3.15	i) Rs.3/- ii) Rs.4/-
25	COUNTER PART OR DUPLICATE	a same duty as original b Rs.1/-	22 a same duty as original b Rs.30/-	27 same duty as original maximum Rs.20	a same duty as original b Rs.3/-	22 a same duty as original b Rs.20/-	a same duty as original b 3.15	a same duty as original b Rs.6/-
26	CUSTOMS BOND	a same duty as bond b Rs. 5/-	23 a same duty as bond b Rs. 8/-	28 a same duty as bond minimum Rs. 100/- b. Rs.100/-	a same duty as battamry bond b Rs. 50/-	23 a same duty as bond b Rs. 30	a same duty as bond b Rs. 21/-	a same duty as bond Rs. 100/-
27	DEBENTURE	a 20 paise - 7.50 3.75 for every Rs.500 or part thereof in excess of Rs.1000/- b 75 paise - Rs.15/- 7.50 for every Rs.500 or part thereof in excess of Rs.1000/-						
28	DELIVERY ORDER IN RECEIPT OF GOODS	one anna	24 20 paise	29 Rs.10/-	Rs.1/-	24 30 paise		Rs.1/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No.	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH Schedule- IA
29	DIVORCE	Rs. 1/-	25 Rs. 10	30 Rs. 50	Rs. 50/-	25 Rs. 5/-	Rs. 42/-	Rs. 30/-
30.	ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT	a Rs. 500 b Rs. 250/-			Rs. 500	26 Rs. 250/-	a Rs. 250/-	
31.	EXCHANGE OF PROPERTY	same duty as a conveyance	26 same duty as a conveyance	31 Rs. 50/- 32 same duty as on conveyance	same duty as on conveyance	27 same duty as on conveyance	same duty as on conveyance	same duty as on conveyance
32	FURTHER CHARGE	a same duty as a conveyance b (i) same duty as a conveyance (ii) same duty as a bond	27 a same duty as a conveyance b (i) same duty as a conveyance (ii) same duty as a bond	33 a same duty as a conveyance b(i) same duty as a conveyance (ii) same duty as a bond	a same duty as a conveyance h (i) same duty as a conveyance (ii) same duty as a bond	28 a same duty as a conveyance b(i) same duty as a conveyance (ii) same duty as a bond	a same duty as a conveyance b (i) same duty as a conveyance (ii) same duty as a bond	a same duty as a conveyance (ii) same duty as a bond
33	GIFT	Same duty as a conveyance	28 Same duty as a conveyance	34 Same duty as a conveyance	Same duty as a conveyance	29 Same duty as a conveyance	Same duty as a conveyance	Same duty as a conveyance
34	INDEMNITY BOND	Same duty as a Security Bond	29 Same duty as a Security Bond	35 Same duty as a Security Bond	Same duty as a Security Bond	30 Same duty as a Security Bond	i) Same duty as a conveyance	Same duty as a Security Bond

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH \$ Schedule- IA	BIHAR \$ Schedule- IA	MADHYA PRADESH \$ Schedule- IA
							ii)Rs.31.50 for the first Rs.1000/- Rs.21/- for every Rs.5000 or part thereof in excess of Rs.1000/- iii)As (ii)Rs.31.50 for every Rs.500/- or part thereof where it exceeds Rs. 10,000/-	
35	LEASE		30	36		31		
		A. Same as a Bond	A. Same as a Bond	A. Same as a Conveyance	A. Same as a Bottomry Bond	A. Same as a Bottomry Bond	A. Same as a Bond	A. Same as a Bond
		2. Same as a Bond	2. Same as a Bond	2. Same as a Conveyance	2. Same as a Bottomry Bond	2. Same as a Bottomry Bond	2. Same as a Bond	2. Same as a Bond
		3. Same as a Conveyance	3. Same as a Conveyance	3. Same as a Conveyance	3. Same as a Conveyance	3. Same as a Conveyance	3. Same as a Conveyance	3. Same as a Conveyance
		4. Same as a Conveyance	4. Same as a Conveyance	4. Same as a Conveyance	4. Same as a Conveyance	4. Same as a Conveyance	4. Same as a Conveyance	4. Same as a Conveyance
		5. Same as a Conveyance	5. Same as a Conveyance	B. Same as a Conveyance	5. Same as a Conveyance	5. Same as a Conveyance	5. Same as a Conveyance	5. Same as a Conveyance
		B. Same as a Conveyance	6. Same as a Conveyance	C. Same as a Conveyance	6. Same as a Conveyance	6. Same as a Conveyance	6. Same as a Conveyance	6. Same as a Conveyance
		C. Same as a Conveyance	7. Same as a Conveyance		7. Same as a Conveyance	7. Same as a Conveyance	7. Same as a Conveyance	7. Same as a Conveyance

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH S Schedule- IA
			B Same as Conveyance C Same as a Conveyance		B Same as a Conveyance B Same as a Conveyance C Same as a Conveyance	B Same as a Conveyance B Same as a Conveyance C Same as a Conveyance	B Same as a Conveyance B Same as a Conveyance C Same as a Conveyance	B Same as a Conveyance C Same as a Conveyance
36	LETTER OF ALLOTMENT OF SHARES	two annas	31 50 paise	37 Rs. 1/-	60 paise	32 30 paise		Rs. 1/-
37	LETTER OF CREDIT	Rs. 2/-			Rs. 2/-			
38	LETTER OF LICENCE	Rs. 10/-	32 Rs. 45/-	38 Rs. 50/-	Rs. 50/-	33 Rs. 35/-	Rs. 31.50/-	Rs. 30/-
39	MEMORANDUM OF ASSOCIATION OF CO	A. Rs. 15/- B. Rs. 40/-	33 A. Rs. 120/- B. Rs. 320/-	39 A. Rs. 100/- B. Same as a Articles of Association under Act. 10	A. Rs. 60/- B. i) Rs. 200/- ii) Rs. 300/-	34 A. Rs. 200/- B. Rs. 500/-	A. Rs. 60/- B. Rs. 168/-	A. Rs. 100/- B. Same as on Articles of Association under Act. 10
40	MORTGAGE DEED	A. Same as a Conveyance	34 A. Same as a Conveyance	A. Same as a Conveyance	A. Same as a Conveyance	35 A. Same as a Conveyance	A. Same as a Conveyance	A. Same as a Conveyance

