CHAPTER - 5

CONCLUSIONS, ADMINISTRATIVE REFORMS / SUGGESTIONS
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CONCLUSIONS

Conclusions:

1) **Moderate Revenue Performance of Stamp Duties:**

The data on stamp duty revenues from Haryana, Gurgaon District and Gurgaon Tehsil shows that stamp duties are the second best source of revenue to the state exchequer. However there is huge gap in terms of revenue from stamp duties and sales tax which is the best source of revenue to the state. While looking at the revenue performance in terms of income from stamp duty per document(deflated) in chapter-3, the revenue has shown decrease in Gurgaon tehsil, Patoudi Tehsil and Gurgaon District as a whole from the year 2003-04 till 2004-05 before picking up in 2005-06 and then again decreasing in 2008-09. In case of Faruknagar and Sohna Tehsil the revenue performance is very erratic with high growth rate in some years and loss in others. The complete analysis indicates the need on the part of the Government to look in to this department for more administrative reforms and also look for alternative revenue sources in the process of rationalisation of stamp duty rates.

2) **Link between the Rate of Stamp Duty and undervaluation:**

As discussed earlier, the results (t-test) obtained from studying the data on the number of registrations done at over and above the circle rates, in Gurgaon Tehsil, showed increase in the number of registrations done over and above the circle rates after decrease in the stamp duty rates. This leads us to the conclusion that the rate of stamp duty definitely affects the tendency to undervalue the property rates. However, the revenue performance in the same year(2004-05) does not give a very positive picture. Similarly the revenues again decreased in the year 2008-09, when the stamp duty rate was decreased again. The rate of growth of revenue also decreased in the year 2007-08 before going in to negative in 2008-09. This shows that though the number of registrations done over and above the circle rates increased after the decrease in the stamp duty
rates, the declared transaction rates in these sale deeds were still much below the market rates and there by negatively affecting the stamp duty revenue.

3) **Huge Gap between the Circle rates and Market rates:**

The sample undertaken to study the difference between the circle rates and market rates showed a huge gap in these rates with the market operating rate being double/triple the circle rates. This leads to the circulation of huge amount of black money in the market which has further consequences in the economy. It also leads to the vicious circle of speculation and price rise in the real estate (discussed earlier). There is an urgent need to contain the gap between the circle rates and market rates to avoid the consequences of the circulation of black money and to improve the revenue aspect of stamp duty.

4) **Valuation of Circle rates:**

One of the most important conclusions in this study comes out to be with regard to the procedure of fixing the circle rates. There is no scientific procedure or guidelines provided by the Government of Haryana to fix these rates. The rates are fixed in a meeting by the Deputy Commissioner with some officials of or above the rank of Tehsildar. These rates are fixed on the basis of market observations and the circle rates of the previous year. The field survey conducted shows huge difference between the level of circle rates and market rates (table 4.1) highlighting the drastic need for improvement in the valuation procedure of circle rates. This will restrict the flow of black money to the economy through real estate which in turn will help improve the tax collection at all levels (capital gains tax, sales tax, excise tax etc.) besides improving the stamp duty collections.

5) **Generation of black Money:**

The most important conclusion of this study lies in indicating the levels of black money which is added to the economy every year on account of undervaluation of property deals. This in turn further leads to the multiple losses in terms of loss of capital gains tax and other taxes like sales tax and excise duty as this money is further spent on more commodities in the market besides
implications on level of prices, fiscal policy, monetary policy and balance of payment as discussed earlier.

**SUGGESTIONS**

1. **NEED FOR ALTERNATE SOURCES OF REVENUE –**

A major apprehension with the state government in rationalizing the stamp duty rates has been of decrease in revenues. The Stamp Duty revenue has shown a steady increase over the years except for 2008-09, which was the year of economic recession and has particularly been bad for the real estate over the whole nation. However, the Government of Haryana would need to look into some additional sources of revenue as the rationalization of stamp duty rate progresses:

1. **Revenue Gains through Links to other Taxes**

The reduction in the black money component arising from stamp duty evasion would further help in increasing the level of capital gains tax (table-4.5) and ultimately income tax collection. The reduction in SDR and increase in level of circle rates would help in better declaration of transaction values which would have a positive effect directly/ indirectly on other taxes imposed by other levels of governments like individual Income Tax, Capital Gains Tax and Wealth Tax imposed by Central Government.

The value of the transaction affects the individual income tax via inclusion of short and long-term capital gains in income tax. Similarly, valuation affects an individual’s tax liability under wealth tax.

Property Tax imposed by local governments in urban areas is based on the ‘Annual Rental Value’ of a property which is further based on the transaction values of a property.

