CHAPTER - V
## CONTENTS

<table>
<thead>
<tr>
<th>A) MODE OF STAMPING</th>
<th>PAGE Nos</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Sections 10 and 11 ~ the statute on stamping</td>
<td>144</td>
</tr>
<tr>
<td>2) Use of adhesive stamps</td>
<td>144</td>
</tr>
<tr>
<td>3) Statute as in force in Maharashtra</td>
<td>146</td>
</tr>
<tr>
<td>4) Payment of Stamp Duty under Karnataka Stamp Act 1957</td>
<td>146</td>
</tr>
<tr>
<td>5) Situation in Tamil Nadu</td>
<td>146</td>
</tr>
<tr>
<td>6) Difference between the Bombay Stamp Act 1958, 10A of the</td>
<td>147</td>
</tr>
<tr>
<td>7) Various purposes for which stamps are used</td>
<td>148</td>
</tr>
<tr>
<td>8) Initiatives of the Tamil Nadu Government</td>
<td>149</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B) AMENDMENT PROPOSED</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Sections 2 and 10</td>
<td>155</td>
</tr>
<tr>
<td>2) Conclusion</td>
<td>156</td>
</tr>
<tr>
<td>2) Appendix ~ Questionnaire</td>
<td>157</td>
</tr>
</tbody>
</table>
CHAPTER 5
FORM OF PAYMENT

A) MODE OF STAMPING

The recent stamp paper scam amounting to Rs.30,000/- crores has created such a sensation that even genuine papers are being doubted by the public and officials alike. It will take years for even authentic papers to gain credibility and acceptance by the public. Such has been the scale of faking and involvement of officials particularly from the top echelons of the police. With such a notoriety it will be difficult for the stamp vendors to sell and the public to check the authenticity and the officers to accept them as valid. It would result in undue delay and unnecessary expenditure for the people concerned to go through the process of ascertaining the veracity of the papers. Hence the continued use of stamp papers itself has become a question mark.

This chapter is aimed at discussing the legal prejudice that may be caused and the practical difficulty that may be encountered while transacting without stamp papers.

Save practical difficulties there cannot be any legal hurdles in transacting without stamp papers. It is obvious from the history of stamp law that the Stamp Act was not introduced with any special legal motives or compulsions.
Stamp Law was not born out of deep legislative reflections. It was a flash in the pan answer to an ad hoc question of meeting the expenditure of war with France for the English Government in 1694. When the revenue / government found that a lot of private contracts were being exchanged on plain white stamp papers, it felt that stamp papers or adhesive labels would generate revenue without any pain and also embellish the instrument with the stamp of the sovereign authority. Consequently it imposed stamp duty on insurance policies, grants of honour, probates and letters of administration. Psychologically the public did not react vociferously. They accepted it silently because the stamping authorities did not interfere in their laissez-faire transactions or value of the properties. Such were the characteristics of stamp law which lasted in England till recently when the Stamp Duty Land Tax substituted the Stamp Act of 1891. Only in India the stamp law departed from the original lines of trajectory and investigated into transactions for multiplying the revenue under stamp law. Thus transactions in writing between private parties became an opportune excuse for generating revenue by way of stamping them. There is hence no legal impediment to collect this duty by modes other than stamp papers.
Sections 10 and 11 ~ the statute on stamping:

According to Section 10 of Stamp Act:

**Duties how to be paid:**

(1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid and such payment shall be indicated on such instruments, by means of stamps-

a) according to the provisions herein contained; or

b) when no such provision is applicable thereto, as the State Government may by rule direct.

(2) The rules made under sub-Section (1) may, among other matters, regulate-

a) in the case of instruments stamped with impressed stamps – the number of stamps which may be used;

b) in the case of bills of exchange or promissory notes - the size of the paper on which they are written.

According to Section 11 of Stamp Act:

**Use of adhesive stamps:** The following instruments may be stamped with adhesive stamps, namely:-

(a) instruments chargeable with the duty not exceeding (twenty paise) except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange and promissory notes drawn or made out of India;

(c) entry as an advocate, vakil or attorney on the roll of a High Court;
(d) notarial acts; and

(e) transfers by endorsement of shares in any incorporated or other body corporate.