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL. * Schedule- IA	ANDHRA PRADESH \$ Schedule- IA	BIHAR \$ Schedule- IA	MADHYA PRADESH Schedule- IA
		B. Same as a Bond	B. Maximum Rs.2,00,000, Rs.10 for every Rs. 500 or part there of C. Maximum Rs.100 same as a Bond	B. Same as a Bond	B. Same as a Bond	B. Same as a Bottomry Bond	B. Same as a Bond C. Rs.1.60/- for sum secured not exceeding Rs.1000/- or part thereof in excess of Rs.1000/-.	B. Same as a Bond
41	MORTGAGE OF A CROP	A. one anna for every Rs.200 or part there of in excess of Rs.200/- B. two annas two annas for every Rs.100 or part there of in excess of Rs.100/-	35 A. 50 paise 50 paise for every Rs.200/- or part there of in excess of Rs.200/- B. Rs.1/- for every Rs.100/- or part there of in excess of Rs.100/-	41 Rs.1/-	A. 20 paise 20 paise for every Rs.200/- or part there of in excess of Rs.200/- Rs.200/- B. 40 paise 40 paise for every Rs.100/- or part there of in excess of Rs.100/-	36 A. 40 paise 40 paise for every Rs.200/- or part there of in excess of Rs.200/- or part B. 60 paise 60 paise for every Rs.100/- or part there of in excess of Rs.100/-	a) 35 paise for every sum secured not exceeding Rs.200/- and 35 paise for every thereof in excess of Rs.200/- b) 45 paise for every sum secured not exceeding Rs.100/- and 45 paise for every Rs.100 or part thereof secured in excess of Rs.100/-	a) Rs.1/- for every sum secured not exceeding Rs.200/- and Rs.1/- for every Rs.200/- or secured in excess of Rs.200/- b) Rs.1 for every sum secured not exceeding Rs.100/- and Rs.1/- for every Rs.100/- or part thereof secured in excess of Rs.100/-
42	NOTARIAL ACT	Rs. 1/-	36 Rs.10/-	42 Rs.25/-	Rs.10/-	37 Rs. 3.50/-	Rs. 1.50/-	Rs. 4/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRADESH S Schedule- IA
43	NOTE OR MEMORANDUM	A. two annas B. Maximum Rs 10/- One anna for every Rs.10000/-	37 A Rs. 1/- B. 20 Paise for every Rs.2000/- C. Maximum Rs.55 50 paise for every Rs.10,000/-	43 A. Rs.1/- B. Rs.1/- C. Rs.1/- D. Rs.1/- for every Rs.10,000 or part thereof E. Rs.1/- for every Rs.10,000 or part thereof F. Rs.1/- for every Rs. 10,000/- or part thereof G. Maximum Rs.1000/- for every Rs.10,000 or part thereof	A. 50 Paise B. 50 Paise for every Rs.5000/- C. Maximum Rs.50/- 50 paise for every Rs.10,000/-	38 A. Rs. 1/- B. Maximum Rs 50/- 50 paise for every Rs.10,000/-	A. 20 Paise B. Maximum Rs 15/- 20 paise for every Rs.10,000/-	A. Rs. 1/- B. Maximum Rs 50/- Rs.1 for every Rs.10,000/-
44	NOTE OF PROTEST BY THE MASTER OF SHIP	Eight annas	38 Rs. 2/-	44 Rs. 10/-	Rs. 10/-	39 Rs. 2/-	Rs. 2 10	Rs. 2/-
45	PARTITION	Same duty as a bond	39 Same duty as a bond	45 a Rs. 10 46 b. i) Rs. 10/- ii) Rs. 20/- iii) Rs. 20/- Same duty as a bond	Same duty as a bond	40 Same duty as a bottomrt bond	Same duty as a bond	Same duty as a bond
46	PARTNERSHIP	(a) a. Rs.2.50/- b. Rs.10/-	40 (a) 1 Rs. 50/- 2 Rs. 200/-	47 1 a) Rs. 500/-	(a) 1 Rs. 20/- 2 Rs. 50/- 3 Rs. 100/-	41 A (a) Rs. 100/ (b) Rs. 300/- B Rs. 150/-	(a) 1 Rs. 10.50 2 Rs. 42/-	(a) a. Same duty as a bond b Rs. 100/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL. * Schedule- 1A	ANDHRA PRADESH * Schedule- 1A	BIHAR * Schedule- 1A	MADHYA PRADESH * Schedule- 1A
		(b) 1. Rs 5/-	(b) 1. Same duty as a conveyance	b) Maximum Rs.5,000/- Rs.500/- 2 i) Maximum Rs.100/- same duty as conveyance ii) Rs 200/-	4 Rs. 150/- (b) 1. Rs. 25/-		(b) Rs 21/-	c. Rs 150/- (b) Rs. 50/-
47	POLICY OF INSURANCE	(a) 1. 10 paise - 10 paise 2. 15 paise - 25 paise (b) 1. 50 paise - Rs. 1/- 2. 1/2 of the duty payable in respect of original policy (c) 1. 10 paise 2. 14 paise 3. 10 paise (d) 1. 15 paise - 40 paise (e) 1. 1/4 duty payable in respect of the original policy						

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTIO OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL. * Schedule- IA	ANDHRA PRADESH S Schedule- IA	BIHAR S Schedule- IA	MADHYA PRA Schedule- IA
48	POWER OF ATTORNEY	1. eight annas 2. eight annas 3. Rs. 1/- c. 4 Rs. 5/- d. 5. Rs. 10/- 6. Rs. Same duty as a conveyance. 7. Rs. 1/-	41 a. Rs. 10/- b. Rs. 20/- Rs. 100/- Rs. 200/- c. Same duty as a conveyance f Rs 100/-	48 a. Rs 10/- b. Rs 10/- c Rs 10/- d Rs 50/- e Rs 10 Maximum Rs 40/- f Same duty as a conveyance g Same duty as a conveyance h. Rs 5/-	a. Rs. 5/- b. Rs. 5/- c Rs. 6/- d Rs. 50/- e. Rs. 100/- f. Same duty as a conveyance g. Rs. 6/-	42 i) Rs.20/- ii) Rs.20/- iii) Rs.50/- iv) Rs.75/- v) Rs 25/-	a. Rs. 1.60 b. Rs. 1.60 c. Rs. 3.15 d Rs. 15.75 e Rs. 31.50 f. Same duty as a conveyance g Rs. 3.15	a Rs 3/- b Rs 3/- c Rs. 5/- d Rs. 20/- e Rs 35/- f Same duty as a conveyance g Rs 5/-
49	PROMISSORY NOTE	(a) 1. 10 paise 2. 15 paise 3. 25 paise  (b) 1. Same duty as as a bill of exchange			(a) 1 10 paise 2. 15 paise 3 25 paise  (b) 1/2 of the rates specified in bill of exchange			
50	PROTEST OF BILL OR NOTE	Rs. 1/-	42 Rs 10/-	49 Rs 10/-	Rs 10/-	43 Rs 3/-	Rs 4 20	Rs 3/-
51	PROTEST BY THE MASTER OF SHIP	Rs. 1/-	43 Rs 5/-	50 Rs 10/-	Rs 10/-	44 Rs 5/-	Rs 4 20	Rs 3/-
52	PROXY	30 paise			30 paise			

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL. * Schedule- IA .	ANDHRA PRADESH \$ Schedule- IA	BHAR \$ Schedule- IA	MADHYA PRADESH \$ Schedule- IA
53	RECEIPT	Rs. 1/-			20 paise			
54	RECONVEYANCE OF MORTGAGED PROPERTY	1. Same duty as a conveyance 2. Rs. 10/-	44 1. Same duty as a conveyance 2. Rs. 100/-	51 1. Same duty as a bond 2. Rs. 100/-	1. Same duty as a conveyance 2. Rs. 100/-	45 1. Same duty as a conveyance 2. Rs. 50/-	1. Same duty as a conveyance 2. Rs. 31.50/-	1. Same duty as a conveyance 2. Rs. 70/-
55	RELEASE	1. Same duty as a bond 2. Rs. 5/-	45 1. Same duty as a bond 2. Same duty as a conveyance	52 1. Same duty as a bond 2. Rs. 100	1. Same duty as a bond 2. Rs. 50/-	46 (a) 1. Rs. 3/- for every Rs. 100 or part thereof or market value whichever is higher 2. Same as (a) Rs. 15/- for every Rs. 500/- or part thereof in excess of Rs. 1000 or market value whichever is higher. (b) Same duty as a conveyance (c) 1. Same duty as a conveyance	1. Same duty as a bond 2. Rs. 15.75 1/2 of the duty	1. Same duty as a bond 2. Minimum Rs. 80/- payable as a bond
56	RESPONDENTIA BOND	Same duty as a bond	46 Same duty as a bond	53 Same duty as a bond	Same duty bottomry as a bond	47 Same duty as a bottomry bond	Same duty as a bond	Same duty as a bond

