‘Every culture has some ritual for joining two people together and making them stay that way, and ours is giving tax breaks.’

Bauvard.

11.1. Individual Compliance and Stamp Duty

Because of the numerous steps required to pay stamp duties, the burden imposed on individuals from the presence of the stamp duties is quite significant. To illustrate, consider the specific case in Gujarat in which an individual seller is attempting to complete the sale of a piece of urban land. The necessary steps for the payment of stamp duties and the registration of the sale deed to complete the transaction include the following:

- The seller has to purchase stamp paper of the required value from a licensed stamp vendor for his sale instrument.

- After purchasing stamp paper, the seller must get the instrument written on the stamp Paper by a licensed deed-writer, by an advocate, or by himself. The instrument written by any other person is chargeable with extra fees.

- After the instrument is written and executed by the seller or his authorized attorney under a power of attorney; a copy of the instrument must be made and filed along with the original instrument.

- The instrument and its copy must be presented to the Registering Officer for registration.

- The Registering Officer must check the adequacy of the stamp duty paid and also the admissibility of the instrument under the
Registration Act. If the instrument is presented after four months from the date of execution, the Registering Officer only registers the document with the approval of the District Registrar on payment of the prescribed fines. If the District Registrar does not approve late filing, then the Registering Officer refuses registration of the instrument.

- On presentation of the instrument, if the Registering Officer finds that the instrument is inadequately stamped, only the admission of execution is recorded, and the instrument is impounded without registration and sent to the Deputy Collector of Stamp Duty who has been appointed as Collector for the purpose.

- The Registering Officer must also verify that the value of the property stated in the instrument is correctly set forth. If the stated value is the same or above the guideline market value, the instrument is registered and returned to the party. If the stated value is below the guideline value, the seller must pay the difference between the payable stamp duty as per the guideline value and the actual amount paid. If the deficit amount is paid, the instrument is registered; if it is not and there is disagreement regarding the amount of stamp duty payable, then the Registering Officer refers the instrument to the Deputy Collector (Stamp Duty) for further review.

- The Registering Officer must also ensure that applicable certificates have been furnished before registering a document.

- After the Registering Officer verifies that all the conditions required for admission of the instrument have been met, the document is registered on payment of the prescribed fees. Any refusal to register a document is governed by various sections of acts, and may be appealed to the District Register at the first instance.
These procedures are clearly complex, cumbersome, and burdensome on individuals, and contribute to the problems of valuation, avoidance, evasion, corruption, and fraud.483

11.2. Administrative Problems with Stamp Duty

There are many serious administrative issues that arise with the stamp duties. The existence of these administrative problems is well known and widely recognized. Overall, there is at least anecdotal evidence that the amount of revenues lost due to the variety of fraud, evasion, and avoidance mechanisms is enormous. In fact, it can be estimated that the amount of revenues lost due to these measures is roughly equal to the amount of revenues actually collected. There is little evidence that enforcement measures are used with any frequency. These administrative problems also give rise to a range of economic issues.484

11.2.1. Complex Valuation Procedure

There is widespread agreement that the values declared for stamp duty transactions are grossly understated due to high duty rate on conveyances and circulation of black money. For example, in Gujarat it is estimated that 70 percent of stamp duty documents are undervalued by 20 percent or more. It can be said that undervaluation may approach 50 percent for many kinds of transactions.

11.2.2. Avoidance: A Way to Avoid Tax Burden

Because of the high stamp duty burdens, individuals have found a variety of ways to avoid legally the tax burden. For example, the use of general power of attorney under which a sale deed is replaced with a sale agreement without possession allows an individual to transfer effective ownership to another

483 Annexure-I, Survey Report, Majority Responses, Item No. 4.
without becoming liable for stamp duties. The use of transfers with cooperative housing has a similar effect.

Other common avoidance methods include:

- The use of an instrument of lease for the long term payment of rent;
- The use of a declaratory suit filed in court under which property is transferred under the Court decree;
- The use of an instrument of dissolution of a partnership in which property is taken as payment for the ending of a partnership;
- The use of an instrument of release in which a co-owner releases his or her share to another co-owner in exchange for some consideration;
- The exchange of properties of much different values; the splitting of one property into smaller properties to avoid higher stamp duty rates; and
- The registration of properties in neighboring, lower-tax States.

11.2.3. Evasion of Stamp Duty

The high stamp duty rates have also created a strong incentive for individuals’ to evade illegally the tax burden. The most obvious way for evasion is via undervaluation of the transaction. Individuals may also evade the legal liability by failing to register the transaction. Because registration creates a large stamp duty liability but does not confer legally accepted property rights, there are strong incentives for non-registration.

Survey conducted by Researcher also reveals that, control on tax evasion can be most effective tool to increase the revenue without modifying the rate of the stamp duty.

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487 Annexure-I, Survey Report, Majority Responses, Item No. 3.
11.2.4. Survey: Evasion of Stamp Duty

The detail of the questionnaire item no. 3 is given here.

**Question:** In your opinion which of the following steps should be most emphasized to increase the revenue without modifying the rate of the stamp duty?

<table>
<thead>
<tr>
<th>Response</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Control tax evasion</td>
<td>128</td>
</tr>
<tr>
<td>(b) Pay more attention to instruments other than instruments of immovable properties</td>
<td>121</td>
</tr>
<tr>
<td>(c) Make ‘market value evaluation’ system more effective</td>
<td>108</td>
</tr>
<tr>
<td>(d) Link relevant provisions of other Acts with Stamp Acts</td>
<td>45</td>
</tr>
</tbody>
</table>

- The questionnaires were sent to 601 persons, among those 408 have responded, 6 respondents have not answered this item.

**Figure 11.1: Survey Response Graph for Item No. 3**

![Survey Response Graph](image)

**Majority Response:**

Tax evasion should be controlled to increase the revenue without modifying the rate of the stamp duty.
Observations:

One has to agree with the majority response. Tax evasion is always a main hurdle in revenue collection. It also affects regular tax payer adversely. It functions as demotivating factor. It is worth mentioning that the reply to questionnaire item no.17; it clearly indicates that existing machinery for detection of tax evasion and method of enforcement is not satisfactory. It suggests that the power of search and seizure should be given to the inquiring officer under the act. Detail of the questionnaire item no.17 is as under;

Question: Do you consider that existing machinery for detection of tax evasion and methods of enforcement satisfactory? What modifications would you like to suggest?

Response

(a) Powers of search and seizure should be given to the inquiring officer under the Act  181
(b) Penalties should be enhanced  44
(c) Independent system should be formed in the organization to prevent tax evasion  89
(d) The Stamp Act should be linked with other relevant Acts  91

405

• The questionnaires were sent to 601 persons, among those 408 have responded, 3 respondents have not answered this item.

Figure 11.2: Survey Response Graph for Item No. 17
Majority Response:

Powers of search and seizure should be given to the inquiring officer under the Act to detect tax evasion.

Observations:

There is no provision for search and seizure in any Stamp Act in India. It is utmost necessary to give such powers to competent officers. In case, if any officer of stamp duty organization gets information that the fake stamp papers are available at particular place, he cannot initiate any action to search the place and seize the documents. For the purpose, he will be required to obtain warrant from the District Magistrate under Criminal Procedure Code, 1973. Researcher agrees with the majority response in this regards.

