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CHAPTER 4
ENFORCEMENT OF THE STATUTE
A) PROBLEMS IN ASSESSMENT OF DUTY

Introduction:
The general theoretical understanding is that a codified law is legislated to regulate a particular branch of human activity. The persons concerned shall understand and adhere to the law. There is a presumption that everyone is aware of the law. Ignorance cannot constitute an excuse. These principles shall bear upon the legislature while enacting a legislation. The legislated law shall as far as possible be simple and intelligible for the public to follow and comply with. In practice however most of the recently enacted and amended laws are complicated and even expert lawyers find it difficult to understand it literally at the first instance. Understanding fiscal laws is still more defying. Stamp Law is a typically maimed and marred legislation replete with contradictory amendments.

In such a situation enforcement of the law of stamps is not easy. The officer concerned has to be equipped with the statute, rules and circulars to decide cases swiftly and convince the public. This infrastructure of knowledge among officers is conspicuously absent. Those endowed with scanty knowledge vacillate and fear the aftermath of their decisions. By and large they play it safe by erring on the side of the revenue. Since most of the documents are sale deeds they do a blind job of registration by following the guidelines. Anything slightly different or beyond sale will
be an anathema for them. The few officers who know the subject abuse the confusion in the law to their private advantages. The others would tax the public unjustly in matters other than routine. Collecting sub-division fees for undivided shares and full field agricultural lands is a typical example of unjust collection of money to avoid presumptive remarks. Ultimately it is the system of enforcement that has to be blamed for the malice of the enforcing officer.

**Transparency in enforcement:**

The main shortcoming in enforcement of the Stamp Act is the non-availability of provisions prescribing time limits for assessment or valuation of duty. Chapter 3 and 4 deal with assessment and consequences of non-payment of duty. However they are devoid of the time within which the authorities concerned have to pass final orders. For instance if a document is presented to the Collector / Sub-Registrar for assessment of duty there is no time limit fixed for his decision in the matter. This affords a formidable weapon in the hands of the assessing officer to beat the public.

Hence there is a need for inclusion of provisions in the act for time bound assessments of stamp duty for documents. Chapter 3 and 4 may be suitably amended with provisions stipulating time limits for assessment of duty. Even now there are provisions under the Registration Act 1908, insisting upon registering officers to communicate reasons for refusal in writing. The registering officers
circumvent this legal obligation by orally refusing registration of documents and turning them away without any written orders. In such cases the parties are utterly helpless to approach any higher authority. The dereliction of the Sub-Registrar has to be proved by documentary evidence. Since the registering officers cleverly avoid giving anything in writing the public are neither able to approach the higher authorities nor invoke the writ jurisdiction of the High Court.

**Historical reasons for presumptive and bullying audit:**

The era of service by the erstwhile stamp collectors/ registrars of assurance was replaced by a revenue conscious commercial age. The officials and department emphasised more on revenue than service throughout the country. Revenue and stamp duty gained precedence over every other factor. In this surcharged atmosphere, stamp duty was considered invaluable and not negotiable. Certainly none would grudge legitimate revenue for the state. However this urge for revenue led to lot of side effects. The auditors and higher authorities started witch hunting in the name of revenue loss. Illusory remarks of loss were cast against bonafide assessments. The most diabolical consequence was the requirement of adhering to higher values recorded by documents. This cruel insistence sealed the fate of several registrars in the hierarchical rise and smooth superannuation. Most of them were either suspended or made to cough up huge amounts on the eve of retirement.
**Higher value recording:**

Along with market value came the guideline register. Documents had to be stamped as per the value. If a document recorded a higher value than that of the guideline register in relation to a survey number, then that higher value would become the guideline value. If a Sub-Registrar failed to note the higher value his successor will be led to the grave yard. For instance if a sale deed is registered for a value of Rs.2,00,000 as against the guideline value of Rs.1,00,000/-, the subsequent deeds will have to be valued at Rs. 2,00,000/-. If by oversight or due to the failure of the erstwhile officer to record the higher value, the incumbent S.R registered at the guideline value he would be pulled up for occasioning a loss of duty to the government. This unjust and arbitrary requirement afforded a field day for the auditors to scare the officers. Now the auditors have opened up other avenues for bullying the officers.

One may wonder whether the system could be devoid of remedies against frivolous audit remarks. The remedies are not as strong as the afflictions. If an officer is remarked as responsible for loss of a few lakhs even if the remark is obviously untenable only one out of ten higher authorities would call it foul. Judicial rulings orders or circulars would offer precious little help; Once a remark is made it
would take a long time for the officer to explain his case and have it settled even though he may not have erred. Owing to this carte blanche audit power to unleash terror without any consequences for vexatious or presumptive remarks, morbid consequences have followed.

Public ~ the prime victims:
The public have become the prime victims of audit. The registering officers have become paranoids and developed a tendency to play safe. This has reached such outrageous dimensions that they would inflict unjust levies even for instruments well within the borders of correctness. The registrars would prefer to err in favour of the revenue. Owing to the heat of audit they would deny the legal rights of the public. Most of the registrars would NOT adjudicate stamp duty for instruments relating to properties falling outside their jurisdiction. Still worse, documents / instruments registrable under Section 29 will be orally rejected on grounds of jurisdiction¹.

Era of Progress:
Thanks to the changing perspectives of the government and the twenty first century outlook, the head of the registration department in 1998, halted the illegal and highly arbitrary practice of adoption of higher value as guideline value in the same year. This initiative has substantially abated audit tyranny. However for rule of law to

¹ Maheswari A.Reddy document registered on 13-8-2004 at S.R.O. Thousand Lights
prevail and for the public to pay ONLY the actual dues to the government the appellate system should accommodate appeals against even audit remarks as proposed in Chapter X. This will be the real dawn of freedom from presumptive audit remarks.

It is not the researcher’s case that the registering officers are saints and auditors are sinners. His contention is that the system does not provide for punishing scandalously incorrect remarks. Nor does it ensure proper and time bound communication of reasons for delay or refusal to deal with a document. There is no avenue for either the public or the officers to assert their stand. The higher authorities empowered to consider appeals are equally scared of audit criticism. It will be appalling to note that seventy percent of the audit remarks do not survive as dues to the revenue.

Article 23:

Apparently Article 23 would appear to be very simple. Actually it is very complicated in application. There will be a number of situations when the Public and Revenue would have to grapple with the import of Article 23. According to Section 2 (10), conveyance includes “a conveyance on sale and every instrument by which a property whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided for by Schedule I”. From the aforesaid definition, it is
clear that conveyance means a transfer of property on sale and under every instrument by which property whether movable or immovable is transferred between living persons and which is not otherwise specifically provided for as a different instrument by the schedule to the Stamp Act. The Supreme Court has ruled that the term “inter vivos” would include bodies corporate\(^1\). Though the definition is as clear and simple as it is, it has become a banal occurrence at the S.R.O to charge every deed as a conveyance whenever they fear audit tyranny.

To trace the evolution of the meaning of conveyance on sale in England, conveyance on sale was defined as including every instrument and every decree or order of any court or of any commissioners, whereby any property or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction. In pursuance of this definition, a lease was held to be a conveyance for the purpose of Section 50 (1) (b) of the F.A. 1938 (\textit{Littlewoods Mail Order Stores Ltd. V. I.R.C}\(^2\)). But then contracts in contemplation of a sale were kept out of the purview of conveyance (\textit{Don Francesco v. De Meo}\(^3\)). Instruments executed in pursuance of agreement for dissolution were held to be conveyance on sale. (\textit{Garnett v. I.R.C}\(^2\) and \textit{Christie v. I.R.C}\(*\)).

\(^1\)Hindustan Lever vs State of Maharashtra AIR 2004 SC 326  
\(^2\)(1962) 2 All E.R. 279  
\(^3\)1908 S.C. 7  
\(^a\)(1899) 81 L.T. 633  
\(^*\)(1866) L.R. 2 Ex.46
A declaration of trust by a vendor in favour of the purchaser was also held to be a conveyance on sale (Chesterfield Brewery Co. v. I.R.C.¹ and West London Syndicate v. I.R.C²).