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTIO OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- 1A	ANDHRA PRADESH S Schedule- 1A	BIHAR S Schedule- 1A	MADHYA PRADESH Schedule- 1A
57	SECURITY BOND OR MORTGAGE DEED	a. Same duty as a bond b. Rs. 5/-	47 1. Same duty as a bond 2. Rs. 101/- Maximum Rs. 2,00,000/-	54 1. Same duty as a bond 2. Rs. 100/-	1. Same duty as a bond 2. Rs. 50/-	48 3 percentum of the value of the security subject to maximum of Rs.100/-	1. Same duty as a bond 2. Rs. 15.75	1. Same duty as a bond 2. Rs. 50/-
58	SETTLEMENT	a. Same duty as a bond b. Same duty as a bond	48 1. Same duty as a conveyance 2. Same duty as a conveyance	55 (a) 1. Same duty as a bond 2. Same duty as conveyance  (b) 1. Same duty as a bond 2. Same duty as a conveyance	1. Same duty as a conveyance 2. Same duty as a conveyance	49 A.a. Same duty as a bottomry bond b. Rs.6/- for every Rs.100/- or part thereof of the market value B. Same duty as a bottomry bond, but not exceeding Rs.90/-	1. Same duty as a bond 2. Same duty as a bond	Same duty as a bond Same duty as a bond
59	SHARE WARRANTS	1 1/2 times duty payable on conveyance	49 1 1/2 times duty payable on conveyance	56 Rs. 5/- 40	1 1/2 times duty payable on conveyance	50 1 1/2 times duty payable on a conveyance	1 1/2 times duty payable on a conveyance	1 1/2 times duty payable on conveyance
60	SHIPPING ORDER	One anna	50 20 paise	57 Rs. 1/-	20 paise	51 20 paise	Rs. 1/-	
61	SURRENDER OF LEASE	a) duty with which such lease is chargeable  b) Rs. 5/-	51 a) the duty with which such lease is chargeable  b) Rs. 100/-	58 duty with which such lease is chargeable maximum Rs. 100/-	a) duty with which such lease is chargeable  b) Rs. 10/-	52 a) duty with which such lease is chargeable  b) Rs. 30/-	a) duty with which such lease is chargeable  b) Rs. 15.75	a) duty with which such lease is chargeable  b) Rs. 20/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- IA	ANDHRA PRADESH \$ Schedule- IA	BIHAR \$ Schedule- IA	MADHYA PRADESH \$ Schedule- IA
62	TRANSFER	a) 75 paise for every Rs 100 or part thereof b) 1/2 of duty payable on conveyance c) i duty with which such bond, mortgage deed or policy of insurance is chargeable ii. Rs.5/- d. Rs.10/- e. Rs.5/-	52 a) 1/2 of the duty payable on conveyance b) i.duty with such bond,mortgage deed or policy of insurance is chargeable ii Rs.100/- c) Rs.100/- d) Rs.200/-	59 a) 50 paise for every Rs 100 or part thereof of the consideration amount of debenture maximum Rs 10,000 b) same duty as bond maximum Rs 100/- c) Same duty as a bond maximum Rs 100/- d) same duty as a bond maximum Rs 100/-	a) 50 paise for every Rs 100 or part thereof b) Rs.1 for every Rs.100 or part thereof. c) i. duty with which such bond, mortgage deed or policy of insurance is chargeable ii Rs.15/- d) Rs.20/- e) Rs.10/-	53 a) 1/2 of the duty payable on a conveyance b) i. duty with which such bond,mortgage deed or policy of insurance is chargeable ii. Rs. 30/- c) Rs. 35/- d) Rs. 30/-	b) 1/2 of the duty payable on a conveyance c) i.duty with which such bond or policy of insurance is chargeable ii Rs.15.75 d) Rs.42/- e) Rs.15.75/-	b) 1/2 of the duty payable on bond, c) i.duty with which such bond, mortgage deed or policy of insurance is chargeable i. Rs. 20/- d) Rs. 30/-
63	TRANSFER OF LEASE BY WAY OF ASSIGNMENT	Same duty as a conveyance	53 Same duty as a conveyance	60 Same duty as a conveyance	Same duty as a conveyance	54 Same duty as a conveyance	Same duty as a conveyance	Same duty as a conveyance
64	TRUST	a) Same duty as a bond Maximum Rs 15/- b) Same duty as a bond maximum RS.10/-	54 Same duty as a bond Maximum Rs.500 b) Same duty as a bond maximum RS.200/-	61 a) i) Same duty as a bond ii) Same duty conveyance b) i) Same duty as a bond maximum Rs 100/- ii) Same duty as a bond maximum Rs.100/-	a) Same duty as a bottomry bond Maximum Rs 25 b) Same duty as a bottomry bond maximum RS.25/-	55 a) Same duty as a conveyance Maximum Rs.200/- b) Same duty as a conveyance maximum RS.100/-	a) Same duty as a bond b) Same duty as a bond	a) Same duty as a bond Maximum Rs 47.25 b) Same duty as a bond maximum Rs 31.25

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No.	DESCRIPTIO OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	KARNATAKA *	BOMBAY *	WEST BENGAL * Schedule- 1A	ANDHRA PRADESH S Schedule- 1A	BIHAR S Schedule- 1A	MADHYA PRADESH Schedule- 1A
65.	WARRANT FOR SURCHARGE	Four annas	55 Rs 1.50	62 Rs.1/-	Rs 1/-	56 Rs 1.50	85 paise	Rs. 1/-

Appendix-X  
RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA S SCHEDULE- IA	PUNJAB H.P. S HARYANA, CHANDIGARH, DELHI SCHEDULE- IA	UTTAR PRADESH SCHEDULE- IA	GUJARAT *	TAMIL NADU *
1.	ACKNOWLEDGEMENT	One anna		25 paise	50 paise	50 paise	Rs. 1
2.	ADMINISTRATION BOND	A. Same duty as a bond  B. Rs.5/-	The same duty as a bond	A. The same duty as a bond  B. Rs.15/-	Subject to maximum Rs 200/- The same duty as as a bond every Rs 100 or part thereof	Subject to maximum Rs.40/- Rs 4/- for	Same duty as a bond
3	ADOPTION DEED	Rs.10/-	200 Rs/-	Rs 37.50	Rs 100/-	Rs 50/-	Rs 50/-
4	AFFIDAVIT	Rs.1/-	10 Rs/-	3 Rs/-	a. Rs.2/- b. Rs.5/-	Rs 10	Rs 10
5	AGREEMENT OR MEMORANDUM OF AN AGREEMENT	A. two annas B. maximum Rs.10/-, one anna for every Rs.10000/- or part thereof C. eight annas	A. Rs.1/- B. Maximum Rs.42/-, 50 paise for every Rs.10,000/- or part thereof. C. Rs.3	A. 40 paise B. Maximum Rs 22.50, 25 paise for every Rs.10,000/- or part thereof C. Rs.6	A. 60 paise B. Maximum Rs.45/-, 30 paise for every Rs.10,000/- or part thereof B-1 Same duty as conveyance on one half of the amount of consideration set forth in the instrument C. Rs.100/-	a. 50 paise b. Maximum Rs. 40 25 paise for every Rs.10,000 or part thereof c. i) a.20 paise b.35 paise for every Rs.5000 or d. 25 paise e. a. 10 paise b. 40 paise c. 75 paise	a. Rs.1/- b. Maximum Rs. 450/- 30 paise for every Rs.10,000 or part thereof c. i) 15 paise for every Rs.2500 or part thereof d. 30 paise e. i) 10 paise ii) 50 paise f. 50 paise