11.2.5. Collection Costs

Although precise information on collection costs is not typically available, the administrative costs of collecting stamp duties are often believed to be very high relative to the revenues generated. In some cases this occurs because some forms of instruments are unproductive sources and generate little revenues. Few States have tried computerization or the use of modern methods associated with “e-government” to achieve collection cost savings.

11.2.6. Corruption: Common Practice

Tax collection officials are widely seen as “unfriendly, unhelpful, and ignorant” It induces wrong decision resulting in wrong projections. In addition to that corruption is damaging because it increases the transaction costs, exclude those who cannot pay, foster contempt for public servants amongst public and erode capacity for revenue collection.


Questionnaire item no. 4 is basically dealing with the issue of red tapism and corruption. The detail of questionnaire item no. 4 is as under.
**Question:** In your opinion, which is the major lacuna in the existing provisions of Stamp Act, which leads to red tapism and corruption?

<table>
<thead>
<tr>
<th>Response</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Complexity of law</td>
<td>118</td>
</tr>
<tr>
<td>(b) Lack of sincerity in the administration system</td>
<td>102</td>
</tr>
<tr>
<td>(c) Ignorance of law in the administrative system</td>
<td>81</td>
</tr>
<tr>
<td>(d) Lack of awareness among the people</td>
<td>91</td>
</tr>
<tr>
<td>(e) (Any other lacuna)</td>
<td>10</td>
</tr>
</tbody>
</table>

- The questionnaires were sent to 601 persons, among those 408 have responded, 6 respondents have not answered this item.

**Figure 11.3:** Survey Response Graph for Item No. 4

![Survey Response Graph](image)

**Majority Response:**

Complexity of the law is the major lacuna in the existing provisions of Stamp Act, which leads to red tapism and corruption.
Observations:

The response is really a mixed bag with majority opting for the complexity of law. The option of lack of sincerity and awareness among the ‘givers’ and ‘takers’, are also not far behind. Red tapism which leads to corruption is a common practice in the mind of people and therefore the respondent opted for simplification of law, which according to them, automatically leads to awareness among the people. Lack of sincerity in the administrative system can only be improved with tangible benchmarking within specified time limit. Comparatively lesser number of respondents chooses the option of ignorance of law in the administrative system. Therefore researcher agrees with the majority response.

11.2.7. Fraudulent Stamp Paper Scandals

Fraudulent production and use of stamp paper has been recognized as a significant problem in the administration of stamp taxes and duties. It recently took on national significance with the eruption in late 2003 of one of the largest financial scandals to hit the country.

The Telgi scam refers to the alleged activities, largely undetected for several years, of Abdul Karim Telgi, the head of a highly effective organization that had been printing and circulating duplicate stamps and stamp paper throughout India. The States of Maharashtra and Karnataka were apparently the hardest hit, which is not surprising given the buoyant conditions experienced in their property markets for at least part of that time. Those States have special teams probing the case. It is unclear just how much the fraud cost the States involved, but it has been reported to be as high as Rs. 78,000 crore over the last ten years. The political ramifications of this news have been substantial because a number of politicians and top police officials were among the more than 50 people arrested for suspected association with this fraud. Revelations as to the depth of penetration in government and the scope of fraudulent activities have figured prominently in news reports in the sensitive period leading up to national and state elections. Those involved in the production and sale of fraudulent tax paper had apparently discovered the
opportunity because the government administrative and supply systems were easy to penetrate and exploit. The high stamp duty rates raised substantially the rewards of engaging in the fraud. The breadth of this scam as well as the apparent complicity of officials in various layers of government and the bureaucracy in the scam hints at the perverse incentives embodied in high stamp tax rates coupled with weak controls. This episode indicates the urgent need for administrative reform, along the lines of the reforms being introduced in Karnataka. It also highlights the potential for abuse when tax rates are very high.

Note that the use of fraudulent tax paper is not the same as evasion because individuals who buy the paper may well do so believing that the stamp duty papers are legitimate. However, for both evasion of the duties and the use of fraudulent papers the state governments lose tax revenues.\textsuperscript{488}

The scandal clearly indicates that payment system of stamp duty should be improved. No doubt psychological impact of Stamp Papers is very strong in mind of citizens. However, looking towards the emerging trends in technological development, it is time to envisage that payment through government treasuries, franking and e-payment system must be encouraged.\textsuperscript{489}

11.3. Black Money Effect

Having looked at the pathways by which under declaration of property values for the purpose of stamp duty evasion may affect individual taxes such as capital gains, it is necessary to understand a broader impact of stamp tax evasion through its effect on the circulation of black money. It is widely believed that, given the high levels of stamp duty rates, many immovable property sales transactions are deferred, others are not recorded, and even those transactions that do pass through the formalities of the registration of the change of title are recorded at values less than the full consideration paid for the property. As this under declaration occurs, individuals involved in the

\textsuperscript{488} An article about Karim Telgi “The Times of India” September 25, 2011
\textsuperscript{489} Annexure-I, Survey Report, Majority Responses, Item No. 5.
transaction must pay a part of the consideration in “black money”; that is, they must pay in cash and in such a way that the consideration paid is not recorded as part of the transaction, be it for the buyer or for the seller.

11.3.1. Vicious Circle of Black Money

The under declared value of the property must be paid in cash, and the seller is in possession of black money that is unlikely to be whitened as long as continued operations in the black economy are possible and desirable. Indeed, the most frequent recipient of these funds would be property developers who have strong incentives to continue to circulate this black money in the black economy. As this money continues to circulate, a whole host of other transactions take place in the black economy and continue to escape the tax net. Payments to materials suppliers could be made in cash, thus evading sales and excise taxes. Builders paid in black money would not declare the associated profits for income tax purposes. Moreover, these recipients of the black money would then have the wherewithal and the incentive to make their purchases of goods and services in the black economy, thereby continuing the circular flow of transactions that escape the tax net. As a result, not only are stamp duty revenues eroded by under declaration, all tax yields are eroded as the process feeds black money in circulation and provides outlets for black money, whatever its source, thereby increasing opportunities for tax evasion of all kinds. Central government as well as state government revenues suffer.

11.3.2. Revenue Suffers from Multiple Sources

Nonetheless, it is important to note that, insofar as high stamp duty rates encourage under declaration of property values, tax revenues from multiple sources suffer, from stamp duties to federal excises to local body property taxes and business income. These numbers indicate that the central government stands to lose about 62 percent of every one rupee of these
additional tax leakages, of which about 17 percent would be shared with the States.\footnote{For examples of such calculations, see James Alm (1985), “The Welfare Cost of the Underground Economy”, \textit{Economic Inquiry}, 24 (2), 243-263; and James Alm and Robert Buckley.}

Under a wide range of assumptions, it is plausible that the tax revenues recovered from reducing the black economy effects of under declaration of real estate values could more than compensate for the loss of stamp duties due to a substantial reduction in rates. Only in those scenarios that are shaded would the black economy tax effect be less than total stamp tax collections.

11.3.3. Rate of Taxation

Taxes are most often levied as percentage, called the tax rate, of a certain value, the tax base is how much income and assets one has, earns, spends, inherits etcetera. An \textit{ad valorem} tax is one where the tax base is the value of a good, service or property.

