DISTORTIONARY IMPACT OF
STAMP DUTY EVASION IN HARYANA:
A CASE STUDY OF GURGAON CITY
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1.1 INTRODUCTION

Stamp duty (SD) is a form of tax that is levied on documents. Historically, a physical stamp (a tax stamp) had to be attached to or impressed upon the document to denote that stamp duty had been paid before the document became legally effective. More modern versions of the tax no longer require a physical stamp.

Stamp duties are levied on various instruments reduced to writing and not on transaction per se. The idea of raising revenue to a state from the transactions of its citizens originated in Holland when the first stamp law was passed in 1624. In England stamp duties were first imposed in 1694 as a revenue raising measure to finance the ongoing war, and this was elaborated in subsequent statutes to cover various instruments. In India, stamp duties were first imposed in Calcutta on prescribed instruments in 1797 and then in other presidency states with the objective of abolition of tax levied earlier on traders for the maintenance of police establishments. Provisions were added later for sampling acknowledgments for the receipt of money rates and on other deeds. The Stamp Act of 1860, replaced the existing regulations of the 3 presidencies and this act was ultimately replaced by the act of 1899. This was based to a considerable extent on the English Act. Since then in India Stamp duties are imposed under the Indian Stamp Act, 1899, as amended several times over the years at the central government level.

The constitution of India empowers the union government and the state government to legislate provisions regarding stamp duties as per their competence according to the union list¹ and the state list² in the seventh schedule.

Stamp duties excluding judicial stamp duties, is a subject included in the concurrent list of the seventh schedule of the constitution of India.

¹ Acts administered only partially by the State Governments where the Central Govt. sets the rates of stamp duty which are usually same across all the states.
² Acts administered wholly by the Registration Department of the state where state sets the stamp duty rates.
However, it does not include the rates of stamp duties.

Duties or fees collected by means of judicial stamps are regulated by state legislature.

There are as such both parliamentary and state legislations in regard to stamp duties. All the legislations have the regulatory and revenue raising aspects. The power to legislate the rates of stamp duty in respect of bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts vest in parliament. These instruments have been mentioned in the entry 91 of the union list and chargeable with duty under section 3 of the act at the rates set out in the relevant schedule to the act. These documents are normally executed in the course of transactions in banking, industry, trade and commerce. The inclusion of these rates in the central list is with a view to keep them uniform throughout the country. However the centre can add new instruments only by constitutional amendment.

Entry 63 of the state list II provides the exclusive power to the state to fix the stamp duties for other instruments listed on the state list. In respect of other documents the legislature of any state has exclusive powers to make laws for that state.

The Indian stamp act, 1899 and state legislature impose duty on various instruments specified in the schedule there to at the rates specified therein. These instruments along with the applicable tax rates are listed in schedule 1-A of the state stamp act which combines the provisions of central act and State Act. Such duties are paid in by executors of instruments by either using the impressed stamp paper or adhesive stamps of the required denomination on them. The state governments have made rules for the purpose of the act by virtue of powers vested in them.

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 through consensus and agreement between the state and central government, although the parliament has overriding powers.
The state governments in India impose a variety of stamp duties and registration fees on different kinds of instruments. There are 65 different kinds of such charges imposed by the states. These charges can be classified into the following two categories:

A. STAMP DUTY
B. REGISTRATION FEE

A. STAMP DUTY:

There are two broad sub-classifications:

1. **Judicial stamp duties (JSD):** these are fees collected from litigants in courts and are best viewed as court fees.
2. **Non-judicial stamp duties (NJSD):** It is a type of tax which is paid for the transaction performed by way of document or instrument under the Indian Stamp Act, 1899.

NJSD are imposed on instruments that generally fall into five main categories:

- Instruments that relate to conveyance\(^3\) and property transfer
- Instruments that are connected with loans and advances
- Instruments that relate to capital market transactions
- Instruments that are used in daily business and commercial transactions
- Instruments that are executed under other statutes for record keeping purposes.