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No.	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB 11 P \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
						f. i) 50 paise ii) Rs.1/- iii) Rs.2 h. 10 paise for every Rs.2500	g. 10 paise for every Rs.2500 or part thereof
6.	AGREEMENT RELATION TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE	2 A. Same duty as a Bill of exchange B. 1/2 duty payable on Bill of exchange	Different rates	Different rates	Different rates	1 a) Nil b) Rs. 25 c) Rs.100 d) Rs.500 e) Rs.1000 f) Rs.5000 2 a) i) 50 paise for every Rs.100 or part thereof ii) Rs.1/- for every Rs.100 or part thereof b) Half the duty payable under sub clause (a)  Same duty as Article 12	Different rates
7	APPOINTMENT IN EXECUTION OF POWER	Rs.15/-	Rs.100/-	Rs.37.50	A. Rs.50/- B. Rs.100/-	8. Same duty as Memorandum of Association under clause (b) of article 35 9. Rs.100	Rs. 100

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB H P \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
8	APPRAISEMENT OR VALUATIONS	A. Same duty as a bond B. Rs.5/-	A. Same duty as a Bottomry bond B. Rs.21/-	A. Same duty as a Bottomry bond. B. Rs.15/-	A. Same duty as a bond B. Same duty as a bond for Rs.1000/-	10 Rs. 50/-	a. Same duty as a bond b. Rs. 40/-
9	APPRENTICESHIP DEED	Rs.5/-	Rs.50/-	As in schedule 1	Rs.12/-	11	Rs. 20/-
10	ARTICLE OF ASSOCIATION OF A COMPANY	Rs.25/-	A. 200/- B. Rs.120/-	A.Rs.60/-	Rs.300/-	12 a. Rs.200/- b. Rs.1000/- c. Rs.5000/- d. Rs.6000/- e. Rs.10,000/- f. Rs.15,000/- g. Rs.20,000/-	Rs. 300/-
11	ARTICLE OF CLERKSHIP	Rs.250/-		As in Schedule 1	Rs.400/-		
12.	AWARD	A. Same duty as a bond B. Rs.5/-	A. Same duty as a Bottomry Bond B.i. Rs.1000-5000 - Rs.27/- ii. Rs.1.50 maximum- Rs.138/-	A. Same duty as a bond B.i. Rs.1000-5000- Rs.15/- ii. Rs. 15/- maximum Rs.12.50 paise	A. Same duty bond B. Rs.1.50 C. Same duty as a bond for Rs.1000/-	13 Maximum Rs. 40/- Same duty as a bond	a. Same duty as a Bottomry Bond b. Rs.50/- and Rs.2 subject to maximum of of Rs.150/- for every additional Rs.1000 or part thereof in excess of Rs.5000/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT. 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB H P \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
13	BILL OF EXCHANGE	B. (ii) Rs. 2.50/- Rs. 5/- Rs. 5/- (iii) Rs. 3.75/- Rs. 7.50/- Rs. 7.50/- (iv) Rs. 5/- Rs. 10/- Rs. 10/- Rs. 10/- C. Rs. 10/- Rs. 20/- Rs. 20/-					
14	BILL OF LADING	Rs. 2/-		As in Schedule-1			
15	BOND		Different rate	Different rate	Different rate	14 Rs. 6 for Rs. 1000 or part thereof	Different rate
16	BOTTOMRY BOND	Same duty as a bond	Different rate	Different rate	Same duty as a bond	15 Same duty as a bond	Rs. 4 for every Rs. 100 or part thereof upto Rs. 1000 and Rs. 20 for every Rs. 500 or part thereof in excess of Rs. 1000/-
17	CANCELLATION	Rs. 5/-	Rs. 100/-	Rs. 15/-	Rs. 25/-	16 Rs. 20/-	Rs. 50/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB H.P. \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
18	CERTIFICATE OF SALE	a two annas b 10-25 annas c same as conveyance	a. 40 paise b. 80 paise c. same as conveyance	same as a conveyance	17.A CERTIFICATE OF ENROLMENT Rs 250/- 17.B.CERTIFICATE OF PRACTICE Rs 500/- 18 Same duty as conveyance	17 Same duty as a conveyance	a. Rs.1/- b. Rs.2/- bb. Rs.3/- c. Same duty as a conveyance
19	CERTIFICATE OR OTHER DOCUMENT	two annas		40 paise	50 paise	18 Rs 2/- 10A Clearance List 18A/18B/18C 18D/18E	Rs 1/-
20	CHARTER PARTY	Rs.1/-	Rs.50/-	Rs.5/-	Rs 6/-	19 Rs.5/-	Rs 10/-
21	OMITTED			Rs.30/-		20-AC +127 Agreement Rs.5/-	
22	COMPOSITION DEED	Rs.10/-	Rs.50/-		Rs.50/-		Rs.60/-
23	CONVEYANCE	eight annas-Rs.10/- Rs.5 for every Rs.500 or part thereof in excess of Rs.1000/-	Rs.1.50 - Rs.42/- Rs.21/- for every Rs.500 or part in excess of Rs.1000/- Rs.1000/-	(Imm. Prop) Rs 5-100 Rs.50 for every Rs.500 or part thereof in excess of Rs.1000/- (Others) Rs.1.50 -30/-	Rs.6.50-Rs.125/- Rs.62.59 for every Rs.500 or part thereof in excess of Rs.1000/-	20	a. Rs.8/- for every Rs.100 or part thereof of the market value of the property

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB H.P. \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *	
				Rs 15/- for every Rs 500 or part thereof in excess of Rs.1000/ <u>Haryana</u> (Imm. prop) Rs 6.25 - Rs.125/- Rs.62.50 for every Rs. 500/- or part thereof in excess of Rs.1000/- (Others) Rs 3-62.50/- Rs 31.25 for every Rs 500 Rs 500 or part thereof in excess of Rs 1000/-				b Rs 7/- for every Rs.100/- or part thereof of the market value of the property
24	COPY OF EXTRACT	i) eight annas ii) Rs. 1/-	i) Rs.2.50 ii)Rs.5/-	i) Rs. 1.50 ii) Rs 3/-	i) 2.25 ii) Rs 3/-	21 Rs.20/-	i) Rs 5/- ii)Rs 10/-	
25	COUNTER PART OR DUPLICATE	a same duty as original b Rs.1/-	a same duty as original b Rs.5/-	a 1.15/- original b Rs 3/-	a same duty as original b Rs.5/-	22 The same duty as payable on the original subject to a maximum of Rs.20/-	a) Same duty as is payable on the original b) Rs 10/-	
26	CUSTOMS DUTY	a same duty as bond b Rs. 5/-	a same duty as bond b Rs 50/-	<u>25A/ 10 paise</u> a same duty as bond b Rs 15/-	Same duty as bond subject to maximum of Rs.150/-	23 Maximum Rs.40/- for every Rs.100 or part thereof	a Same duty as a bottomry bond b Rs 40/-	