Sales taxes tariffs, property taxes, inheritance taxes and value added taxes are different types of \textit{ad valorem} tax. An \textit{ad valorem} tax is typically imposed at the time of transaction, such as transaction of property, sales tax or value added tax. It may impose on an annual basis or in connection with another significant event.

The alternative to \textit{ad valorem} taxation is a fixed rate tax, where the tax base is the quantity of something, regardless of its price. Taxation is devoid of rational approach rates of taxation depend entirely on the will of the State. Even State to State, there is no uniformity either in coverage of items or quantum of levy as the concept of fiscal policy for levy of tax differs.

Though there may be any uniformity in taxation, determination of the rates of taxes is a part of fiscal policy pursued by the State for economic growth in the country thing or low rates of taxes, exemption full or partial, inclusion or otherwise of a particular sector to taxation, etc. are broad policy issues
decided by government keeping in view the socio-economic compulsions an revenue need.

The incidence may vary depending on one's ability to pay, though attempts are made to see that persons with equal financial status should make equal tax payment.

The great economist and statesman Kautilya had cautioned the sovereign power on arbitrary taxation policy when he observed that "one's own root should not be destroyed by giving up taxes not that of others (subject) by excessive taxation". John Marshall had a dig at taxation when he observed that "the power to tax involves power to destroy" and there appears a lot of sanity in the statement. 491

11.3.3.1. Rate of Stamp Duty in India

Taxation system of a nation aims at an efficient real estate market where transactions, i.e., sale and purchase of properties, can take place smoothly, without any barriers, and in a transparent manner. The real estate market in India, as is widely known and acknowledged, is narrow and extremely cumbersome.

One of the many barriers to the efficient functioning of the real estate market has been, and continues to be, the high rates of stamp duty on conveyance transactions.

Although a few states have taken steps to bring down the stamp duty rates, in several states, the rates are in excess of 10 percent, deterring individuals, businesses and industry from registering properties at actual, or market values. It is required that the rates of stamp duty should be brought down to three per cent or less in all the states.

Rate of stamp duty in different States of India are mentioned in following Table 11.1.

491 The Institute of cost Accountants of India (Jan 2012) Italia Applied Taxation, Directorate of Studies P. 238
### Table 11.1: Stamp Duty and Registration Fees of Various States

<table>
<thead>
<tr>
<th>State</th>
<th>Criteria</th>
<th>Stamp Duty</th>
<th>Registration Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>Sale Deed</td>
<td>4%</td>
<td>0.50%</td>
</tr>
<tr>
<td></td>
<td>Conveyance Deed; gift, mortgage, lease etc.</td>
<td>5%</td>
<td>0.50%</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>Within Municipal Corporation boundary</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td>Within Municipal Council boundary</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td>Within Gram Panchayat boundary</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>Odisha</td>
<td>None</td>
<td>7%</td>
<td>2%</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>None</td>
<td>7%</td>
<td>1%</td>
</tr>
<tr>
<td>Karnataka</td>
<td>None</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td>Goa</td>
<td>None</td>
<td>7%</td>
<td>1%</td>
</tr>
<tr>
<td>Gujarat</td>
<td>None</td>
<td>3.50%</td>
<td>1.05%</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>General</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td>Disabled</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Punjab</td>
<td>None</td>
<td>6%</td>
<td>1%</td>
</tr>
<tr>
<td>Haryana</td>
<td>Sale Deed</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Within Municipal boundary</td>
<td>Male</td>
<td>7%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Female</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>Outside Municipal boundary</td>
<td>Male</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Female</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>Conveyance Deed</td>
<td>Within Municipal boundary</td>
<td>7%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Outside Municipal boundary</td>
<td>5%</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>None</td>
<td>12.50%</td>
<td>2%</td>
</tr>
<tr>
<td>Delhi</td>
<td>Male</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>None</td>
<td>8%</td>
<td>1%</td>
</tr>
<tr>
<td>Chhatisgarh</td>
<td>None</td>
<td>7.50%</td>
<td>1%</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>None</td>
<td>4%</td>
<td>3%</td>
</tr>
<tr>
<td>West Bengal</td>
<td>Within Municipal boundary</td>
<td>6%</td>
<td>1.10%</td>
</tr>
<tr>
<td></td>
<td>Outside Municipal boundary</td>
<td>5%</td>
<td>1.10%</td>
</tr>
<tr>
<td>Manipur</td>
<td>None</td>
<td>4%</td>
<td>3%</td>
</tr>
<tr>
<td>Sikkim</td>
<td>None</td>
<td>4%</td>
<td>3%</td>
</tr>
</tbody>
</table>

**Source:** Websites of Various States.

Thus, the present provisions in various laws and their poor implementation have led to a situation where there are considerable financial laws to the exchequer on account of under assessment of sale proceeds, non-registration
and consequent non-payment of stamp duty and avoidance of capital gain tax.

11.3.4. The Case for Stamp Duty Rate Reform

By most criteria, stamp duties and registration fees are a “bad” tax. They are very complicated, they are poorly administered, they highly distort economic decisions, especially those in urban land markets, they raise some but relatively little revenues, and the failure to value transactions accurately for purposes of stamp duties has a clear negative impact on a wide range of related taxes. Recall that in the aggregate the amount of stamp duties and registration fees collected in Indian States totals Rs.77,461.13 crores in revenues. The failure to value properties accurately for purposes of stamp duties together with use of fraudulent tax paper costs State governments an amount of revenues that approximates the amount actually collected. Further, the failure to value properties accurately costs different levels of government tax revenues from income taxes, gift and wealth taxes, property taxes, and sales and excise taxes. In the aggregate, the amount of foregone revenues from these linked taxes is almost certain to far exceed the amount of stamp duties and registration fees actually collected, according to a number of estimates here.

11.3.5. Overall Impact of Rate Reduction

A major concern of the State governments is the impact of stamp duty rate reductions on collections. There is a widespread fear that any reform of stamp duties that reduced duty rates would lead to a significant loss of revenues for State governments. Such fear acts as a major deterrent to any attempt to reduce overall duty rates. The empirical analysis above suggests that these fears are not always well founded. Some rate reductions have been accompanied by improved revenue performance. Taking into account the impacts on other taxes, rate reductions are likely to improve overall revenue performance. Addressing the specific revenue concerns of the States may then become an issue of providing an appropriate
intergovernmental transfer, if needed to compensate stamp duty losses. It is also important for State governments to bear in mind that maintaining high stamp tax rates may be counterproductive, even for their own revenues. We may estimate that the black economy effect suggest that State level revenues from other taxes may go up if high stamp duties and the incentive for black transactions are reduced.

In this regard, it should be noted that stamp duties are commonly found throughout the world. However, the level of these taxes is in most instances much lower than in India; typically, transfer tax rates are around 1 percent of the value of the transaction.