The stamp duties can be imposed an ad valorem rate, a specific rate, or a mix of ad valorem and specific rates. In all cases it is the buyer who is legally liable for the stamp duties. For most states, the bulk of stamp duty revenues come from the tax on a conveyance. Duties collected on

\(^3\)“Conveyance” - "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule I-A, as the case may be(Indian Stamp Act,1899)
conveyances typically account for 70 to 90 percent of total stamp duty revenues in most of the states.\textsuperscript{4}

This study is concerned with instruments relating to conveyance and property transfer.

The Instrument of conveyance, often known as a sale deed, is chargeable with duty at advalorem\textsuperscript{5} rates on a slab basis, i.e. higher the slab range, higher the rate of total stamp duty.

\section*{B. REGISTRATION FEE}

\textbf{Registration Fee} is a payment made for a specific service provided by the government in recording contracts and deeds. The government maintains a registry of deeds in return for a fee.

The registration act, 1908 and the rules made by the state government broadly outline the assessment, levy and collection of revenue under registration fee. It also lays down the administrative framework of the department.

The item “Registration of deeds and documents” appears as entry No. 6 of list III of the seventh schedule of the constitution of India. In accordance with article 246(2), the parliament and the legislatures of the state have concurrent powers to make law on the subject. The Indian registration act, 1908, a law passed by the central legislature and modified by both central and state legislatures from time to time, regulates the registration of deeds and documents throughout India.

\textbf{Land or immovable property registration} is the process of recording a copy of a document, transferring the title to immovable property, in the office of the Registration Department. It acts as proof that a transaction has taken place. The registration of a document serves as a notice of the transaction, to the persons affected by the transaction. Registration also serves as an implied notice to any person subsequently acquiring interest in the property, covered by the registered

\textsuperscript{4}World Bank Policy Research Working Paper 3413, September 2004 titled “Stamp Duties in Indian States: A Case for Reform” by James AIm, Patricia Annez, and Arbind M

\textsuperscript{5}Advalorem tax is a charge levied as a percentage of value of the item it is imposed on.
document. When a document, which is compulsorily to be registered, is not registered, it fails to confer any title given by the document.

The real purpose of registration is to ensure that every person dealing with property, for which compulsory registration is required, can confidently rely on the statement contained in the register, as being a full and complete account of all transactions by which the title may be affected. However, a certificate of registration is mere evidence that a document has been registered. It is not a proof that it has been executed.

Such land records give land holders the fullest security of tenures and minimize the possibility of disputes and litigation. These also enable them to obtain credit more easily and to transact in land more quickly, safely and cheaply. At the same time, the records secure the rights of absentees and also prevent the growth of unwanted and illegal land ownerships. Maintaining regular and updated land records are equally in the interest of the government also.

1.2 STUDY AREA

Gurgaon Tehsil in Haryana has been chosen as the area for studying the distortionary impact of stamp duty evasion. Real estate market in India has shown unprecedented growth in the last few years. One of the cities that has been taken over by a property boom is Gurgaon. Its proximity to Delhi (Gurgaon lies in the NCR region) and availability of real estate options has made it a hub of real estate activity. The real estate boom in the area, resultant proliferation of real estate agents and housing companies and huge amount of property transactions during the last ten years or so make it a good study area to analyze the impact of stamp duty rates and its evasion.

1.3 SCOPE OF THE STUDY

The study covers the stamp duty and registration fee structure as it exists, its legislative aspects, revenue growth over time and problems associated with this tax in Haryana and particularly in Gurgaon Tehsil. It also makes an attempt to understand the structure of real estate and its functioning in Gurgaon. The study presents the case of reform with respect to rationalization of this tax by providing an evidence of link between stamp tax rates and undervaluation through
data collected on sale deeds registered over circle rates and circulation of black money through undervaluation. An attempt has been made to calculate the amount of black money that is added to the economy every year on account of under declaration. The distortionary impact of stamp duty evasion in real estate in terms of generation of black money and further its impact on collections of other taxes and other aspects of the economy has been discussed. In conclusion the various reforms have been suggested with regard to the changes that could be effected in the administration of stamp duty besides the reduction in rates so as to avoid the loss of revenue to the exchequer and make it more public friendly.

