CHAPTER - XIV
1) This thesis is a critique on the state of rule of law in the enactment and enforcement of the Indian Stamp Act 1899 as applicable to Tamil Nadu. Owing to the subconscious asphyxiation of justice by the system for which no individual or institution or government is solely responsible, this research is an earnest endeavour to restore rule of law in the working of the Act. The mission is better expressed in the words of the learned jurist Joshua Rozenberg “it seeks not to state what the law is, but to suggest what the law should be; its started as a anatomy of law but it soon became a search for justice”\(^1\).

2) The Researcher’s goal is to strike a compromise between the dire needs of revenue and the legal justification for the demands on the public on this account. The entire dynamics of stamp levy - from enactment to enforcement, should be in consonance with fairness or equity. It is a settled law that there cannot be equity in matters of taxation. Hence the canvassing is not for equitable interpretation of the statute or equity in levy but articulating the fiscal system to the requirements of social equity. One of the major objectives of the Tax reforms and Revenue Augmentation Commission headed by Dr. Rajah J. Chellaiah Committee is to

\(^1\) Search for Justice” by Joshua Rozenberg
“increase the fairness or equity of the tax structure”. However the Researcher’s expectations are still more modest. The fiscal law should be reasonable and constitutionally valid. It should not be opposed to fairness or equity.

3) In his quest for justice the Researcher has maintained resolute neutrality in his analysis and deductions. The findings are both for and against those concerned about or dealing with stamp law.

4) The Stamp Law was originally self sufficient and explanatory in its provisions. The duties prescribed were clear and unambiguous. It generated the revenue that was expected and did not cause any discomfort to the public.

The law as it is:

6) Owing to periodical exigencies and the inevitable amendments, the act has changed beyond recognition. The equilibrium of rule of law is lost. The engrafting of the concept of market value has proselytised the act into a tax legislation. The charge has shifted from the instrument to transaction.

7) By imparting its own meaning to the statute the enforcement machinery has banished to oblivion the fundamental characteristic of stamp law as pronounced in

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¹Final Report of the TR&RA Commission dated: 4-7-2003 Chapter 2 Page 7
²Chapter IV, XI and XIII
³ Chapter II Origin and History of Stamp Law
⁴Chapter III d and Chapter IV (c) and article 55(A) of the Schedule to the Act
"Morley vs Hall". In the enforcement of the statute there is considerable discrepancy between theory and practice sporting the machiavellian logo of “the end justifies the means” the revenue collect duties sans any authorisation of law.

7) Amendments devoid of constitutional validity, levies smacking of discrimination have created a conducive climate for auditors to unleash a terror of presumptive audit remarks. Absence of speedy appellate remedies or legal fora have multiplied problems in assessment².

8) Archaic system of stamp collection has spawned faking and forgery of stamp papers³.

9) The revenue have stretched their demands even beyond the borders of legal legitimacy. In utter disregard for provisions of chargeability and Supreme Court Rulings thereon even properties not conveyed or covered by instruments are being assessed for levy of stamp duty in the name of Sections 27 and 64a.

10) Malafide audit remarks have led to hallucinatory interpretations of Section 5 by the officials. Without support of any judicial rulings instruments reciting prior transactions are buffeted by double levies.

¹ 2 Dowl 494
² Vide Section 47A – remedies under subSections (1) to (9) controlled by revenue – vide Chapter X
³ Chapter V
⁴G.O .Ms 390 CT & RE dt: 26-5-1989
11) Section 45 remains unchanged inspite of the renovation of Section 41. Rule 16 is a riddle vis-à-vis Section 45. The revenue will not refund any duty collected unduly save if paid u/s 35 or 40.

12) The reference to or mention of Collector as an authority under the statute is the most baffling development on the side of enforcement of the Act. The vesting of powers is duplicatory and contradictory. The Powers of Collector and the officials exercising them under the act can be read and understood only with the help of various notifications, circulars and orders¹.

Whither Rule of Law?

13) Inspite of concrete rulings on the concept and application of market value as the basis for stamp levy, the revenue is still pertinacious in imposing the guideline values. The remedy of reference under Section 47A(1) is an apology to impartial determination of market value. A standard discount of 10% by the remote controlled Collectors is passed off as a quasi judicial order. The appeal u/s. 47A(5) is heard by a magnified version of the Registrar. The actual possibility of an appellate remedy u/s 47A(10) at the High Court is a distant dream. True market value is unable to contest the might of the guideline value due to make believe appellate remedies. The entire process of assessment of market value of properties is thus legally and otherwise vitiated².

¹ Chapter IX
² Chapter X
14) The twists and turns of amendments have resulted in irrational contours in the scenario of stamp levy. The recent reductions have scaled down substantially but not eliminated discrimination in levies\(^1\). Gifts between brothers and sisters command the highest levy even more than deeds of sale\(^2\).