11.4. Stamp Duty Rates in Gujarat

According to the amended Article 20, clauses (a) and (b), the rate of stamp duty which was 6.00 per cent prior to amendment is reduced to 4.25 per cent and with additional stamp duty leviable under Section 3A at the rate of 40 per cent of 4.25 per cent total duty works out to Rs. 5.95 per cent on instrument of conveyance and other related instrument chargeable with stamp duty same as conveyance with effect from 1-04-2006. It is difficult to digest such complicated rate of stamp duty and additional stamp duty instead it would have been easier to work out proper amount of stamp duty at the rate of 6.00 per cent, that is, 0.05 per cent more than the amended rate of 5.95 per cent. When it is a general trend to make fiscal law smooth, simple and straight so as to enable people at large to calculate and pay the proper amount tax smoothly, in Gujarat, however, by the amendment it has been made complicated in a document of sale deed which is executed in sizable numbers even in the rural areas. As a matter of fact out of the total documents executed and registered in the State almost ninety per cent of the documents are sale deeds in any given year. The rate of stamp duty on a sale deed, should be, therefore, such that normal person can calculate it and pay it by means of stamps of available denominations without difficulty.
11.4.1. Survey and Rate of Stamp Duty

A Sample survey was conducted by the researcher. The detail survey report is placed as Annexure-I. Questionnaire item no. 1 is pertaining to rate of Stamp duty in Gujarat on instrument of “Conveyance”.

Question: The effective stamp duty rate chargeable on instruments of ‘conveyance’ relating to immovable property is 4.9%. Do you consider that the existing rate should be changed to –

Response

(a) 3% 216
(b) 6% 174
(c) 8% 11
(d) Above 8% 1

402

• The questionnaires were sent to 601 persons, among those 408 have responded, 6 respondents have not answered this item.

Figure 11.4: Survey Response Graph for Item No. 1
Majority Response:

The effective stamp duty rate chargeable on instruments of ‘conveyance’ relating to immovable property is 4.9%. Existing rate should be changed to 3%.

Observations:

As discussed above general expectation is that rate of stamp duty should be reduced. The payment of stamp duty is an indirect addition to the price of the immovable property. It is obvious that citizens expect lower rate of tax; same is with the stamp duty. It is pertinent to note here that in response to questionnaire item no. 3 majority response suggest that tax evasion should be control to increase the revenue without modifying the rate of the stamp duty. Studying together both the responses, one can conclude that paying tax at present rate is not main concern of the people but people are unhappy with the tax evasion. Secondly, respondent understands it very well that the stamp duty is a source of revenue for the state and state has to collect stamp duty for performing state functions. We can also infer from both the responses that revenue can be increased by controlling evasion and reducing tax rate.

11.4.2. Mortgage Transactions

In regard to mortgage transactions covering housing and other types of loans, in most of the cases mortgage is created by deposit of title deeds as specified in Section 58, clause (f) of the Transfer of Property Act, 1882 and unlike other types of mortgages, in case of Mortgage by Deposit of Title Deeds no document is required to be executed and registered for creating a mortgage charge over the property in question as provided for in Section 59 of the Transfer of Property Act, 1882.

Creation of such mortgage without a registered document has obviously enlarged the scope of committing frauds by unscrupulous parties in numerous cases in the State since 1998-99. Such frauds adversely affected not only Banks and Financial Institutions but genuine purchasers of Flats, Apartments etc., as number of loans by different banks & financial institutions have been
sanctioned and disbursed on one and the same flat/apartment etc. This serious situation requires some immediate legal solution. Such frauds can be curbed if Agreement or Memorandum of Agreement relating to Deposit of Title Deeds [Art. 6(1)] which is normally executed after creation of such mortgages are either made a compulsory registrable document and/or entries of such mortgage by deposit of title deeds are noted in the revenue record viz; village form No. 7 & 12 in all such cases.

11.4.3. Agreement

In the Gujarat State with a view to make a document or Agreement to sell compulsory registrable document the following new clause (aa) has been inserted in Section 17, sub-section (1) by Amendment Act No. 7 of 1982:

“(aa) instruments which purport or operate or effect any contract for transfer of any immovable property:”

Whether Agreement or Memorandum of Agreement relating to deposit of title deeds would fall within the ambit of above clause (aa) is a subject of Legal interpretation and the State Government, if desires to curb such frauds immediately, may obtain legal opinion on this specific issue from its Legal Department. When we have a specific statutory provision of clause (aa) in the Registration Act, 1908 applicable to the State of Gujarat, the State Government need to scrutinize this issue forthwith in the general public interest.

11.4.4. Entry in Revenue Records and Search

In case legal opinion on this issue is negative then alternatively, the State Government should direct all the Banks and Financial Institutions to get such mortgaged mutated in the Revenue Records compulsorily and also direct revenue authorities to smoothly make appropriate mutation entries of such mortgage on receiving letter from the concerned banks / financial institutions,

Such frauds also take specious time and energy of Police Department as when such account becomes Non-Performing Assets account and First
Information Reports are launched in the concerned police station for detecting such crimes.

To meet with this serious situation of curbing such frauds creation of appropriate public records is inevitable by (i) registration of Letter of Allotment of premises and (ii) registration of agreement or memorandum of agreement relating to deposit of title deeds and / or mutation entry in revenue records for the purpose as aforesaid.

For this purpose it is also absolutely necessary to introduce computerized search of Government records within the stipulated time frame as the present system of search of records is highly unsatisfactory for want availability of proper and up to date records in the Registration Offices.

11.4.5. Orders Passed Under Section 32A

In regard to determination or true market value of the property which is the subject matter of conveyance by the Deputy Collector, Stamp Duty Valuation Organization of different districts, the Gujarat High Court in recent judgments all dated 20/06/2006 in Special Civil Application Nos. 1418 of 2006, 1471 of 2006, 1973 of 2006 & 4654 of 2006 has made very important observation in the following words:

“The fixation of the market value is a complex phenomenon. When the party has purchased the land in question at Rs. X, the price which is reflected in the conveyance deed, is not accepted by the respondent authority and the respondent authority has fixed the higher market price for the land in question, it is for the respondent authority to justify the higher market value.

Reasons ought to have been assigned for arriving at higher market value. Any lump sum figure whichever comes in the mind of respondent No. 3 cannot be labeled as true and correct market value, unless reasons are assigned for arriving at such value. Without reasons, if the market value is fixed for the land in question, it leads to arbitrariness. The arbitrary usage of powers is always giving birth to discrimination and whenever there is discrimination, there is always a breach of right of equality. Without assigning any reasons, if
any figure is to be fixed, it can be few Lacs more or it can be few Lacs less. Petitioner cannot be thrown at the speculation of the respondent authority.

Several reported as well as unreported judgments have been given by this Court, whereby, such type of cyclostyled order has been quashed but it appears that the respondent authority is not paying any attention to such type of judgement and is repeatedly committing similar type of errors and, therefore, citizens have to approach this Court again and again. Multifariousness of petitions could have been avoided.

In view of the aforesaid judgments cited by the petitioner, this Court has directed the Deputy Collector, Stamp Duty Valuation Organization, to pass a speaking order, within the time limit specified under the Act. A cyclostyled order, with some gaps filled in and two sentences are added, reflects clear non-application of mind. On the contrary, it is the duty vested in the respondent No.3, to justify their say, for higher market value, for the land in question.”