At the slightest excuse the S.R's would classify harmless deeds of dissolutions of partnership, rectification and cancellation as conveyance. They will not spare even buildings expressly excluded from conveyance or past transactions mentioned in the recitals³.

The conveyance or transfer of property in contemplation of a sale in William Cory & Son Ltd. v. I.R.C.⁴ the House of Lords reversed the decision of the Court of Appeal by majority. It held transfer of property in contemplation of a sale was not a conveyance on sale. However, this loop hole was plugged in by the amendment in the year 1965 by Section 91 which provided that an instrument whereby property is conveyed or transferred to any person in contemplation of sale of the property has to be treated as conveyance or transfer of sale for a consideration equal to the value of the property.

In the light of this brief reference to history, we may examine the developments in India. Primarily, almost all the States have made contracts of part performance under 53 (a) of the Transfer of Property Act liable for compulsory registration as well

¹ (1899) 2 Q.B. 7  
² (1898) 1 Q.B. 226  
³ Document Nos: 1522 to 1525 of 2004, S.R.O. Triplicane  
a (1956) 1 All E.R. 917
as levy of Stamp Duty as conveyance on sale. The model legislation as proposed by the Government of India has provided for waiver of stamp duty for subsequent execution of sale in case of such contracts which are stamped at the rate of conveyance even prior to execution of Sale Deed. The State of Andhra Pradesh has also incorporated a similar provision in its provision to Article 20. Tamil Nadu has also sought to bring in these pre-sale contracts as conveyances and charge stamp duty at the rate of sale and provide for remission of stamp duty for subsequent execution of sale in pursuance thereof. It is based on the historical principle "that an instrument may attract duty as a conveyance on sale notwithstanding that it does not itself operate to convey or transfer to the purchaser the precise interest contracted to be sold in the property or, indeed, it would appear notwithstanding that it does not operate to convey or transfer any interest at all in the property". Although a contract for sale of property does not operate to convey or transfer to the purchaser the equitable interest of the vendor in the property (I.R.C. v. Angus & Co\(^1\) it DOES operate to confer certain rights on the purchaser which have the effect in equity of making the purchaser the beneficial owner of the property (Parway Estates Ltd. v. I.R.C\(^2\)) so that the subsequent conveyance may only operate to convey at the most a

\(^1\) (1889), 23 Q.B.D. 579

\(^2\) (1958), 37 A.T.C. 164
legal estate or interest to the purchaser. Nevertheless, as Lord Jenkins observed *Kin Oughtred v. I.R.C.* ¹ the existence of the prior equitable rights of the purchaser “has never (so far as I know) been held to prevent a subsequent transfer, in performance of a contract of the property contracted to be sold from constituting for stamp duty purposes a transfer of sale of the property in question”.

Similar were the observations of Lord Somervell in “*Escoigne Properties Ltd. v. I.R.C.*²; and of CHANNELL, J., in *Garnett v. I.R.C.*³. An extreme example of an instrument attracting ad valorem duty as a transfer on sale notwithstanding that at the moment of execution it may not have operated to transfer to the purchaser any interest in the property contracted to be sold, is provided by the case of a transfer of shares to a purchaser executed in implementation of a prior agreement for sale.

The beneficial interest in the shares will have passed to the purchaser on the signing of the contract and on payment of the purchase money the vendor will have become a bare trustee for the purchaser. Although there is some authority to indicate that the subsequent instrument of transfer may operate to transfer a legal interest to the purchaser (see the speech of Lord WATSON in *The Colonial Bank v. Cady & Anor*⁴,

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¹ (1959) 3 All E.R. 623
² (1958) A.C. 549, at p.563
³ (1899) 81 L.T. 633, at p.638
⁴ (1890) 15 App. Cas.267, at p.277
and *Re Rose, Rose v.I.R.C*¹, the generally accepted view appears to be that the legal interest is transferred only on registration of the transfer. Nevertheless, such an instrument of transfer of shares attracts ad valorem duty as a transfer on sale when it is first executed (*Fitch Lovell Ltd. v. I.R.C*²)." Sergeant on Stamp Duties.

**Indian Scenario:**

The Indian States which have brought about the amendments to the respective schedules to bring in part performance contracts into the ambit of conveyance have stipulated that consideration in entirety should have been paid and possession handed over to the purchaser under an agreement of sale. But as far as the amendments proposed to the Tamil Nadu Act is concerned, it is not clear as to what would constitute part performance contracts.

The State of Andhra Pradesh has in its explanation to the definition of conveyance u/s 2 of its Stamp Act included even transfer of interest by one co-owner to the another co-owner as a conveyance. In its explanation it has squeezed in even transfer of a partner's interest in the partnership business of one partner to the other on retirement or dissolution and also contribution of capital by the partner to the firm. By amending the Section in 1998, the State of Andhra Pradesh has short circuited a

¹ (1952) Ch.499
² (1962) 3 All E.R. 685)
judgement of the Supreme Court in the case of “Adanki Narayanappa vs. B.Krishnappa”. Similarly in Tamil Nadu, transfer of interest from one co-owner to another co-owner has been brought under the sphere of conveyance retaining the nomenclature of release under Article 55 (c) of the schedule. Likewise, dissolution under Article 46 (b)(i) has also being brought under the scheme of conveyance liable for duty at the rate of market value. An exception has been made in the case of dissolution among family members. Article 55 (c) and Article 46 (b)(i) vis-à-vis Article 45(b) are grossly discriminatory in the eyes of law. On a plain analysis, they are bound to collapse at the altar of Article 14.

In the case of transfer of shares in a co-operative society between one member and another which operated to convey right title and interest in the immovable property of that society, it was held that it was a conveyance liable to stamp duty as per the relevant article2. An unstamped and unregistered sale deed has been accepted for scrutiny to ascertain the nature of possession3.

**Amalgamation of Companies:**

Amalgamation of two corporate bodies could be only owing to economic reasons. More often than not, it will be aimed at pooling in the resources of the revenue of two companies for better infrastructure. Stamp duty for conveyance of properties

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1 AIR 1966 1300
3 Bodar Singh vs Nihal Singh 2003 (4) SCC 161 and AIR 2003 (SC) 1905
arising out of amalgamation of companies will only impair economic growth and dampen the zeal of corporate enterprise. The immediate impact will be increase in the cost of production. Therefore, amalgamation of companies should be charged not more than 1% on the market value of immovable properties transferred and the registration fee shall not be more than Rs.10,000/-. Presently the Registrars question even recitals of amalgamation in the deeds of inter corporate transfers.

**Inter corporate transfers:**

In the case of inter corporate transfers between holding and subsidiary companies particularly where 90 percent of the issued capital of one company is held by the other there is no transfer at all. When the share holders are the same for both the companies the ownership continues to vest with the same parties. Though several States have exempted inter corporate transfers from stamp duty by way of a G.O., they have qualified the exemption as applicable only to those companies registered in the states concerned. This embargo is unjust because the idea is to encourage corporate growth and avoid stamp duty for transfer of properties actually owned by the same group of shareholders. They should not insist on filing of balance sheets and P & L A/C with the Registrar of Companies prior to execution of the Sale Deed. This exemption should be based on a certificate from the Registrar of Companies stating that one body corporate is holding 90% of the Issued Capital of the other as
on the date of execution of the transfer deed or otherwise fulfilling the criteria for exemption from duty. Beyond this, they may insist upon the certificate from the auditors in support of fulfilment of the conditions for exemptions. Only then, the benefit of concession could be really enjoyed by the corporate bodies concerned. There are so many audit remarks pending against Registrars who have registered transfers between two companies (owned by the same shareholders) which are registered outside the State of Tamil Nadu.