The revenue from gift and wealth taxes, the central government taxes, would also increase if valuation of transactions subject to stamp duties improves. However, for these revenues would
show improvement subject to the dedication by the Government of Haryana in containing the black money already existing in the market.

2. **Increase in the Circle Rates**

There is need to increase the circle rates so that they reflect the market price better. At present (as shown above) there is huge difference in the circle rates and market operating rates. Table-shows that there was virtually no change in the circle rates till 2003-04 and thereafter also the market operating rates have shown a much higher growth than circle rates. If through a better valuation, the decrease in stamp duty rate could be matched with increased circle rates, it would lead to better declarations and lesser use of black money.

The Government could further provide environment for better compliance through a monetary policy encouraging institutional f
inance. An increase in circle rates will help buyers get higher loans as banks and financial organizations disburse loans on the basis of sale deeds which are made according to the circle rates. Buyers can avail up to 80-85% of total circle rates as home loans which are extended only on the basis of white component of money involved in transactions.

3. **Encouraging FDI/ NRI Investment**

The Government of Haryana needs to encourage Foreign Direct Investments and investments by Non-Resident Indians (NRIs). The department of industrial Policy and Promotion, vide press note 2 (2005), has permitted FDI upto 100% under automatic route in township, housing, built-up infrastructure and construction development projects. Though the decision to liberalise the FDI norms in construction sector is a very significant step by the centre Government, the Government of Haryana can further make it attractive for the international real estate firms by reducing stamp duty rates. These firms would further generate employment and also increase revenue through increased tax collections in the form of service tax, income tax, and work contract tax. An important point to be noted here is that in addition to the stamp duty rationalization there is an urgent need of facilitating various approvals by different Government
departments to be given to these international firms to make Haryana an attractive destination. Annual FDI Report (2008-09), ASSOCHAM Eco Pulse (AEP) reported that in the financial year 2008-09, there was an investment of US $ 2801 million in real estate in India though in the same year the level of FDI investment in real estate in Haryana declined.

Another point worth noting here is that most of the FDI in Haryana, whether in real estate or in some other industry, is concentrated in NCR region (Gurgaon and Faridabad). The State Government can offer some special incentives in terms of help in providing a site for the project, tax rebates or relaxation for few years to attract the new projects to other cities in Haryana. This would offer new employment opportunities for the lesser developed cities and give impetus to the development. With the setting up of few prestigious projects, more investment follows from the private sector giving boost to the economy and collection of taxes.

II. SUGGESTIONS FOR ADMINISTRATIVE REFORMS

The primary reason for levying any tax is revenue generation. The large scale evasion and avoidance undermines this basic rationale. In the basic approach to tax reforms a few major principles need to be kept in mind. Apart from the concerns of economic efficiency and equity, simplicity and taxpayer convenience needs to be built into the system. Instruments of conveyance are important not just because they are a predominant source of revenue but also because the structure of stamp duty and registration fee applicable to them, and the procedure for collecting revenue from them affects a wide cross-section of people.

a) Corruption-

While talking to the various people who had gotten their properties registered in the recent past, the general perception given was that of tax collecting officials as unfriendly, unhelpful and corrupt. There is no help by the staff in terms of information. Usually the registration formalities need to be done through the agents who have an understanding with the staff in terms of commission on every registry. A certain percentage of the commission is to be paid at all the counters. Without an agent the individuals are in for a harrowing time with the most unhelpful
staff. Even after the formalities of registration, many times the registry papers are not provided for months and after many visits.

On the other hand, many times certain influential people or those with the intent of fraud take advantage of the existing system by taking relaxation in the stamp duty payment where it is not applicable. It would not be wrong here to assume that many of these frauds are not possible without the help of internal staff. Consider this example taken from the Audit Report (Revenue Receipts), ending March, 2001. It was noticed (December 1999) that 27 sale deeds registered during 1996-99 were valued at Rs.49.81 lakh whereas the amount worked out to Rs.94.71 lakh calculated at the circle rates approved by the Deputy Commissioner. The **figures of stamp duty entered on these deeds were changed/ altered by overwriting, inter-polation or tampering for higher amounts than the stamp duty actually charged in each case so that the changed figures of stamp duty may look equivalent to the proper duty payable on the value of consideration based on the rates approved by the Deputy Commissioner.** So instead of collecting the stamp duty of the amount of Rs.12.64 lakh, Rs.6.6 lakh were charged in one of the cases. Only Rs.0.01 lakh had been recovered till July 2001. There was no feedback regarding the amount left. This clearly indicates involvement of some staff members. The system failure leads to widespread leakage of revenue which remains undetected. Further, it is the duty of the Department Revenues, Haryana, Chandigarh to have a detailed look at the working of the Sub-Registrars/Junior Sub-Registrars and its procedure with a view to ensure proper and actual realization of stamp duty and registration fee and implementation of the provisions of the Acts, Rules and departmental instructions. The issue of corruption needs to be handled at a larger and much serious level. Such kind of administrative set up not only discourages the people to get their documents registered but is also a drain on the tax payers’ money.