REAL ESTATE - MEANING

The term ‘real estate’ is defined as land, including the air above it and the ground below it, and any buildings or structures on it. It is also referred to as realty. It covers residential housing, commercial offices, trading spaces such as theatres, hotels and restaurants, retail outlets, industrial buildings such as factories and government buildings. Real estate involves the purchase, sale, and development of land, residential and non-residential buildings. The main players in the real estate market are the landlords, developers, builders, real estate agents, tenants, buyers etc. The activities of the real estate sector encompass the housing and construction sectors also.

BACKGROUND AND HISTORY OF INDIAN REAL ESTATE SECTOR

Real Estate sector has seen remarkable growth in India in past decade though it showed some recession in 2008-09 before picking up again in the next year. The real estate market in many economies has consistently outperformed major stock and bond indices. According to Economic Survey, 2006, Government of India, the real estate sector in India has the potential to grow at 34% annually. It also estimated the real estate industry has a multiplier effect of 500% as the housing sector in India is linked to over 250 associate industries. According to the Indian National Housing board (1997), the real estate sector has the potential to generate over 3 million jobs over the next decade, assuming the Indian economy continues its high rate of economic growth.
The real estate sector is the second largest employer next only to agriculture (Ma Foi Randstad Employment Trends Survey, 2008). This is because of the chain of backward and forward linkages that the sector has with the other sectors of the economy, especially with the housing and construction sector. About 250 ancillary industries such as cement, steel, brick, timber, building materials etc. are dependent on the real estate industry.

The real estate sector has grown especially after the economic reforms and liberalization policy. Since the relaxation of controls on foreign direct investment (FDI) in early 2001 and then further relaxation in 2005, India has become a popular destination for investment. According to the data released by the Department of Industrial Policy and Promotion (DIPP) (2011), housing and real estate sector including cineplex, multiplex, integrated townships and commercial complexes etc, attracted a cumulative foreign direct investment (FDI) worth US$ 9,405 million from April 2000 to January 2011 wherein the sector witnessed FDI amounting US$ 1,048 million during April-January 2010-11.

It has lead to further increase in the business opportunities as mentioned above leading to consequent increase in migration of labour to the urban areas. Increase in the business opportunities and labour force coupled with the ever increasing middle class and job opportunities, has lead to the increase in the demand for commercial and housing space especially the rental space. Development of real estate has also been influenced to a large extent by the growth of entertainment, retail, hospitality industries, information technology enabled services (Call-Centers), economic services (like colleges, schools, hospitals) and vice-versa. According to Tenth Five Year Plan (2002-07), the housing, construction and real estate service sector grew by 4.6% from 1994-95 to 1999-2000. ‘Indian real estate: opportunities and returns’, a report by Ernst & Young (2006) stated that Indian Realty Sector is growing at 30% per annum and contributes about 5%-6% of the national GDP.

India’s real estate and particularly housing sector has seen many variations in the Government policies over the years.
After independence the basic thrust of Indian government was to provide affordable housing for all. Concrete governmental initiatives began in the early 1950s as a part of the **First Five Year Plan (1951-56)** with a focus on institution-building and housing for weaker sections of society. In the subsequent five year plans, government action ranged from strengthening the provision of housing for the poor and the introduction of several schemes for housing in the rural and urban regions of the country.

**Second Five Year Plan (1956-61)** saw the enactment of legislations for orderly town and country planning including the setting up of relevant organizations and for the preparation of master plans for important towns. In 1959 the central government announced a scheme to offer assistance in the form of loans to state governments for a period of 10 years for acquisition and development of land in order to make available building sites in sufficient numbers. During this period master plans for major cities were also prepared.