The aforesaid observations of the Hon'ble High Court more particularly the observation "it appears that the respondent authority is not paying any attention to such type of judgement and is repeatedly committing similar type of errors and, therefore, citizens have to approach this Court again and again” should be taken now seriously by the State Government and all the Deputy Collectors of Stamp Duty Valuation Organization should appropriately be instructed to avoid such error in future so that citizens need not require to approach High Court for getting justice.

11.4.5.1. Pending Cases for Valuation in Gujarat State

On presentation of instrument, if the Registering Officer finds that the instrument is inadequately stamped, only the admission of execution is recorded, and the instrument, without registration, is sent to the Deputy Collector of Stamp Duty, who has been appointed as Collector for the purpose. The details of such cases are as under;

To overcome the pendency, administratively, with clear intention to stop the disputed cases, the circular dated 3/3/2007 was issued by the Inspector General of Registration. The circular clearly stated, “Inspector General of Registration shall examine as to whether the deed which is being presented for the purpose of registration under Rule 45 of the Gujarat Registration Rules, 1970, is bearing requisite stamp duty or not, in case requisite stamp duty as per the market price of the property is not paid, the Inspector General of Registration shall, in consideration of said Rule 45, not accept the same and shall not issue token for same.” The said circular was challenged in the High Court of Gujarat and it was held that the circular is against the provision of Registration Act, 1908, hence the petition is allowed.493

It is worth observing that survey response clearly indicates that people are ready to provide all necessary documents for registration and for other proceedings.494

494 Annexure-I, Survey Report, Majority Responses, Item No. 8.
11.4.5.2. Survey and Pending Recovery

A recovery of the dues is the major concern of any taxation organization. The amount of pending recovery of stamp duty increases gradually. Questionnaire item no. 9 is dealing with the matter of ‘Pending Recovery’.

**Question:** The amount of pending recovery of stamp duty is increasing. To realize the pending recovery amount -

**Response**

(a) Amnesty schemes should be offered periodically 28
(b) The provision should be made in the Act, if the pending dues are not paid within specified time. It should be made a charge upon the property 145
(c) Immediate actions should be taken to recover the amount by settlement 112
(d) A provision should be made in the Act to make necessary remarks in the revenue records of the property and the same can be recovered as and when any right of transfer is made 118

- The questionnaires were sent to 601 persons, among those 408 have responded, 5 respondents have not answered this item.

**Figure 11.5:** Survey Response Graph for Item No. 9
Majority Response:

The amount of pending recovery of stamp duty is increasing. To realize the pending recovery amount the provision should be made in the Act, if the pending dues are not paid within specified time, charge should be made upon the property.

Observations:

Amnesty schemes or individual settlement are not good options as chosen by the respondents. Amnesty schemes generally indicate the weakness of the system in terms of execution of the tax law. Once Amnesty scheme is announced, people will always expect it to be announced repeatedly.

The other option as given in this questionnaire is related to coercive means of recovery, which are opted by the majority of the respondents. The researcher is of the opinion that a charge should made upon the property as the best option because it inhabits the defaulters to make subsequent sale of the immovable property.

11.4.6. Letter Issued: An Instrument

Beside the provisions of Section 4 of the Gujarat Ownership Flats Act, 1973 specified as aforesaid both these instruments will also require compulsory registration as provided for in Section 17, subsection (1), clause (aa) of the Registration Act, 1908 as inserted by the Gujarat State by Amendment Act No. 7 of 1982.

It is fact that the State Exchequer has not earned sizable revenue after the aforesaid amendment in the Act subsequent financial years. It seems, drawn the attention of the authorities to analyze appropriate reasons for such huge loss of revenue inspite of such important amendment made by inserting new sub-clause (v) in the definition of the word "conveyance" with effect from 1-09-2001. Appropriate corrective measure seems the need of time from the perspective of not only collection of revenue on this account but to seal the prevailing loophole whereby sizable public money is going to drains in the
name of housing and other loans pocketed by unscrupulous parties by producing fraudulent documents on absence of any public records. This also unnecessarily creates avoidable burden on Gujarat Police when Banks and Financial institutions file First Information Reports in respect to these frauds in police station.

11.5. Structuring Transaction

Stamp duty is a very important factor in structuring transactions, especially with many of the states in India imposing high stamp duties on documents to shore up their revenues. A document inadequately stamped is not admissible as evidence. It is thus very important that stamp duty implications be examined upfront whilst structuring a transaction rather than just before execution as the latter approach often leads to delay and many a times may also lead to payment of excess stamp duty when it was not required. The matter is compounded by the fact that stamp duty is different in each of the states of India and there are a few states where even the local lawyers are not well versed with the stamp duty attracted by different documents. Moreover, changes to stamp duties may be announced by state governments at the time of the state budget or even otherwise. In the case of many states, the updated stamp acts/schedules may not be available. At times even the state government websites may not reflect the stamp duty incidence accurately. In the past, the practice of executants in states with high stamp duty was to execute documents in other states where incidence of stamp duty is lower. However, the stamp authorities have been getting increasingly vigilant and of late have been conducting suo moto enquiries in suspected cases of underpayment. They have examining publicly available balance sheets and even information available on the internet to apprehend evaders.

11.5.1. Differential Stamp Duty

Many states provide for levying differential stamp duty should the document first be executed in another state with lower stamp duty but brought in to the former state. At times it is only the original document that will attract
differential stamp duty if it is brought into a state but many states have
provided that even photocopies and scanned copies of documents brought
into the state will attract differential stamp duty. Thus, stamp duty implicat-
ions must be examined when documents or their photocopies are being moved
from one state to another and even when documents are being transmitted by
e-mail to another state in India. One has also to be careful whilst bringing in
documents executed overseas into India whether by email or physical or
photocopies. Many states provide that the shortfall in stamp duty must be paid
within a specified period, most commonly 3 months, of the documents being
brought into the state.

11.5.2. Multiple Transactions

The stamp laws of most states provide that when there are multiple
instruments for specified transactions, duty payable only on the instrument
attracting highest stamp duty needs to be paid on the principal instrument and
nominal stamp duty is payable on the rest of the documents. It is found that
quite often parties do not take advantage of this provision. The schedules to
the stamp acts stipulate the rate at which stamp duty is attracted on an
instrument. Stamp laws provide that where an instrument is so framed to
come within two or more descriptions in the schedule to the stamp act, where
the duties chargeable are different one need pay only the highest of such
duties. In states where the stamp duty incidence is very high, it may be
worthwhile to club several documents into one umbrella document and reduce
the incidence of stamp duty.

11.5.3. Instrument of Distinct Matter

When a single instrument relates to distinct matters, stamp laws require that
the instrument shall be chargeable with the aggregate amount of duties with
which the separate instruments each comprising of one of such distinct
matters would be chargeable. One may come across instances where distinct
matters may have been combined in one instrument and stamp duty has
inadvertently been paid only on one instrument when it should have been paid
separately for each distinct matter. This may happen in securitization or bond transactions where a single instrument may be executed for convenience purpose in respect of distinct matters.

When the value of the instrument is indeterminate upfront like employment agreements, royalty agreements, etc, the provision in most state laws to pay a nominal stamp duty upfront can be availed of with the remaining stamp duty being paid as and when the value is ascertained.