Almost all the states in India have granted exemption from Stamp Duty for inter corporate transfers involving companies as aforesaid. The Companies Act being an All India Central Legislation, property transfer between two corporate bodies fulfilling the conditions of the shareholding should be given this concession irrespective of the domicile of the company’s registered office. The Parliament should legislate on Inter Corporate Transfers so as to bind all the States for grant of exemption between holding and subsidiary companies. This will enable profitable utility of the property and thereby contribute to the economy of the State. However the States shall provide for legal safeguards against abuse of this exemption. In this respect the Tamil Nadu Stamp Act has blindly incorporated the existing G.O without eliminating the scope for procedural obstacles in availing this exemption.

**Article 4: Affidavit:**

This Article provides Rs.20/- as proper Stamp Duty therefor. Obviously, the name itself explains that it is only an affirmation or declaration in lieu of swearing.
One may wonder as to why this Article has to be discussed at all for purposes of examining the enforcement by the revenue. This is registered under Book 4 of the Registration Act and as an Affidavit, it is sworn before the Notary Public for which Rs.10/- is collected under Article 42 of the Act. This Article is resorted to in practice by those seeking to attest their (a) Date of Birth (b) Sole proprietorship of a concern, ownership and possession of properties and allied purposes. However, of late, this document is being utilized for purposes of declaring the exact details of a property and also declaring the total absence of interest and claim of the declarant in an immovable property. While the revenue is not exasperated over declaration in relation to the Date of Birth, names and so on, it refuses to register declarations of disclaim upon a property though it is not addressed to any particular person. With similar vehemence, they also scoff at and resist declarations of particulars of property presented for registration.

Case Study No.1

Deed Of Declaration dated 06.11.1996, registered as document No:3224 of 1996 at S.R.O., Anna Nagar

I, SHOBA RAMESH, wife of O.R. Ramesh, Hindu, aged 30 years, residing at A/12, Jubilee Apartment, West Mambalam, Madras – 600 033, this 6th day of November 1996 do hereby solemnly affirm, swear and declare that:
(a) M/s. O.R. Shanthi, wife of Jagannathan and J. Badrinath, S/o. Jagannathan had executed a Deed of Sale in my favour on 2-3-94 on and was registered as Document No.588 of 1994 of Book I, Volume 802, pages 87 to 92 at S.R.O., Anna Nagar.

(b) the admeasurements of the property conveyed under above sale deed had been erroneously typed as measuring East to West 60 Feet, North to South 18 ½ Feet in LIEU of East to West 18 ½ Feet and North to South 60 Feet which is the palpable measurement of the land.

(c) the Correct and defacto measurement is only North to South 60 Feet and East to West 18 ½ Feet.

(d) the Schedule of the above sale deed is being read, understood, interpreted and acted upon with the admeasurements as contained in clause (c) hereinabove.

(e) there is neither a fresh creation nor extinguishment of any right whatsoever by way of this declaration.

(f) this is merely a declaration and not an instrument as envisaged by Section 2 (14) of the Indian Stamp Act 1899 and consequently out of the purview of Section 47 (B) thereof,

(g) The property purchased by me under the above sale deed No.588 of 1994 of S.R.O., Anna Nagar consists of Western portion of Plot No.17, House, Ground and premises, No.16, Mangammal Nagar, Koyambedu, Madras –
600 107, situate within the Sub-Registration District of Anna Nagar and in the Registration District of Madras of an extent of about 1080 sq.ft. measuring in Survey No.161 and 162/3, East to West 18 ½ Feet and North to South 60’, bounded on the North by: Ramani Ammal’s Plot No.11, South by: 24’ Road, East by: Vendors’ property (Part of Plot No.16) and West by: Revathi’s property.

In witness whereof I, the aforesaid O.R. Shoba, have set my hands and seal this 6th day of November 1996 in the presence of:

WITNESSES: ____________________________ DECLARANT

--sd/-                                         -sd/-

The aforesaid deed relates to a mere declaration by the Claimant of the error in mention and identity of the property belonging to the declarant. In the light of Section 2 and Sub Section 14 of the Stamp Act, it is very apparent that there is no creation or extinguishment of any right or liability in the property. It is neither addressed to a third person nor any authority. There is no conveyance of any interest to any person. Still the revenue hesitates to register documents of this nature on grounds of audit objections and administrative censure. The compulsion of the people to register such declarations is only owing to another slip shod amendment in the form of 47 (b) to the Stamp Act, which shall be discussed hereunder.
Article 4 confused with Section 47 (B):

According to Section 47 (B), the liability arises only if the said rectification deed is an instrument. Rectification of a duplicate or copy of an instrument would not come within Section 2(14) \(^1\). The beginning of the sentence implies that only if there is a creation or extinguishments of right, the impugned deed could be subjected to the levy contemplated there under. However, for every itch and twitch deeds of rectification are sought to be pilloried under this Section. Declaration can never come under 47 (b) even if it is a rectifying declaration or Affidavits of disclaim upon a property. A declarant solely declaring in relation to a property or a person will not be doing anything as contemplated under Section 2(14) of the Stamp Act. Hence, registration of these documents could be undertaken without any demur. In fact it should be the headache of the Civil Court and persons seeking to recognize the title to bother about the efficacy or validity of these deeds and not the revenue. If the declaration is going to be made by one single person in the nature of a Affidavit, without any address to any person or authority, the revenue should have no qualms over registration of these documents.

Reluctance Of The Registration Department To Register Deeds Of Declaration:

Owing to the insistence of Stamp Duty for rectification deeds as contemplated

\(^1\) Jupudi Kesava Rao vs. Puluvarathi Venkatasubbarao and others A.I.R. 1971 S.C. 1070
under Section 47 (b) for the difference in market value as between the date of registration and the date of rectification by the Registration Department, the other authorities namely the Taluk Office, Corporation/Local Body and the Electricity authorities blow-up the effect of these negligible errors in the instrument of transfer.

**Article V : Agreement:**

This Article stipulates Rs.20/- as proper Stamp Duty for Agreements or Memorandum of Agreement. This Article is seldom interpreted by or engages the attention of a Registrar because Instruments of Agreement are only optionally registrable. However, for real estate purposes, the parties register Sale Agreements just to confirm the contract and bind each other. Hither to the only problem that had arisen between the Revenue and the subject was the registration fees for the amounts specified in the contract. However, now the Revenue is insisting upon Stamp Duty without surcharge on the market value of the consideration set forth in the agreement. Hence, the parties avoid mention of possession in the agreement. The common point of contention however is possession by the Vendor to develop the property. The A.G.Audit would interpret any sort of activity by the buyer if the property as acquisition of possession.

The Revenue is totally justified in insisting upon Stamp Duty on the market value of the consideration passed under the Stamp Act because hither to Real Estate entrepreneurs obtained a Sale Agreement and Power of Attorney from the
parties concerned, took possession of the property and enjoyed complete ownership under the shelter of the Section 53 (A) of the Transfer of Property Act which provides for the benefit of Doctrine of part performance. Besides, the Income Tax Department also treated such transactions as "Deemed Transfer" under Section 45 thereof.

Hence, the Revenue was totally justified in altering the instances of levy for instruments classified under Article 5 of the Act. Due to the possibility of abuse of this Article by realtors with the support of uncanny legal consultants, Agreement to lease, Agreement to divide property in severalty, settled property may be disguised as agreement and passed off as such for evading Stamp Duty under Article 35, 45 and 58 not to mention the very need for registration. Therefore, the revenue enforcing authorities had to be very circumspect in examining these agreements. Similarly the revenue should be equally restrained in classifying any innocuous agreement under various other heads and demanding stamp duty not actually due.

A separate restricting right to construct building on land after sale thereof by a registered instrument has been held to be an agreement not requiring even registration'. Lease agreement providing for month wise tenure over eleven months has been held as an agreement not requiring compulsory registration².

