

Reform of
Stamp Duty Administration
in Orissa

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Preface

The National Institute of Public Finance and Policy undertook this study in response to the request of the Government of Orissa in early 1998. Opinions expressed are those of the author and the Members of the Governing Body of the Institute are in no way responsible for these.

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Director

New Delhi
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The Constitution of India empowers the Union government and the State governments to legislate provisions regarding stamp duties as per their competence according to the Union list and the State list in the Seventh Schedule. Entry 44 of the Concurrent list covers matters other than the tax rate. Thus, the constitutional provisions regarding stamp duty appear to imply that as far as rates are concerned, the instruments connected to matters included in the Union list are in the domain of the Central government, while the rates on residual items can be legislated upon by the individual States. Machinery provisions (where, how and by whom should the tax be collected) should be arrived at through consensus and agreement between the States and the Central government, although the Parliament has overriding powers. In practice, however, several States have enacted a number of machinery provisions as well, which stand as long as the Parliament does not actually exercise its overriding powers.

The stamp Duty in Orissa, like in all other States of India, is levied under the Indian Stamp Act, 1899, and further provisions can be found in the Indian Stamp (Orissa Amendment) Act, 1986, and Orissa Additional Stamp Duty Act, 1970 as amended and complemented by related legislations/ordinances promulgated. Orissa Stamp Rules, 1952, as updated, contain the applicable machinery provisions. This is essentially a tax on transfer of property through sale or other means and is closely connected to registration of relevant documents. There is a distinct registration fee levied in exchange of the service of conferring a legal status to the document registered; the stamp duty is perhaps intended to be direct tax on the presumption of ability to pay.

The main objectives of this study, in conformity with its terms of reference as communicated by the Government of Orissa, is to examine the system of levying stamp duty in its totality (in particular, the non-judicial stamp duty) and suggest possible

reforms. These reforms should simplify and modernise its administration, rationalise the rate structure and control evasion and/or avoidance.

1. Revenue Significance

Stamp duty and registration fees together (SDRF) constitute an important source of revenue for the State governments. Table 1 sets out the tax structure of all States as a whole and that of Orissa for 1995-96 and 1996-97.

Table 1
Own Tax Structure of Orissa and All States

(Rs. crore)

Tax	Revenue in 1995-96		Revenue in 1996-97	
	Orissa	All States	Orissa	All States
Total Own Tax	1127.19	63865.19	1342.04	71101.52
Sales Tax	716.10	35477.25	893.51	43926.90
Motor Vehicle Tax #	107.50	5233.99	128.26	5779.96
State Excise	73.44	8516.47	90.77	8805.32
Stamp Duty and Regn. Fee	63.05	5897.52	68.52	6267.22
Electricity Duty	121.35	2377.17	120.06	2718.27
Land Revenue *	39.47	1377.23	35.20	1152.38
Agricultural Income Tax	..	154.27	..	103.24
Entertainment Tax	6.27	439.58	5.72	605.79
Profession Tax	..	681.02	..	907.27
Other Taxes	0.01	3710.69	0.00	835.27

Includes passenger and goods tax

* Includes urban immovable property tax

Source: *Reserve Bank of India Bulletin (Supplement)*, February 1998 and February 1999.

As the table shows, own tax revenues are dominated by sales tax, both in Orissa and in all States, contributing more than 60 per cent of the total. However, in the case of all States, the other major revenue contributors are State excise, SDRF, and motor vehicle taxes, in that order. In Orissa, the order changes a little in that motor vehicle taxes follows sales tax in terms of revenue significance. Revenue from SDRF accounts for only about 6 per cent of the total own tax revenue in Orissa, the corresponding percentage for all States being 12. As a ratio of net State domestic product in 1995-96, revenue from SDRF works out to only 0.30 per cent in Orissa, compared to 0.53 per

cent. 0.53 per cent, 0.58 per cent and 0.52 per cent in the contiguous States of Bihar, West Bengal, Madhya Pradesh and Andhra Pradesh. Evidently, collection of SDRF is comparatively low in Orissa. There is no evidence to suggest that the poor revenue performance is a matter of deliberate policy to lower the cost of transactions in the State. Evidently, the cause lies either in the socioeconomic determinants of revenue from this tax, or in the tax structure itself and/or the manner of tax administration. While the former set of variables is the subject of a different type of study, the possible shortcomings in the latter provide the main motivation for the present study. Also, the structure and administration of this tax in Orissa has never been reviewed except to raise the applicable statutory rates periodically. As we shall see below (Chapter II, section 3), this has resulted in accumulating difficulties for and pressure on the administrative setup, which has increasingly caused delays and harassment of the taxpayers, and increased the cost of voluntary compliance, simultaneously raising the payoff from evasion/avoidance. There is need for a review of the administrative machinery and methods, with the objective of rationalisation, simplification and speedy disposal of cases, containing tax evasion and avoidance to the extent feasible at the same time. The aim of this report is to carry out such a review and provide recommendations.

2. Plan of the Report

We begin with the tax structure in the next chapter (Chapter II) and suggest some desirable changes. Chapter III deals with administration of the tax, mainly with respect to simplification, easier compliance and modernisation, Chapter IV deals with computerisation and Chapter V discusses the important issues of property valuation and tax evasion/avoidance. Chapter VI concludes with a summary of the recommendations.

CHAPTER II THE STRUCTURE OF STAMP DUTY IN ORISSA

1. Coverage of the Central Act

Instruments covered under the Indian Stamp Act 1899 (Central Act) include:
(1) Bill of Exchange, (2) Bill of Lading, (3) Cheque, (4) Debenture, (5) Letter of Credit, (6) Policy of Insurance, (7) Promissory Note, (8) Proxy, (9) Receipt, and (10) Transfer of shares.

These instruments have been mentioned in the Entry 91 of the Union List in the 7th schedule to the Constitution of India. They are chargeable with duty under section 3 of the Act at the rates set out in the relevant Schedule to the Act. Article 21 of the Schedule has been omitted by the Central Act V of 1927. As such, no stamp duty is leviable on the instrument of cheque. The Central government can also add new instruments through constitutional amendments. Power to prescribe the rates of the duty on these instruments is vested in the Parliament of India. However, the collection is by the State Government and the proceeds of the duty are assigned to the State in which they are collected.

The rate of duty on an instrument enlisted in Entry 91 is uniform throughout India. This uniformity in rate in respect of the instruments listed above has been considered desirable as these are mainly used in the financial sector, capital market and in the transactions of trade, commerce and business. A uniform rate structure eliminates tax-induced distortions in the flow of these transactions. Recently the Government of India has remitted the stamp duty on instruments of bill of exchange

and promissory note.¹ Thus, out of ten Central instruments, seven instruments are now chargeable with duty. These are: bill of lading, letter of credit, proxy and receipt, chargeable with a fixed rate and the remaining three, namely debentures, policy of insurance and transfer of shares are chargeable with ad valorem rates. These Central instruments should not be looked upon as sources of revenue, but only as fees. As such, the rate on these instruments should be moderate so as not to affect the trade, commerce and business in India.

2. Coverage of the State Acts

Instruments other than those specified in the Union list are covered under the Stamp Acts of the concerned States. Individual State governments can therefore insert new instruments in the list of taxable instruments from time to time through amendments made by the State Legislature. Under Entry 63 of the State List, the power to levy stamp duty on these State instruments is vested in the State Legislature. These instruments along with applicable tax rates are listed in Schedule 1-A of the State Stamp Act, which combines the provision of the Central Act and the Orissa Act.

The Government of Orissa, through enactments by the State Legislature, has revised the rates of stamp duty on the State instruments from time to time. The last revision to the rates of stamp duty on the State instruments was made by the Government of Orissa through an ordinance in the year 1985 which was subsequently substituted by the Orissa Act 6 of 1986, Indian Stamp (Orissa Amendment) Act, 1986, which is now in force. Based on the rate structures of stamp duties in Orissa, the State instruments can be broadly classified under three categories:

- (i) instruments chargeable with duty at an *ad valorem* rate,
- (ii) instruments chargeable with duty at a fixed or specific rate, and

¹ It has been suggested that the Central government should consider withdrawing the order of remission and levy stamp duty on these two instruments so that the duty paid will impart them evidentiary value in case of dispute.

(iii) instruments chargeable with duty at an *ad valorem* rate on the value or amount to a certain extent and then chargeable with a fixed or specific rate when the amount or value in the instrument exceeds the limit.

2.A. Category (i): The instrument of conveyance, often known as a sale deed, is the major provider of stamp duty revenue to the State. It falls in category (i) and is chargeable with duty at *ad valorem* progressive rates on a slab basis. i.e.. higher the slab range, higher the rate of total stamp duty. The same rate structure is also applicable to many other instruments mentioned in Schedule 1-A. These other instruments include certificate of sale falling under Article 18(c), exchange, further charge, gift, lease [Article 35(a) III to VIII, 35(b) and 35(c)], mortgage with possession [Article 40 - (a)], power of attorney, when given for a consideration [Article 48(f)] and transfer of lease.

In the case of bottomry bond, which also falls in category (i), stamp duty is chargeable on it at *ad valorem* progressive rates on the basis of slab range, like in the case of the instrument of conveyance. But the applicable rate of duty is almost half of the rate prescribed for instruments of conveyance. The rate applicable to bottomry bond is also applicable to some other instruments like administration bond, bond, respondent bond, further charge [Art 32(b)(ii)], lease deed for a term not exceeding five years where only rent is paid, mortgage deed without possession [Art 40(b)], partition and settlement.

Among all the instruments listed under stamp duty, the instrument of conveyance is the most important one, in the sense that out of the total number of instruments registered in Orissa, more than 80 per cent are instruments of conveyance. The State Government gets the bulk of its stamp duty revenue from instruments of conveyance. Since the rates of stamp duty on some of the important instruments specified above are the same as that on conveyance, the prevailing rate of stamp duty on the instrument of conveyance is shown in the Annexure - I. Similarly, some other instruments mentioned above are chargeable with duty at the same rate as that

prescribed for the bottomry bond. The rate of stamp duty on bottomry bond is given in Annexure - II.

2.B. Category (ii): Instruments chargeable with a fixed or specific rate of stamp duty [category (ii)] include: acknowledgment, adoption deed, affidavit, agreement not otherwise provided for [Art 5(c)], appointment in execution of a power, articles of association of a company, apprenticeship deeds, cancellation, charter party, composition deed, copy or extracts, counterpart or duplicate, divorce, dissolution of partnership, letter of license, memorandum of association of a company, notarian act, power of attorney, note of protest by the Master of ship, protest of bill or note, transfer [Art 62(a)] and warrant for goods.

Of the instruments chargeable with a fixed duty [category (ii)], the following instruments are relatively important as they are more frequently used in comparison to others: agreement falling under Article 5(c), affidavit, counterpart or duplicate, copy or extract and power of attorney. The applicable rates are:

1. Agreement under Art 5(c)	Rs 3.00
2. Affidavit	Rs 10.00
3. Copy or Extract	
under Art 24(I)	Rs 2.50
under Art 24(II)	Rs 5.00
4. Counterpart or Duplicate	
Under Art 25(a)	Rs 2.50
Under Art 25(b)	Rs 5.00
5. Power of Attorney	
Under Art 48(a) & (d)	Rs 50.00
Under Art 48(b)	Rs 5.00
Under Art 48(c)	Rs 10.00
Under Art 48(e)	Rs 100.00

2.C. Category (iii): The instruments chargeable with *ad valorem* duty combined with fixed duty when exceeding certain amount or value [category (iii)] are: apprisement or valuation, award, custom bond, indemnity bond, note or memorandum (Art 43), reconveyance of mortgaged property, release, security bond or mortgage deed (Art 57), revocation of settlement, surrender of lease, transfer [Art 62(e)], partnership, trust and revocation of trust.

Out of the instruments falling under category (iii), the instruments of reconveyance of mortgaged property and release are important from the point of their being commonly used in the State of Orissa. The rates of stamp duty on these instruments are as follows:

1. Reconveyance of Mortgaged Property--

-if the consideration for which the property was mortgaged does not exceed Rs. 1000.00 [Art. 54(a)]	Same duty as conveyance for the amount of such consideration as set forth in the reconveyance
-in any other case [Art. 54(b)]	Rs. 42.00

2. Release (Art. 55)--

-if the amount or value of claim does not exceed Rs. 1000.00 [Art. 55(a)]	Same duty as Bottomry Bond
-in any other case Art. [55(b)]	Rs. 21.00

2.D. Additional Tax and Surcharge: The instruments of conveyances, exchange, gift, lease falling under Article 35(b) and (c), mortgage with possession, settlement and revocation of settlement purporting transfer of immovable property are also chargeable with additional stamp duty under the Orissa Additional Stamp duty Act 1970 (Act 32 of 1970) as amended. The applicable rate is shown in Schedule II of the

said Act (same rate on all instruments, with slab rates as given in Table 2 below) in addition to the duty prescribed for them in Schedule 1-A.

Table 2
Incidence of Stamp Duty on Conveyance in Orissa

(percentage rate on value of consideration)

Value of Consideration	Rural Areas			Urban Areas under Town Planning and Improvement Trust Act				Urban Areas under Development Authorities Act			
	Basic	Additional	Total	Basic	Additional	Sur-charge	Total	Basic	Additional	Sur-charge	Total
up to Rs. 2000	4.2	2.0	6.2	4.2	3.0	2.0	9.2	4.2	3.0	3.0	10.2
Rs. 2001-5000	4.2	3.5	7.7	4.2	5.0	2.0	11.2	4.2	5.0	3.0	12.2
Rs. 5001-10000	4.2	4.5	8.7	4.2	7.0	2.0	13.2	4.2	7.0	3.0	14.2
Rs. 10000-25000	4.2	5.5	9.7	4.2	8.5	2.0	14.7	4.2	8.5	3.0	15.7
> Rs. 25000	4.2	6.5	10.7	4.2	10.5	2.0	16.7	4.2	10.5	3.0	17.7

Note: The basic tax rates are expressed in percentage terms only to give an approximation of the tax burden. Actually the rates are prescribed in nominal amounts for each slab defined.