11.5.4. Instrument: An Electronic Record

Many of the states have now provided that instruments attracting stamp duty would also include electronic records. A common mistake that one comes across is documents being executed in State X when the address of executants and situs of subject matter is state Y. If such instrument is required to be filed with the registrar of companies in state Y, example an instrument of charge then the document would have to be uploaded electronically onto the website of the Ministry of Company Affairs. Since the concerned registrar of companies office (i.e State Y in this case) would download the documents in State Y, the electronic records are deemed to have been brought into the state where registered office is located at the time when the registrar of companies downloads the document and this may attract the stamp duty in State Y at that point of time.

If an instrument is not duly stamped the stamp authorities may levy a penalty which is generally an ad valorem rate which varies from state to state and maximum penalty could range from twice the deficient stamp duty to ten times the deficient stamp duty. Deliberate evasion of stamp duty could also attract imprisonment.

Finally, there may be situations where one stamps a document in anticipation of execution but the deal falls through and the document is not executed at all. If the stamp duty is high then most states provide for claiming a refund. There is a specified period within which such claims have to be lodged and supporting documents may have to be provided and the specified procedure
strictly followed. However, the process of getting refund is slow and bureaucratic and one must be prepared for a long wait.

11.6. Stamp Duty on Letter of Allotment

Letter of Allotment issued by a Co-operative Society registered or deemed to have been registered under the Gujarat Co-operative Societies Act, 1961 or Corporation or Association formed or registered under the Bombay Non-Trading Corporation Act, 1959 or the Gujarat Ownership Flat Act, 1973 has been included in the definition of the word "Conveyance" as defined in Sec: 2, clause (g) of the Act by inserting new sub-clause (v) by Amendment Act No. 19 of 2001 with effect from 1/09/2001. This important amendment had, as a matter of fact, no impact since such Letters of Allotment were mostly issued prior to the effective date viz; 1/09/2001 for one or other reason without using any stamp duty.

Now, owing to purchase of land on or after 1/09/2001 and similar other reasons such as approval of plans etc., mostly in loan cases where the proposed allottee requires to obtain title clearance certificate the Society/Association/Organizer requires to issue Letter of Allotment on or after 1/09/2001 using proper stamp duty. Even in such cases there is some opinion that such Letter of Allotment issued by a Company incorporated under the Companies Act, 1956 would not fall within the ambit of the world "coveyance", more specifically the said sub-clause (v) of Section 2(g) of the Act.

11.6.1. The Flat Act and Letter of Allotment

The Gujarat Ownership Flats Act, 1973 is in force in the areas within The limits of the city of Ahmedabad, Baroda, Surat, Rajkot, Jamnagar, Bhavnagar and Nadiad with effect from 1st August, 1973 and in areas within the limits of the AUDA, VUDA, SUDA, RUDA, JUDA, BUDA and Mehsana Municipal Borough with effect from 16th May, 1983 in the Gujarat State. However, virtually there is no administrative machinery in the State which enforces and implements the provisions of the Gujarat Ownership Flats Act, 1973. In part I of the Gujarat Ownership Flats Act, 1973 in Section 2(d) the word "Registrar"
is defined which means Registrar as defined in the Gujarat Co-operative Societies Act, 1961 or in the Companies Act, 1956. In Section 10(1) of the Gujarat Ownership Flats Act, 1973 it is clearly provided that “as soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who have taken flats, a co-operative society or, as the case may be, as a company.” It means that Letter of Allotment issued by the Company would be covered within the meaning of the said sub-clause (v) since all such schemes irrespective of the promoter following the provisions of the Gujarat Ownership Flats Act, 1973 or not it would be within the regulating provisions of the Gujarat Ownership Flats Act, 1973, in areas in which the said Act is in force.

Moreover, in pursuance of the provisions of Section 4 of the Gujarat Ownership Flats Act, 1973 promoter is required to enter into a written agreement for sale with each of such persons who take or who have taken such flats and such agreement shall be registered under the Registration Act, 1908. If the Gujarat Ownership Flats Act, 1973 is properly enforced and implemented in the areas in which it is in force as aforesaid registration of such Agreement will, owing to creation of public record in the concerned registration office, not only adequately safeguard the interest of the allottee of such flat it would also adequately safeguard the interest of Banks and Financial Institutions granting loans to such borrower and it will obviously curb frauds presently committed by unscrupulous parties and thereby save huge public money.

11.7. Major Issues with Stamp Duty

As early as in 1925, the Indian Taxation Enquiry Committee had pointed out how the Indian rates of duties were very high when compared with the rates in England and America, and recommended that duties should be reduced as soon as circumstances permit. But far from being reduced they have been further increased by State Legislation in all States. A high rate of duty tempts
the persons who have to pay the duties to resort to evasion both legal and illegal. This creates the need for an alert and vigilant staff to detect leakage and enforce the penalties provided by the Act. In most of the States, there are provisions for revision and assessment of correct market value of the properties for purpose of computing the duty payable on various instruments. The audit department attached to the office of Accountant General is also an inspecting agency for the purpose by a perusal of the Registers in the Registrar’s offices.

11.7.1. Execution in Different States

As the revenue from stamp duties is assigned to the States in which they are collected, each State Government has prescribed by rule that stamps purchased in that State alone should be used for instruments executed in it. A share transfer may be signed by the seller in one State and the purchaser in another State. The practice has been to treat the transfer signed by the seller alone as an inchoate document and to have it stamped only when it is signed by the purchaser. It may happen that the registered office of the Company who is to register the share in their books may be in a third State. It would be expedient for the Central Government to provide that transfer deeds shall be stamped only at the time of execution by the purchaser and in the State where he resides. This can be done by exercising their power under section 9 of the Indian Stamp Act, 1899.

11.7.2. Rate Differences

The difference of rates in different States for sale deeds, mortgage deeds and agreements relating to deposit of title deeds has tempted parties to resort to carrying out their transactions in the State where the rates are low even though the properties may be situate in another State. It is only the Andhra Pradesh Legislature which has amended the Registration Act so as to require registration of instruments regarding Andhra Pradesh properties in the Registrars’ offices in the State. Though this may not bind a District Registrar competent to receive the instrument under section 30 of that Act as it obtains
in his State, it has virtually resulted in preventing the division of revenue. Again a common instrument may be executed as regards properties in more than one State. The Uttar Pradesh amendment of section 6-A, 33 and 48 by Uttar Pradesh Act 49 of 1975 provides for collection of the proportionate difference in such cases, when the copy of the instrument is received by the registering officer of the State for making copy in his books. But as market value of the properties sold is prescribed as criterion for duty in some States while consideration for the sale continues as criterion in other States, cases of instruments, relating to properties in different States as different rates for the benefit of local bodies and the provisions as to collection contained in the Stamp Act would not apply to the collection of such duties. The provision in section 30 of the Registration Act singling out the Presidency Towns for presentation of instruments is almost an anachronism. It is well that the Stamp Act and the Registration Act are amended by the Central Legislature providing for execution and presentation for registration of instruments concerning immoveable properties in the State in which the properties are situated. Under the law as it stands now an instrument may be executed in another State and registered in the State where the properties are situate. This also would have the effect of diversion of revenue from one State to another. Where properties in different States are involved, the parties may enter into an agreement regarding them all and mentioning the total amount of consideration which may be referred to in the recital clauses of the operative instruments. The levy of transfer duty for the benefit of local bodies may also be made more effective for collection by amending the relevant Acts making the provisions of the Stamp Act generally applicable to such levy.