¹ Mithiles vs State of Maharashtra 1997 9 SCC 94
² Satish Kumar vs Zarih Ahmed 1997 3 SCC 679
Article 6: Agreement relating to deposit of title deeds pawn or pledge:

According to the latest amendment proposed\(^1\) by the Tamil Nadu Government, the Stamp levy for instruments falling under this Article is @ 0.5% subject to a maximum of Rs.5000/- for the value of loan. In the case of Article 6, the revenue would ensure that the memorandum relating to deposit of title deeds is not preceded by a simple mortgage or any other transaction wherein the original deeds could have been given as security for a borrowing. Secondly, they also object to clauses relating to sale of property without the intervention of the court or other characteristics typical of simple mortgage. However, there are several cases in which the A.G. Audit have found fault with agreements relating to deposit of title deeds classifiable under Article 6(1)(a) as falling under Article 40 1(b) (Mortgage of the schedule to the Act). This is because of a very thin margin allowed for the instrument as equitable mortgage\(^2\).

"In order that Article 6 may apply the document should merely contain the bargain between the parties with regard to deposit of title deeds and the condition subsidiary or ancillary to the deposit of title deeds." CCRA vs Jawahar\(^3\) and AIR 1967 MAD 1(FB).

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\(^1\) Article 6 (1)a ~ vide - G.O Ms 47/CT / Dt: 12-2-2004
\(^2\)vide Article 6(1) (a) from 12-2-2004
\(^3\) ILR (1996) 2 MAD 465
**Remedy suggested for Article VI:**

1) Effective Appellate system and strict guidelines /circulars from the Department containing the key rulings of the Courts.

2) Periodical standard instructions may be sent by e-mail to guide the Sub-Registrars in interpreting the documents.

**Article 12:**

This Article calls for a special understanding because of a fixed stamp duty prescribed for awards under Article 12 (a) & (b). Registrars indiscriminately insist upon advalorem duty for awards containing references to immovable properties. Only an arbitral award directing partition is liable to duty without any exception under Article 45. The other awards are classified under two categories:

a) those given on reference by Courts

b) those given on private references

While the first category of awards do not require any stamp duty, the second category would require stamp duty as per Article 12 of the Schedule to the Act.  

Here again the exception in Article 12 to those awards given on reference by the Court do not apply to references made by the Court in response to application u/s 20 of the Arbitration Act 1940.

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1 Darshansingh vs Forward India Finance Pvt Ltd AIR 1984 Delhi 140
2 State of Kerala vs V.Baskaran AIR 1990 Kerala 42
With the advent of the Arbitration and Conciliation Act 1996 intervention of the Court has been dispensed with. Hence all awards other than those falling under Article 45 will have to be stamped under Article 12. Interestingly where there was a relinquishment of rights by two out of four partners in the partnership of a firm for a specified consideration asper the award, it was held that the award was not one directing partition under Article 45 but one chargeable under Article 12¹. Thus these points should guide the Sub Registrars in insisting upon stamp duty for registration of awards.

**Article 18:**

This Article provides for levy of stamp duty on certificate of sale granted to the purchaser of any property sold by the public auction by a civil or revenue court or Collector or other Revenue Officers. According to Article 18 (c) the duty for sale certificates issued as aforesaid is the same duty as prescribed for conveyance on the market value equal to the amount of the purchase money only.

The questions that frequently arise for consideration while dealing with these documents are:-

a) The value at which the stamp duty should be collected whether for consideration or the Guideline Value.

b) Whether Civil Court or Revenue Court would include Debt Recovery Tribunal, BIFR, Sick Industries Tribunal, etc.

¹ Eranna vs Thimmaiah AIR 1966 AP 184
The Government should notify whether BIFR, Debt Recovery Tribunal and Sick Industries Tribunal could be accepted as Courts for issue of sale certificates under Order 21 Rule 94 of the Civil Procedure Code. According to the ruling by their Lordships in the case of Municipal Corporation of Delhi vs Pramod Kumar Gupta, a certificate of sale cannot be termed to be an instrument under Section 2(14) of the Stamp Act. "A paper which is recording a fact or attempting to furnish evidence of an already concluded transaction under which title has already passed cannot be treated to be such an instrument."

Notwithstanding the aforesaid statement of law by the Supreme Court, the S.R.O. Neelangarai insisted upon stamp duty at the rate of the guide line value for a sale certificate issued by the Debt Recovery Tribunal. Contrastingly the S.R.O. Triplicane has even indexed sale certificates without collecting surcharge therefor. Thus the authorities are confused on the law in this matter. This confusion cannot justify their illegal collection of stamp duty on the guideline value or rejection of certificates of sale issued by Judicial Tribunals recognised as Court under the C.P.C.

Registrars refuse to concede the concession under Article 18 of the Stamp Act even when there is only a specious difference in the nomenclature of the Courts notified by the department due to the carping remarks of the Auditors. If only the Sub-

1AIR 1991 SC 401
2S.R.O. Neelangarai
Registrars were to apply common sense and accept the sale certificates of Debt Recovery Tribunals which would snugly fit into the definition of a Civil Court, they would suffer the buffetings of scathing audit remarks. They will be asked to compensate the revenue to the extent of concession granted as contemplated under the Article. To avoid this dangerous situation, the Sub-Registrars find it safe to violate the law in favour of the Revenue than uphold justice in favour of the public.

**Suggested Remedy:**

The Department and the Government have to clearly notify the various Courts whose certificates would qualify for concession under Article 18. The concession under Article 18 are double:

1) There is no surcharge.

2) The levy is on the purchase money only.

The Article does not require any amendment. Only the public are desperately in need of a forum to assert their rights against the illegal actions of the revenue authorities. As stated earlier it is only owing to presumptive audit remarks of which only twenty five percent finally stand as valid, that there are problems in assessment of cases falling under this Article.

**Article 23:**

Even instruments falling under Article 23 which provides for the maximum duty under the entire schedule, do not always have a smooth sailing. Apart from the disputes and differences relating to market value which have been discussed in
Chapter 10, certain sale deeds are hauled up by certain adventurous Registrars for double levy. Still worse will be the predicament of instruments qualifying for exemptions under this Article.

**Case Study:**

**Assignment of Copy Right:**
A straightforward Assignment of Copy Right registered as document No:14 of 1993 of Joint I, North Madras was treated as sale and stamp duty demanded therefor as per Article 23 notwithstanding the clear and conspicuous exemption of duty therefrom. Interestingly the Registrars' Office denied the exemptions of stamp duty under Article 23 on the ground that it was available only to the companies registered under the Companies Act (vide letter of the Assistant I.G. Registration No: 17427 / B1 / 93 dt: 11-10-93). At times the revenue would come out with such imbecile explanations for denial of exemptions.

Later however the authorities concerned resiled from their position at the intervention of the Chief Secretary and conceded the legal rights of the parties. The agreement was given the exemption it legally deserved.

**Article 35:**
Viewed in the context of Section 105 of the Transfer of Property Act lease presupposes transfer of possession. Hence there can scarcely be any confusion in arriving at the stamp duty for or the nature of an instrument of lease. However
sometimes lease agreements are disguised as agreements to lease and presented as such with the stamp duty paid under Article 5. Presently it is a settled law that if the demise were in praesenti, notwithstanding the nomenclature of the instrument, it will be treated as a lease. In the case of “State of Maharashtra and others Vs. Atur India Pvt.Ltd.”, the Supreme Court held that where it is merely an agreement that a conveyance shall enter at the future date it is not a lease. Lease postulates immediate and present demise “I.C.I.CI vs State of Maharashtra”

A document to be treated as a lease must satisfy the test of immediate and present demise in respect of property covered by it; an agreement to lease is no exception and this test would apply for determining not only stamp duty but also whether it is compulsorily registrable (“Mrs.Birendar Amarjit Singh vs General Marketing and Mfg.Co. Ltd”). The mere fact the tenants have covenanted to execute a formal lease deed would not make a document one not creating present demise in the property. The payment of advance rent is significant (“S.Manjit Singh vs J.P.Jarrawalla”).