**b) Display of Information -**

For better transparency, the rates of stamp duty and any guideline value or benchmark value in use should be exhibited at a prominent place in the office of the RO’s. A booklet in the local and another commonly used language (English) publishing guideline values and other information could be made available to the public at nominal cost. This would help them to carry out the self
assessment of stamp duty required for an instrument. This would also take care of the need for agents or middlemen.

c) Procedure for valuation:

A natural issue that comes to mind while talking about reforms is the system of fixing the benchmark or guidance values for different areas. Right now there is some arbitrariness involved in the issue with no specific procedure or guidelines provided by the Government of Haryana. The unsatisfactory basis of valuation provides adequate scope for abuse of the considerable discretionary powers with the RO for impounding the documents, or for reference of cases for inquiry by the collector especially when these officers are not adequately trained in the valuation procedure.

In order to simplify and facilitate valuation procedure, there is need of a scientific valuation system. It would also be desirable to levy differentiated rates of duties on conveyances according to the type of human settlement. The Chelliah Committee (1991) pointed out that valuation is a major problem with regard to the real estate. It pointed out the absence of proper valuation machinery, besides high stamp duty rates, facilitated the utilization of black money in real estate investments. Correct valuation of assets can contribute to an effective administration of income tax, other direct taxes and stamp duty and for capturing the incremental values in urban property. States’ Stamp Acts do not lay down the principles for the determination of the market value of the property. However, it is possible to refine the present system of annual determination of guideline values by following more scientific principles, employment of professional valuers and by providing the opportunity for private builders and experts to represent about the draft statement of values.

Countries like U.K, Japan and Sweden follow the system of annual determination of values of land and buildings in different areas by an expert valuation organization under the Inland Revenue Department with the help of professional valuers and this is adopted for all purposes including stamp duty. This reduces the extent of appeal against valuation by adjudicating office and litigation.
The principles for valuation of property may take into consideration following characteristics:

1. General value of the land in a locality
2. Proximity to market, park, schools, commercial centers etc.
3. Proximity to national highways, state highways, railway station etc.
4. Approach roads
5. Amenities available in the area like electricity, sewerage, water supply, schools, hospitals etc
6. Various development activities in the area

In case of buildings or constructed residential premises, shops etc few more factors could be taken into account like:

1. Type of structure
2. Year of construction
3. Covered area, carpet area plinth area
4. Purpose for which property is being used
5. Price of the similar properties being sold and bought in the market.

d) **Computerisation**:

Computerisation of records can provide a cost saving and time effective alternative to the way in which the registration department works. At present most of the registration work is already being done on the computer. However, it would definitely improve the services if the previous records are also updated on the computers. Providing copies of previously registered documents or encumbrance certificates depends on the maintenance of the records. Computerisation is a recently developed phenomenon in the registration process. It therefore takes many days and consistent visits to obtain a copy of the previously registered documents. A reliable database of revenue is a pre-requisite for informed decision making. Computerisation of the records of previous years will prove to be cost effective, easy and time saving alternative to the way the department operates now. Similarly the records relating to the stamp duty, registration fee collections and number of registrations in atleast past ten years could be updated on the computer
to provide the statistical data. It would help study the trend in various tehsils and analyse their performance.

e) Better Maintenance of the Data:

At present the registrations of all nature are put together like registration of a plot, a flat, builder floors, co-operative societies, builder societies, commercial buildings, shops, mortgage deals, rental deals etc. on monthly basis. There is no consolidation regarding the registrations of different nature. Also there is no differentiation regarding the number of commercial and residential registrations every year. With computerization this can be done side by side while registering the documents and a robust data can be created. This data would be highly useful in the future policies regarding valuation procedure, fixation of circle rates, number of co-operative societies, builder societies, educational institutions etc. It would also help in minimizing the mistakes regarding calculating the stamp duty due to the different nature of the properties and their applicable rates. Notes could be put under various categories relating to recent changes in the SD structure and policies. This would be highly helpful in reducing the number of cases of wrong valuation due to incorrect application of SD rates and subsequent harassment of the public. Maintaining a centralised database of the remissions/concessions in Stamp Duty and Registration Fee will help in effective monitoring and instituting deterrent penalties for their abuse.

f) Administrative irregularities:

In addition to the loss of revenue due to undervaluation the exchequer incurs a lot of loss also due to administrative irregularities while registering the documents.