**The Fourth Plan (1969-74)** recognized the need to prevent the growth of population in large cities and decongestion and dispersal of population through the creation of smaller townships.

**The Housing & Urban Development Corporation (HUDCO) was established to fund housing and urban development programmes.** A scheme for improvement of infrastructure was also undertaken to provide basic amenities in cities across the country.

**Fifth Plan (1974-79) - The Urban Land (Ceiling & Regulation) Act** was enacted to prevent concentration of land holdings in urban areas and to make urban land available for construction of houses for the middle- and low-income groups. In order to reduce the pressure of urbanization the policy of promoting smaller towns in new urban centers was enacted while emphasizing on the improvement of civic amenities in urban and metropolitan regions.

**The Sixth Plan (1980-85) -** The programme of **Integrated Development of Small and Medium Towns** was launched in small towns for development of roads, pavements, minor civic works, bus-stands, markets, shopping complexes, etc. Positive incentives were offered for setting up new industries and commercial and professional hubs in small, medium and intermediate towns.
The Seventh Plan (1985-90) saw a marked departure in the Government Policy which stressed the need to place major responsibility of housing construction to the private sector.

To augment the flow of institutional finance to the housing sector and promoting and regulating housing finance institutions, the National Housing Bank (NHB) was set under the aegis of the Reserve Bank of India in 1988. This was also the period when private builders were offered incentives to participate and contribute in building mass housing projects.

The Eighth Plan (1992-97) identified the key issues in the emerging urban areas, viz., the widening gap between demand and supply of infrastructural services, the increased growth of urban population and deterioration of city environments.

In the late 1990’s and early 2000’s, the real estate market in India grew rapidly mainly due to the rapid economic growth and an expanding middle class. The new Housing and Habitat Policy was introduced in 1998. The key objective of the policy was on creating strong public–private partnership for tackling the housing. Under the new policy, government proposed to offer fiscal concessions, carry out legal and regulatory reforms and create an enabling environment for the development of the housing sector. The policy emphasized the role of the private sector, as the other partner, to be encouraged to take up the land assembly, housing construction and invest in infrastructure facilities. Ever since the added emphasis was given to private initiative in housing development, there has been a rapid growth in private investment in housing with the emergence of real estate developers mainly in metropolitan centers and other fast growing townships. The real estate sector was further buoyed when the Indian government allowed 100% foreign direct investment in the property sector in early 2001.

Currently the Indian real estate sector is major contributor to GDP growth. For instance, in the year 2005-06 the real GDP growth rate was 13.8% and in the same year the contribution of construction industry to GDP increased to 6.81% from 6.5%. During 2005-2006 construction sector recorded growth rate of 14.2% which was highest growth rate amongst all the sectors. Despite recessionary bump of 2008, the Indian market was fast to recover because of huge demand gap which was different as compared to other countries. It is interesting to note that
according to estimates of National Building Organization; India had shortage of 24.68 million units in 2001 of which 14.12 were in rural areas and 10.56 was in urban areas. Following the trend of urbanization that estimate of shortage was 24.71 million units in urban area for year 2007 which is likely to go up to 26.53 million units by 2012.

The real estate sector is showing all the promise of stupendous growth in future given the right kind of impetus. However at this stage the real estate sector is still dominated by large number of small players with very few numbers of large and corporate players having national presence. Restrictive legislation, lack of transparency and the presence of a number of taxes on real estate are the main impediments to the growth of this sector.

**Tax Burden on Real Estate**
There are multiple numbers of taxes imposed on real estate at centre, state and local level:

1. **Central Government:**
The Income Tax Department of Centre Government imposes wealth tax and capital gains tax (discussed later).

2. **State Governments:** State governments levy stamp duty, registration fee and transfer duty. At times the stamp duty also includes a surcharge which is passed on to the local bodies.

3. **Local Government:** The local governments impose property taxes or development charges and at times special levies on land and buildings.