Besides, a surcharge on stamp duty at the rate of 2 per cent of the value of the immovable property situated within an area to which the Orissa Town Planning and Improvement Trust Act extends is chargeable on certain instruments of transfer and usufructuary mortgage. A similar surcharge at the rate of 3 per cent of the value of the immovable property situated within an area to which the Orissa Development Authority Act applies is also levied. All collections on this account are paid to the concerned Town Planning/ Development Authority after deducting incidental expenses. The total incidence of stamp duty on conveyance of immovable property is indicated in Table 2.

3. Stamp Duty Rates in Other States

Rates of stamp duty in Orissa and in its contiguous States of Andhra Pradesh, Bihar, West Bengal, and Madhya Pradesh on important instruments are given in Annexure-III. In the case of important instruments chargeable with duty at *ad valorem* rates, the rates in Orissa are clearly higher than in the neighbouring States. However,

the fixed rates chargeable on some important instruments in Orissa do not exhibit large differences when compared to the fixed rates of the neighbouring States. However, substantive diversion of stamp duty revenue from Orissa to these States, and to West Bengal in particular, is believed to be taking place in the case of the first category of instruments. This is probably caused by the large rate differentials in this category, combined with some outdated provisions in the Registration Act. We may recall that the instruments in this category raise the bulk of the revenue from stamp duty in Orissa. The higher rates in Orissa induce the registrant public of the State to register their instruments in the neighbouring States under section 28(1) or under section 30(2) of the Registration Act,² paying a lower rate of stamp duty. Consequently, the State of Orissa loses stamp duty on these instruments.

High tax rates always raise the expected payoff from tax evasion, which can be countered by effective tax enforcement and stiff penalties for evasion. However, stricter tax enforcement has associated costs, and there are informal limits to penalties. Hence, raising tax rates beyond a point³ only succeeds in making evasion relatively more paying, and encourages a widespread tendency to evade. Beyond the critical level, the probability of detecting tax evasion also starts falling, as most of the enforcement techniques are, in one way or another, based on deviations from the average, or the 'normal' taxpayer. *Apart from the diversion of registration of documents from Orissa to other States, the high rates in Orissa seem to have resulted in the widespread evasion scenario discussed above. In this situation, a substantial reduction in the stamp duty rates appears to be essential.* The Committee of State Finance Ministers recommended a maximum of around 8 per cent as stamp duty. Even this may be accepted only as an interim reduction; the maximum rate should ultimately be brought down to around 6 per cent.

² Section 28(1) allows the registration of properties located in more than one State to be registered in their entirety in any of the concerned States. Section 30 (2) allows registration of any instrument, irrespective of the location of the property involved, in any of the four former Presidency Towns (now metropolitan cities) of Delhi, Calcutta, Bombay (Mumbai) and Madras (Chennai).

The temporary loss of revenue to the State due to the rate reduction should be, in the long run, compensated to some extent through higher voluntary compliance and better enforcement as discussed later. It may be noted that the basic rate is constant across slabs (no progressivity) and is quite reasonable. The surcharges in urban areas also are proportional, although *it would be advisable to have a surcharge of 2 per cent in all urban areas without any further distinction*. It is the additional duty, which introduces progressivity and also pushes the tax rate to very high levels. Thus, the simplest solution to bring down the tax rates would be to repeal the additional tax. However, as argued below, a limited degree of progressivity in the tax structure is probably called for; such progressivity will also be useful to impart buoyancy to the revenue. *Hence, we would like to recommend a very limited (in terms of scope, rate and progressivity) role for additional tax. It should be applicable to the entire State for transactions with a value of consideration exceeding Rs. 5,000 only. Further, there should be only three slabs of such value, with the recommended additional tax rate mentioned against each slab as shown below.*

Rs. 5,001- 15,000	one per cent
Rs. 15,001-25,000	one and a half per cent
Above Rs. 25,000	two per cent.

This will bring down the maximum tax rate applicable on, say, conveyance from 17.7 per cent to 8.2 per cent. While the rate reduction looks drastic, it is called for in view of the lower rates in the neighbouring States, particularly Andhra Pradesh and West Bengal.

A uniform rate of stamp duty in respect of some important instruments for all the States is desirable for the convenience of the public. But this is possible only when all the States agree on such uniformity. This is now being attempted through the deliberations of a Committee of Chief Ministers to reform the system of registration and levy of stamp duty. An initial report on this subject by the Committee of State

³ Technically, this is the point where the expected gains from evasion just equals the expected losses from possible penalties, given probabilities of detection.

Finance Ministers has already been submitted⁴; a draft of a (thoroughly revised) Model Stamp Act is now under review.

4. Progressivity in the Tax Rates

In the context of stamp duty, the question of the applicability of the principle of progressivity is important, as it carries with it a potential tradeoff between the practical considerations relating to tax evasion (and hence tax revenue) and the larger principle of vertical equity. To address this question at the proper plane, the basic issue is: do the values reported in the instruments registered represent ability to pay? The answer must be a qualified yes, as some of them do and some do not. For example, a gift deed certainly represents an increase in the net worth of the recipient. Even a simple sale of property represents liquidation of an asset. It does not imply any increase in net worth and hence does not imply any income in the classic sense. But it does signify realisation of capital gains in most cases; if these capital gains are not taxed on accrual, which is the case more often than not, then they ought to be considered for taxation as income. Since it is reasonable to assume a direct relationship between the sale value of a property and the extent of capital gains that it represents, a progressive tax structure may not be altogether unjustified. However, certain other types of documents (e.g., adoption deed or divorce) can hardly be thought of as giving rise to any income. Quite appropriately, these instruments usually have a fixed duty. Thus, the current tax structure does show an appreciation of the applicability of the principle of progressivity. There is, however, no simple solution to the applicable degree of progressivity in any given case, and it is reasonable to presume a positive association between the degree of progressivity and tax evasion. Thus, on balance, a judgment regarding the maximum degree of progressivity is required on administrative grounds. Another practical consideration relates to the confusion created among taxpayers about the applicable rate of tax when progressivity is applied through a number of slabs. Also, a number of slabs at the lower end of the value of consideration is meaningless in the present context, as practically no transaction takes place at such low prices in fact.

A cap on the tax rate at a reasonable level can largely obviate the problem of tax evasion as a consequence of a progressive tax structure; a reduction in the number of differentially taxable slabs should meet the other difficulty with the present system. A cap of Rs. 2.5 lakh on stamp duty payable should be reasonable. However, to prevent misuse of this recommended provision, it will be necessary to incorporate a proviso that the cap will be applicable for instruments relating to only one piece of property or only one transaction. As for an example of the reduction in slabs, we provide below proposed slabs for conveyance, with the proposed stamp duty for each slab.

Slab	Proposed Stamp Duty
Below Rs. 100	Three Rupees
Rs. 100 to <Rs. 500	Eleven Rupees
Rs. 500 to <Rs. 1000	Thirty Two Rupees
Rs. 1000 and above	as at present

Slabs relating to other instruments may also be reduced accordingly. Of course, the simplest result will be achieved if the rate can be overtly *ad valorem* at the present proportional rate of 4.2 per cent. This, we expect, would be only a simplifying measure and would not have any revenue implication.

5. Clubbing Similar Instruments under One Rate:

No instrument is exactly the same as another instrument. The legality and legal consequences of one class of instruments are different from that of another class of instruments. Each class of instruments is to be used for a separate purpose with a distinct objective. As such, each class has been separately dealt with in Section 2 (Definitions) of the Stamp Act and have been shown separately under different articles of the schedule to the Act. Excepting a small number of instruments, each of which belongs to one of only two or three rate categories, in most cases the rate of stamp duty on different instruments vary, resulting in a bewildering array of rates of duty. This makes the identification of the properly applicable rate difficult for the taxpayer and the tax administrator, flying in the face of the canon of simplicity. An important

⁴ Report of the Committee of State Finance Ministers on Stamp Duty Reform, October 1996, NIPFP, New Delhi.

objective of reform of any tax structure must be to simplify the system to the extent possible, without violating other requirements of the system. This argues for a substantial reduction in the number of applicable tax rates.

Further, the objective of having a variety of legal instruments is only to provide for different requirements and circumstances. However, differential taxation of these instruments has led to frequent use of low-tax instruments as effective substitutes for instruments bearing higher tax rates. The most common example is the use of power of attorney for effective sale in the place of a proper conveyance deed. Such unintended use of particular classes of instruments need to be eliminated, or at least minimised. *To achieve this in a way that will stand judicial scrutiny, the Act must identify possibilities of such unintended use to the extent possible and link the identified instruments with the properly applicable tax rate. This principle needs to be combined with a substantial reduction in the multiplicity of tax rates to achieve a tax structure that would be simple, easy to administer, easily complied with and less prone to avoidance.*

In the first place, as mentioned earlier, there are two groups of instruments taxed at the same rate as conveyance and bottomry bond. This is already as in the applicable rate schedule. To these groups one may add those instruments that are effective substitutes of instruments already in one of the two groups. This is likely to result in the bulk of the instruments frequently used in one of these two rate categories. The rest of them can also be grouped under only one or two categories according to the object of these instruments. This process can bring down the number of applicable rates substantially. Similarly, the instruments subject to a specific rates can be grouped into a maximum of four rates, to be determined by the Government. In Chapter V, we have listed some instruments that take the character of a conveyance, and need to be taxed as such. In the same Chapter, we have also indicated a few new types of instruments that need to be brought into the tax net along with the recommended tax rate.

Annexure - I

Basic Stamp Duty Rates on Conveyance (Art. 23) in Orissa

Where the amount or the value of the consideration for such conveyance as set forth property does not exceed Rs. 50.00	One rupee and fifty paise.
Where it exceeds Rs. 50 but does not exceed Rs. 100;	Three rupees.
Where it exceeds Rs. 100 but does not exceed Rs. 200;	Six rupees.
Where it exceeds Rs. 200 but does not exceed Rs. 300;	Eight rupees and fifty paise.
Where it exceeds Rs. 300 but does not exceeds Rs. 400;	Twelve rupees.
Where it exceeds Rs. 400 but does not exceeds Rs. 500;	Fifteen rupees.
Where it exceeds Rs. 500 but does not exceed Rs. 600;	Seventeen rupees.
Where it exceeds Rs. 600 but does not exceed Rs. 700;	Twenty rupees.
Where it exceeds Rs. 700 but does not exceed Rs. 800;	Twenty-three rupees
Where it exceeds Rs. 800 but does not exceed Rs. 1000;	Forty-two rupees.
And for every Rs. 500 or part thereof in excess of Rs. 1000;	Twenty-one rupees.

Annexure - II

Basic Stamp Duty Rates on Bottomry Bond (Art. 16) in Orissa

Where the amount or value secured does not exceed Rs. 10;	Forty paise.
Where it exceeds Rs. 10 and does not exceed Rs. 50;	Eighty paise.
Where it exceeds Rs. 50 and does not exceed Rs. 100;	One rupee and fifty paise.
Where it exceeds Rs. 100 and does not exceed Rs. 200;	Three rupees.
Where it exceeds Rs. 200 and does not exceed Rs. 300;	Four rupees and twenty-five paise.
Where it exceeds Rs. 300 and does not exceed Rs. 400;	Six rupees.
Where it exceeds Rs. 400 and does not exceed Rs. 500;	Seven rupees and fifty paise.
Where it exceeds Rs. 500 and does not exceed Rs. 600;	Eight rupees and fifty paise.
Where it exceeds Rs. 600 and does not exceed Rs. 700;	Ten rupees.
Where it exceeds Rs. 700 and does not exceed Rs. 800;	Twelve rupees.
Where it exceeds Rs. 800 and does not exceed Rs. 900;	Eighteen rupees.
Where it exceeds Rs. 900 and does not exceed Rs. 1,000;	Twenty-one rupees.
And for every Rs. 500 or part thereof in excess of Rs. 1,000.	Eleven rupees.

Annexure III

Maximum Rates of Basic Stamp Duty on Selected Instruments in Orissa and its Contiguous States

State Instrument	Orissa	Andhra Pradesh	Bihar	Madhya Pradesh	West Bengal
Conveyance	4.2%	5%	7%	7.5%	5%
Bond	2.2%	3%	3%	4%	4%
Bottomry Bond	2.2%	3%	3%	4%	4%
Agreement	Rs 42.00	5%	Rs 31.50	0.01% or Rs 10.00	5%
Lease	4.2%	5%	7%	7.5%	5%
Mortgage Deed					
a. With Possession	4.2%	5%	7%	7.5%	5%
b. Without Possession	2.2%	3%	3%	4%	4%
Dissolution of Partnership	Rs 50.00	Rs 150.00	Rs 21.00	Rs 50.00	Rs 25.00
Gift	4.2%	5%	6.3%	7.5%	5%

Note:

The following additional duty/surcharge were applicable over and above the basic stamp duty:

Orissa:

As mentioned in the text (sub-section 2.4 and Table 2).

Andhra Pradesh:

Surcharge of 5% on the value of consideration or market value on the instruments of sale, gift, exchange and usufructuary mortgage of immovable property in the entire State by the respective local bodies.