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB U.P. \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
27	DEBENTURE	a 20 paise - 7.50 3.75 for every Rs.500 or part thereof in excess of Rs.1000/- b 75 paise - Rs.15/- 7.50 for every Rs.500 or part thereof in excess of Rs. 1000/-					
28.	DELIVERY ORDER IN RECEIPT OF GOODS	one anna		25 paise	50 paise	24 Rs.10/-	Rs.1/-
29	DIVORCE	Rs.1/-	Rs.100/-	Rs 30/-	Rs 25/-	25 Rs.500/-	Rs 25/-
30	ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT	a. Rs.500 b. Rs. 250/-		a Rs 750/- b Rs 750/-			a Rs.625/- b. Rs.312.50
31	EXCHANGE OF PROPERTY	same duty as a conveyance	same duty as on conveyance	same duty as on conveyance	same duty as on conveyance	26 Same duty as conveyance	Same duty as a conveyance
32	FURTHER CHARGE	a same duty as a conveyance b (i) same duty as a conveyance (ii) same duty as a bond	a same duty as a conveyance b (i) same duty as a conveyance (ii) same duty as a bond	27 a same duty as a conveyance b (i) same duty as a conveyance (ii) same duty as a bottomry	a same duty as a conveyance b(i) same duty as a conveyance (ii) same duty as a bond	a Same duty as a conveyance b i Rs.3 for every Rs.100 or part thereof less the duty already	a. Same duty as a conveyance for a market value. b i. Same duty as a conveyance for a market value

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA S SCHEDULE- 1A	PUNJAB H.P. S HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
				bond		paid. ii. Rs.3/- for every Rs.100 or part thereof	ii. Same duty as a bottomry bond
33	GIFT	Same duty as a conveyance	Same duty as a conveyance	Same duty as a conveyance	Same duty as a conveyance	28 Same duty as a conveyance	Same duty as a conveyance for a market value
34	INDEMNITY BOND	Same duty as a Security Bond	Same duty as a Security Bond	Same duty as a Security Bond	Same duty as a Security Bond	29 Maximum Rs 60/- Rs.6 for every Rs.100 or part thereof of the amount recovered	Same duty as security bond
35	LEASE	A. Same as a Bond 2. Same as a Bond 3. Same as a Conveyance 4. Same as a Conveyance 5. Same as a Conveyance B. Same as a Conveyance C. Same as a Conveyance 8. Same as a Conveyance	A. Same as a Bottomry Bond 2. Same as a Bottomry Bond 3. Same as a Conveyance 4. Same as a Conveyance 5. Same as a Conveyance 6. Same as a Conveyance 7. Same as a Conveyance 8. Same as a Conveyance	A. Same as a Bond 2. Same as a Bond 3. Same as a Conveyance 4. Same as a Conveyance 5. Same as a Conveyance 6. Same as a Conveyance 7. Same as a Conveyance 6. Same as a Conveyance	A. Same as a Bond 2. Same as a conveyance 3. Same as a Conveyance 4. Same as a Conveyance 5. Same as a Conveyance	30 a i) Same as a bond ii) Same as a bond iii) Same as a conveyance on the average annual rent iv) Same as a conveyance on the average rent v) Same as a conveyance on thrice the annual rent vi) Same as a conveyance on 5 times the average annual rent vii) Same as a conveyance on 1/5 of the whole rent	a i) Same as a bottomry bond ii) Same as a bottomry bond iii) Same as a conveyance iv) Same as a conveyance v. Same as a conveyance vi) Same as a conveyance vii. Same as a conveyance viii) Same as a conveyance b. Same duty as a conveyance c. Same duty as a conveyance

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA S SCHEDULE- IA	PUNJAB H.P. S HARYANA, CHANDIGARH, DELHI SCHEDULE- IA	UTTAR PRADESH SCHEDULE- IA	GUJARAT *	TAMIL NADU *
		B. Same as a Conveyance C. Same as a Conveyance	B. Same as a Conveyance C. Same as a Conveyance	7 Same as a Conveyance 8 Same as a Conveyance B. Same as a Conveyance C. Same as a Conveyance		or first 50 years of the lease viii) Same as a conveyance on the arrears of annual rent or for the first 10 years. b. Same as conveyance	
36	LETTER OF ALLOT- MENT OF SHARES	Two annas		30 paise	50 paise	31 Rs. 2/-	Rs. 1/-
37	LETTER OF CREDIT	Rs. 2/-		As in Schedule-I		32 Letter of guarantee	Rs. 2/-
38	LETTER OF LICENCE	Rs. 10/-	Rs. 50/-	Rs. 30/-	Rs. 30/-	33 34 Marriage Registration Rs. 250/-	Rs. 60/-
39	MEMORANDUM OF ASSOCIATION OF CO	A. Rs. 15/- B. Rs. 40/-	A. Rs. 200/- B. Rs. 500/-	A. Rs. 60/- B. Rs. 150/-	A. Rs. 200/- B. Rs. 500/-	35 a. Rs. 100 b. Same duty as Art. of Association	Rs. 200/- Rs. 500/-
40	MORTGAGE DEED	A. Same as a conveyance. B. Same as a Bond	A. Same as a B. Same as a Bottomry Bond	A. Rs. 4/- Rs. 80/- Rs. 40 for every Rs. 500 or part thereof in excess of Rs. 1000/-	A. Same as a Convey- ance B. Same as a Bond C. Rs. 2.25 for every Rs. 1000/- or part	36 a i) Same duty as a conveyance ii) Same duty as a conveyance b. Rs. 3/- for every	a. Same duty as a conveyance b. Same duty as as a bottomry bond

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No.	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA S SCHEDULE- IA	PUNJAB H.P. S HARYANA, CHANDIGARH, DELHI SCHEDULE- IA	UTTAR PRADESH SCHEDULE- IA	GUJARAT *	TAMIL NADU *
				Haryana A. Rs.3-Rs.80 Rs.31.25 for every Rs.500/- or part thereof in excess of Rs.1000/- B. Same as a Bond	in excess of Rs 1000/- c. Rs.5 for every Rs 1000/- or part thereof	Rs.100/- or part thereof	c. Rs.2.50 d. Rs.2.50
41	MORTGAGE OF A CROP	A. one anna one anna for every Rs.200 or part there of in excess of Rs.200/-. B. two annas two annas for every Rs.100 or part there of in excess of Rs.100/-.	A. 30 paise 30 paise for every Rs.200/- or part there of in excess of Rs.200/-. B. 40 paise 50 paise for every Rs.100/- or part there of in excess of Rs 100/-.	A. 15 paise 15 paise for every Rs.200/- or part there of in excess of Rs.200/-. B. 30 paise 30 paise for every Rs 100/- or part there of in excess of Rs 100/-.	A. 35 paise 35 paise for every Rs.200/- or part there of in excess of Rs 200/-. B. 60 paise 60 paise for every Rs.100/- or part there of in excess of Rs 100/-.	37. a. 25 paise for every sum of Rs.100/- or part thereof b. Rs.1 for every sum of Rs.100/- or part thereof	a. 50 paise and 50 paise b. Rs.1 and Rs 1/-
42	NOTARIAL ACT	Rs. 1/-	Rs. 3/-	Rs. 4.50/-	Rs. 3.50/-	38 Rs.10/-	Rs 10/-
43	NOTE OR MEMORANDUM	A. two annas B. Maximum Rs.10/- One anna for every Rs.19000/-	A. 75 Paise B. Maximum Rs.42/- 50 paise for every Rs.10000/-	A. 40 Paise B. Maximum Rs.30/- 30 paise for every Rs.10,000/-	A. Rs.1/ B. Maximum Rs.75/- Rs.1/-for every Rs 10,000/-	39 a. 25 paise b. 40 paise c. 75 paise	a. 1/- b. Maximum 40 paise for every Rs 10,000/- or part thereof