Thus property is subject to one time levies like stamp duty and registration fee, gift tax, capital gains tax in case of sale of land, development charges etc. The recurring levies are wealth tax, property tax and other local taxes whenever applicable.

In the present study, for simplicity, stamp duty and registration fee are jointly referred to as Stamp Duty.
TAX EVASION AND TAX AVOIDANCE

One of the important findings of various studies that have gone into policy evaluation with respect to real estate (Chelliah Committee, 1991; Economic Reforms and the Stamp Act, 1995; Black Money in Real Estate, 1995; Reform of Stamp Duty Administration In India, 1999; etc) point to high incidence of taxes on the real estate properties as a factor responsible for compelling the taxpayers to adopt extra legal or illegal methods for avoiding or evading taxes. In order to understand the various methods for evading/avoidance of taxes, it is important to understand the difference between them.

TAX AVOIDANCE:

“It means preventing or reducing one’s tax liabilities through manipulations within the framework of existing tax legislation”.

It is legally permissible and hence a legitimate aim of taxpayers.

Some common avoidance methods in case of stamp duty are as under:

1. The use of an instrument of lease for the long term payment of rent.
2. The use of a declaratory suit filed in court under which property is transferred under the court decree;
3. The use of an instrument of dissolution of partnership in which property is taken as payment for the ending of a partnership.
4. The use of an instrument of release in which a co-owner releases his or her share to another co-owner in exchange for some consideration:
5. The exchange of properties of much different values; the splitting of one property into smaller properties to avoid high duty rates.

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TAX EVASION:

“Tax Evasion is an illegal attempt to reduce the tax payable by deliberately under-reporting or not reporting taxable incomes or concealing one’s true state of affairs from the tax authorities”.

It is a criminal offence and if detected, is punishable by financial penalties or even by imprisonment or both.

Other than these criteria of legality, Sharma (1976), uses another criteria in defining tax evasion and tax avoidance. According to him this other criteria is in terms of their effect on revenue productivity, which puts both tax evasion and tax avoidance on the same footing because both result in reduction of revenue productivity of taxes.

FORMS OF TAX EVASION IN REAL ESTATE:

There are various ways in which the taxes are evaded in the real estate weather at the Centre, state or local level. Some of the most common of these methods are:

1) Unauthorized land development and sale
2) Unauthorized construction or use
3) Conversion of properties (commercial use of residential premises)
4) Neglecting Building Regulations
5) Evasion of Stamp Duty

The amount of black money generated in these types of illegal activities gets multiplied in the successive transactions. The black money handed out to facilitate or ignore the illegal ways as mentioned in first four components is beyond the scope of this study as it is not possible to calculate this component due to its secretive and subjective nature.

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7 Tax Evasion in Theory and Practice(1997), Indian Tax Institute, Delhi.
Stamp duty is often evaded through the following ways:

i) Understatement of the value of properties at the time of purchase or subsequent transfers.
ii) a simple agreement between buyer and seller
iii) a General Power of Attorney
iv) a will
v) a cash receipt

It is difficult to quantify the magnitude of evasion through channels ii) to v) as the data relating to these activities is not available. However, with certain estimates available with regard to the ratio of black and white component in the property transaction (through real estate operators like builders, property dealers, colonizers etc.) an attempt can be made to quantify the amount of black money generated through the undervaluation of properties.

LEGISLATIVE ISSUES:

The Tenth Five Year Plan of India stressed on the need to dismantle the extensive controls on the urban real estate land through many legislations which were setup during emergency era of 1975-77 and no longer apply to the current situation in real estate. These controls have in fact prevented the market driven supply response to the changing demands of urbanization. In fact, as explained in the section relating to black money, due to the extensive controls and accompanying bureaucratic mandates and corruption the real estate has seen the use of black money in most of its dealings.