Bihar:

- (i) A surcharge on duty is payable @ 85%. Additional surcharge of 10% is also payable.
- (ii) An extra duty of 2% on the instruments of sale, gift and usufructuary mortgage of immovable property is levied in municipal areas.

Madhya Pradesh:

- (i) Additional stamp duty of 4% and 2% on the instruments of sale, gift and usufructuary mortgage of immovable property in corporation and municipal areas respectively. Depending on location, the rural counterparts of this additional duty are 1% and 1.5%.
- (ii) There is a cess on stamp duty payable of 5% on the same instruments, and that of lease for a period exceeding 30 years.

West Bengal:

- (i) Additional duty of 2% on the instruments of sale, gift and usufructuary mortgage of immovable property located within Calcutta municipal area.
- (ii) Surcharge of 20% on stamp duty payable on specified instruments.

Source: K. Krishnamurthi (1997), The Indian Stamp Act, Wadhwa and Co., Nagpur.

1. The Present System

The levy of stamp duty is tied up with the registration of the document concerned. The payment of stamp duty, through the use of security printed stamp paper or affixing stamps of required denomination on chargeable instruments, is ascertained before an instrument is registered. Depending on the type of instrument, the value of consideration, the location of the property concerned (if any) and some other factors, several other government departments may be involved in the process and preconditions may apply before a document is registered. Let us consider the sale of a piece of land, the most common transaction that is liable to stamp duty in Orissa, to illustrate the procedure for the payment of stamp duty and registration of the sale deed.

1.A. Sale of land in a rural area: Registration of a sale instrument for sale of land lying within a rural area involves the following stages:

- 1) The seller has to purchase the stamp paper(s) of required value from a licensed stamp vendor for his sale instrument, provided the value of stamps does not exceed Rs. 50,000. If it does, required stamp paper(s) have to be obtained from the Treasury / Sub-Treasury of the Government of Orissa.
- 2) After purchasing the stamp paper(s), the seller gets the instrument written on the stamp paper by a licensed deed-writer, or by an advocate or by himself. The instrument written by any person other than the aforesaid persons is chargeable with extra fees of Rs. 50.00 over and above the prescribed registration fees.
- 3) After the instrument is written and executed by the seller (or his authorised attorney under a power of attorney), a copy of the instrument (handwritten or photocopied) is made, to be filed along with the original instrument.

4) The instrument along with its copy is presented either by the executant or claimant or their representative(s) (assigned or authorised agent under a power of attorney) to the registering officer (RO) for its registration.

5) The RO, after receiving the instrument checks the adequacy of the stamp duty paid and also admissibility of the instrument under the Registration Act. If the instrument is presented after four months from the date of execution, the RO does not register the document unless the delay in presentation is condoned by the District Registrar on payment of the prescribed fine under section 25 of the Registration Act. In such cases, the RO only records the admission of the execution by the executant and keeps the registration of document pending until the receipt of the condonation of the District Registrar. If condonation is not granted, registration of the instrument is refused.

6) On presentation of the instrument, if the RO finds that the instrument is inadequately stamped, only the admission of execution of the executant is recorded, the instrument is impounded without registration and sent to the District Registrar who have been appointed as Collector for the purpose. The RO follows the instructions of the Collector in all such cases; the instructions usually require registration of the document once the deficit payment is made, or registration of the document as it is.

7) The RO also verifies if the value of the property stated in the instrument is correctly set forth. If the stated value is the same or above the guideline market value, the instrument is registered and returned to the party. On the other hand, if the RO finds the value stated in the instrument to be below the guideline value, payment of the deficit stamp duty (the difference between the payable stamp duty as per the guideline value and the actual amount paid) is sought. If the deficit amount is paid, the instrument is registered. If it is not and there is disagreement regarding the amount of stamp duty payable, then the RO refers the instrument to the District Sub-Registrar (appointed as Collector under that Act for this purpose) under section 47A of the Stamp Act for review of the case. If disagreement persists even after this review, the

District Sub-Registrar refers the case to the Deputy Inspector General of Registration (DIGR) / Joint Inspector General of Registration (Joint IGR) for disposal.

8) The RO has also to ensure that applicable certificates have been furnished before registering a document. These may include one or more of the following:

- (i) a no-objection certificate under section 230-A of the Income Tax Act, permission under section 22 of the Orissa Land Revenue Act,
- (ii) permission of the *Tahasildar* under section 6A of the Orissa Land Revenue Act or permission under from the Sub-Collector,
- (iii) permission of the Endowment Commissioner under section 19A of the Hindu Religious Endowment Act,
- (iv) permission of the Government of Orissa (General Administration department) or of the Collector in the case of government leasehold land, and
- (v) permission of the Consolidation Officer for land under consolidation operation.

9) After the RO verifies that all the conditions required for admission of the instrument have been met, the document is registered on payment of the prescribed fees. Refusal to register a document is governed by sections 19, 21, 22, 34 and 35 or 80 as the case may be. After refusal, the document is returned. There is a given procedure for appeal against such refusal to the District Register at the first instance. If the appeal is upheld, orders for registration are passed and the RO registers the instrument, after keeping a copy in his office.

1.B. Sale of land in an urban Area: The same procedure as detailed above is followed in the case of registration of sale of land in urban areas. In addition, permission from the District Collector under the Urban Land Ceiling Act is required for land within the jurisdiction of Cuttack Development Authority. Also, a clearance

certificate of the appropriate authority of the Income Tax department (if the value of consideration is Rs. 5 lakh or more) is necessary for sale of land in urban areas.⁵

2. Involvement of Multiple Governmental Agencies

Several officials other than the RO and other officials of the registration department are thus involved in the registration of an instrument relating to property transactions in the context of the restrictions that apply in general. These officials are listed below along with the details of their role in the process of registration.

- *Office of the Sub-Collector:* Under section 22 of the Orissa Land Reforms Act permission of the Sub-Collector is required for registration of an instrument whereby a member of a scheduled tribe transfers his immovable property to a member of a scheduled caste or general caste. Permission of the Sub-Collector is also required under the same section when a member of a scheduled caste transfers his immovable property to a member of a scheduled tribe or general caste. Under regulation 2 of 1956, for transfer of property located in the scheduled areas as notified by the government, the permission of the sub-collector is required for registration of an instrument transferring immovable property of a member of scheduled tribe or caste, irrespective of the transferee.
- *Office of the Tahasildar:* Under section 6A of the Orissa Land Revenue Act, permission of the *Tahasildar* is required to be furnished to the RO when a land leased to the executant of an instrument under Orissa Land Revenue Act is transferred within 10 years from the date of such lease being given. The *Tahasildar* is also the custodian of land records, and when a piece of land is transferred from one person to another through any registered instrument, a copy of the instrument is sent to the *Tahasildar* along with a filled-up statutory form (Form 3). The

⁵ Similarly, an instrument by which an immovable property valued at more than Rs. 20 lakh is not registered unless a clearance u/s 269 (ul) of the Income Tax Act from the appropriate authority of the department is furnished. The application of the section 269 (ul) is limited only to the areas under the Bhubaneswar Development Authority and Cuttack Development Authority.

transferee then has to get the land mutated in his favour. In a legal sense, the mutation certificate is also an important document to establish the ownership of land; registration of an instrument transferring ownership is not enough.

- *Office of the District Collector:* Transfer of government land leased to a person through an instrument requires the permission of the District Collector, except when such land lies within the area of the Bhubaneswar Municipal Corporation. Such permission is also required for transfer of *Khasmahal* land (land that belongs to the government but not acquired through payment of compensation) of the government.
- *Office of the Consolidation Officer:* Under the Orissa Consolidation and Prevention of Fragmentation of Lands Act, the permission of the Consolidation Officer is required to transfer land in a village where consolidation operation is in progress. The Consolidation Officer sends a list of villages that are taken up for land consolidation operation for the guidance of ROs.
- *Office of the Endowment Commissioner:* Under section 19A of the Hindu Religious Endowments Act, no instrument transferring the property governed by the Act is registered unless permission of the Endowment Commissioner is furnished to the RO. If no such permission is given within 60 days from the date of application for such permission, and no objections are raised, it will be deemed as if permission for the transfer has been given.
- *General Administration Department of the Government of Orissa:* In the case of leasehold land owned by the Government of Orissa in the area of Bhubaneswar Municipal Corporation, permission of the General Administration department is required for the registration of an instrument transferring such leasehold land.
- *Commissioner of Income Tax:* A no-objection certificate, from the Commissioner of Income Tax having jurisdiction on the area in which the property being transferred

is located, is also required before registering a document that gives effect to the transfer of a property valued at more than Rs. 5 lakh.

It may be noted here that the involvement of so many officials obviously pushes up the cost of collection of this tax. In practice, the cost is often borne by the registrant, but that only increases the cost of compliance and hence reduces voluntary compliance. While most of these procedures have some rationale in terms of built-in checks, it is certainly possible to rationalise them as we discuss below.

3. Administrative Reforms

Most of the administrative reforms suggested below are intended to make voluntary compliance easier by reducing the harassment of the people at large. The reforms indicated below cannot be claimed to be exhaustive. The entire process of registering a document and paying the required stamp duty is a fairly involved one, and implies considerable scope for further simplification and rationalisation. However, that is all the more reason to start simplifying the procedures expeditiously and making them as user-friendly as possible on the indicated lines. Simplification is likely to benefit the department also by reducing evasion/avoidance and by reducing the workload of the departmental staff.

3.A *Non-availability of stamps and stamp papers:* Section 10 of the Indian Stamp Act envisages that all duties with which any instrument is chargeable shall be paid by means of stamps. Only the Treasury/ Sub-Treasury Officers and licensed vendors are authorised to sell stamps and stamp papers under Rule 12 of the Orissa Supply and Sale of Stamp and Stamp Papers Rules, 1990. Due to the monopoly in selling the stamp and stamp papers, reinforced by regular shortages of stamps and stamp papers, the vendors often charge amounts higher than their face value, taking advantage of shortages. Further, the commission paid to the vendors on their sales varies according to the denomination: the commission is smaller for stamps of larger denominations. Hence, even when the required value of the stamps is high, the vendors

have a tendency of supplying a large number of stamps of lower denominations, when only a few stamps of higher denomination would do. *It is thus advisable to allow for uniformly proportional commissions to vendors so that the disincentive to sell stamps of higher denominations is substantially eliminated;* but this step alone will not ensure adequate and convenient supply of stamps and stamp papers of all denominations.

Although the shortages referred to above are felt most in the case of stamps and stamp papers, to some extent this observation is equally applicable to various statutory forms. The problem is actually one of inadequate supply from the government itself, as much as a problem of artificial shortages. Further, stamps of denominations of Rs. 50,000/= or more are available only from the Treasury/ Sub-Treasury. But since the Treasuries/ Sub-Treasuries sell stamps only on particular days of the week, urgent needs are not satisfied. The public dealing at the Treasury/ Sub-Treasury also leaves a lot to be desired.

The problem of shortage of stamps and forms emanating from capacity limitations of the government press is neither likely to be sorted out in the near future nor within the control of the department. Thus, some innovation to meet this problem is called for; fortunately, such an innovative idea is already being implemented in some States (e.g., Maharashtra), and is being tried out in Orissa (only in Bhubaneswar so far) also. *Using franking machines to provide stamps allows for the necessary flexibility in the supply of stamps*⁶. Due caution is, however, recommended in view of the possibility of counterfeit stamps with freely available modern equipment. Cases of this nature have already been noticed in Mumbai. While nothing will be absolutely foolproof, use of special paper and other relatively low-cost possibilities exist within the available technology to make counterfeiting extremely difficult. It is important to note, however, that franking machines should be used sparingly and only as an additional means of ensuring adequate supply of stamps; they cannot substitute security printed stamps and stamp papers.

To make things easier for the taxpayers while paying the duty, *necessary provision may also be made in the rules to allow payment in cash or by bank draft or bank pay order. The document can be appropriately endorsed with the amount of duty paid clearly mentioned, using the franking machine.* This still leaves the problem of inadequate supply of forms, some of which are priced. But the prices are so low as to fetch negligible revenue, so that should not be a concern. As for authenticity, any authentication involved is carried out only after the document is submitted for registration. Hence, there is no reason why the supply of these forms should be restricted to the printed ones only. In fact, although a strict interpretation of the rules do not permit it, some of the sub-registrars in the State have been forced to allow the use of photocopied forms in order to prevent inordinate delays in carrying out their normal duty. This may formally be allowed, and *photocopied forms may be accepted as valid along with printed ones.*

3.B Multiple sale of a single property: One of the common problems faced by many inexperienced buyers in the property market relates to dishonest sales of a single property several times, and registration of such sale deeds by the government. The process of registration misleads people into believing that such sales are authorised by the government; when several claimants of the same property crop up, it creates large-scale misery.

Technically, such sale deeds cannot be refused registration by the department as there is no provision in the relevant Act allowing refusal in these cases. As it stands now, it is not the duty of the RO to look into the legal effect of an instrument. Various High Courts and the Supreme Court of India have already given a clear opinion about two registered instruments executed by the same person in respect of the same property to two different persons, at two different times. The deed that is executed first takes priority over the other under section 47 of the Registration Act, even if the former deed is registered subsequent to the latter. So on close reading of this legal decision it transpires that registration of two such instruments is permissible under the

⁶ The Committee of State Finance Ministers has already recommended this reform.