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB H.P. \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
						40 Note or entry in record made on a letter written by creditors	
44	NOTE OF PROTEST BY THE MASTER OF SHIP	Eight annas	Rs. 10/-	75 paise	Rs. 3/-	41 Rs 10 42. Order for the payment of money not being a bill of exchange i Rs.1/- for every Rs.1000/-or part thereof ii Same as a Bond	Rs.5/-
45	PARTITION	Same duty as a bond	Same duty as a bottomry bond	Same duty as a bond	Same duty as a bond	43 Same as a bond	Same duty as a bottomry bond
46	PARTNERSHIP	A a) Rs. 2.50/- b) Rs. 10/- B Rs. 5/-	(a) 1. Rs. 20/- 2. Rs. 100/- (b) 1. Rs. 50/-	(a) 1. Rs. 3.75 2. Rs. 22.50 (b) 1. Rs. 15/-	(a) Same duty as on a bond (b) Same duty as a bond for Rs.4000 (c) Same duty as a bond for Rs.1000/-	44 A(i) Maximum Rs.200 for every Rs.10,000/- or part thereof 2 a.Same as clause (i) Rs.200/- B. 1 Same duty as conveyance Maximum Rs 100/- 2 Rs 200/-	A a) Rs.50/- b) Rs.150/- B. Rs.100/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No.	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- IA	PUNJAB H.P. \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- IA	UTTAR PRADESH SCHEDULE- IA	GUJARAT *	TAMIL NADU *	
47.	POLICY OF INSURANCE	(a) 1. 10 paise - 10 paise 2. 15 paise - 25 paise (b) 1. 50 paise - Rs. 1/- 2. 1/2 of the duty payable in respect of original policy  (c) 1. 10 paise 2. 14 paise 3. 10 paise  (d) 1. 15 paise - 40 paise  (e) 1. 1/4 duty payable in respect of the original policy		As in Schedule I				
48	POWER OF ATTORNEY	1. eight annas 2. eight annas 3. Rs. 1/- 4. Rs. 5/-	a Rs. 50/- b Rs. 5/- c Rs. 10/- d Rs. 50/-	a Rs. 1.50 b Rs. 1.50 c Rs. 3/- d Rs. 15/-	a Rs. 3/- b Rs. 10/- c Rs. 50/- d Rs. 100/-	45 a Rs. 20/- b Rs. 20/- c Rs. 20/- d Rs. 50/-	a Rs. 50/- b Rs. 15/- c Rs. 100/- d Rs. 175/-	

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

SL. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA S SCHEDULE- 1A	PUNJAB H.P S HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
		5. Rs. 10/- 6. Rs. Same duty as a conveyance. 7. Rs. 1/-	e. Rs.100/- f. Same duty as a conveyance g. Rs 10/-	e. Rs. 30/- f. Same duty as a conveyance g. Rs. 3/-	e. Same duty as a conveyance f. Rs.10/-	c. Rs.100/- f. Same duty as a conveyance or market value whichever is greater. g. Same duty as a conveyance or market value whichever is greater. h. Rs.20/-	c. Same duty as a conveyance for the market value. f. Rs.20/-.
49	PROMISSORY NOTE	(a) 1. 10 paise 2. 15 paise 3. 25 paise  (b) 1. Same duty as as a bill of exchange		As in Schedule I			a i. 10 paise ii. 15 paise iii. twenty five paise b. Same duty as a Bill of Exchange
50	PROTEST OF BILL OR NOTE	Rs. 3/-	Rs. 10/-	Rs. 3/-	Rs. 5/-	46 Rs. 10/-	Rs. 10/-
51	PROTEST BY THE MASTER OF SHIP	Rs. 1/-	Rs. 10/-	As in Schedule I.	Rs. 5/-	47 Rs. 10/-	Rs. 10/-
52	PROXY	30 paise		As in Schedule I			30 paise
53	RECEIPT	Rs. 1/-		As in Schedule I.			20 paise

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA S SCHEDULE- 1A	PUNJAB H.P. S HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
54.	RECONVEYANCE OF MORTGANOED PROPERTY	1. Same duty as a conveyance 2. Rs. 10/-	1. Same duty as a conveyance 2. Rs. 42/-	1. Same duty as a conveyance 2. (i) Rs. 45/- (ii) Rs. 30/-	1. Same duty as a conveyance 2. Same duty as a conveyance for Rs 1000/-	48 Maximum Rs.60/- Rs.6/- for every Rs.100/- or part thereof	a. Same duty as a conveyance for market value b. (i) Rs.80/- (ii) Rs.70
55.	RELEASE	1. Same duty as a bond 2. Rs. 5/-	1. Same duty as a bottomry bond 2. Rs. 21/-	1. Same duty as a bond 2. Rs. 15/-	1. Same duty as a conveyance 2. Same duty as a bond for Rs 3000/-	49 Maximum Rs.60/- Rs.6/- for every Rs.100 or part thereof.	A. Release - same duty as a bottomry bond B. Release of benami right. a. Rs.13 for every Rs.100/- or part thereof of the the market value b. Rs.12/- for Rs.100/- or part thereof. c. Rs.21 for every Rs.100/-
56.	RESPONDENTIA BOND	Same duty as a bond	Same duty as a bottomry bond	Same duty as a bottomry bond	Same duty as a bond	50 Same duty as a bond	Same duty as a bottomry bond
57.	SECURITY BOND OR MORTGAGE DEED	a. Same duty as a bond b. Rs. 5/-	1. Same duty as a bottomry bond 2. Rs. 21/-	1. Same duty as a bond 2. Rs. 15/-	1. Same duty as a bond Rs.6/- 2. Same duty as a bond for Rs.1000/-	51 Maximum Rs.60/- for every Rs.100/- or part thereof	a. Same duty as a bottomry bond

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT. 1899	ORISSA S SCHEDULE- 1A	PUNJAB H.P. S HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
58	SETTLEMENT	a. Same duty as a bond b. Same duty as a bond	1. Same duty as a bottomry bond 2. Same duty as a bottomry bond	1. Same duty as a bond 2. Same duty as a bond	1. Same duty as a bond 2. Same duty as a bond	52 A i) Same duty as duty as a bond or market value of the property settled. ii) Same duty as a conveyance or the market value of the property settled. B i) Same as a bond or market value but exceeding Rs.20/- ii) Same as a conveyance or market value but not exceeding Rs 20/-	A. i. Same duty as a bottomry bond ii.A Rs.13/- for every Rs.100/- or part thereof B. Rs.12/- for every Rs.100/- or part thereof C. Rs.7/- for every Rs.100/- or part thereof
59	SHARE WARRANTS	1½ times duty payable on conveyance	1½ times duty payable on conveyance	1½ times duty payable on a mortgage deed with prosecution	Same duty as a debenture transferable by delivery	53 Same duty as a bond	Rs.9/- for every Rs.100/- or part thereof
60	SHIPPING ORDER	One anna		15 paise	50 paise	54 50 paise	Rs 1/-
61	SURRENDER OF LEASE	a) duty with which such lease is chargeable  b) Rs 5/-	a) duty with which such lease is chargeable  b) Rs 21/-	a) duty with which such lease is chargeable  b) Rs 15/-	a) duty with which such lease is chargeable b) Same duty as a conveyance for a consideration of Rs 500/-	55 Maximum Rs.60/- The duty with which such lease is chargeable	a. Duty with which such lease is chargeable b Rs 40/-