11.7.3. Creation of Charge

Again a company having offices in different States can execute documents creating a charge over its assets in the State where the rate is low and have the copy thereof registered with the Registrar of Companies in the State where its registered office is located. This has actually happened in a case decided in Gujarat where the State Legislature provided for such a copy being

stamped with the difference when brought into the State but the amount could not actually be collected in the absence of machinery provisions for actual collection. Perhaps the Uttar Pradesh amendments referred to in the previous paragraph would serve the purpose of revenue in such cases but that too only in respect of the difference in duty. The High Court has deprecated such attempts to save on stamp duties, resulting in diversion of revenue from one State to another. Uniform rates for all such instruments in all States would be preferable. The suggestion made in the previous paragraph as to execution of separate instruments would not apply to this class of documents.

11.7.4. Rates on Bond

The Indian Taxation Enquiry Committee also pointed out that the high rate of duty on bonds in India was believed to have the effect of encouraging the use of promissory notes, even in cases where bonds would be more appropriate instruments for carrying out the transactions. The use of promissory notes for ordinary loan transactions had led to difficulties in the matter of proof of such loans if for any reason there is deficiency or defect in the stamping of such promissory notes making them inadmissible in evidence. For, the law absolutely prohibits admission of promissory notes if unstamped and no payment of penalty can save an action on them. This rule seems to be based on the principle that as they are put into circulation in such large number in the commercial world and as claims on them would be mostly settled out of Court, severe penalties should attach to non-stamping them if there is to be a check on any tendency to defraud revenue. The penalty is sometimes considered unduly harsh especially as the great disparity between the duty on promissory notes and that on bonds induces several ignorant persons to put their credit instruments in the form of promissory notes without at the same time properly stamping them or properly cancelling the stamps on them. The line of distinction between such non-commercial promissory notes and bonds is very thin in most cases and there is no reason why such differentiation in duty and in the consequences of non-stamping should be perpetuated. This

has also led to a plethora of judicial decision as to sustainability of a suit on original consideration when the promissory note is inadmissible for want of proper stamp. Again parties often resort to the practice of executing promissory notes payable on demand accompanied with agreements for allowing payment after a period or in installments. The charges is also avoided by resort to loan documents which are not attested, as the bond duty is attracted only when the document is attested and as such documents are only subject to a nominal charge as agreements. After all, attestation only serves as a mode of proof of authenticity. The differentiation between attested instruments of pledge and unattested instruments of pledge has also no force. This differentiation is abolished in some States.

11.7.5. Types of Mortgages and Stamp Duty

The Indian Taxation Enquiry Committee recommended also the abolition of the distinction for duty between simple mortgages and usufructuary mortgages and between settlement deeds and gift deeds. The Gujarat Legislature has abolished the distinction between simple mortgages and usufructuary mortgages, by charging both the classes of mortgages with conveyance duty. This would make parties resort to mortgage by deposit of title deeds in an increasing measure, but all the provisions about the bargain between the parties as to conditions for repayment and as to power of sale etc., cannot be included in an agreement relating to such deposit. Even here parties avoid executing a formal agreement relating to deposit and resort to other methods of proof of deposit being made to create security. In order to plug this loophole, the Gujarat Legislation has enacted a special provision in Article 49.

11.7.6. Distinguishing Instruments and Rates

The disparity of duty in respect of the above documents has become greater now on account of State legislation. In the case of mortgages and settlements, the disparity is further accentuated by the levy of a surcharge
duty at a high rate for the benefit of the local bodies on usufructuary mortgages and gift deeds but not on simple mortgages and settlement deeds.

As pointed out by the Indian Taxation Enquiry Committee, it is often difficult to distinguish between a settlement and a gift and the differentiation between them might well have been abolished as has been done in some States. But there is a case for differentiation between a gift and settlement for other purposes. This is made by Notification in some States and by legislation in some others. But in most States there is no differentiation.

11.7.6.1. Survey and Nature of Instrument

Questionnaire item no. 11 is dealing with true nature of the instrument. The detail of Questionnaire item no. 11 is as under;

**Question:** What measures should be taken to remove the ambiguity to determine the true nature of the instrument?

**Response**

(a) Base of instruments should be broadened and classification of documents should be done 85

(b) The instruments should be classified in different groups and should have a uniform rate for the particular group 120

(c) Classification of instruments in different groups should be more specific 134

(d) No change is required 60

399

- The questionnaires were sent to 601 persons, among those 408 have responded, 9 respondents have not answered this item.
Majority Response:

Classification of instruments in different groups should be more specific to remove the ambiguity to determine the true nature of the instrument.

Observations:

Majority of the respondents have opted for classification of instrument in specific different groups. It indeed, sounds a better proposition where all the instruments attract a specific rate of stamp duty. This option also indicate transparency in the system, however, the system of determining a true nature of an instrument is too complex to be divided into the groups. An individual case has all the possibilities to be divided into any of the group as specified and therefore ultimately idea of the objectivity will not be maintained. The classification therefore, as it is the best suitable option and no change is required even though the respondents choose for specific classification of different groups.

11.7.7. Special Provisions by States

As regards usufructuary mortgages several methods have been adopted by parties to avoid payment of the high duty and the Legislature has had to make special provision to thwart such methods. In the Indian Stamp Act, 1899 an Explanation has been added in Article 40 to the effect that person giving a lease or a power of attorney to collect rent would be deemed to give
possession. This Explanation is intended to prevent evasion of the higher duty on mortgage with possession. But as it appeared that parties have been circumventing this provision by giving a lease or a power of attorney first and then executing a simple mortgage, the Tamil Nadu and Andhra Pradesh legislatures have amended the Explanation by providing that a mortgagor who gives or has given to the mortgagee such lease or power of attorney would be deemed to give possession within the meaning of Article. But this amendment would not meet evasion by executing a simple mortgage first and then giving a lease or power of attorney. In some cases the amendment would have the effect of roping in transactions which are genuinely different and separate transactions as where an absentee landlord takes a loan on the security of his property from his lessee.

11.7.8. Gift at the Rate of Conveyance

With regard to conveyance there is another important aspect which seems to have received no attention at all till now except in a few States where market value of the property is made the criterion for duty. A transfer may be for a consideration which is far less than the real value of the property because of the vendor's natural love and affection towards the vendee or of a sense of gratitude for some past act of service or of hope of future reward in some shape. In such cases, the transaction would partake of the character of a gift in some measure but still duty would be chargeable only on the actual amount of consideration.

11.7.9. Lost Instruments: Secondary Evidence

Where an un stamped instrument is lost, the party relying on it is helpless and no payment of penalty can enable admission of secondary evidence. In a Madras case the loss of the instrument was due to a mob setting fire to the Court records in the disturbances of 1942, and the Court could not given any relief in the matter. No purpose is served, least of all the purpose of revenue, by shutting out such secondary evidence. If the law had allowed it, a copy of

497 Chidambaram Chettiar v. Meyyappan Ambalam, ILR (1946) Mad 672.
the instrument forming part of the reconstructed record could have been admitted on payment of penalty. Where the loss takes place in the Government Department, reconstructed document has been treated as original in (1979) 1 MLJ 297. This may be placed on a legal basis by suitable legislative amendment.