Registration Act. In practice, the ownership of property is decided on the basis of various documents relating to ownership of the concerned property. Such documents include land records maintained by the *Tahasildar*, and a buyer is expected to complete the mutation of the acquired property in his/her name on the strength of the sale deed. In many cases, gullible buyers neither check the land records, nor do they obtain an encumbrance certificate (it details previous transactions regarding the property for which such a certificate is sought). The registration department does send a copy of all registered documents to the concerned *Tahasildar*, but the onus of taking all precautions and getting mutation done soon after registration of the sale deed is completed is legally on the buyer. Else, even a properly registered document, on which due stamp duty has been paid, can stand void in a court of law. There is no legal redress except for filing a criminal case of fraud, and even a conviction may not make good the financial loss.

This particular combination of legal provisions smacks of governmental evasion of responsibility *vis-a-vis* a taxpayer, who as a buyer enters into a perfectly legal transaction in all honesty, as far as he/she is concerned. The entire question of honest citizens paying taxes and fees (apart from the price of the property) for a possibly invalid transaction cannot be brushed under the carpet of legal provisions, as is usually done. If dishonest persons exploit legal loopholes to perpetrate fraud, then the law needs to be suitably changed. It is in practice impossible for a buyer to know, even after taking all precautions, whether a sale deed with respect to a particular property has been executed or not if it has not been registered. *Hence, the Registration Act must be changed to give legal validity to only that transaction that has been registered first, rather than the one that has been executed first, to be fair.*

As of now, the laws give priority to a document that may not even have the governmental approval in the form of registration, which makes a mockery of the entire system of registration and payment of stamp duty. Further, all the concerned agencies involved in a property transaction – barring perhaps the buyer and seller – are governmental departments, and many such frauds can be checked if only the

government takes upon itself the responsibility of automatic mutation of property. *There is a system of a copy of every registered instrument relating to sale of land being transmitted to the Tahasildar; however, mutation is neither automatic nor necessarily chronological. This should be legally ensured. Finally, instead of asking the buyer to take precautions and obtain an encumbrance certificate, this should be automatically checked at the time of registration. If the seller has already registered a sale deed (or executed a power of attorney in favour of a third party) with respect to the land being transacted, then the buyer should be warned as such.* We realise that under the present system of manual maintenance of land records, this would enormously increase the workload of the department; but it should be feasible with computerisation of the department, which we discuss in the next chapter of this report. The additional costs (at present charged for an encumbrance certificate) can be charged as enhanced registration fees; for the assurance of a fraud-free transaction, this would be only a small charge. *Pending computerisation, registration offices should prominently display the need for taking appropriate precautions in the form of an encumbrance certificate. Also, the registration form should contain a specific entry asking the buyer whether he/she has obtained an encumbrance certificate or not; a further entry should be included indicating that the buyer agrees to register the instrument at his/her own risk, if the response is in the negative.*

3.C Appeal against administrative orders/adjudication: Against the erroneous order of adjudication of the District Collector under section 31 of the Act, there is no provision in the Act for appeal before the Chief Controlling Revenue Authority, whereas appeal lies before him in cases of impounding and under-valuation. There should be provisions in the Act to allow for appeal against all administrative decisions to a higher authority for cheap and quick redressal of genuine grievances, else the system fails the test of fairness. In the case of decisions by the highest administrative authority, the appeal usually lies before the higher courts. Hence, *for the sake of justice to aggrieved persons, it is necessary to make some provision in the Act for appeal against possible erroneous orders of the District Collector.*

3.D Discriminatory provisions in the Act: Application of section 4 (concessional rate of stamp duty for certain types of instruments) is limited to the instruments of sale, mortgage and settlement. Stamp duty of one rupee is leviable on the instrument employed for completing the above transactions as per the said section. For example, for a consent deed or a deed of rectification to the instrument of sale, mortgage or settlement, a nominal stamp duty of only one rupee is payable. But in the case of deed of consent or deed of rectification to an instrument of gift, partition etc. other than the instrument of sale, mortgage or settlement, stamp duty as leviable on the original has to be paid. There is no clear reason or rationale for having a higher duty on the instruments employed to complete some transactions like gift, partition etc. as compared to the others. *For the sake of equity and for the elimination of such discrimination, the provision under section 4 of the Stamp Act may be rationalised by extending the provision of section 4 to other instruments also.*

3.E Fixing the liability for payment of the tax: It is generally not possible to control the ultimate incidence of any tax by law (it depends essentially on market conditions). But it is important to specify the initial incidence of the tax or the party legally responsible for discharging the tax liability to the government on any taxable event. Under section 29 of the Stamp Act, the person by whom stamp duty is to be paid on an instrument has been specified, but this section does not cover all the instruments under schedule 1-A of the Act. For example, there is no mention as to who is to pay the stamp duty on an instrument of gift. *For removal of confusion and doubt, a provision needs to be inserted under Section 29 of the Stamp Act. This should specify that in respect of all other instruments leviable with stamp duty not mentioned in sections 19, 29 and 30, the person executing the instrument is liable to pay the duty.*

3.F Rounding off: *While calculating the amount of stamps required on an instrument, fractions of a rupee should be rounded off to the nearest rupee, so that there will be no need for the use of stamps of lower denominations below one rupee. By dispensing with lower denomination stamps, the payment will be simplified and*

dispensing with lower denomination stamps can also save the cost of printing on that account.

3.G Provision for payment of differential duty: An instrument which is already stamped on execution in any part of India can thereafter become chargeable with the higher rate of duty when received in any other State or Union Territory. The stamp duty chargeable on such instrument is usually the amount chargeable under Schedule-I, less the amount of duty, if any, already paid on the execution of that instrument. This is done taking into consideration the Supreme Court decision in case No. 1963 SC 1307, and in order to give relief in payment of duty on the line of the Supreme Court decision. *The State of Orissa, along with many other States, has enacted a new Section 19-A for this purpose. The Indian Stamp Act itself should contain similar provisions to bring uniformity among all the States and Union Territories.*

3.H Executive orders: The government passes executive orders from time to time, setting forth various remissions and reductions in the applicable rate of duty for specified uses of different instruments, under the powers conferred on it by section 9 of the Indian Stamp Act. These are scattered over a number of years and different issues of the official *Gazette*, denying convenient access by ordinary taxpayers. *These are in effect a part of the applicable Act as they modify specific provisions thereof, and hence the Act should contain these orders in the schedules, updated regularly.*

3.I Display of information: *For better transparency, the rate of stamp duty and any guideline value or benchmark value in use should be exhibited at a conspicuous place in the office of the ROs. A booklet in local language indicating different applicable rates of stamp duty and the Government may publish guideline values for sale at cost price to disseminate this information for all concerned. This will help the public to carry out self-assessment of stamp duty required for an instrument. This will also remove any need for the touts and middleman for the purpose of registering instruments, who sometimes misguide and exploit gullible members of the public.*

3.J Reducing the need for multiple clearances: As we have seen above, the sale of land, and registration of a deed pertaining to such a sale, involves a number of clearances from various Central and State governmental authorities, which often causes delays in registration. While each of these clearances serve some purpose individually, the combined effect of these often causes hardship to the buyer and/or seller. Hence, it is necessary to simplify the procedure to the extent feasible without sacrificing the basic objectives. In this context, *the clearance required from the income tax authorities can in principle be obtained post facto also. There is no need to require prior clearance as long as the person registering a sale deed that requires such clearance submits a declaration that the details of the transaction have been duly reported to the concerned income tax authority.* Similarly, the sale of rural land under land consolidation should not require the prior permission of the land consolidation officer, since the effect of such a provision is to limit the right of the owner to his/her land and to sell it legally without due process of law. The object of the provision is probably to aid the land consolidation process, but for that purpose, intimation to the land consolidation officer about the proposed sale should suffice. *The requirement for registration should therefore be amended to a declaration by the seller that he/she has duly intimated the land consolidation officer about the sale, at least 15 days before the document is submitted for registration.* This will give enough time to the concerned authority to raise objections, if any. If the RO does not receive any objection, the instrument should be registered. This principle should be followed in general for all the other government departments, from which permission is required before registering a sale, with two important exceptions. *The exceptions relate to the sale of land by a member of the scheduled caste/tribe and that located in a scheduled area, where present provisions should continue in view of the serious social implications of such land transactions.*

3.K Support to officers of the department: The Government of Orissa (Revenue Department) in their Notification No. 52554 of 23 November, 1995 have appointed all the Sub-Registers and District Sub-Registers (DSRs), D.I.G.R.s and Joint IGR as Collectors under Section 2(9) of the Stamp Act. They can exercise the powers

of a Collector under Section - 47A of the Act to the extent mentioned in the said notification. These powers are: (a) determining the market value of the property and duty payable thereon, and (b) accepting the deficit stamp duty leviable. The latter is done on the basis of guideline value (benchmark value) from the person liable to pay the stamp duty under section 29 of the Stamp Act and return the instrument after making endorsement of payment on the instrument. If the concerned person does not agree to pay the deficit duty leviable on the basis of guideline value, the Sub-Registrar must refer the instrument to the DSR for disposal at his level. The under-valuation cases of the office of the DSR are to be disposed of by the DSR in the same manner as prescribed for the Sub-Registrar. Disputed cases are referred to the concerned D.I.G.R. or Joint I.G.R. In such disputed cases, the parties sometime demand spot inspection of the property to determine the true market value. In the absence of any office vehicle or a Revenue Inspector who can be deputed to make the spot inspections and submit his reports to them, such reasonable demands create substantive problems for the DSR and D.I.G.R. Although it is expected that the *Tahasildar* would depute a Revenue Inspector for such spot inquiry, the required cooperation is often not forthcoming⁷, which causes delay in disposal of disputed cases. *It is therefore necessary to install a system that would provide the services of a Revenue Inspector to the DSRs, D.I.G.R.s and Joint I.G.R.s within a reasonable time from making such a request.* It may be noted here that the abovementioned amendment made to the Section 47(A) is reported (by the ROs during discussions with the author) to have helped in reducing the number of references to the Collector. It has also facilitated getting back the instruments without delay on voluntary payment of the deficit stamp duty. Revenue officials have claimed that this has been achieved in spite of the above problems faced by these officers while disposing of disputed cases.

3.L Provision of certified copy in disputed cases: Sometimes it is found that the party liable to pay the stamp duty under section 29 is not bothering to take back his original instrument referred to the Collector U/s 47 of the Act. on payment of deficit stamp duty leviable on it. This has actually resulted in a pile-up of such cases in

the offices of Collectors. The pile-up is due to the present system under which the concerned person is getting the property mutated in his/her name on the strength of the certified copy of the registered instrument referred to the Collector after its registration as per the provision of the section 47(A). He/she can also take loans in the same way. There is no prohibition in the Registration Act to grant a certified copy of an under-valued registered instrument. *It is therefore suggested that the present provision in Section 47A to refer the instrument to the Collector after its registration may be amended. It should be modified by a clause to prohibit issue of a certified copy if the concerned person does not agree to pay the deficit stamp duty leviable on the basis of benchmark value: only after disposal of such disputed cases should the bar be lifted.* This change in the law will debar the registrant from getting the property mutated or availing loans on the strength of the certified copy of such pending instrument, creating the necessary incentive to get his original instrument released quickly.

3.M Action on the basis of copies of registered instruments: There is no provision in the Stamp Act 1899 to take action under section 33 on the copy of the instrument. Sometimes, during the course of inspection of higher officers of the Registration Department or of an Audit Party, cases of inadequate payment of stamp duty are detected from copies of the instruments that have already been registered and returned. To realise the deficit stamp duty so detected, *section 33 of the Stamp Act has been amended by the Orissa Act 7 of 1987 to permit action by the Collector on the basis of the copy of the instrument if the original instrument is not produced. Similar provisions may be made in the Indian Stamp Act 1899 on the line of the act 7 of 1987 to bring uniformity all over India. Also, there should be a provision in Section 47 A (2-a) to the effect that the Collector can also determine the market value of the property and duty on the basis of the copy of the instrument obtained from the concerned registering officer. For this purpose the copy should be deemed to be the original one.*

⁷ This is indeed perplexing given that both the concerned officers belong to the revenue department.

3.N Training: At times, due to lack of sufficient knowledge on the Stamp laws, the classification of the instruments is not properly done by the RO. Such misclassification results in lower assessment of stamp duty than required by law, which is detected by the superior officers in course of their inspection. This results in reopening the case and all the consequent harassment for the taxpayers as well as the tax collectors. *Mistakes by the ROs can be prevented by giving proper training to the officers as well as the other staff of the Registration Department on the classification of the instruments by experienced officers of the Department.*

1. Introduction

The process of registering a document has been described in detail in the preceding chapter, but it does not describe the office activities within the registration department, apart from those that involve interface with other government officials. To be sure, the office activities can be described simply as maintenance of records of registered instruments, but this is one of the major responsibilities of the registration department; other responsibilities like providing copies of the registered instruments or encumbrance certificates crucially depend on the maintenance of the records. This is at present done manually with physical copies of the instruments; all the searches are also therefore manual. It therefore takes anywhere between 3-15 days to obtain an encumbrance certificate or a copy of a previously registered document with the consequent inconvenience to users of these services. The storage of physical copies is also subject to the risk of destruction by several means, large and ever-expanding space requirements, and considerable expense for the public as well as the department. *Computerisation of the records can provide a cost-effective, easy and time saving alternative to the way the registration department now carries out its business.* Due to the possibility of maintaining multiple copies of the same records without much additional space requirement, the risk of destruction is minimised. Finally, *given that land records are already being computerised in Orissa, this is only a logical extension of the process that would enable electronic transfer of data between Tahasildar offices and registration offices, making it possible to minimise fraudulent multiple sale of the same property,* as discussed in section 3.B of the preceding chapter.