Test-check of records of various registration offices conducted in audit (www.revenueharyana.gov.in) during the year 2001-2002 revealed non/short levy of stamp duty and registration fee amounting to Rs.8.37 crore in 981 cases.
During the year 2001-2002, the department accepted under-assessment of Rs.1.71 crore in 9 cases pointed out during the year 2001-02 and recovered Rs.10.61 lakh in 43 cases pertaining to the earlier years.
Similarly during the test-check of records of various offices conducted in audit during the year 2005-06, revealed non/short levy of stamp duty and registration fee amounting to Rs.22.10 crore in 8349 cases. However an amount of only Rs.0.07 crore had been recovered in 108 cases. Similarly during the year 2006-07, the revealed non/short levy of stamp duty and registration fee amounted to Rs.8.99 crores in 3476 cases. In this year the recovery was of Rs.3 lakh and that too was pertaining to previous years.

During the year 2007-08, the department accepted underassessments and other deficiencies of Rs. 6.04 crore involved in 2,136 cases, of which 2,024 cases involving Rs. 6 crore had been pointed out during 2007-08 and the remaining in the earlier years. The department recovered Rs. 6.63 lakh in 240 cases of which Rs. 2.40 lakh in 112 cases related to the year 2007-08 and balance to the earlier years. Due to administrative irregularities there is huge amount of revenue loss every year and the rate of recovery is almost insignificant. Indifference with regard to such irregularities, delay or lack of action against the person responsible further accentuates the trend leading to a lot of loss both in terms of revenue and time spent in tracking these cases and trying to recover the lost revenue from affected parties. Proper training and professional attitude towards the nature of job is essential to overcome this drawback.

g) Speedy Disposal of Pending cases:

Under Section 47-A of the Indian Stamp Act, if the registering officer has reasons to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument refer the same to the Collector for determination of the value or the consideration and the proper duty payable, which will thereafter be decided by the Collector after giving an opportunity to the registering party. At present no time limit is provided by the government to redress the cases of undervaluation. Very often the cases stay pending and are redressed at the discretion of the officer concerned. With various other administrative obligations, it takes time to address (might take from few months to a year or so) these cases which in turn causes great inconvenience to the affected parties. In addition to this, there are many cases of short levy of SD, inadmissible exemption of stamp duty which take
years to redress. This kind of delay causes a huge backlog and loss of time and energy in terms of record keeping in addition to the revenue loss to the exchequer.

**h) Recovery in case of frauds:**

The example given here has been downloaded from the web site saiindia.gov.in (Audit Report, Revenue Receipts, for the year ended 31March 2002) put up by the office of the Principal Accountant General (AUDIT), Haryana. During test-check of documents registered in the office of the Sub-Registrar, Gurgaon for the period 1996-1999, it was noticed (December 1999) that 27 sale deeds registered during 1996-99 were valued at Rs.49.81 lakh whereas the amount worked out to Rs.94.71 lakh calculated at the market rates approved by the Deputy Commissioner. The figures of stamp duty entered on these deeds were changed/ altered by overwriting, inter-polation or tampering for higher amounts than the stamp duty actually charged in each case so that the changed figures of stamp duty may look equivalent to the proper duty payable on the value of consideration based on the rates approved by the Deputy Commissioner. The stamp duty chargeable on the considerations of Rs.94.71 lakh works out to Rs.12.64 lakh against which stamps of Rs.6.60 lakh were actually purchased from the treasury. This resulted in evasion of stamp duty of Rs.6.04 lakh.

On this being pointed out (December 1999 and February 2000), Joint Sub-Registrar, Gurgaon intimated (July 2000) that F.I.R. had been lodged (May 2000) against the concerned officers/officials and connected records had been handed over to the vigilance department. Further, Sub-Registrar, Gurgaon intimated (February 2002) that a sum of Rs.0.01 lakh had been recovered (July 2001) and efforts were being made to recover the balance amount.