1 1997 2 SCC 497  
2 2000(1) BOM C.R. 35 (S.C.)  
3 AIR 1976 DELHI 15  
8 AIR 1971 J&K 86
It is clear from the above rulings that even if the period of lease were to commence on a date later than the date of execution of the instrument of lease it will still operate as a lease deed and liable to be stamped as such.

Yet another problem in assessment created by the Registrars is in respect of clause of renewal in a lease deed. Inspite of express rulings that a clause of renewal will not constitute an extension of renewal of lease deed, the Registrar will insist upon and collect stamp duty for a period of lease duty not covered by the lease deed¹.

In the case of “M.Mohan vs Maheswar²”, the Delhi High Court has ruled clearly that a covenant for renewal is not a matter distinct from the lease. Renewal clause has been held as only ancillary in the case of AIR 1970 MAD 288 FB.

**Remedies Suggested:**

Constitution of neutral fast track tribunals (vide Chapter 10) and instructions to S.R.O’s on the latest rulings.

**Article 48 – Power of Attorney:**

The revenue is over ~ obsessed when it comes to assessing stamp duty for instruments of Power of Attorney. Parties resort the use of this instrument to avoid

¹Lease deed dated: 1-11-2004 registered at Joint II S.R.O South Madras
²AIR 1987 Delhi 115
double levy for short term purposes. In fact the revenue should not have any objection to utilizing these instruments for interim periods. Instruments of Power of Attorney are only express instruments of agency and not deeds of conveyance. There is no creation or extinguishment of any right as contemplated u/s 2 (14) of the Stamp Act. If it is a power for consideration and there is express mention of transfer of possession, then the revenue would be justified in demanding stamp duty as per Article 48(e). In fact the following clauses can be interpreted as coming within the mischief of Article 48(e).

**Clause No.1 :**

"To take possession of, establish control over, maintain, manage, sell, lease, create a lien upon, mortgage or otherwise deal with the property on my behalf".

The aforesaid clause is a common feature in most of the instruments of Power of Attorney. This is obviously a transfer of possession in disguise to the Attorney.

There is absolutely no need for mention of possession or establishment of control over as has been done in the aforesaid clause. The principal who is the owner of the property appoints an attorney to act on his behalf. The attorney merely steps into the shoes of the principal and his legal status is the same as that of the principal. When the principal is in the possession of the property, the Attorney is also deemed
to be in possession of the property. Therefore, no specific clause of the aforesaid nature is necessary. Consequently the revenue will be justified in classifying such instruments under Article 48(e).

**Article 34:**
A Bond as defined u/s 2(5) must create an obligation to pay for the first time. It should not be in recognition of a pre-existing right “*State of Kerala vs MC.Dowell and Co. Ltd*” \(^1\). In the context of this ruling Indemnity Bond and Security Bond as envisaged under Article 57 are almost synonymous with each other as far as the incidence of the stamp duty is concerned. A contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of another who could be the promisor himself or any other person – Section 124 of the Indian Contract Act. Viewed in the context of Article 34 and Section 5 of the Indian Stamp Act 1899 a clause of indemnity contained in an instrument which is implied by law or ancillary to the main purpose, is not separately chargeable under Article 34. *AIR 1956 ALL 25 (SB), Board of Revenue vs R.K.Subramaniam*\(^2\). This Article applies only when the contract of indemnity is in the form of bond. Security Bond under Article 57 is executed by way of security for due execution of

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\(^1\) AIR 1995 SC 1445

\(^2\) AIR 1977 Ms44(SB)
office or to account for money or other property received by virtue thereof or executed by surety to secure due performance of a contract. Consequently it is clear that all bonds that are commonly called Security Bonds do not come under Article 57.

To attract this Article it must be executed as:

a) a security for due execution of office

b) or to account for money or other property

c) or executed by surety under a contract

In order to fit into Article 57 it has been held in the case of "Sudhesh Kumar vs Mulchand"¹ that the document itself must be a mortgage deed or Security Bond. Promissory Note and Receipt would not come under this category. A Security Bond given by a cashier of a company would fall under Article 57 and not Article 40. Where a chit foreman executes a bond offering his landed property as security for the due execution of his office as chit foreman, it is chargeable under this Article. A Security Bond executed by a guardian under Order 32 Rule 6(ii) CPC would also fall under this Article AIR 1935 Calcutta 610. A deposit under a tender would also fall under this category Article 57(b) AIR 1976 SC 1813. A bond given by a surety in support of a PWD contractor would fall under Article 57(b). However a Security Bond executed by a person for a due performance of his own contract does

¹AIR 1969 RAJ 22
not get the benefit of a limited charge prescribed by the Article. Mortgage deeds by wife and son as securities to secure the due performance of contract by assessee would fall under Article 57 (b) Kamaladevi vs CCRA\(^1\). An order for release of lorry seized on the bond executed by surety comes under Article 57(b) “Smt.Suryanthama vs District Registrar Srikakulam\(^2\).

The aforesaid documents are very rare and less yielding in revenue. Though the Sub-Registrars are bound to confuse themselves between Indemnity Bond and Security Bond, it would not make much of a difference in stamp duty. However there is a risk of mortgage deeds being masqueraded as Indemnity or Security Bonds.

**B) RECTIFICATION - SECTION 47(B)**

Perhaps the most glaring lacuna in the entire statute as amended up to date by the State is the conspicuous absence of a Head of Charge for Deeds of Rectification. For reasons best known to the legislature or those who piloted the amendment of Section 47 (b), there is no corresponding Head of Charge to classify a document as a Deed of Rectification warranting duty as contemplated u/s 47 (b). It may be recalled that the Section which empowers the revenue to charge an instrument with stamp duty is Section 3. But the chargeability can be done only under the Heads of Charge as envisaged under the schedule to the Stamp Act. Section 5 mandates levying aggregate duty for “distinct matters”.

\(^1\) AIR 1966 Punjab 293 (FB) \(^2\) AIR 1986 AP 3
This does not mean that the Revenue can levy Stamp Duty for a matter which has not been classified under the Heads of Charge as contained in the schedule. Hence, it is intriguing as to how the authorities continue to charge for rectification deeds stamp duty as stipulated u/s 47 (b). While the quantum of duty to be collected has been spelt out u/s 47 (b) by way of an amendment to the Act in 1987, the statute has failed to define a rectification deed. There is no assistance from the transfer of property act either to understand the nature of instrument. Still worse is the predicament of instruments seeking to rectify deeds other than those of sale. The chargeability is being done subjectively without any legal basis therefor. Owing to this anomaly, which has been caused not by the statute as it was originally legislated in 1899, but because of the clumsy amendment there to in 1987, this Section has become an eye sore for legal ideologues. If not for the disastrous consequences which have resulted in from the operation of this Section, it would not have drawn the attention of either the revenue or the people. Not all deeds of rectification warrant treatment under Section 47 (B).

**Chargeability arises only if it is an instrument:**

Only documents "by which any right or liability is or purported to be created, transferred, limited, extended, extinguished or recorded require a charge as provided
for under Section 47 (B). In the absence of proper guidelines to interpret and conclude the nature of such deeds of rectification which require stamping as per 47 (B), the Registering Officers are going berserk in interpreting innocuous and straightforward deeds as either falling under 47 (b) or as liable to dual duty u/s 5. Long before the amendment in 1987, the Revenue board had decided on the nature of a rectification deed warranting stamp duty as required u/s 47 (b) as only those instruments which would come within the Section 2 (14) of the Indian Stamp Act. In the case of “Thirumaran vs C.C.R.A” the High court ruled that even a substitution of a survey number would not require a levy of stamp duty as a fresh sale since the boundaries extent and consideration had not changed. Consequently, only documents which would fit into the definition of instruments as envisaged u/s 2 (14) of the Act (by which any right or liability is to be created, transferred, limited, extended, extinguished or recorded ) could be charged the stamp duty as stipulated u/s 47 (b). However, presently, the Sub Registrars harp upon 47 (B) for every itch and twitch in the instrument. Errors in initials, apparent omission in numbers are all being bullied as rectification. It was held as early as in the case of “Sutton vs Tooner”² alteration of an instrument after execution may render a new stamp duty necessary only when it becomes a new instrument. Where the alteration is not material or made just to correct a mistake the instrument does not require a new stamp. (Cole vs Parkin ³).