2. The Office Activities

To examine the practicability and usefulness of computerisation, it is first necessary to list the office activities and examine the way they are carried out at

present. These can be contrasted with the way the office would function when computerised, and that would clearly indicate the gains from computerisation.

2.A. Accepting documents for registration: When a document is tendered for registration, the original as well as a photocopy is submitted. If the document relates to a transaction of land or building, then Form No. 3 is also required to be submitted along with the original document and its copy, to be eventually forwarded to the *Tahasildar* to effect the mutation in the Record of Rights (ROR). The copy is first checked manually against the original to establish authenticity. After the copy is duly certified, the registration fee is ascertained and collected from the registrant against a receipt. The receipt gives a date on which the properly registered original can be collected by the registrant.

Clearly, this is a fairly long drawn-out process, although this is a task that is being undertaken by the Sub-Registrar's offices most often. With a fully computerised administration, Form 3 can reside in the computer. Photocopies will be unnecessary as the original itself will be scanned and the image will be stored in the computer. A few entries will need to be made in the computer after calling Form 3 for each case if necessary (regarding details of the property being transferred), and the completed form can be electronically transferred to the *Tahasildar's* office. No receipt will be necessary as all this can be completed in ten minutes and the original document can be given back after due registration. The payment of registration fee can also be entered into a computer maintained register, and if necessary, a receipt can be easily generated.

2.B. Valuation of properties: Every time a document relating to transfer of a property is submitted for registration where the value of the consideration has a bearing on the chargeable duty/fees, a valuation check by the RO is part of the routine procedure. This is done as per the norms presently laid down (this is discussed in greater detail in the subsequent chapter). At present this involves a check of the properties sold in the same approximate location as the property under transaction during the last three years. For this purpose, a valuation register is also maintained.

Both the tasks of maintaining a valuation register and of making a search are at present manual processes involving a substantial amount of time. Moreover, if the valuation procedure is amended to depend on a few parameters rather than the simplistic comparison method as applicable now, then manual maintenance of the valuation register itself will become a major task. *Computerisation can simplify the process of valuation check tremendously, even under the present system.* This is because the valuation register maintained by the computer can be automatically updated with every transfer of property registered, and a search on the basis of given parameters (presently location only) can be quickly completed in a matter of minutes.

2.C. Cases of inadequate duty: In the cases of insufficient payment of stamp duty and registration fees, either through suspected underreporting or incorrect application of tax rate or miscalculation, an elaborate procedure is adopted, which causes further delay. In such cases, the document submitted for registration is kept with the RO and a certified copy is given to the registrant, if desired. Depending on the exact nature of the inadequacy in payment, and provided an agreement is reached between the registrant and the RO regarding the short payment, the document is registered on payment of the additional dues by the RO himself; else, the document is referred to a higher authority. A register is maintained for all such cases, and payment is monitored from time to time.

In such cases, the additional office activity essentially refers to the maintenance of the register for such cases, particularly to keep track of the disputed cases and documents sent to higher authorities for settlement. This is a fairly routine activity, which can easily be accommodated within the system of computerisation.

2.D. Preservation of documents: This is one of the most important functions of the registration department. After registration, photocopies of the instruments registered need to be preserved for future reference. This is done by sorting the documents into given categories (usually three or four), location of the event (e.g. land

being sold) and year, and maintaining bound volumes of these copies. Obviously, when the number of such volumes are large, an index also has to be maintained. This procedure has several shortcomings. First, the volumes are subject to destruction in many ways including dampness, fire, fading and even termites. This is particularly so because many of the offices do not have adequate funds for maintenance; in some of the smaller offices visited, documents could not even be bound for lack of funds. Another major problem with this procedure is the continuously rising space requirement, which is likely to be a major constraint in the near future. The dilemma in this context is that either the government needs to keep making investments in creating proper additional storage space, or the documents are not maintained properly. The paper quality of the photocopies are also not good enough to last for long; in the earlier years, copies were made by hand on good quality cartridge paper, which could be maintained for years. However, instead of going back to the system of manually made copies, it is now advisable to take advantage of the technological advances to solve most of these problems through computerisation.

It is fairly straightforward to set up a data bank of scanned documents, properly classified, in a computer. The space requirement would be minimal, photocopies will not be required and chances of destruction will be minimal with a system of back-ups located in a place other than the office of the RO. The system ought to be highly cost-effective also, if all private and government costs are considered. Further, the time saving will be considerable.

2.E. Certified copies and encumbrance certificates: The revenue department needs to preserve copies of documents because they are needed for two purposes: providing certified copies and providing encumbrance certificates. The latter refers to a certificate provided by the concerned RO listing all the previous transactions with respect to a property registered in his office. Both these require manual search for relevant documents with the help of the index register and manual copying of the document or the necessary information.

Obviously, both these activities take considerable amounts of time due to manual search and copying involved. In contrast, once the electronic data bank on the instruments registered is created, retrieval and printing of copies is extremely fast. The time necessary for the two modes of functioning would be approximately three days against 15 minutes. Issue of encumbrance certificates also will also be comparably faster. The convenience for the users of these facilities can be easily gauged. The workload of the department will also be considerably reduced, allowing time for anti-evasion activities, for which at present there is no time at all.

2.F. Miscellaneous activities: Miscellaneous back office activities in a registration office include preparation and maintenance of valuation register, index registers and fee book besides preparation of monthly income and expenditure reports and other miscellaneous reports as and when required. A computerised system can take care of most of these routine tasks. Besides, the computerised system will be less prone to manipulation, and copies of the instruments can be adequately safeguarded with a system of passwords.

Essentially, each of the computerised offices would require a good desktop computer system, a scanner, a printer and a back-up system drive (preferably a CD-ROM writer) in terms of hardware. The software will have to be tailor-made for this purpose with the help of departmental personnel, but the costs will represent one-time investments only. Regular expenditures will include back up media, toner cartridges, annual maintenance charges and paper and stationary costs. Additional initial investments will have to be made in terms of power connections, air-conditioning and such other overheads. Thus, the initial investments will be non-negligible, but the changeover to a computerised system should be cost-effective in the medium run. More importantly, the quality of service provided by the department will improve greatly and as discussed earlier, legal loopholes like multiple sale of a single property can be effectively checked, thus providing greater legitimacy to the collection of registration fees and stamp duty.

3. Computerisation in Andhra Pradesh

In Andhra Pradesh, a computerised system of registration of documents is already in operation and the Government of Orissa can therefore easily satisfy itself regarding the costs and benefits of the changeover. This system is known as **Computer Assisted Registration of Documents** or **CARD** in short. All the offices of ROs in the State have been computerised and the entire system has been functioning smoothly. The estimated costs of computerisation were only a small fraction of the revenues raised by the department during a year. Valuation is not yet computerised in Andhra Pradesh,⁸ but computerised valuation of properties is being tried in Maharashtra. In principle, once the parameters for valuation are determined and information on these parameters are collected, the system can provide an objective and error-free method of valuation, which should help in controlling evasion to a large extent.

⁸ Discussions with officials in Andhra Pradesh revealed that the prevalent view in the State does not endorse an objective system of valuation. It was quite categorically stated that there will remain a subjective element in valuation, even though computer assistance may be called for.

CHAPTER V VALUATION OF PROPERTY AND TAX EVASION

1. Introduction

The basic approach to tax reform needs to keep a few major principles in mind. Apart from the concerns of economic efficiency and equity, primarily to be addressed through the design of the tax, simplicity and taxpayer convenience need to be built into the system. We have tried to address these concerns in the preceding chapters. But the major problem of stamp duty administration, from the point of view of the government, is the evasion and avoidance of stamp duty. The primary reason for levying any tax is revenue generation for the concerned government; large-scale evasion and avoidance undermines this basic rationale. Attempts to prevent evasion often bring in all sorts of draconian measures including higher tax rates and complexities in the tax law, which can actually result in less tax compliance. It is therefore important to break this spiral in the most balanced manner possible. Measures to curb evasion need to be carefully crafted to achieve their objective without adversely affecting the taxpayer friendliness of the system as far as possible. As is well known, this is not a problem specific to the State of Orissa; in most States in India, this is a major concern. Indeed, the real estate sector is often thought to be the most significant in the analyses of black economy in India. However, there are possibly local variations in the laws and rules adopted and hence techniques adopted for evasion/ avoidance. Thus, the problems and reforms suggested below to tackle them, may have only partial applicability elsewhere in the country.

2. Valuation of Properties: Past and Present

In essence, traditional legislation in the area of stamp duty adopted the declared value of the property being transacted as the tax base, unless this was possible to be shown as understated. In principle, this accords well with the standard legal principle of accepting all statements as true until proven otherwise. Thus, the onus of proving under-valuation was on the government. The judiciary consistently struck down

attempts by the various governments to revalue the tax base as long as it was legally linked to the reported value. This is not surprising, given the number of factors that determine property prices and the inherent arbitrariness of contending that a transaction between two or more parties was actually at a higher consideration than declared. The inability of the government to prevent evasion, coupled with very high tax rates, encouraged evasion of stamp duty further. It was then realised that for the government to successfully argue for revaluation before a court of law, the legal tax base must be shifted from the declared value to a fair market value. Most of the State governments enacted necessary legislation to implement this change. However, the judiciary is still not satisfied that this change is enough to prevent arbitrary revaluation by the government. The thrust of the court rulings clearly indicate that this provision needs to be supplemented by a fair definition of market value, which must include a set of objective principles on which market value is determined by the government.

In the case of Orissa, the State Legislature enacted a new section, namely Section 47-A, by the Orissa Act 35 of 1962, which has been inserted in the Indian Stamp Act applicable to the State of Orissa, to prevent under-valuation of instruments. The Act was subsequently amended to make it obligatory for the registrant to state the market value of the property being transacted correctly. Section 47A was subsequently amended by the Act XI of 1965 to take into consideration the judicial decisions preventing application of the market value principle in the assessment of stamp duty, including the High Court of Orissa quashing orders of the Collectors. Orissa Act 7 of 1987 made further changes to the relevant Act to give effect to the market value basis for the assessment of stamp duty. By virtue of the amendments made under Orissa Act 1987, instruments of sale, exchange, gift and partition are now chargeable with duty on the market value of the property which is the subject matter of instrument or on the consideration whichever is higher. The State Government added a whole new chapter (Chapter V dealing with the rules on under-valuation of instruments) to the Orissa Stamp Rules 1952, vide Finance Department Notification No. 196F of 15 February, 1963. The concept of charging an instrument with duty on the market value of the property necessitated substitution of section 47A by the Act 7 of 1987 and Rule 23 of

the Orissa Stamp Rules 1952. The definition of market value was provided with the insertion of Rule 2(f) of the Stamp Rules 1950, vide the Revenue Department notification No. 15244 of 11 February, 1988.

However, no guidelines for determination of market value have been outlined in the Stamp Rules 1952 as amended to be followed by the ROs. The Inspector General of Registration (IGR) in his letter No. 3577 of 4 September, 1993 issued guidelines in the form of executive instructions to all ROs to decide whether the transaction recorded in a submitted instrument is undervalued or not. It asks the ROs to take into consideration the rate of the highest sale value of similarly classified land in the same area/village, with due regard to the proximity of place and time of the transaction. The relevant period for determining the highest sale value is three consecutive years preceding the year in which the document in question is presented for registration.

3. Problems with the Present System

It may be noted that the Section 47A and the Rules thereunder in Chapter V do not provide the principles to be followed for determination of market value and the guidelines for valuation of land and buildings situated in different areas of the State. Further, Section 47A confers no express power on the Government to determine the market value of the property concerned. The Hon'ble High Court of Orissa struck down in 1992 the order of the Revenue and Excise Department of the State government (letter No. 7251 of 17 February, 1990) that concerned fixing the market value of lands for different areas coming under Bhubaneswar Master Plan, in OJC case no. 958 of 1990, in the absence of such provisions. Similarly, the orders of the Government fixing market value of land in different areas in the towns of Puri, Berhampur, Rourkela and Sambalpur have also been set aside by the Hon'ble High Court of Orissa. Since the major lacuna in the provisions, as assessed by the judicial system, is a set of reasonable and objective principles to determine market value, it is suggested that such principles be incorporated in the Rules. A summary of such Rules applicable in selected States including the neighbouring ones is provided in the Annexes. Setting up these rules

clearly requires careful formulation of the principles involved that would pass the judicial tests. It may be noted in this connection that the executive instruction of the IGR mentioned above has no statutory force, and may be rendered inapplicable if challenged in a Court of Law. It is worth noting that the government of West Bengal is following the same principle as a basis for deciding whether the instrument is undervalued or not; but this provision has been inserted in their Stamp Rules to give it statutory validity.

The above guideline of the IGR to adopt the highest value as the basis for deciding as to whether the document is properly valued or not can sometimes cause hardship to the registrants. For example, when the highest value is the result of a small or abnormal transaction at a high price, it does not represent the market value. On the other hand, it is not particularly useful for checking under-valuation either, because the highest sale value may itself be far below the market value in a situation of widespread under-valuation, as is suspected to be the case in fact. As such, the Government could be sustaining significant revenue loss on account of determination of market value on the basis of this highest value.