From the foregoing Sections it can be seen that the statute is very particular about payment of duty only by way of stamps. The kind of stamps and the mode of using them may be regulated by the State Government. For reasons of convenience, Section 11 has provided for use of adhesive labels for bills of exchange, promissory notes, notarial acts etc. Sections 12, 13 and 14 tell us how to use the stamps and Section 16 empowers a Collector to waive duty for duplicates / copies of instruments and those for which duties had already been collected.

For purposes of receipt deeds contemplated under Article 53 the Madras High Court has ruled that there will be perfect compliance with the Act even if the instrument is written on an impressed stamp which will meet the requirements of Section 2(11) “Pappathi Achi vs Narayanaswami.”

The Madhya Pradesh High Court however has ruled that for pro notes executed in India no other adhesive stamp other than adhesive revenue labels should be affixed “Ismail Khan vs Ram Prakash Varma.”

---

1997 (3) L.W 320
AIR 2000 M.P. 277.
Statute as in force in Maharashtra:
Section 10 of Indian Stamp Act 1899 has been adapted to suit the exigency of the state. Section 10 of the Bombay Stamp Act 1958 provides for the CCRA or the superintendent of stamps permitting use of franking or any other machine to record payment of stamp duty. Sub-Section 3 of Section 10 of the Bombay Stamp Act 1958 permits alternate modes of payment including by way of cash, demand draft, challan etc.

Payment of Stamp Duty under Karnataka Stamp Act 1957:
Section 10 of Karnataka Stamp Act provides for payment in cash by challan at the banking treasury or treasury or by way of demand draft or by pay order of any scheduled bank. However this state has kept out the purview of the Section, instruments falling under the union list. Thus by way of the aforesaid two amendments the states of Maharashtra and Karnataka have expressly permitted alternate modes of payment.

Situation in Tamil Nadu:
In Tamil Nadu they have not chosen to amend Section 10 and 11 because there is a gate way in the form of Section 41 to avoid use of stamp papers. Under Section 41 the proper duty can be paid directly to the Collector and the Collector can certify the payment u/s 42 of the Act. However the existing alternative of Section 41 will not fulfil the requirement of stamp papers and adhesive labels of smaller denominations for deeds/instruments not requiring registration.
Difference between the Bombay Stamp Act 1958, 10A of the Karnataka Stamp Act and Section 41:

In the case of Section 10 and 10A of Maharasthra and Karnataka Stamp Acts, respectively, the law expressly permits stamping of instruments by substituted modes. The public need not convince the Collector about inadvertence or accident for failure to stamp the instrument as laid down u/s 10 and 11 of the Stamp Act. However in Tamil Nadu there is a discretion vested with the Collector to either accept the payment or proceed under Section 33 and 40 of the Act. The Party has to convince the Collector about his bonafides of accident, mistake or urgent necessity as reasons for omission to stamp the instrument. Therefore it is imperative that Sections 10 and 11 of the Stamp Act as applicable to Tamil Nadu are amended suitably to expressly permit the public to make payments otherwise than by way of stamps as laid down thereunder. However since the registering officers are vested with powers of a Collector u/s 41 and 42, in practice they do not fuss even for a second to accept stamp duty under Section 41. Still the Collector has every authority under the statute as it stands to initiate proceedings u/s 33 and 40 in respect of instruments presented u/s 41 within the period of one year from the date of execution if he felt that the
omission to stamp was not due to accident mistake or urgent necessity. Hence the parties concerned would run the risk of a punitive action from the Collector u/s 41.

**Various purposes for which stamps are used:**

As said earlier in this thesis, a major portion of stamp revenue is collected only through instruments relating to immovable properties. However there are several documents even in relation to immovable properties which escape the attention of authorities. Thus stamp papers are used for both purposes of registration and conducting unregistered transactions. In the case of registered transactions the alternate modes of stamping could be resorted to. However in the case of unregistered transactions the parties cannot avoid use of stamps. According to statistics available, the stamp duty of Rs. 371.48 crores collected by way of stamp papers for the year 2000-2001\(^1\) includes sale of stamp papers for purposes other than registration. The following are the documents which do not figure on the screen of the authorities’ sight.