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¹W.P. 11413/89 dt: 3-7-98
² (1827) 7B & C 416
³ (1810) 12 East 471
What is Material Alteration?

"It appears that an alteration is not material which does not vary the legal effect of the deed in its original state, but merely expresses that which was implied by law in the deed as originally written, or which carries out the intention of the parties already apparent on the face of the deed, provided that the alteration does not otherwise prejudice the party liable under it. An alteration made in a deed may be material as against some party or parties thereto but immaterial as against the other or others; and where such an alteration has been made in a deed, any agreement contained in it may be enforced against the party or parties as to when the alteration is immaterial (if originally liable thereunder) in the same manner as if the deed had remained unaltered (Halsbury's Laws of England)." ¹

It was held in the case of Spector vs Ageda² that where an alteration made in a document was to the detriment of the borrower, such an alteration was a material one which invalidated the document.

In the case of Ananda Mohan vs Ananda Chandra³ the Calcutta High Court held that an alteration in a document after its execution and registration made in good faith to carry out the original intention of the parties does not vitiate the instrument.

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¹ 4th Edition, Volume 12, Para 1383
² (1971) 3 ALL ER 417
³ AIR 1917 CAL 811
Similarly in the case of "Kalianna Gounder vs Palani Gounder"¹ the Supreme Court held that in a memorandum of agreement for sale of land the insertion of the words 'clear the debts and execute the sale deed free from encumbrance' after its execution did not amount to material alteration so as to cancel the document."

It is clear from the foregoing cases that the provisions of Section 47(B) of the Indian Stamp Act 1899 mean the same while stating that in order to attract stamp duty the rectifying deed should be an "instrument" as envisaged under Section 2(14) of the Indian Stamp Act.

**Case Study: Deed Of Sale, S.R.O., T. Nagar:**²

In this case the S.R of D.R. Cadre of S.R.O., T. Nagar has scandalously roped in a Deed of Sale as warranting duty as a sale and rectification u/s 5 of the Stamp Act r/w 47 (b). He has blinked at the definition of the instrument u/s 2 (14) and ignored the glaring sina qua non that the owner / executant alone could create an interest or extinguish one in a document.

Still worse, Sale Deeds containing recitals of earlier transactions and references to errors in the previous documents are drawn into the purview of Section 5 and 47 (b). Notwithstanding the mandates in the cases of *A.I.R 1935 Lahore 567, 569 S.B. and A.I.R. 1972 S.C. 899* wherein the courts have clearly emphasized

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¹ AIR 1970 SC 1942  
² Document No: 954 of 2004 of S.R.O. T.Nagar
that a document "which merely recites a past transaction is not to be treated as one expressing or embodying the transaction for the purpose of stamp law", the Sub Registrars persist in their abuse of Section 5. Viewed in the context of Board Proceedings B.P. 847 R dated 26-06-1891 (vide Madras Stamp Manual) Section 2 (14) Section 5 and Section 47 (b) of the Stamp Act 1899, a document could be classified as rectification and Sale Deed only if the following conditions are fulfilled.

1. The Sale Deed should contain two distinct matters separate from and independent of each other, namely that of a rectification of a previous deed and sale of the schedule property.

2. There should be a clear creation or extinguishment of right or liability by way of rectification sought to be effected.

Finally, the ingredients of rectification deed should qualify for the status of an "instrument" as specified u/s 47 (b). Only if these conditions are fulfilled, a Deed of Sale can be categorised as both sale and rectification. In a sale deed registered at S.R.O T.Nagar¹ the vendor of the property has merely recited in the recitals of the document that she had obtained a sale deed from the previous vendor in which her undivided share had been quantified as 1/8th instead of 1/4th. The vendor does not

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¹ Document No: 954 of 2004 of S.R.O. T.Nagar
state that she is seeking to rectify the previous document. She is merely referring to an error in the previous sale deed and conveying \(1/4^{th}\) instead of \(1/8^{th}\). Certainly this cannot mean creation of any right in the property owing to her unilateral reference to the error in the previous deed.

If at all this word is to be treated as rectification, the predecessor-in-title of the vendor of the impugned deed should have also joined in the sale deed to rectify the previous deed. Only then, there will be a creation of interest in the undivided share inadvertently omitted in the previous deed. A self statement would not create any right in a property that had not been acquired by the person concerned / vendor.

The principle of "nemo dat non quod habet" will come into full play in this case. No person can convey a better title than what he has. Similarly, in the case of the Sale Deed under study, it is clear that only the purchaser under previous deed (preceding deed of title) is selling the property under the impugned sale deed. Therefore, he can convey only what had erroneously been conveyed to him and not what ought to have been correctly conveyed to him. Hence, by no stretch of imagination, this recital can be treated as a distinct matter u/s 5 of the Stamp Act. Consequently stamp duty CANNOT BE demanded therefor under Article 23 and 47B.
of the Act. However the Sub-Registrar T.Nagar (of D.R. Cadre) held up the aforesaid document for a long time and released the same only after a clarification from the auditor.

If one has to examine the occasion of charge in an instrument and draw it into the sphere of two heads of charge, then he has to spell out the two heads of charge and only after that apply 47 (b) for consequent levy. The Revenue is injunctioned from taking even the first step. According to the ruling in "Himalaya House Company Vs. C.C.R.A. 1", "reference to earlier transactions in a document does not amount to an incorporation in that document of the terms and conditions relating thereto" unless the parties thereto intended to incorporate them therein. Even in an earlier decision it has been ruled that the recitals of a document should not be treated as embodying the transactions for purpose of stamp duty (AIR 1935 LAH 567 S.B.). Even if this first step were to be countenanced, the second stage of bringing it into the sweep of Section 2 (14) r/w 47 (b) will be possible only if the original vendor had executed the sale deed. In the absence of these two essentials treating the document as rectification cum sale deed would be an insult to rule of law and betrayal of public interest.

1 AIR 1972 SC 899
**Disastrous side effect of Section 47(B):**

Owing to Section 47 (b) and the dreadful levy proposed therein for deeds of rectification, the public utilities effecting mutations in their records make a rigorous scrutiny and even read between the lines in a zealous search for an error of omission and commission or absence of vital letters for the spelling of a word to intimidate the party with a demand for a rectification deed. Palpably this is done with oblique motives for hiking their collections! The Registrars shut their eyes to the very beginning of the Section as “where an instrument purports to rectify an error.”

It can be seen from the above discussion that because of Section 47(B), the public are put to utmost discomfort, harassed and harrowed by the persons concerned. Therefore, it is imperative that a separate head of charge is created as Article 53 A in the Schedule to the act and Section 47 (B) amended as follows:

<table>
<thead>
<tr>
<th>Description of instrument</th>
<th>Proper stamp duty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 53A:</strong></td>
<td></td>
</tr>
<tr>
<td>RECTIFICATION:- a document as defined by Section 47B which purports to rectify a previously executed document or instrument.</td>
<td>The duty for the deed of rectification will be the same as prescribed for the previous instrument as on the date of its execution less the duty if any already paid in respect of the previously...</td>
</tr>
</tbody>
</table>
executed instrument.


Section 47B:

Where a document purports to rectify a previously executed instrument in a manner affecting chargeability thereof, the amount of duty chargeable for such a deed of rectification shall be the proper stamp duty therefor as per Schedule I as on the date of execution of the previous instrument less the amount of duty, if any, already paid in respect of such previously executed instrument.

It is provided however that no duty shall be charged on a document not being an instrument as defined u/s 2 (14).