It is thus clear that as a long-term sustainable policy, the government must attempt the logical extension of the policy of shifting the tax base to market prices. This would entail incorporation of basic principles for fixing such market prices into the statute book in such a way that it would stand up to the judicial tests of legality and fairness. But fixation of market prices is not an easy task even with given basic guidelines, and because the government is not exactly a disinterested party (higher the fixed market value, higher the tax). Hence, setting up a reasonably independent body to assign market prices to properties also becomes an important logical step in the interest of perceived fairness. These are, however, important changes that would affect a large cross-section of people and the government. It is therefore advisable that before attempting such far-reaching reforms the desired plan of action is discussed in various fora as to the possible consequences, within a pre-established time frame for instituting the needed reforms in this area. We provide below a suggested framework, which can

serve as a point of departure for such discussion. While the long-term policy is being finalised, the present system may continue with some immediate reforms to alleviate obvious difficulties as indicated below.

4. Immediate Reforms

- To tackle the difficulties arising from unusually high prices applied to small transactions distorting the market price for everyone, *the average value of sale instances registered during preceding six months immediately before the instrument in question is submitted for registration should be taken as a basis for deciding as to whether the instrument in question is undervalued or not. When there are two or more such previous transactions, the size of the transaction should also be taken into account by computing the weighted average price.*⁹
- As per the abovementioned instruction of the IGR, comparable land of the same classification (*kisam*) already sold and adjacently located to the land in question is to be taken into consideration. In order to ascertain which plot of the same *kisam* as that of the plot in question is adjacently located, a reference to the village map is absolutely necessary. But no village maps have been supplied by the government to the ROs for want of which they are facing difficulties to locate the comparable plots already sold which are located near the plot in question whose market value is to be ascertained. Hence, *maps of all villages under his/her jurisdiction should be provided to each RO.* These are probably available from the Directorate of Map Publication, Orissa. It may be noted that *a full computerisation of the land records and land revenue system may include a Geographical Information System (GIS), which would contain such a map with salient features of each plot easily obtainable from the GIS.*¹⁰ *If the GIS is available online to the ROs (subject to computerisation of the department), then this problem is obviated fully.*

⁹ For example, if two plots of 2 hectares and 6 hectares are sold at the prices of Rs. 50,000 and Rs. 10,000 per hectare, then the weighted average price would be $[(50,000 \times 2) + (10,000 \times 6)] / (2+6)$, i.e. Rs. 20,000 per hectare.

- To locate the highest sale value of similar classification of land of the same village relating to three consecutive years, the valuation register has to be referred to. This valuation register is maintained by the RO under executive instruction, which has no statutory base. To rule out legal difficulties, *the maintenance of valuation register and the principles for determination of market value should be laid down in the Stamp Rules.*
- Sometimes the declared *kisam* is different from the actual *kisam* of the land in question (i.e., as recorded in the record of right or the ROR) for the purpose of under-valuation. To ascertain as to whether the actual *kisam* of the plot as recorded in the ROR has been declared or not, the RO has to verify the ROR. For this purpose, the RO has to either ask the party to produce the ROR, or make a search for the relevant ROR kept in the concerned *Tahasil* Office. There is no provision in the Registration Act to demand the production of ROR or to refuse registration of documents for non-production of the ROR. The State government has instructed the ROs to confirm the *kisam* of the land in question from the relevant ROR kept in the custody of the *Tahasildar*. But the level of coordination between the *Tahasil* office and the Registration office is inadequate for this purpose, resulting in delays. This difficulty can be obviated if copies of the ROR of all the villages under the jurisdiction of a RO are supplied to him/her by the *Tahasildar* as a matter of routine, duly attested by him. But this is likely to result in an inefficient duplication of land records in a large scale. Thus, there is no option but to continue with the present system, perhaps with an executive instruction to the *Tahasildar* to provide the required information to the ROs within a given time period. It should be noted here that this problem should also disappear with online availability of a GIS.

¹⁰ Such GIS are in progress or completed elsewhere in a small scale. Examples are those of Mirzapur city in Uttar Pradesh for the purpose of property taxation and a pilot project under implementation in Northern Maharashtra.

5. Long-term Reforms

As noted above, objectively determined guideline values (or benchmark values) should be the basis for determination of the market value. For the purpose of stamp duty, the market value shall be deemed to be not less than the guideline value. The government itself may provide the principles for determining the guideline value, in the first instance, in the relevant Rules. But these must be made subject to amendment through due process defined in the Rules to provide for improvement over time, as also to keep pace with changing times. Also, *it is necessary to provide for a fairly independent statutory body to implement these guidelines and actually determine the guideline values with perceived fairness. This calls for the constitution of a Central Valuation Board.* The Board would be responsible for amending the guidelines for valuation as and when required and providing statistical information in respect of prices of land and building for different parts of the State, based on these guidelines and in consultation with the public. The statistical information would be prepared in the form of an annual or biannual statement of benchmark values showing average prices of land and building situated in various parts of the State.

The Central Valuation Board shall function under the authority of and should report to the Minister in charge of the Revenue department of the Government of Orissa. The Revenue Secretary should be the ex-officio Member-Secretary of the Board, responsible for the day-to-day functioning of the Board. The Government shall select other Members of the Board, with the proviso that the Board should have five members including the Member-Secretary. Of the remaining four, one should be a qualified Chartered Accountant, one should be the Chairperson of any municipal council/ corporation within the State, and the other two should be prominent citizens of the State to be nominated by the State government, not holding any government office. The guideline values (benchmark values) determined by them should be issued to all ROs for publication in their office notice board for better transparency.

6. Principles for Determination of Market Value

As a first pass at providing some principles for the valuation of property, some characteristics are listed below for consideration. Once a particular property is classified accordingly, benchmark values can be assigned with relatively greater assurance. While the characterisation preferred below cannot be called exhaustive of the various facets of a property, it must be noted that it is necessary to be selective in choosing a few characteristics out of many for the system to be practicable.

(a) *In the case of land*, the following may be considered:

- i. classification of the land as dry, wet and the like;
- ii. classification (*kisam*) in the settlement register;
- iii. value of adjacent lands or lands in the vicinity;
- iv. the number of crops, the nature of crops raised in a year on the land and average yield from the land;
- v. proximity to road, railway station, village and market;
- vi. facilities available for irrigation such as tank, wells and pumpsets; and
- vii. the level of land.

(b) *In the case of house sites*, the following may be considered:

- i. whether the site is landlocked or has approach to it;
- ii. the general value of house sites in the locality;
- iii. proximity to roads, railway station and bus routes;
- iv. proximity to market, shops and commercial centres;
- v. amenities available in the area like water supply, electricity, sewerage, hospitals and educational institutions;
- vi. developmental activities and industrial scenario in the vicinity; and
- vii. land tax and valuation of sites with reference to taxation records of the local authorities concerned.

(c) *In the case of buildings*, the following may be considered:

- i. type and structure;
- ii. locality in which constructed;
- iii. plinth area, covered area and carpet area;
- iv. year of construction;
- v. kind of materials used;
- vi. property tax with reference to taxation records of local authority concerned; and
- vii. the purpose for which the building is being used as well as potential use and the income if any, by way of rent per annum secured on the building.

(d) *In the case of properties other than lands, house sites and buildings:*

- i. the nature, age and condition of the property;
- ii. purpose for which the property is being put to use; and
- iii. market price of comparable property, if similar goods are regularly bought and sold in the market.

In all the cases, special features relevant for valuation will have to be considered, either reported by the concerned parties or learnt of otherwise.

7. Other Issues of Valuation

i. Updation of plinth area rates: The Government of Orissa (Revenue Department), in their letter No. 39413 of July 3, 1989, have laid down the principles for the determination of market value of buildings and different types of houses for stamp duty purposes. The Government has instructed the RO to take into consideration the plinth area rates of different structures as shown in the same letter for determination of the market value of the building and other structures. The rates were prescribed in the year 1989 and in the meantime the plinth area rates have gone up. The ROs are still assessing the value of buildings and other structures on the basis of the plinth area rates provided by the Government, which are much less than the present plinth area rates of the Public Works Department (PWD), another arm of the same Government. The valuation of the buildings and other structures made on the basis of outdated rates

has resulted in substantial loss of revenue to the Government. *It is suggested that a provision may be made to supply updated plinth area rates, i.e., scheduled rates of the PWD for different structures, updated from time to time, for assessing the value of buildings, deducting depreciation at the rates shown in the chart enclosed with that letter.*

ii. Need for municipal verification: To avoid payment of stamp duty leviable on the market value of the building, the building standing on the land is sometimes not reported in the instruments. A new building is often shown as an old one in order to get the benefit of higher depreciation. Similarly, plinth area of the building is sometimes not correctly reported to cause under-valuation of the building, and payment of proper duty is thus avoided. To prevent this, *it is suggested that the registering party should be asked to furnish a report from the Executive Officer of the concerned Municipality or Notified Area Council as to the non-existence of building and other structures or to furnish a copy of the approved plan of the building if in existence.*

8. Avoidance of Stamp Duty

It is generally found that the avoidance of stamp duty is greater in the case of instruments whose registration is optional, since there is no check on them to detect such avoidance as is done in the case of compulsorily registerable instruments. Under Section 73 of the Stamp Act, the Collector or his authorised officer can inspect the public offices to find out if such optionally registerable instruments kept in the custody of public offices are properly stamped or not. But there is no provision in the Act to inspect private premises to detect such cases of evasion of stamp duty on optionally registerable instruments. This provides a loophole through which tax is often avoided. In any case, as long as registration is optional in these cases, conferring the power of inspection to the Registration Department will be pointless. Thus, the first requirement would be to *make those types of instruments compulsorily registerable under the relevant Act, which are commonly used for commercial purposes or as substitutes of compulsorily registerable instruments. Next, necessary provisions may be made in the Act to inspect such instruments kept in the custody of private persons.*

particularly the developers/ builders and to take action for realisation of deficit stamp duty. This is because the instruments of Power of Attorney and Agreement relating to land development and construction, which are optionally registerable, are often not registered at all. This will have to be done with retrospective effect to be effective, and may be combined with a one-time amnesty scheme providing for concessional tax rates on old instruments voluntarily submitted for registration, and heavy penalties if detected by the department. Such an amnesty scheme was quite successful in Maharashtra in bringing out for registration a large number of old documents, although the amnesty related to penalties only, and there was no concessional rate for the old instruments surfacing for proper registration. Tamil Nadu has also recently offered an amnesty scheme (called Samadhan Amnesty Scheme), whereby 50 per cent of the difference between the duty paid and payable as per the 'guideline value' of the property concerned is waived (copy of relevant G.O. provided in Annexes).

Taking advantage of the legal loopholes, the payment of stamp duty leviable on the instrument of conveyance is widely avoided by executing the following kinds of instruments. Some of these are executed in such a way that in substance and effect they really become instruments of conveyance.

- i. Power of attorney giving possession of the property described in the instrument to the Attorney and authorising him to sell;
- ii. Agreement with possession of the property, particularly the agreement between the owner and Developer-cum-Builder where the owner of the land gives the possession of the land to the developer-cum-builder to construct buildings over it and after construction to share the buildings among themselves, whose registration is optional under the Registration Act.

(As suggested above, these two kinds of instruments should be made compulsorily registerable to prevent evasion of stamp duty.)

- iii. Instrument of lease for a long term or perpetuity on payment of nominal rent.
- iv. Declaratory suit filed in a court of law whereby valuable property is transferred under the court decree.

- v. Instrument of Dissolution of partnership where immovable property is taken as his share on dissolution by a partner other than the partner who contributed that property as his share in the partnership.
- vi. Instrument of release where a co-owner releases his share in the property to another co-owner for a consideration.
- vii. Instrument of exchange is also used to evade stamp duty, where a property of much higher value is exchanged for a property of far lower value.
- viii. Splitting of sale transaction by more than one instrument in order to avoid payment of higher stamp duty chargeable on a higher slab.
- ix. By resorting to registration of an instrument affecting the property of Orissa in other States or in metropolitan cities where the rate of stamp duty is lower than that of Orissa under Section 28(1) and 30(2) of the Registration Act, 1908.

The instruments mentioned against serial no. (i), (ii), (iv), (v), (vi) and (vii) should be subject to the same rate of duty as applicable to conveyance (as these instruments are in reality and substance conveyance). Some exceptions may be made in the case of such instruments involving direct relatives to avoid harassment of those executing such instruments for genuine reasons.

Splitting of a sale transaction through more than one instrument is at present legally permissible under section 28 of the Indian Stamp Act. It should be discouraged when by such splitting the payment of duty at a higher rate is avoided. To check this avoidance, *a declaration on all sale instruments should be made to the effect that the transaction made under the instrument is not a part of a larger transaction.* In case the declaration is found to be false, the Collector shall take action for realisation of the deficit amount of stamp duty chargeable on the higher slab from the person liable to pay it, along with a specified penalty. This provision of recording a declaration as suggested above should be made applicable only till the slab system in the rate structure of conveyance is abolished and the Stamp duty is levied on a percentage basis on the market value of the property.

Avoidance of stamp duty by mentioning a nominal rent in a lease deed for a long term or in perpetuity can be checked by charging the instrument of lease with stamp duty on the market rent and not on the nominal rent mentioned in the instrument. Market rent means that rent which the lease for immovable property might reasonably be expected to fetch at that time in the open market.