a) **Deeds of Lease:**

Almost ninety nine percent of the lease agreements are entered into for a period beyond one year. However for the mere purpose of eschewing registration through the escape route of Section 18 of the Registration Act, the parties limit the period of lease to 11 months with provision for renewal. Many of them dare to ignore

\(^1\) Demand Details of the Registration Department 2003-2004
registrations of even deeds providing for longer periods of lease in the confidence that they could pay the ten times penalty to legitimise the transaction to acquire evidentiary value in courts. Exploiting the loop hole u/s 17 of the Registration Act and 107 of the Transfer of Property Act these lease deeds are transacted on 20 rupees stamp papers.

b) Affidavits / notarial Acts (Article 42)

c) Sale Agreements

d) Instruments of General Power of Attorney

e) Court Decree

f) Chit Agreement

g) Certified Copies

h) Extracts (Article 24)

i) Returns filed under Societies Registration Act, Partnership Act etc.

**Initiatives of the Tamil Nadu Government:**

In Tamil Nadu the State Government and the department are doing their best to check the menace of fake stamp papers. In fact as early as a decade ago S.R.O Mylapore was the first office to detect fake adhesive labels. Alert officials with sharp observation noticed the fake from the genuine. The scope for a discerning scrutiny is not possible in the normal course of the functioning of a Sub-Registry office. The hectic pace of registration and the accompanying pressures from the multitude on the corridors will not permit the Sub-Registrar or the staff to view or feel the papers
for detection of fake papers. The Researcher would not be biased in stating that no
official of the registration department has ever been indicted of abetting this evil
practice of faking by outlandish criminals bent on ruining the economy.

Practically the suggestion of installing the U.V. lamps, fake money detector pen at
Sub-Registrar Offices will NOT make any difference because non-judicial papers of
denominations less than Rs.10,000/- do not have U.V. features or numbers. In fact
one Stamp Vendor confessed that a fool proof check against fake papers was
impossible.

The states of Tamil Nadu, Andhra Pradesh and Karnataka have published guidelines
for the public to detect fake papers. The public have been asked to check for the
following features of genuine, adhesive and non-judicial stamp papers.

<table>
<thead>
<tr>
<th>Security Features of Genuine Adhesive Stamps and Stamp Papers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-judicial stamp papers have the following features.</td>
</tr>
<tr>
<td>Impressd Papers of lower denominations are of uniform colour with</td>
</tr>
<tr>
<td>watermark of Ashoka pillar and the words &quot;satyamevajayate&quot; on the plain part of it</td>
</tr>
<tr>
<td>in Devanagari Script.</td>
</tr>
<tr>
<td>Higher denomination papers of Rs.10,000/- to Rs.25,000/- bear</td>
</tr>
<tr>
<td>multicoloured print with a security thread on the left and also watermark similar to</td>
</tr>
<tr>
<td>the one in Rs.1,000/- paper. These papers also have serial numbers printed on them.</td>
</tr>
</tbody>
</table>
The special adhesive stamps of any denomination have single colour print with Bharat in Devanagari script and India in English with the notations- Brokers Note / Share Transfer / Insurance / Notarial / Foreign Bills printed on the Stamps. Impressed (non-judicial) Stamps above Rs.10,000/- bear serial numbers.

The Karnataka State has amended its act with effect from 1-4-1999 providing for payment of stamp duty by demand draft, pay order or challan (Section 10 A of Karnataka Stamp Act 1957). They have also installed franking machines in all the Sub-Registrar offices for franking of stamps of lower denomination. In Tamil Nadu the department has taken, inter-alia, the following steps:

1. It has educated and exhorted the public to pay stamp duty by way of demand draft, bankers cheque in favour of the S.R.O concerned. This alternative has appealed to and caught up with the elite public of the metropolitan cities. They have by now reconciled to this practice of payment of stamp duty by demand draft or cheque. Some of the Sub-Registrars had qualms initially about

1 Demand Details 2003-2004
accepting even demand drafts prior to verification. Now they are willing to accept stamp duty by way of demand draft and pay orders. This mode of payment of stamp duty is not convenient for rural and sub-urban public. Firstly because of the psychological hesitation to obtain demand drafts and cheques from bank. Secondly because most of them are uneducated and find it difficult to get these things organized through document writers. Thirdly the public have not abandoned their fancy for imprinting the text of their deeds on non-judicial papers. They feel that stamp papers are durable.