The worst consequence of the aforesaid Section 47(b) as it exists today is the harassment of the public by certain lending institutions (guided by legal quacks on their panel) which insist upon palpably harmless errors. They do this with ulterior
motives knowing fully well that Registrars would insist upon difference in stamp duty. The auditors are mainly responsible for the frenzied extents to which 47(b) has been stretched by the Registrars.

Thus the amendment proposed as aforesaid will scale down 90% of the grievances. Ten percent of the grievances could be sorted out by appellate tribunals which could be constituted as suggested under Chapter 10.

C) RELEASE – ARTICLE 55

*Esoteric in content and arbitrary in enforcement:*

Bureaucratic exigency and its evitable off springs of despair and confusion are writ on the face of the statute. Obviously the amendments of Article 55 in 2000 and 2004 reveal bankruptcy in knowledge of legal principles governing an amendment. The bureaucrats are guilty of having proposed an amendment full of ambiguities and imparting their own criteria for classification under Article 55A. Fundamentally prescribing a levy equal to that of a conveyance on sale for deeds of release is per se opposed to the occasions of charge under Sections 4, 5 and 6. If there were to be a homogeneous rate for any and every instrument then the existence of the schedule containing various heads of charge would become meaningless. When release of interest is not a conveyance legally, there is no justification for levy of duty equal to that of a sale deed. It is now a settled law that release is only a
feeder of title aimed at enlarging the estate of the releasee. The parties ought to have a pre-existing right in the specified property. (C.C.R.A vs Rustom Nusserrwanji Paul\(^1\) and Kuppuswami vs Arumugam\(^2\). A release cannot TRANSFER title (C.C.R.A vs Lakshmanan Chettiar\(^3\)).

Inspite of full bench rulings on the nature and characteristics of a release deed the bureaucrats have piloted the discriminating and arbitrary amendments effected from 6-3-2000 and 16-12-2004. Prior to the amendment effected from 16-12-2004 the department was collecting stamp duty and fees at the rate of four plus one percent on “the value set forth” for deeds of release which merited their (the departments’) classification under Article 55A. The definition and interpretation of Article 55A continue to be the same and restricted to just co-parceners even after amendment. This does not have legal sanction. As stated earlier stamp law is a statute positivi juris. Unilaterally ruling out possibilities of other categories coming under Article 55A smack of arbitrariness. On the first reading of the statute, even legal experts will not be able to conclude that these concessions are available only to co-parceners. Judicial decisions are almost absent to authorize the stand of the department on this issue. In the case of Rajah Yarlagadda Sivarama Prasad vs Bahadur Zamindar Venkata Ramalinganna Prasad\(^4\), it was held that “whereby a document a person voluntarily renounces for consideration co-parcenary rights of succession to

\(^1\) (1968) 1 M.L.J 165  
\(^2\) AIR 1968 SC 1935  
\(^3\) AIR 1970 MAD 348 (FB)  
\(^4\) (1961) 1Andh WR 183
impartible estate, it is a release.” However this interpretation is only inclusive and NOT exhaustive.

With the Article as it is, the Registrars find it very difficult to classify a document under Article 55A. Registrars do not concede this concession to co-owners unless and until it is proved that the Releasor and Releasee are descendants of a common ancestor.

**Case Study No.1**

A Deed of Release was executed by daughters of a person who had died intestate in favour of their mother. The deceased was allotted the property released under an oral family arrangement which was later acted upon and recorded under a Memorandum of Family Arrangement.

When this document of Release was presented to the Sub Registrar, Anna Nagar, the Registrar referred the document to the DIG Registration on the ground that the passing of the property to the Releasors and Releasee had taken place under a family arrangement and hence not qualified for duty under Article 55A. the Sub-Registrar insisted upon stamp duty under Article 55C. However on an appeal to the D.I.G, the parties relationship as co-parceners was accepted and the deed was ordered to the classified accordingly under Article 55A. Thus the registering authorities worry about previous transactions and conclude on co-ownership.

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1Registered as document No:P69 of 2001 at S.R.O. Anna Nagar.
Release deeds classified by the revenue under B,C and D(ii) of Article 55 suffered the duty of a conveyance. However even for release among family members Article 55D(i) had provided for three percent on the market value of the property (as against four percent or the "value set forth" under Article 55A). No legal professional worth his name chose to challenge the conspicuous discrimination in the levy under Article 55A and 55D(i) and the bases of "value setforth and market value" not to mention the arbitrary classification under Article 55A by the revenue authorities.

Amended version of Article 55A as per Amendment Act 31 of 2004 effected from 16-12-2004:-

Retaining the same idiosyncrasies of equivocality in content and enigma in arbitrary classification of release deeds under Article 55A, the latest amendment has only worsened the agony of the public. The stamp duty for instruments falling under this Article would be one percent on the market value (as against "the value as set forth") of the property under release subject to a maximum of Rs.10,000/-. The description of the instrument continues to be ambiguous and the levy is arbitrary and discriminatory. Persons taking a release of interest worth ten lakhs and one crore would be paying the same ten thousand as duty. The authorities may learn from the legality and logic of levy pervading Articles 25 and 36A of the Bombay Stamp Act

1 Vide T.N Gazette Extraordinary No:297 of 2004 dt: 25-11-2004 w.e.f.16-2-2004
1958. According to the latest amendment of Article 55C the existing expression “another co-owner” has been “substituted by “ another co-owner who is not a family member”. Family member does not mean or include brothers and sisters.

The aforesaid amendment has only theoretically scaled down the levy. It has only complicated the assessment of stamp duty for deeds of relinquishment falling under Article 55(a).

Hitherto the revenue was breaching the rule in “Morley vs Hall” and the mandates of the Supreme Court in matters of taxation. A person cannot be taxed without clear words for the purpose in a taxing statute. There is no presumption as to tax. Inference and analogy are out of place in a taxing statute. In the case of “Income tax Officer Tuticorin vs T.S.Devinatha Nadar”², a five judge bench of the Supreme Court held that “if the interpretation of a fiscal enactment is in doubt the construction most beneficial to the subject should be adopted even if it results in obtaining an advantage to the subject: The subject cannot be taxed unless it comes within the letter of law”. In this ruling their lordships have relied upon the earlier ruling in the case of “C.I.T Madras vs Ajax Products Ltd.”³

² Dowl 494
³ AIR 1965 SC 1358
² AIR 1968 SC 623
In spite of the above guidance the Department is unilaterally restricting the application of Article 55 (a) to release between co-parceners. Even the amendment has not altered the description of the instrument under Article 55(a). Therefore the stand of the department will continue to be what it was earlier. Hence Article 55(a) could be amended as follows:

“Release that is to say any instrument (not being such a release as is provided for by Section 23-A or a (release referred to in clauses B,C and D of this Article) ) whereby a member of a family renounces a claim upon another member or against any specified property.”

Notwithstanding the amendment of Article 55 (c), as aforesaid, the cobwebs of doubts will persist on whether a property purchased jointly by two brothers and held in joint tenancy will be eligible for classification under Article 55(a).

Article 45(b) of the Karnataka Stamp Act 1957 is clear in its applicability to family members. Besides family members include brother and sister as per the explanation to Article 45(b) which is the head of the charge for release.
In the light of the rulings in *CCRA vs Sarojini Muthuswamy*² and the earlier decisions in *T.K.Subramaniam vs CCRA*,³ *T.T.Meenakshi Aachi vs District Registrar Coimbatore*⁴ and *CCRA, Board of Revenue vs Dr.Manjunatha Rai*⁵ it is clear that co-ownership should be the basis of levy. May be the revenue can distinguish between co-ownership of family members and non-family members. Distinguishing relinquishments between family members on account of co-parcenary succession and joint acquisition is legally arbitrary to say the least. Such discriminations will run the risk of being struck down on grounds of “palpable arbitrariness” as ruled in the case of “*M/s.Khadi and Village Soap Industries Association and another vs State of Haryana and other*⁶”.

Literally Article 55A would read as follows:

“A Release, that is to say any instrument (not being such a release as is provided for by Section 23-A) or a (release referred to in clauses B,C and D of this Article) whereby a person renounces a claim upon another person or against any specified property”.