Avoidance of stamp duty by registering the instrument in another State or a metropolitan city under section 28(1) or 30(2) of the Registration Act can be checked, if action can be taken on the copy of such instrument received under section 65 or 67 of the Registration Act for realisation of stamp duty. The District Registrar, on receipt of the copy under the aforesaid sections from the District Registrar of the other State or of the metropolitan city, should move the Collector for realisation of deficit stamp duty leviable on the market value. The *Tahasildar* of the State may also be instructed by the Government not to allow mutation on the strength of the instrument registered in another State or metropolitan city affecting property of Orissa until the deficit stamp duty due on the instrument is realised by the Collector. For the purpose of realisation of deficit duty leviable on the market value, the *Tahasildar* should refer the instrument under section 47A to the Collector. Section 47A is a State enactment. Hence, a Registering Officer of another State or metropolitan city is under no statutory obligation to ascertain from the Collector of a district in Orissa as to whether market value of the property in Orissa under the instrument being registered by him is correctly set forth or not. Therefore, this suggested provision may be inserted in the Rules to the Act. *A lasting remedy for this problem, however, is that the high rate of duty in Orissa should be lowered. Section 30(2) of the Registration Act should also be deleted from the Indian Stamp Act 1899 and section 28(1) may be suitably amended so that the property relating to a particular State can only be registered in the concerned Registration office of that State.*

Some instruments of settlement categorised under clause (b) of sub-section (24) of section - 2 of the Stamp Act allow disposition of property under without any condition of its reversion to the executant or his heirs. Such deeds with absolute

disposition may be clubbed with the instrument of gift to be chargeable under one rate of stamp duty of gift.

9. Emergence of new types of instruments

The following *new types of instruments have emerged which have not so far been included in the Schedule to the Act and need to be included in the schedule 1-A so as to be chargeable with stamp duty.*

a) Instrument of Sale of Air Right:

This instrument of sale of air right is executed to record the sale transaction of air right by which the owner of the existing building gives right to the developer/builder to construct the upper floors on his building for sale independent of the existing building. The applicable rate should be that on conveyance.

b) Instrument of Rectification:

The Instrument of rectification is that which rectifies an error that inadvertently crept into an instrument previously executed provided that the rectification does not make any material alteration in the terms of the original instrument. This deed of rectification is employed to complete the transaction, and is chargeable with nominal duty of Rs. 1.00. If the instrument of rectification makes any material alteration to the original instrument that instrument of rectification constitutes *per se* a separate instrument and should be leviable to full stamp duty as laid down under the Schedule IA for the original instrument.

c) Instrument of Ratification or Consent:

The first instrument ratifies the original instrument and is employed to complete the transaction effected through original instruments. Similarly, a deed of consent is that whereby consent is given to a transaction already made through an instrument previously executed. Unless the original instrument has already been taxed at the full rate, these instruments should be taxed at the rate applicable to the original instrument.

d) Instrument of Clearance List:

The instrument of clearance list means an instrument recording the list of transaction for sale and purchase of Government security, share, scrip, stock, bond, debenture and other marketable security of like nature in/of an

incorporated body to be submitted to a clearing house of a stock exchange. With the establishment of Stock Exchange in the State at Bhubaneswar this instrument needs to be included in the schedule 1-A of the Stamp Act. However, it is not clear as to whether the Government of India should consider this particular instrument or the States themselves.

e) Memorandum of Partition:

Memorandum of partition is an instrument which records the terms and conditions of oral partition already made to provide written evidence for such partition and may be stamped at the rate of the instrument of partition.

f) Lease of Movable Property:

As per definition of Section 105 of Transfer of property Act 1882, lease means lease of an immovable property. Movable properties like vehicles, machinery are also leased out, especially by lease financing companies. So far these transactions have not attracted stamp duty, and sometimes it is proposed that these should be subject to stamp duty. Since such transactions are subject to sales tax under clause 2 (d), which defines 'goods' and 2 (g [iv]), which defines 'sale', of the Orissa Sales Tax Act, there is no case for levying stamp duty on these transactions. Such transactions with respect to immovable property only are rightly subjected to stamp duty, as sales tax is not payable on these transactions.

g) Instrument of Equitable Mortgage:

Under Section 58(f) of the Transfer of Property Act, 1882 this instrument of equitable mortgage does not require registration and remains outside the purview of the stamp duty provisions. Merely deposit of title deed as security on the immovable property is enough. But some states like Maharashtra, Gujarat and Madhya Pradesh amended their Stamp Act and subjected this instrument of equitable mortgage to the levy of stamp duty. In the interest of uniformity, this instrument of equitable mortgage should be included in Schedule 1A with a nominal rate of duty on the value of movable or immovable property, since the operation of the equitable mortgage has been extended to many places of Orissa. However, the case for levying stamp duty on this instrument is unclear, and if there is a joint decision by all the States to keep it outside the purview of stamp duty, then Orissa should also conform to this decision.

We bring together the numerous recommendations and suggestions spread over the four preceding chapters in this concluding chapter for easy reference. The chapter and section numbers are given in parentheses and the recommendations and suggestions are grouped by the same subjects as the chapters themselves.

1. Stamp Duty Structure

- ◆ *Apart from the diversion of registration of documents from Orissa to other States, the high rates in Orissa seem to have resulted in the widespread evasion scenario discussed above. In this situation, a substantial reduction in the stamp duty rates appears to be essential. (Chapter II, section 3)*
- ◆ *It would be advisable to have a surcharge of 2 per cent in all urban areas without any further distinction. (Chapter II, section 3)*
- ◆ *We would like to recommend a very limited (in terms of scope, rate and progressivity) role for additional tax. It should be applicable to the entire State for transactions with a value of consideration exceeding Rs. 5,000 only. Further, there should be only three slabs of such value, with the recommended additional tax rate mentioned against each slab as shown below:*

Rs. 5,001- 15,000	one per cent
Rs. 15,001-25,000	one and a half per cent
Above Rs. 25,000	two per cent.

(Chapter II, section 3)
- ◆ *A cap on the tax rate at a reasonable level can largely obviate the problem of tax evasion as a consequence of a progressive tax structure; a reduction in the number of differentially taxable slabs should meet the other difficulty with the present system. A cap of Rs. 2.5 lakh on stamp duty payable should be reasonable.*

However, to prevent misuse of this recommended provision, it will be necessary to incorporate a proviso that the cap will be applicable for instruments relating to only one piece of property or only one transaction. (Chapter II, section 4)

- ◆ *To limit avoidance of taxes through unintended use of certain types of instruments in a way that will stand judicial scrutiny, the Act must identify possibilities of such use to the extent possible and actually link the event with the properly applicable tax rate. This principle needs to be combined with a substantial reduction in the multiplicity of tax rates to achieve a tax structure that would be simple, easy to administer, easily complied with and less prone to avoidance. (Chapter II, section 5)*

2. Administrative Reforms

- ◆ *It is advisable to allow for uniformly proportional commissions to vendors so that the disincentive to sell stamps of higher denominations is substantially eliminated. (Chapter III, section 3-A)*
- ◆ *Using franking machines to provide stamps allows for the necessary flexibility in the supply of stamps. Due caution is, however, recommended in view of the possibility of counterfeit stamps with freely available modern equipment. (Chapter III, section 3-A)*
- ◆ *Necessary provision may also be made in the rules to allow payment in cash or by bank draft or bank pay order. The document can be appropriately endorsed with the amount of duty paid clearly mentioned, using the franking machine. (Chapter III, section 3-A)*
- ◆ *Photocopied forms may be accepted as valid along with printed ones. (Chapter III, section 3-A)*

- ◆ *The Registration Act must be changed to give legal validity to only that transaction that has been registered first, rather than the one that has been executed first, to be fair. (Chapter III, section 3-B)*

- ◆ *There is a system of a copy of every registered instrument relating to sale of land being transmitted to the Tahasildar; however, mutation is neither automatic nor necessarily chronological. This should be legally ensured. Finally, instead of asking the buyer to take precautions and obtain an encumbrance certificate, this should be automatically checked at the time of registration. If the seller has already registered a sale deed (or executed a power of attorney in favour of a third party) with respect to the land being transacted, then the buyer should be warned as such. (Chapter III, section 3-B)*

- ◆ *Pending computerisation, registration offices should prominently display the need for taking appropriate precautions in the form of an encumbrance certificate. Also, the registration form should contain a specific entry asking the buyer whether he/she has obtained an encumbrance certificate or not; a further entry should be included indicating that the buyer agrees to register the instrument at his/her own risk, if the response is in the negative. (Chapter III, section 3-B)*

- ◆ *For the sake of justice to aggrieved persons, it is necessary to make some provision in the Act for appeal against possible erroneous orders of the District Collector. (Chapter III, section 3-C)*

- ◆ *For the sake of equity and for the elimination of discrimination, the provision under section 4 of the Stamp Act may be rationalised by extending the provision of section 4 to other instruments also. (Chapter III, section 3-D)*

- ◆ *For removal of confusion and doubt, a provision needs to be inserted under Section 29 of the Stamp Act. This should specify that in respect of all other instruments*

leviable with stamp duty not mentioned in sections 19, 29 and 30, the person executing the instrument is liable to pay the duty. (Chapter III, section 3-E)

- ◆ *While calculating the amount of stamps required on an instrument, fractions of a rupee should be rounded off to the nearest rupee. (Chapter III, section 3-F)*
- ◆ *The State of Orissa, along with many other States, has enacted a new Section 19-A for this purpose. The Indian Stamp Act itself should contain similar provisions to bring uniformity among all the States and Union Territories. (Chapter III, section 3-G)*
- ◆ *[Executive orders] are in effect a part of the applicable Act as they modify specific provisions thereof and hence the Act should contain these orders in the schedules, updated regularly. (Chapter III, section 3-H)*
- ◆ *For better transparency, the rate of stamp duty and any guideline value or benchmark value in use should be exhibited at a conspicuous place in the office of the ROs. A booklet in local language indicating different applicable rates of stamp duty and the Government may publish guideline values for sale at cost price to disseminate this information for all concerned. (Chapter III, section 3-I)*
- ◆ *The clearance required from the income tax authorities can in principle be obtained post facto also. There is no need to require prior clearance as long as the person registering a sale deed that requires such clearance submits a declaration that the details of the transaction have been duly reported to the concerned income tax authority. (Chapter III, section 3-J)*
- ◆ *The requirement for registration should be amended to a declaration by the seller that he/she has duly intimated the land consolidation officer about the sale, at least 15 days before the document is submitted for registration. (Chapter III, section 3-J)*

- ◆ *The sale by a member of the scheduled caste/tribe of land located in a scheduled area should be an exception to the general principle of not requiring prior permission from government officers. In such cases, present provisions should continue in view of the serious social implications of these land transactions. (Chapter III, section 3-J)*

- ◆ *It is necessary to install a system that would provide the services of a Revenue Inspector to the DSRs, D.I.G.R.s and Joint I.G.R.s within a reasonable time from making such a request. (Chapter III, section 3-K)*

- ◆ *The present provision in Section 47A to refer the instrument to the Collector after its registration may be amended. It should be modified by a clause to prohibit issue of a certified copy, if the concerned person does not agree to pay the deficit stamp duty leviable on the basis of benchmark value; only after disposal of such disputed cases should the bar be lifted. (Chapter III, section 3-L)*

- ◆ *The Orissa Act 7 of 1987 amended Section 33 of the Stamp Act to permit action by the Collector on the basis of a copy of the instrument, if the original instrument is not produced. Similar provisions may be made in the Indian Stamp Act 1899. There should be a provision in Section 47 A (2-a) to the effect that the Collector can also determine the market value of the property and duty on the basis of the copy of the instrument obtained from the concerned registering officer. For this purpose the copy should be deemed to be the original one. (Chapter III, section 3-M)*

- ◆ *Mistakes by the ROs can be prevented by giving proper training to the officers as well as the other staff of the Registration Department on the classification of the instruments by experienced officers of the Department. (Chapter III, section 3-N)*

3. Computerisation

- ◆ *Computerisation of the records can provide a cost-effective, easy and time saving alternative to the way the registration department now carries out its business. (Chapter IV, section 1)*
- ◆ *Given that land records are already being computerised in Orissa, this is only a logical extension of the process that would enable electronic transfer of data between Tahasildar offices and registration offices, making it possible to minimise fraudulent multiple sale of the same property. (Chapter IV, section 1)*
- ◆ *Computerisation can simplify the process of valuation check tremendously, even under the present system. (Chapter IV, section 2.B)*
- ◆ *It is fairly straightforward to set up a data bank of scanned documents, properly classified, in a computer. The space requirement would be minimal, photocopies will not be required and chances of destruction will be minimal with a system of back-ups located in a place other than the office of the RO. (Chapter IV, section 2.D)*

4. Valuation of Property and Tax Avoidance

- ◆ *It is clear that as a long-term sustainable policy, the government must attempt the logical extension of the policy of shifting the tax base to market prices. This would entail incorporation of basic principles for fixing such market prices into the statute book in such a way that it would stand up to the judicial tests of legality and fairness. (Chapter V, section 3)*

- ◆ *Setting up a reasonably independent body to assign market prices to properties also becomes an important logical step in the interest of perceived fairness. (Chapter V, section 3)*
- ◆ *The average value of sale instances registered during preceding six months immediately before the instrument in question is submitted for registration should be taken as a basis for deciding as to whether the instrument in question is undervalued or not. When there are two or more such previous transactions, the size of the transaction should also be taken into account by computing the weighted average price. (Chapter V, section 4)*
- ◆ *Maps of all villages under his/her jurisdiction should be provided to each RO. Full computerisation of the land records and land revenue system may include a Geographical Information System (GIS), which would contain such a map with salient features of each plot easily obtainable from the GIS. If the GIS is available online to the ROs (subject to computerisation of the department), then this problem is obviated fully. (Chapter V, section 4)*
- ◆ *The maintenance of valuation register and the principles for determination of market value should be laid down in the Stamp Rules. (Chapter V, section 4)*
- ◆ *It is necessary to provide for a fairly independent statutory body to implement these guidelines and actually determine the guideline values with perceived fairness. This calls for the constitution of a Central Valuation Board. (Chapter V, section 5)*
- ◆ *It is suggested that a provision may be made to supply updated plinth area rates, i.e., scheduled rates of the PWD for different structures, updated from time to time, for assessing the value of buildings, deducting depreciation at the rates shown in the chart enclosed with that letter. (Chapter V, section 7)*
- ◆ *The registering party should be asked to furnish a report from the Executive Officer of the concerned Municipality or Notified Area Council as to the non-existence of*

building and other structures or to furnish a copy of the approved plan of the building if in existence. (Chapter V, section 7)