The Central laws governing real estate in India include:

INDIAN CONTRACT ACT, 1872

This legislation specifies when a party can be said to have the capacity to contract. A contract pertaining to realty can be entered into, among others, by an individual (who is not a minor or of
unsound mind), partners of a firm, a corporate body, a trust, a sole corporation, the manager of
an undivided family, and a foreigner. All the requirements of a valid contract, i.e. consideration,
intention to contract and validity under the law of the land must be satisfied.

**TRANSFER OF PROPERTY ACT, 1882**

This lays down the general principles of realty, like part-performance and has provisions for
dealing with property through sale, exchange, mortgage, lease, lien and gift. A person acquiring
immovable property or any share/interest in it is presumed to have notice of the title of any other
person who was in actual possession of such property.

**REGISTRATION ACT, 1908**

The purpose of this Act is the conservation of evidence, assurances, title, publication of
documents and prevention of fraud. It details the formalities for registering an instrument.
Instruments which are mandatory to register include:

(a) Instruments of gift of immovable property;
(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit
or extinguish, whether in present or in future, any right, title or interest, whether vested or
contingent, to or in immovable property;
(c) Non-testamentary instruments which acknowledge the receipt or payment of any
consideration on account of instruments in (b) above.
(d) leases of immovable property from year to year, or for any term exceeding one year, or
reserving a yearly rent

Sales, mortgages (other than by way of deposit of title deeds) and exchanges of immovable
property are required to be registered by virtue of the Transfer of Property Act. An unregistered
document will not affect the property comprised in it, nor be received as evidence of any
transaction affecting such property (except as evidence of a contract in a suit for specific
performance or as evidence of part-performance under the Transfer of Property Act or as collateral), unless it has been registered.

**URBAN LAND (CEILING AND REGULATION) ACT (ULCRA), 1976**

This legislation fixed a ceiling on the vacant urban land that a ‘person’ in urban agglomerations can acquire and hold. A person is defined to include an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not. This ceiling limit ranges from 500-2,000 square meters (sq. m). Excess vacant land is either to be surrendered to the Competent Authority appointed under the Act for a small compensation, or to be developed by its holder only for specified purposes. The Act provides for appropriate documents to show that the provisions of this Act are not attracted or should be produced to the Registering officer before registering instruments compulsorily registrable under the Registration Act.

The objective of acquiring the excess vacant land could not be achieved because of intrinsic deficiencies in the legislation itself. The provisions under Sections 19, 20 and 21 of the Act have together proved counter-productive to the objectives of the legislation. According to various studies the state governments and UTs could not take much land into possession and a lot of land remained locked in the litigation. Consequently, a gap was created in the demand and supply of the land and prices were pushed up.

The legislation has been repealed by the centre in 1999. The Repeal Act shall not affect the vesting of the vacant land, which has already been taken possession of by the state government. The repeal of the Act, it is believed, has eliminated the large amount of litigation and released huge chunks of land into the market. However the repeal of the Act has not been carried out in all states.

**LAND ACQUISITION ACT, 1894**

This Act authorizes governments to acquire land for public purposes such as planned development, provisions for town or rural planning, provision for residential purpose to the poor or landless and for carrying out any education, housing or health scheme of the Government. In
its present form, the Act hinders speedy acquisition of land at reasonable prices, resulting in cost overruns.

**STATE LAWS GOVERNING REAL ESTATE**

While each state has its own set of laws, two laws that exist in every state, are the stamp duty and rent laws. Stamp Act has already been covered earlier.

**RENT CONTROL ACT**

Rent Control Legislations in India have been around since 1918. Rent legislation provides payment of fair rent to landlords and protection of tenants against eviction. However, since the rent control legislations were poorly written and executed, they often led to deterioration of existing housing stock, increased pullout of apartments from rental housing market and ultimately reducing the supply in the market. These laws also led to increased litigation between the landlords and tenants. Rent control has been identified as the’ “single most important reason for the proliferation of slums in India by creating a serious shortage of affordable housing for low income families” (Planning Commission, 2002).