From the aforesaid description of the instrument of release and the judicial rulings thereon it is clear that a person renouncing a claim upon another against any

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¹Vide Tamil Nadu Gazette Extraordinary No:297 of 2004 dt: 25-11-2004 w.e.f.16-2-2004
² 2001 (1) CTC 410
³ AIR 1994 MAD 317
⁴ AIR 1994 SC 2479
⁵ AIR 1987 MAD 260
⁶ * AIR 1977 MAD 10(FB)
specified property need not be a co-parcener. In the case of *V.S. Somasundaram vs C.C.R.A*¹, the Madras High Court has upheld this plea of the Petitioner and ordered that parties to the document of release need not be co-parceners to qualify for classification under Article 55A.

**D) ARTICLE 54 – RECONVEYANCE**

The topic under discussion is only Reconveyance of a mortgaged property which attracts levy and falls under Article 54 of the heads of charge in the Schedule to the Act. It is not the Reconveyance under a sale. Reconveyance in normal parlance means the Reconveyance effected in exercise of the sellers’ option to buy back or recall the sale of a property. This option can be inferred from the agreement of sale itself “*Babu Ram vs Inder Pal Singh*²”. Owing to this general understanding of the term Reconveyance Registrars mistake even Reconveyance of mortgaged property as Reconveyance under a sale.

In case of Reconveyance of a mortgaged property, the Registrars some times insist upon stamp duty at the rate of conveyance for the amount of consideration as set forth in the Reconveyance. This in defiance of Article 54(b)(i) & (ii). A Reconveyance of mortgaged property or simple receipt to discharge a mortgage should be treated alike. In cases of Conditional, English and Usufructuary mortgages, when there is

¹2003-2-L.W 253

²AIR 1998 SC 3021
Reconveyance of the property, the Stamp Duty charged should not exceed the amount stipulated under Article 54(a)(i) & (ii). The Registrars still confuse Reconveyance of mortgaged property with sale of a property. As a result whether a Sale Deed is cancelled with the consent of the buyer or not, it is treated as Reconveyance warranting levy under Article 23. The Registrars should be given proper guidance in matters affecting Reconveyance under Article 54.

E) CANCELLATION- ARTICLE 17

Article 17 deals with cancellation of instruments. This instrument assumes significance not on account of Stamp Act but on account of its impact on registration. Consequently, its use is resorted to frequently by the parties. The parties go to the extent of cancelling even Sale Deeds. Hitherto the Registering Authorities did not refuse registration of cancellation deeds owing to the cast iron injunction against straying away from their set path of the Registration Act 1908. Though criticized often, the area of concern demarcated for the Registration Authorities by the Registration Act is perhaps the most sensible thing the legislators would have ever done. But for this prohibition, the Registration office would have unwittingly been adjudicating upon civil disputes by going into the validity of the instruments presented for registration. Thanks to the same objects of the Registration Act and Stamp Act, the authorities have not deviated from their areas of operations.
However, in course of time, this statutory status quo came to be abused by parties seeking to settle scores among themselves. In the last few decades several sale deeds were cancelled by the Vendors after registration. This resulted in endless woes to even bonafide purchasers and law abiding citizens of the society. By a mere stamp of Rs.50/-, predecessors in title or their attorneys who will invariably be Real Estate agents would bully buyers owing to some pecuniary reason or the other. Since these cancellations appeared in the Encumbrance Certificate, the lending institution as well as the subsequent buyers hesitated to accept the bonafides of the title of the actual owners of the property. Now, however, the Registration Department in Tamil Nadu has sought to check this menace by ordering the Registrars not to entertain the cancellation without notice to and No Objection Certificate from the buyer. While this is a wise decision in public interest, the tendency to classify genuine cancellations as Reconveyance is against the rule of law. Presently any and every cancellation is termed as Reconveyance and stamp duty demanded accordingly. There is precious little interpretation of this Article and guidance by the Supreme Court in this regard. Consequently, even genuine cancellations have become impossible owing to the demand of stamp duty as per Article 23 of the Act.
There are not many cases wherein the Civil Court has cancelled instruments under the Specific Relief Act. The Registrars refuse to accept even genuine cases where actual transfer of property has not taken place. Where a property has not been properly identified or handed over to the buyer, cancellation is the only solution to the parties concerned. These reliefs are denied by the Revenue Authorities owing to their tendency to classify cancellations under Article 23 as Reconveyance. The case of *Crest Hotel Ltd. Vs. Asst.Suptd. of Stamps*¹, the Hon’ble High Court held that where there is no conveyance, the question of recovery of duty cannot arise in such cases. Deeds ofCancellation cannot fall under Article 23. They are liable to be classified under Article 17 (*AIR 1970 Madras 1 FB*).

**Cancellation of Instruments treated as Reconveyance:**

Cancellation of Instruments has been prescribed a duty of just fifty rupees under Article 17 of Schedule I to the Stamp Act. However this instrument of cancellation is coming in for different treatment in the hands of the Registrars. Till recently crafty parties were cancelling even sale deeds after registration. Though cancellation of sale deeds is a non-est in the eyes of law it was unsettling the claimants under the deeds sought to be cancelled particularly sale deeds. The Encumbrance Certificates were revealing these ugly entries. To counter this menace the prudent of the victims cancelled the deeds of cancellation. This resulted in a big head-ache to the registering and stamp authorities. Unnecessary controversies were stirred up over

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¹ AIR 1994 Bombay 228,231
the Registrars’ involvement in either the cancellation or the refusal to register the same. At this stage the Department of Registration issued a notification u/s 22A of the Registration Act 1908 in G.O M.S 150 CT& RE dated: 22-9-2000 published in Tamil Nadu G.O.No: II CT 1024 E 2000 that no more cancellation of deeds of sale shall take effect without the express consent of the parties to the document.

While there is no dispute over the notification insisting upon the consent of both the parties the charging of stamp duty as conveyance under Article 23 is highly objectionable. This is a typical case of dual levy. When the parties seek to set at naught an instrument which they did not intend to take effect after paying proper duty therefor, insisting upon stamp duty as per Article 23 will violate the constitutional mandate under Article 265. While the legal validity of the restoration of ownership of the property to status quo ante merely by a deed of cancellation is anybody’s guess, insisting upon stamp duty at the rate of conveyance is nothing but unfair. Perhaps this stand of the revenue is based on the decision in (1910) 32 ALL 171 (DB). In that case the cancellation has not stopped with just annulment of the deed. It has specifically effected a Reconveyance of the property concerned. Article 17 is obviously intended to register deeds of cancellation resorted to owing to mistake of
fact and other genuine reasons including those contemplated u/s 31 of the Specific Relief Act 1963. Hence the stamp authorities should apply the Article as it is and not ascribe a different meaning to Article 17. If it is a mere deed of cancellation not involving or effecting any express Reconveyance it should be treated as such. According to the principle laid down in "Morley vs Hall" the wordings of the statute should not be flexed to suit the requirements of the revenue. The statute should be interpreted literally. Stamp Law is basically a matter positivi juris.

**Latest Circular of the I.G. Registration:**

As if to fulfil the aspirations of the Researcher to assert the rule of law, the Inspector General of Registration has issued a circular, in the context of document of cancellation registered at S.R.O Triplicane, that deeds of cancellation shall be charged stamp duty only as prescribed under Article 17 of the Schedule to the Act. Henceforth even if it is a cancellation of a sale deed assented to by the Purchaser or Claimant it will be treated only as a cancellation. However the deed of cancellation shall not purport to restore the property to the original vendor or worded in terms of Reconveyance. A deed merely cancelling a sale deed will be considered only as such and charged a fixed duty as contemplated under Article 17.

THE AFORESAID CIRCULAR HAS NOT RECTIFIED OR AMENDED THE ARTICLE. IT HAS JUST ACCEPTED AND RECOGNISED THE STATUTE AND RULE OF LAW.

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