RATE STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA \$ SCHEDULE- 1A	PUNJAB H.P. \$ HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
62	TRANSFER	a) 75 paise for every Rs 100 or part thereof b) 1/2 of duty payable on conveyance c) i. duty with which such bond, mortgage deed or policy of insurance is chargeable ii. Rs. 5/- d. Rs. 10/- e. Rs. 5/	c) i. duty with which such payable on mortgage deed or policy of is chargeable ii. Rs. 21/- d) Rs. 42/- e) Rs. 18.75	a) as in schedule I b) 1/2 of the duty payable on debenture c) 1/2 of the duty with which such bond, mortgage deed or policy of insurance is chargeable d) Rs. 22.50 paise e) Rs. 11 25 paise.	a) as in schedule I b) Rs 1.50 - Rs 18 Rs 9 for every Rs 500 or part thereof in excess of Rs. 1000/- c) i. duty with which such bond, mortgage deed or policy of insurance is chargeable ii. Rs. 75/- d) Rs. 67.50 e) Rs. 34/-	56 a. 25 paise for every Rs. 100/- or part thereof.  b. Same duty as a bond, maximum Rs 50/- c. Rs. 50/- d. Same duty as a bond or the market value of the property, maximum Rs. 50/-	a 75 paise for every Rs. 100/- or part thereof. b Rs. 1 for every Rs. 100/- or part thereof c i. Duty with which mortgage deed or policy of insurance is chargeable ii Rs. 40/- d Rs 50/- e Rs 30/-
63	TRANSFER OF LEASE BY WAY OF ASSIGNMENT	Same duty as a conveyance	Same duty as a conveyance	Same duty as a conveyance	Same duty as a conveyance	57 A. Same duty as a conveyance or market value whichever whichever is greater	Same duty as a conveyance
64	TRUST	a) Same duty as a bond Maximum Rs 15/-	a) Same duty as a bottomry bond Maximum Rs 62/-	a) Same duty as a bond Maximum Rs 45	A a) Same duty as a bond	58 A. Same duty as a bond or market value but not exceeding	a Same duty as a bottomry bond but not exceeding Rs 90/-

RAIL STRUCTURE OF STAMP DUTIES IN DIFFERENT STATES

Sl. No	DESCRIPTION OF INSTRUMENTS	THE INDIAN * STAMP ACT, 1899	ORISSA § SCHEDULE- 1A	PUNJAB H.P. § HARYANA, CHANDIGARH, DELHI SCHEDULE- 1A	UTTAR PRADESH SCHEDULE- 1A	GUJARAT *	TAMIL NADU *
		b) Same duty as a bond maximum RS.10/-	b)Same duty as a bottomry bond maximum RS.42/-	b)Same duty as a bond maximum RS 30/-	b)Same duty as a bond on Rs.10,000 and Rs 3 for every additional Rs 1,000 or part thereof. B Same duty as a Bond Maximum Rs 75/-	Rs.100/- B. Same duty as a bond or market value but exceeding Rs.100/-	b. Same duty as a bottomry bond but not exceeding Rs 60/-
65	WARRANT FOR GOODS	Four annas	Rs.5/-	Rs 1.15	Rs 3/-	59 Rs.1/-	Rs 5/-

\* Rate Structure of Stamp Duties on 1994  
 § Rate structure of Stamp Duties on 1990

## CHAPTER-VI

### Summary and Conclusions

#### The Context

The objective was to study the Indian Stamp Act, 1899 and the State Stamp Acts, with reference to the impact of the levies under the Acts on the process of liberalization and economic reform. The Study was expected to result in a set of recommendations for the Amendment of the Act and the revision of the rates, so as to reduce the constraints to economic activity and the repressive effects of the Act, without resulting in any significant loss of revenue to the States.

The Constitution provides for the levy of Stamp Duties on instruments mentioned in Entry 91 by the Central Government, but the proceeds are to be collected and retained by the States. Under Entry 63 of the Constitution, the States are allowed to determine the rates of duties in respect of instruments other than those mentioned in Entry 91, and also decide on the type of instruments. Entry 44 of the Concurrent List covers the machinery provisions for Stamp Act, on which the Central Law will prevail over the provisions of State Act.

It is necessary to look at the provisions and actual operation of the Central and State Stamp Acts, together with the Indian Registration Act, in view of the fact that the levy of stamp duty is integrally connected with the registration process for all State instruments, and because the same hierarchy of administration in the State implements both the Acts. The legal amendments to the Stamp Acts and the Schedules, and the Registration Act, have been proposed on that basis.

It is further suggested, as noted by the Chelliah Committee, that a comprehensive view be taken of all the recurring and non-recurring levies on property under the Income Tax Act, Wealth Tax Act, Gift Tax Act, Stamp Act, Municipal provisions for

property tax and transfer of property, recovery of unearned increment etc. The reform in Stamp Act has to be pursued along with related changes needed in Income Tax Act, Companies Act etc. within the perspective of long term economic reform and fiscal policy.

### **Fiscal Importance of Stamp Duties and Registration Fees**

Stamp Duties and Registration Fees are an important source of revenue for the State Governments. The revenues would exceed Rs.5000 crores in 1995-96 from all States as projected by the Tenth Finance Commission. The growth of this revenue has been remarkable since 1985-86 especially because of the increased realisation of revenues from conveyances (which account for a major proportion of the Non-judicial Stamp Duties), arising from legal powers with a number of State Governments under the Stamp Act to enquire into undervaluation. The buoyancy has ranged from 0.85 to 1.53 and the growth rate from 12 to 23 per cent across States. Part of the revenue from stamp duty was passed on to Local Bodies, and forms a significant source of intergovernmental transfer to Municipalities in a number of States.

At the same time, the duty was not uniformly exploited by all the States, as revealed by the tax effort analysis, with some States showing greater ingenuity than others in revising the rates or redefining the instruments such as the conveyance or capital market transactions. The rates of Stamp Duties for various instruments vary across the States as may be seen from the relevant Appendices (Appendix IX and Appendix X of Chapter V)

The revenue from Stamp Duties is broken up into Judicial Stamp Duties (under Court Fees Act) and Non-Judicial Stamp Duties (under the Central and State Stamp Acts). To get an idea of the total burden, the revenue from Registration Fees is analysed as well (levied by the States under Indian Registration Act). The predominant share of revenue comes from Non-judicial Stamp Duties (NSD). The instrument-wise revenue realisation of NSD could not be obtained from the States except for Uttar Pradesh, Maharashtra and Gujarat. However, it was found that, generally, about 75 to 90 per

cent of the NSD revenue is derived from Stamp Duties on conveyances. The high rates of Stamp Duties (and the procedures connected therewith) on conveyances and transfer of property, combined with the provisions of Capital Gains Tax, Gift Tax, recovery of unearned increment etc., lead to a high monetary burden on the registering parties, and the consequent tendency to undervalue properties or evade registration.

It is our finding that it is not feasible to consider the abolition of the Stamp Duties on major instruments in the State List, because of their revenue contribution, their significance in the overall scheme of State taxes as a buoyant revenue source, and the absence of alternative sources of revenue or Central transfers to compensate the loss. It would be more useful to concentrate on steps to rationalise the present legal provisions, procedures and Schedule of rates.

#### **Instruments under the Indian Stamp Act**

The levy of Stamp Duties on these instruments was examined by the Eighth Finance Commission, and then by an Official Committee set up by the Finance Ministry. This led to certain amendments to the Schedule by the Finance Act of 1994, and proposed changes in respect of Insurance Policies, Bills of Exchange and Promissory Notes.

Except for Maharashtra, instrument-wise details of revenue from the Central instruments are not available. But State-wise data on stamp duty remittances in respect of LIC/GIC policies are available. The perceived loss of revenue from duty remission would be very high for States like Maharashtra, which are witnessing major volumes of trading of these instruments, and financial transactions. It is seen however that the burden from Stamp Duties on Central instruments is not significant for the various institutions, if considered in isolation. It is considered more useful to study the impact of duties on financial and capital market instruments levied by State Governments, both under the Indian Stamp Act and the State Schedules, the definitions of instruments, and the procedures associated with determination of duty, procurement of stamps etc. in order to address the problems referred to by SEBI and the financial institutions.