2. The department has recommended that no fresh indent should be placed for printing of stamp papers with the denominations of Rs.5000/- and less because of absence of security features. They have suggested that non-judicial stamp papers of denominations of Rs.10,000/- and above shall be issued only through Sub-Registrars and treasury. This is aimed at monitoring the demand supply use and accounting of stamp papers. These stamp papers could be purchased by payment through demand drafts or bankers cheque.

3. Stamp Papers of denomination of Rs.100/- or below will be sold directly by Sub-Registrars. Use of adhesive stamps shall be restricted to a value not exceeding Rs.5/- per instrument.

These are some of the distinct measures initiated by the department. However considering the response to the questionnaire as appended hereto and the research
study of various modes of payment and the practical results the general impression is that the public prefer durable papers with impressions or insignia of Government Authority or holograms embossed on those papers. They desire paying stamp duty by way of demand draft and cash and writing deeds on papers which will:

a) guarantee longevity

b) bear an attractive emblem of authority.

c) be sold by the government for a price of not more than Rs.2 or 3.

The State of Karnataka has already introduced this form as a substitute for stamp papers. However even this solemn endeavour of the State Government is suffering the side effects of sale at a premium. The Researcher had a first hand experience of seeing these papers being sold at a premium of ten times at the precincts of the S.R.O. Nevertheless it has checked forgery because faking would cost more money than the face value.

Inspite of the probable corrupt practice of premium sale of these papers (which could be ended easily), the needs of the public could be fulfilled without any risk to the State. Karnataka has practically proved this possibility. Durable papers with the imprint of the Karnataka State Government Registration Department is sold for two rupees. This sale will ensure that these papers cannot be faked for the simple
reason that it would not be commercially viable. Secondly the text of the deed could be conveniently written on these papers and stamp duty could be paid by way of demand draft or challan or cash at the Sub – Registrars’ office. This will be the best alternative to completely eliminate forgery of stamp papers. This system will placate the fancy of the public and safeguard the interests of the revenue.

Obviously something very serious has to be done about alternate modes of stamping for the unregistered instruments because the parties concerned cannot make substituted payments either by way of demand draft or under Section 41. Use of stamp papers for these kinds of documents has become a necessary evil. Therefore the state should arrange for alternate modes of stamping because a major chunk of stamp duty is being paid towards these unregistered instruments. Amending the act will not solve the problems of the public when it comes to use of these instruments. If a suitable mode of payment is suggested, a large scale faking of these papers can be obviated. The recent stamp scam brought to light forgery of adhesive labels with the connivance of L.I.C officials.

Instructions to use U.V lamps, fake money detectors and training in detection of fake papers will not really help the public. Forgery can be countered effectively by:
a) payment of stamp duty by demand draft, cheque etc.
b) Statutorily authorising the Sub-Registrars to accept cash
c) Supplying durable papers with government emblems/holograms for use by the public in lieu of stamp papers.
d) Monitoring sale of high value stamp papers
e) imprinting special seals, holograms, insignia on durable papers intended for deed writing
f) use of franking machines
g) Restricting the face value of adhesive labels to not more than Rs.5.

B) AMENDMENT PROPOSED

1) Sections 2 and 10:-

For purposes of defining “Stamp” the amendment of Act 2 of 1899 as notified by the Union Government may be adopted with a slight modification as suggested hereunder.

It may be adopted as Section 2(27) of The Indian Stamp Act 1899 as applicable to Tamil Nadu. “Stamp “ means and includes any mark, seal, or impression by franking machine or endorsement by any agency or person duly authorised by the State Government and includes an adhesive or impressed stamp, for the purposes of duty chargeable under this Act.”.

Section 10 could be amended with a provision vesting the State Government with powers to:
a) dispense with the requirement of stamping as per Section 10(1) a to c and

b) authorise an alternate mode of payment of duties.

2) Conclusion:

Thus in the present circumstances the best alternative would be to supply durable papers bearing the department emblem for deed writing and collect stamp duty by way of demand draft or cash. These papers should be charged not more than Rs.2 each and made freely available.