**The law as it should be:**

15) The findings are equally arrayed against the legislature in as much as it has failed to catch sight of the arbitrariness and unconstitutionality of the amendments engrafted into the Act. Certainly a statute as such cannot constitute a justification for collection of revenue. It has to be in consonance with the spirit and substance of the rule of law, which is an indispensable part and basic feature of the Indian Constitution\(^3\). The legislature, executive and public have sinned in varying degrees; The legislature has enacted unconstitutional and arbitrary amendments; the public have abused the erstwhile option to set forth their own value. The executive is the guiltiest of them all. It has refused to concede even the scanty rights and relief that the public are entitled to under the unfair scheme of the Act. **THE REVENUE HAS PRECLUDED THE PUBLIC FROM GAINING ACCESS TO JUSTICE BY USURPING THE CONTROL OF THE IMMEDIATE STAGES OF APPEAL.**

16) The Researcher has proposed reforms in the interests of both the public and the revenue. Fundamentally he has emphasised the unconstitutionality in the content of

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\(^1\) Chapter XI  
\(^2\) Article 58  
\(^3\) District Registrar and Collector Hyderabad vs Canara Bank 2004 (5) CTC 376 SC
the statute to refute the claims of the revenue against the public under the law. Constitutional supremacy is not a fanciful aphorism but a legal truth. Parliament and legislatures in the country cannot transgress the doctrine of rule of law which has been treated as the basic structure of the constitution. *(Indira Nehru Gandhi vs Raj Narain* and *Kesavanand Bharathi vs State of Kerala)*\(^2\) The basis of charge shall be as per the latest judicial rulings\(^3\). The rates of levy shall be rational and based on logical classification\(^a\). If the public consider themselves, as within the law in their estimate of duty they should be able to effectively assert themselves at a forum, which will be not only neutral but also immediate in its response*. Levies shall be equitable and just. The loopholes, which abet evasion of duty, shall be immediately plugged in. The really dishonest should be visited with deterrent penal consequences including imprisonment.

17) The original intent of the statute need not be disturbed. It should continue as fiscal legislation collecting duty without inflicting any pain on the public. The collection should be broad-based and spread over the entire range of the heads of charge in the schedule\(^\circ\).

\(^1\) AIR 1975 SC 2299  
\(^2\) AIR 1973 SC 1461  
\(^3\) Park View Enterprises vs State of T.N (2001) (1) SCC 742  
\(^a\) Chapter XI  
\(*\) vide amendments proposed in Chapter X  
\(\circ\) Chapter XII
18) There is absolutely no need to depart from the instrument. If the state intends converting the law into a tax legislation it should do so allowing all the concomitant reliefs to the public.

19) Abiding by the Supreme Court Rulings and eliminating the contradictions in the post-independence amendments by de novo amendments as proposed will substantially eliminate difficulties in assessment. Still no statute can be self contained to answer questions of assessment. The need of the hour is to constitute neutral, efficacious and fast track appellate machinery as suggested in Chapter X to revive rule of law in assessment of duty for instruments.

20) Alternative modes of stamp duty may be resorted to as proposed in Chapter V. Invocation of the laws should be strictly confined to cases of chargeability. Where there is no case of chargeability, there should be no demands on the public. The officials should account for their exercise of powers.

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1 Chandrakant vs Karthickaram (1903) 5 BOM L.R 103
2 Stamp Duty Land Tax 2003 as in force in U.K.
3 Section 2(6), 2(14) and Section 3 and Partington vs The Attorney General (1869) 4 H.L 100 at p.122
21) The state should not hesitate to refund duty unduly collected\(^1\). The role of various authorities should be clearly defined and demarcated. There should not be any duplication of powers. Removal of confusion in the role of collectors would enable a better understanding of the working of the Act\(^2\).

22) Market value has to be understood and enforced as ruled by the Supreme Court and High Courts. True market value should be held as the sacred basis for levy of stamp duty\(^3\). Any attempt to confound or oust their basis as has been done in Section 2(22) r/w Article 21 of the proposed Tamil Nadu Stamp Act will not survive the test of constitutional validity. Several states are still managing with provisions opposed to rule of law owing to the acquiescence of the public and consequent absence of challenge to them. Discriminatory levies shall be shunned. Alternative and legitimate sources as suggested may be tapped for additional revenue.

23) Amendments and de novo legislations should be within the vires of the constitution. **Legislative supremacy cannot be stretched to offend the constitution.** "Any act of the repository of power whether legislative or administrative or quasi judicial is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or if it is so

\(^1\)vide amendment proposed in Chapter VIII
\(^2\)Chapter XI
\(^3\)AIR 1990 MAD 297
arbitrary that no fair-minded authority could ever have made it; *Shri Sita Ram Sugar Co.Ltd vs Union of India*¹. " *District Registrar and Collector Hyderabad vs Canara Bank*². The provisions which are constitutionally invalid, paradoxical in content and infirm in logic shall be jettisoned sans any hesitation.