- ◆ *[The Government must] make those types of instruments compulsorily registerable under the relevant Act, which are commonly used for commercial purposes or as substitutes of compulsorily registerable instruments. Next, necessary provisions may be made in the Act to inspect such instruments kept in the custody of private persons, particularly the developers/ builders and to take action for realisation of deficit stamp duty. This will have to be done with retrospective effect to be effective, and may be combined with a one-time amnesty scheme providing for concessional tax rates on old instruments voluntarily submitted for registration and heavy penalties if detected by the department. (Chapter V, section 8)*

- ◆ *The instruments of power of attorney with authorisation to sell, agreement with possession of property, property transfers resulting from declaratory suits, dissolution of partnership effecting transfer of immovable property, release for a consideration and exchange of property should be subject to the same rate of duty as applicable to conveyance (as these instruments are in reality and substance conveyance). Some exceptions may be made in the case of such instruments involving direct relatives to avoid harassment of those executing such instruments for genuine reasons. (Chapter V, section 8)*

- ◆ *A declaration on all sale instruments should be made to the effect that the transaction made under the instrument is not a part of a larger transaction. (Chapter V, section 8)*

- ◆ *Avoidance of stamp duty by mentioning a nominal rent in a lease deed for a long term or in perpetuity can be checked by charging the instrument of lease with stamp duty on the market rent and not on the nominal rent mentioned in the instrument. (Chapter V, section 8)*

- ◆ *A lasting remedy for the problem of out-of-State registration is that the high rate of duty in Orissa should be lowered. Section 30(2) of the Registration Act should also be deleted from the Indian Stamp Act 1899 and section 28(1) may be suitably amended so that the property relating to a particular State can only be registered in the concerned Registration office of that State. (Chapter V, section 8)*

- ◆ *The following new types of instruments have emerged which have not so far been included in the Schedule to the Act and need to be included in the schedule 1-A so as to be chargeable with stamp duty.*
 - Sale of Air Rights,
 - Rectification with material alteration,
 - Ratification or Consent, unless duty has been paid on the original instrument already,
 - Clearance List, if it indeed is in the State jurisdiction,
 - Memorandum of Partition, and
 - Equitable Mortgage, subject to a consensus among States that it needs to be brought under stamp duty.

(Chapter V, section 9)

ANNEXE – I

A Note on Provisions relating to Valuation in Stamp Duty Rules in Selected States

1. Andhra Pradesh

Andhra Pradesh Stamp (Prevention of Under-Valuation of Instruments) Rules, 1975 contain the relevant provisions. The rules require the market value to be specified in the instrument submitted for registration. Rule 3(3) empowers the RO to call for the documents supporting the declared market value. Rule 3(4) allows the RO to refer the case to the collector along with his/her own assessment of market value, if under-valuation is suspected. Rule (4) lays down the system of a provisional determination of the market value by the Collector, after hearing the parties and examining documents called for as relevant ones. Rule (5) lays down a list of characteristics of different types of properties (we have liberally borrowed from it in our suggested list) that the Collector must consider before passing the order. Rules (6) and (7) provide for giving another opportunity to the concerned parties to make representations on the provisional assessment before final order is passed. The final order is also subject to the prescribed process of appeal.

It may be noted that the system of maintaining a 'market value register' is not included in the rules, although it is in fact prepared and updated regularly. There is indirect statutory backing to this practice in Rule 3(4) and Rule (4), which empowers the department to reassess the declared value.

2. Bihar

The relevant rules are contained in Bihar Instruments Valuation Rules, 1991. Rule (3) requires that details of the property being transferred be submitted along with specified types of instruments at the time of registration. Rules (4) and (5) specify that keeping these characteristics and the location of the properties, the minimum value of properties will be determined on the basis of the highest declared value of properties registered in the preceding year. If no property transfer was registered in a given area during the previous year, then similar considerations with respect to adjoining areas will apply. Rule (6) provides that the list of minimum values should be sent to the ROs for their reference. Rule (7) calls for updation of these minimum values every two years. Rule (9) allows the RO to refer any particular case to the Collector even if the declared value is not less than the minimum value, if he/she has reasons to suspect under-valuation.

3. Karnataka

Karnataka Stamp (Prevention of Under-Valuation of Instruments) Rules, 1977 contain the relevant rules. We only need to note that the provisions are very similar to those in Andhra Pradesh, described in some detail above.

4. Maharashtra

Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 are probably the most detailed set of rules that specifies the entire system of market value (called average rates) determination. Unlike in other States, the determination of market value is not based on declared values either explicitly or implicitly, except in some special cases. Rule (4) provides that the basic set of information is to be provided by the Joint Director of Town Planning and Valuation, Maharashtra State, in the form of 'Annual Statement of Average Rates for Immovable Property'. This is a comprehensive document classifying properties by location and grouping them by

specific characteristics like type of land or construction. It is first submitted to the Chief Controlling Revenue Authority, latest by 31 October every year. The latter, with any modification considered necessary, issues it at the beginning of the calendar year to the Sub-Registrar and ROs. A copy is on public display in all registration offices. The rule, however, does not make it binding on the RO to accept property valuations conforming to these average rates; he/she can refer any case to the Collector for determination of market value recording the reasons for suspecting under-valuation.

5. Madhya Pradesh

Madhya Pradesh also has a set of statutory provisions specially aimed at shifting the tax base from declared value to market value, called *M.P. Prevention of Undervaluation of Instruments Rules, 1975*. The relevant provisions are again very similar to those in Andhra Pradesh and Karnataka.

6. Tamil Nadu

Tamil Nadu Stamp (Prevention of Under-Valuation of Instruments) Rules, 1968 is once again very similar to those in Andhra Pradesh, Karnataka and Madhya Pradesh. but there is an important difference. Rule 3(4) provides statutory support to the “guidelines register” containing departmental estimates of market value, without binding the RO to these values in that it provides for exceptions on both sides of the guideline value.

7. Uttar Pradesh

Uttar Pradesh does not have a separate set of Rules for the specific purpose implementing the system of levying stamp duty on market value. Chapter XV of *The United Provinces Stamp Rules, 1942* (as amended by notification no. S-R-1850/X-500(1)-75 dated 24-6-1976) contains the relevant provisions in Rules 340-352. Rule 341 provides the principles to be applied in determining minimum market values.

There are several alternative methods specified, some of which are quite objective and easy to apply. For example, one of the methods it provides for is using given multiples of land revenue assessed (for agricultural land) or of annual rental value (for buildings).

8. West Bengal

West Bengal (Prevention of Under-Valuation of Instruments) Rules, 1994 lays down a system which is very similar to the currently used one in Orissa. except that the highest value declared in the preceding five years is considered instead of the preceding three years as in Orissa. The other major difference, of course, is that this system gets statutory backing by virtue of being a part of these rules.

9. An Assessment

Our assessment of the nine systems outlined above reveals that all of them suffer from the shortcoming that the government itself determines the market values. It can be a legitimate grouse of the taxpayer that there is a strong possibility of 'participation bias' pushing the determined market values higher than warranted, particularly because the rules are not objective enough (except in Uttar Pradesh, to some extent). The Maharashtra system at least has the virtue of removing this important task from those directly responsible for revenue collection. We strongly believe that this is an important consideration and the best way to do it would be to entrust it to an independent agency.

The West Bengal system suffers from the same substantive problems as the present system in Orissa and does not merit serious consideration. The Bihar system also has similar shortcomings of being based on declared values although it is a little more elaborate. The system adopted in Andhra Pradesh, Karnataka, Madhya Pradesh and Tamil Nadu seems to be along desirable lines as far as the estimation of market value is concerned, but has the shortcomings discussed above. While it may be possible

to build in some of the objective principles laid down in the U.P. Rules, we believe a fully objective system of determining market values is a rather Utopian idea. Hence, the next best option would be to entrust it to an independent and statutory agency, providing them with a set of guidelines as suggested in the main text.

ANNEXE – II

Government Order on Samadhan Amnesty Scheme, Tamil Nadu

GOVERNMENT OF TAMIL NADU

ABSTRACT

REGISTRATION DEPARTMENT – SAMADHAN AMNESTY SCHEME –
Collection of stamp duty from instruments referred to under sections 47-A (1), 47-A(3) and 19-B(4) of the Indian Stamp Act, 1899 – Remission of 50% of stamp duty on the difference of duty chargeable as per Guidelines Register and duty already paid – Orders issued.

COMMERCIAL TAXES (J1) DEPARTMENT

G.O. (Ms.) No. 35

Dated: 26.2.99

Read:

From the Inspector General of Registration letter No.36183/C2/98,
dt.18.8.98, 17.9.98, 27.11.98 and 12.1.1999

....

ORDER:

The Indian Stamp (Madras Amendment) Act, 1967, requires that the market value of the property has to be mentioned in the instruments of conveyance, gift or partition, as the basis for the measure of the extent of liability or quantum of stamp duty with which such instrument is chargeable, in order to check evasion. Section 47-A of the Indian Stamp Act, 1899, inserted by the Tamil Nadu Act 24 of 1967, provides that the registering officer, while registering any instrument of conveyance, exchange, gift, release of benami right or settlement, has reason to believe that the market value of the property which is the subject matter in such instruments, has not been truly set forth in those instruments, refer the same, after registering such instrument, to the "Collector" (Special Deputy Collector (Stamps) for determination of the market value of such property and the proper duty payable thereon.

2. The Inspector General of Registration has brought to the notice of the Government that the cases of undervaluation of instruments has risen steeply and there is a huge pendency of cases awaiting disposal of the Collector and that a considerable amount of stamp revenue has been locked up in these cases.

3. The Inspector General of Registration has sent a proposal for recovery of arrears of stamp revenue in respect of instruments referred to under sections 47-A(1), 47-A(3) and 19-B(4) of the Stamp Act by reducing stamp duty to 50% of the additional amount of duty chargeable on the difference between the value recommended by the Registering Authority and the value set forth in the instrument.

...2....

4. The Government, after careful examination of the proposal of the Inspector General of Registration, have decided to remit 50% (fifty percent) of the difference of duty chargeable on the value of the property as per the Guidelines Register and the duty already paid in respect of instruments referred and received by the "Collector" under sections 47-A(1), 47-A(3) and 19-B(4) of the Indian Stamp Act, 1899 (Central Act II of 1899) and pending as on 1.3.99 for the determination of market value by the collector. This scheme will be in operation till 30.6.1999.

5. The Government issue the following instructions in this regard:

- (i) The remission of stamp duty notified in the appendix will be available to the instruments mentioned in paragraph 4 above which are pending determination of the market value by the Collector on the date of publication of the notification appended.
- (ii) Document involved in undervaluation cases stand completely discharged on payment of 50% of the difference of duty chargeable on the value of the property as per the Guidelines Register and the duty already paid.
- (iii) After disposal of the cases, the Registering Officers are authorised to record on the document to the effect that 50% of stamp duty chargeable on the difference between the value of the property as per the Guidelines Register and the duty already paid together with the proportionate registration fee has been collected and that the case has been settled under the notification appended to this order.
- (iv) This order will be applicable only for one time and payment made on or before the 30th June, 1999.
- (v) This order will not be applicable to those cases which are pending recovery of arrears under the Revenue Recovery Act.

6. The notification appended to this order will be published in the Tamil Nadu Government Gazette

7. The Works Manager, Government Central Press, Chennai is requested to send to Government for record, 25 copies of the Tamil Nadu Government Gazette in which the notification appended hereto is published.

(BY ORDER OF THE GOVERNOR)

K.A.MATHEW,
SECRETARY TO GOVERNMENT.

To
The Inspector General of Registration, Chennai-28.
The Works Manager, Government Central press, Chennai-79.

The Accountant General (Audit), Chennai-6.
The Accountant General, Chennai-18.
The Accountant General, Chennai-18(By name).
The Accountant General, Chennai-35

Copy to :
Chief Minister's office, Chennai-9.
Senior P.A. to Minister (Rural Industries & Registration),
Chennai-9.
Finance Department, Chennai-9.
Law Department, Chennai-9.
SF/SCs /Forwarded:By order/


SECTION OFFICER.

APPENDIX

NOTIFICATION

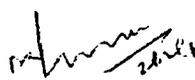
In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Governor of Tamil Nadu hereby remits fifty percent of the difference of duty chargeable on the value of the property as per the Guidelines Register referred to in sub-rule (4) of rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of instruments) Rules, 1968 and the duty already paid, -

- (1) in respect of instruments, which have been referred to under sub-section (1) of section 47-A of the Act;
- (2) on the instruments on which suo motu action has been taken by the Collector under sub-section (3) of the said section 47-A;
- (3) on the instruments mentioned in sub-section (4) of section 19-B of the said Act.

2. The above remission will be available to the instruments mentioned in paragraph 1 above which are pending as on the 1st March, 1999 for the determination of the market value by the collector. (Special Deputy Collector [stamps]). The said remission will be available till the 30th June, 1999.

K.A.MATHEW,
SECRETARY TO GOVERNMENT.

/ True copy /


SECTION OFFICER.

RK/282