On the case being referred (February 2000) to Government, the Financial Commissioner and Secretary to Government of Haryana directed (March and July 2000) the Deputy Commissioner, Gurgaon to effect these recoveries. Further, report on recovery made and action taken against the defaulters had not been received (November 2002).
In another instance, in a test-check of the records of 12 Registering Offices, it was noticed (between January and September 2001) that 44 conveyance deeds were registered (between May 1999 and May 2001) on account of sale of immovable properties. The total value of properties set forth in all these conveyance deeds was Rs.6.52 crore whereas the value of properties as per agreements executed between affected parties during the period from June 1990 to January 2001 was worked out to Rs.7.70 crores. Thus, the conveyance deeds were got executed and registered at a consideration less than that agreed upon between the parties. Under-valuation of the properties in conveyance deeds resulted in evasion of stamp duty of Rs. 15.48 lakh. Besides, penalty not exceeding Rs. 2.20 lakh for under-valuation made with intent to defraud the Government was also leviable. On this being pointed out (between February and September 2001) in audit, 8 registering authorities stated that notices were being issued to recover the amount. No reply had been furnished by remaining four registering authorities.

When referred (between March and December 2001) to Government, the Deputy Commissioner, Karnal was directed (April 2001) to effect the recovery within three weeks but report on recovery made had not been received (March 2002). Reply in respect of other cases had not been received (November 2002).

While going through the audit reports of various years, the rate of recovery on detection of fraud was found to be very low. In 90% of the cases, the cases were pending even after two years. In many instances, no reply had been received from the concerned authorities regarding the action taken. This whole scenario paints a picture of indifference on the part of administration. The state loses a lot of revenue every year because of administrative delay in taking action against the defaulting parties. This gives a boost to continuing this kind of practice as people indulging in it expect to get away with it.

i) Making the Internal Audit Operational –

Internal audit is generally defined as the control of all controls as it is a means for an organization to assure itself that the prescribed systems are functioning well. The Finance Department (Revenue) conducts audit of the offices of Sub-Registrar/Junior Sub-Registrars in
the State. For the purpose, one stamp auditor had been posted at each district headquarter who conducted pre audit of registrable documents in the offices of the Sub-Registrar/Junior Sub-Registrars before these were returned to the persons/parties presenting the document for registration. The system of pre audit was abolished vide Government order dated 24 January 2007. It is important to make internal audit to ensure timely detection and correction of errors in levy and collection of revenue and avoid recurrence of errors of similar nature.

To conclude, Stamp Duties are a significant source of revenue for most of the states in India, often second or third most important source. However, stamp duties have always been subject to a high degree of undervaluation which can be attributed to high rates of stamp duties and existence of huge amount of black money in the real estate sector. In the past, the real estate in India had always been under extensive control (urban land ceiling act, rent control act) leading to inadequate supply of land in response to growing urban demands, bureaucratic delays and corruption. This in turn led to high property prices and use of black money in the real estate.

In 2004, the Government of India initiated an Urban Reform Initiative Fund that rewards states pursuing market friendly real estate reforms. One of the reforms supported under the URIF programme is progressive reduction in the stamp duty rates on immovable property.

The analysis suggests that there is a definitive need to rationalize the stamp duty rates on immovable properties as the high rates provide an incentive to the people to undervalue properties. A major concern of the State Government regarding rationalization is the loss of revenue. However, the undervaluation further helps in escaping the capital gains tax and income tax directly and excise duty and sales tax indirectly. This leads to loss of revenue to the state exchequer. Further the undervaluation leads to the generation of black money which is already a menace in the real estate. The revenue analysis of the state of Haryana, Gurgaon District and its tehsils suggests that though there is initial fall in the revenue from stamp duty with the reduction in the rates, the successive years have shown increase under this head. The Government of Haryana would need to look into additional sources of revenue, to cover any losses due to rationalization of stamp duties, so that the reform process of stamp duty is not compromised.
Moreover, the inter-Government transfers can take care of any losses in the revenue as promised in Jawaharlal Nehru Urban Reform Initiative Mission.

The exercise undertaken to study if the number of registries, done at over and above the circle rates, increased after decrease in stamp duty rates has also given a positive response indicating the need to reduce the stamp duty rates as a source of incentive for reducing the tendency to undervalue.

However the analysis of black money suggests that the amount of black money in the property market is still very high and reflects in terms of difference in the circle rates and market rates. **To achieve the desired reforms, just reducing the stamp duties would not be of much help. There is a dire need for an effective policy pertaining to the difference between the circle rates and market rates and containing the black money already existing in real estate.**

Besides the revenue collected, it is imperative to remember that the undervaluation of these taxes is causing much more amount of loss than the revenue actually collected. Also the further consequences of increasing black economy could be destabilizing for the economy as a whole.

Given the existing scenario in Indian Real Estate market, characterized by fraudulent and non-transparent practices, the stamp duty reforms would be a welcome change that will help shape and regulate the market. While these reforms are outlined in JNNURM and already being undertaken in many states (Haryana being one of them), it would be prudent for such reforms to continue to be undertaken extensively and effectively keeping in mind that it is imperative to contain the black money already existing in real estate to achieve the desired level of reforms.