The enforcement shall be in accordance with the statute as interpreted by the High Courts and Supreme Court. No circular or G.O shall be violative of either the law or rulings.

24) Every one shall be subject to the rule of law. The legislature shall enact only valid laws. The enforcing authorities shall legally justify all their actions particularly their levies. The auditors empowered to superintend the revenue officials shall defend their remarks in the light of the statute and rulings. The public shall similarly abide by the provisions of law. In case they consider the demands of the revenue illegal they should be able to assert their position at a neutral judicial forum.

26) There should be deterrent punishment for evasion of duty, vexatious audit remarks and illegal demands from the authorities. The revenue should not attempt to short circuit Supreme Court Rulings. Instead it may canvas before the legislature for an alternative legislation which will neither be ultra vires the constitution nor opposed to the fundamental characteristics of the existing statute.

¹AIR 1990 SC 1277, 1297 ²2004 (5) CTC 376 SC
27) Realising the impact of the chemistry of toxic levies on the health of the State's economy the Tamil Nadu Government has effected epoch making reductions in stamp levy\(^1\). In this progressive mood it should accept true market value in lieu of artificial guideline value.

28) The State which has demonstrated its earnestness to empathise with the public by removing the sting from the levies, should constitute a neutral and vibrant appellate system as suggested under Chapter X to restore the rule of law in the whole system of stamp law.

29) Rule of Law which is the basic feature of the Indian Constitution should pervade the entire statute. To paraphrase their lordships of the Supreme Court, elected representatives just put their stamp of approval to laws actually made by bureaucrats\(^2\). A decade later the learned jurist N.A. Palkhivala voiced deeper apprehensions over the rule of bureaucracy in law making. "Bureaucratic legislation masquerading as parliamentary legislation ~ is the barbarous offspring of the party whip system mating with a brute majority"\(^3\). Inspite of their thorough understanding of the working of the statute and the needs of the revenue, the role of the executive or bureaucrats in legislative drafting should be confined to submitting...

\(^1\) G.O. Ms No:177/CT Department / dt: 20-11-2003 w.e.f. 21-11-2003  
G.O. Ms No:47/CT Department / dt: 12-2-2004 w.e.f. 12-2-2004  
Gazette extraordinary No:297 of 2004 dt: 25-11-2004 w.e.f.16-2-2004  
\(^2\) Avinder Singh vs State of Punjab AIR 1979 SC 321  
\(^3\) Nani A. Palkhivala – “We the Nation” ~ The Lost Decades Page 157
only a summary of their requirements to expert legal professionals. They should not do the drafting themselves unless they have incisive knowledge of the fundamental principles of law, the Indian Constitution and the Supreme Court Rulings on the basic ingredients of the Statute. The department should seek the guidance of a team of designated senior counsels or persons with scholarly understanding of the statute to avoid the pitfalls of textual distortions legal anomalies and constitutional repugnancy (Tamil Nadu Stamp Act). The aim of the legislature should be, in the words of Stephen Dorrell, Finance Secretary United Kingdom “To make legislation accessible to the lay reader. What we now try to do is slightly different; to deliver law that is certain and clear, at least to professionals, and then rely on professionals to explain that clarity and certainty to the lay observer”. Otherwise the end product will create obstacles in enforcement and be liable to legal challenge. The latest amendments of Articles 45, 55 and 46 are instances of egregious bungling in drafting. The gaping discrimination in respect of the basis of levy between market value in 45(a) and value of separated share in 45(b), withdrawal of explanation to separated share and definition of family as not including brothers and sisters testify to the scandalous inefficacy of those entrusted with such serious assignments of legal drafting. The principle of equality enshrined in Article 14 is a basic feature of the constitution. (Indira Sawhney vs Union of India).

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1 Revenue Law Principles and Practice by Chris White House

2 AIR 2000 SC 498
30) If the conclusions under the foregoing chapters are introduced as reforms it would not only pep up economic growth but also augment stamp and income tax revenue due to the imminent transparency that is sure to emerge from the reforms.

31) There is a paradigm shift in the fiscal outlook of the state. Its reforms are aimed at economic growth without prejudice to social justice. There cannot be a more consummatory reform than restoration of rule law in the operation of the fiscal system. The historic taming of stamp levies is a signal move towards rule of law.

**SUM UP:**

32) Thus it is palpable from the deductions in the foregoing chapters that a clear and constitutionally valid statute with provisions for reasonable levies (devoid of discrimination) and neutral adjudication of disputes, as proposed in Chapter X of this research, IS BOUND TO resurrect rule of law and effect a reconciliation between the dynamics of stamp law and imperatives of equity.