In the long run, and with the help of collaborative studies on the State-wise financial impact of these instruments by the State agencies and the affected institutions, it may be possible to consider the abolition of duties on Share Transfer, Assignment of Debt, all types of Bill of Exchange and Promissory Notes etc., subject to their replacement by mutually agreed annual consolidated fees to be paid by designated capital market institutions to the respective State Governments. In that case, the evidentiary value of the documents need no longer depend on stamping. However, till such time as the necessary institutions fully develop, such as the National Stock Exchange, the proposals made in Chapter III can be implemented, with the cooperation of State Governments: for the levy of uniform, low and ad valorem duties, as proposed in the Appendix III of Chapter V, for the use of franking machines, other simplified procedures, and provision for the payment of composite duty, wherever possible, and for uniform definition of dutiable instruments. This should be accompanied by low mortgage rates for Debenture Trusts, through an amendment to the Schedule of the Indian Stamp Act, and a liberal approach to valuation of properties of sick companies in the course of mergers. Some of the proposals can be enforced, on the basis of a consensus, through amendments to Indian Stamp Act, instead of relying on a series of State level amendments.

#### **Proposed Amendments to Stamp Act and Registration Act**

These are described in detail in the legal Chapter and in the Appendices thereunder (See Appendices V and VI of Chapter V). The proposed structure of duties cover both instruments in the Central List and such of those instruments in the State List as are related to financial and capital market transactions. The purpose is to ensure the levy of low and ad valorem rates uniformly across the States on all related financial and capital instruments, resting on the same definition and value base. Some remissions on inconsequential instruments can be considered. Nominal duties are proposed for Assignment of Debt and trading in Participation Certificates in the interest of promoting a secondary market, in the hope of parallel steps by the Government of India to amend the Income Tax Act and the Companies Act (See Appendix VIII of Chapter V) suitably, and to legislate for speedy foreclosure of mortgage, and of the emergence of market

makers in debt.

As regards the exemption clause in Article 27, it may remain, so long as the issue of debentures by Trusts in the State of incorporation of the company is encouraged by low rates of duties on mortgage, prescribed under the Indian Stamp Act, regardless of the duties on other mortgages. On the proposal relating to LIC/GIC policies, the objective can be achieved by providing for composite duty in all similar cases for designated institutions, as proposed in the legal Chapter, without exempting them from the provisions of Stamp Act for evidentiary purpose. The problem in respect of conveyances is both the high rates and complex procedures prescribed by Law in a number of States for determining market value. It is proposed that properties below the value of Rs.100,000 carry only a nominal rate of duty and that properties of high value carry rates of duty on a graduated slab from 2 to 10 per cent as in Maharashtra, inclusive of Registration Fees, tax on transfer of property etc., At the same time, in order to plug loopholes exploited by unscrupulous developers and individuals alike, the definition of conveyance is elaborated to cover all instruments and agreements evidencing transfer of possession of property, with set-off for duties paid at earlier stages of the transaction. The Appendix (Appendix III of Chapter IV) on valuation describes the approach to devising an acceptable valuation base. The proposed reduction in Stamp Duties on conveyances may not meet with universal approval from the State Governments, but, as seen in the case of tax reform, the increased number of registration of property transactions and voluntary compliance with notified market values, will in the long run make up in absolute revenues and buoyancy for the short term losses in revenue from reduced rates.

The amendments to various definitions of instruments have been proposed, after considering the Report of Law Commission and the views of State Governments. Besides these, it is proposed to insert a Section on valuation in the Indian Stamp Act in order to provide for uniform procedures in this regard, to encourage self-assessment of stamp duty, payable on the basis of guideline values, for the removal of powers with Sub-Registrar for referring cases to Collector for valuation so long as the duty is paid as per guideline values, and for the registering parties alone to seek adjudication on value. It

is proposed further that, as recommended by Law Commission, uniform machinery provisions be enacted in the Indian Stamp Act to supersede the differing provisions in various States. The exemptions from duty could be greatly minimized and incorporated in the Act itself, with future provision for selective remission of duty in Public interest. Ultimately, the objective should be to have a single Indian Stamp Act, with the States making changes only in their Schedule as part of the Finance Act.

### **Machinery Provisions**

The machinery provisions would address the procedural aspects of re-grouping the large variety of instruments in the Schedule through rational definitions, reducing the large variety of stamps sold, the sale of stamps and stamp papers, provision for franking machines and composite duty, payment by certification or through nationalized banks/Post Offices, adjudication, cancellation, penalties, refund, appeals etc.

This has to be accompanied by amendments in the Indian Registration Act as noted in the legal Chapter (Appendix VI of Chapter V) to reduce the requirement of various approvals prior to registration, to eliminate the power of Registering Officer to refer cases to Collector for valuation, to provide for prompt return of the registered document in person or by post, and for coordination with other Central and State Departments and Local Bodies. The compulsory registration of all documents involving transfer of possession is suggested in line with the demand of State Governments. Registration Fees should be related to the cost of administration as in Bombay, and should not be levied on an ad valorem basis as in a number of States.

It is proposed thus that the activities of registration and stamping be delinked as in the developed countries, and that the registration of documents be done only within the framework of the Indian Registration Act without being charged with the task of ensuring compliance with other Laws of the land.

## **Amendments to Other Central Laws**

The objective of facilitating economic liberalisation, and increased convenience of Public and the institutions, will be fully achieved only if, along with reforms in the Stamp Act and Registration Act, certain amendments in the Law and procedures are made in the Income Tax Act, Evidence Act and Company Law as proposed in Chapter IV. In particular, it is necessary to delete the requirement under Section 230 A of Income Tax Act for registration and to make various changes in Chapter XXC as proposed in the Report.

## **Reforms in Procedures and Administration**

The public perception of harassment and delay, not to mention allegations of corruption, is due, as much to high rates of duty, as the problems of securing approvals, the cost and time involved in the purchase of stamps and stamp papers, limited outlets for securing stamps, inadequate space for office, storage of records and reception of public, inadequate information to the public on duties and procedures, lack of adequate staff and modern equipment, and the lack of people- friendly approach. The workload can be reduced by minimising the need to buy and affix stamps and by alternative modes such as franking machines, payment of composite duty, acceptance of bank chalan or bank drafts for certification by the Collector of Stamps, permitting Post Offices to sell stamps etc. The stock depository institutions can pay duty on behalf of the clients on the basis of computer records, and the companies can pay duty in respect of transfer of shares lodged with them. The procedure of copying can be simplified, and the registered documents can be sent by post or courier. The NOCs for registration can be dispensed with and the reference for valuation minimised. Better coordination can be established with Income Tax Department, Appropriate Authority, Municipality and Revenue Officials for mutation of records etc. Information booklets can be issued and the association of flatowners, cooperatives etc. can be engaged in the task of public awareness and facilitation. The image of the Department of Registration and Stamps will undergo a positive change if the reforms are carried out.

## **Valuation**

It is necessary to provide for self assessment of stamp duty on the basis of publicised guideline values of land and property which are biennially or annually notified in different areas by independent professional valuation cells, on the model of the U.K. and Malaysia. The approach to the setting up of such a cell for each State, with District Offices, has been outlined in Appendix III of Chapter IV, as is the proposal for a common valuation base for Income Tax, Property Tax and Stamp Act purposes. The market value of lands and buildings need however to be determined on the basis of legally notified parameters, and after public enquiry, as was done in the case of Property Tax in Andhra Pradesh. Once the system is tried out on a pilot basis in few cities jointly by Income Tax Department and State Government. the parameters can be finalised and then made part of the Indian Stamp Act.

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