The above are some defects in the law on matters of broad policy. There are some other defects in the law which is of a minor character. But with all that, the core of the basic law is based on sound principles borrowed from English law. The English decisions have been very helpful in the application of the provisions of the Indian law. The law contains also provisions for obtaining authoritative decisions by Special Benches of the High Court on doubtful questions arising in the case of specific instruments.498

11.8. Specific Issues with Gujarat Stamp Duty

Stamp duty is one of the major sources of revenue for the State. The issues with stamp duty in Gujarat are somewhat similar to other states. In addition to general issues of stamp duty, some specific issues are main hindrances for the smooth functioning of the State statute.

11.8.1. Administering the Statute

It is pre-requisite for good governance to have departments administering taxing statutes and collecting taxes from citizen must have their own appropriate administrative machinery consisting of certain cadres having through knowledge of specific tax law in particular and other relevant laws in general. Such administrative machinery while collecting tax revenue diligently will also be simultaneously able to satisfactorily attend to the matter before them by taking free and fair judicious decision swiftly. It is in the interest of both the State and the Citizen to have such cadre based department administering tax law.

Stamp department which deals with the Stamp Law, it is understood, in absence of such cadre based machinery, is solely depend upon the services of revenue officers. Decision making without depth of the subject of the law, to deal with any matter involving interpretation of law or attending matter of important amendment to the law without having overall knowledge and intricacies of the law is very difficult situation both for the officers concerned and for citizen who needs fair and quick decision for completing his transaction and desires to have clear and unambiguous provision of law including amended law. It is a general experience that even when citizen is ready and willing to pay stamp duty, however, decision from the authority is not forthcoming. Sometime citizen submit all the relevant evidences and even a copy of judgement of the Apex Court given on the similar facts of the case, however, the decision taking authority under statutory provisions of sections 31, 32A, 39, 40 & 41 of the Act who has to apply his mind and take his own decision, refer this matter to higher authority and await instructions from the said authority and in this manner the case is unnecessarily and for no justifiable reason dragged on unending.

11.8.2. Improving the Procedure

Similarly, the Annual Statement of Return (ASR) prepared by the stamp department is to be utilized only by the registering officers appointed under the Registration Act, 1908 to verify whether the consideration set forth in the instrument presented for registration before him is approximate to the market value of the property or not. Where in pursuance to the provision of section 32A, sub-section (1) read with rule 3, sub-rule (4) of the Market Value Rules registering officer refer the said instrument to the collector he will required to determine true market value of the property which is the subject matter of such instrument as provided for in sub-section (2) of section 32A of the Act with Rules 4, 7 & 8 of the said Market Value Rules and several other factors specified therein, however, revenue officers in many cases, it is generally found, also use of ASR for determining true market value of the property which is the subject matter of such instrument. Determination of true market value as provided for in section 32A, sub-section (2) on the basis of ASR by
the collector will be absolutely improper and illegal. However, in many cases, the stamp authority appointed as “collector” for the purpose of section 32A determine true market value of the property on the basis of ASR and passes non-speaking cyclostyled orders filing therein some blanks without considering submissions of the petitioners or without giving any reason whatsoever. In this way stamp duty tax payer is facing much difficulties and untold hardships. Even for such improper and illegal order the person against whom such order is issued if he desires to file an appeal under section 53, sub-section (1) of the Act, he will be required to deposit 25% of the amount of duty or amount of difference of duty. It is also understood that the authority before whom the order of collector is challenged has not, it seems, so far quashed such order on the ground that the collector has not followed the provisions of Stamp law in determining true market value of the property as laid down in the Act and Rules. It may not be possible to make improvement in administration of Stamps and Registration Department overnight, however, in the public interest some genuine efforts need to be made at appropriate level.

11.8.3. Ignorance in Execution

There are number of judicial decisions of the Gujarat High Court making specific observation in regard to such improper and illegal orders passed by the collector under section 32A, sub-section (3) of the Act, however, it seems that there is no adequate machinery and Stamps and Registration Department to initiate adequate follow-up action against the defaulting officers and to circulate such defects in order pointed out by the Hon’ble High Court in the language easily understood by them and similarly enlightening and instructing all the other district officers not to pass in future such improper and illegal orders. In absence of any such communication in respect to important observation made by the high court in regard to such orders passed by the collector under section 32A of the Act it is found that so far there is little improvement in the style of working in these offices. Basically, for providing good and satisfactory administration to citizen and for reducing unnecessary and avoidable load of appeal and reference cases, cadre based qualified
administration at the higher level and development of trained lower cadre on
the establishment of Stamp and Registration Department seems inevitable.
Such revenue earning tax department obviously cannot run on borrowed
officers particularly for the reason that by the time he is becoming conversant
with the law he is transferred to other department. It is a serious injustice to
tax payers.

11.8.4. Continuous Valuation of Properties

To deal with acute problem of “the concealment of the actual amount of
consideration passed from the purchaser to the seller in documents of
conveyances” the Bombay Stamp Act, 1958 as adapted by the State of
Gujarat was amended by Act no. 21 of 1982 to levy stamp duty according to
market value of the property which is the subject matter of conveyance. The
amended provision of the stamp law can remedy the real problem of
concealment only if the Stamp Duty Valuation Organization Department
(SDVOD) as was established by the State Government in the beginning for a
continuous valuation of properties is, even in its present form, able to provide
timely revised valuation figures to the concerned registering officers.

The meaning of “continuous valuation of property” in it real sense would be,
the SDVOD is keeping a continuous watch on the trend of prices in different
areas throughout the state and where flow of documents for registration at
any given time is found to be increased in particular registration offices more
than its normal average or whenever owing to some developmental factor or
any other factor prices of land in the particular area of the State has registered
upward trend etc., the SDVOD machinery should have watchful eye to
immediately undertake in depth and close study of the given factor or situation
for some time to that specified area of the State and submit report to the
committee empowered to fix and revise valuation of property and the said
committee after thorough consideration and if deemed necessary, after
recheck consider the report and should take appropriate decision regarding
approximate value of the property of that specified particular area of
village/town/city etc., and supply revised ASR to the concern registering
officer for deciding approximate market value of the property of the instrument submitted before him for registration. In case of reverse trend similar action would require to be initiated to downward value of the property of the specified area and submit fresh ASR to the concerned registering officer accordingly.

11.8.5. Injustice and Tool for Avoidance

If the SDVOD will not be able to attend the process of continuous valuation of properties as aforesaid then the ASR prepared by it and which is actually used by the registering officer will become ‘administrated price’ and such ASR would cause on the one hand considerable loss of stamp revenue to the State Exchequer, on the other hand such ASR will itself become a source of creation of unaccounted money on a very large scale. This is what is happening presently in respect to many areas including areas comprising of agricultural lands of the State where prices are much higher than the valuation fixed in ASR prepared by the Superintendent of Stamps in the year 2006 and which is presently used by the registering officers. As a matter of fact preparing the ASR at the end of one year or two year or on specified period of the year is not the correct parameter of measuring or deriving approximate value of property. It should be continuous job as observed in para above. All other methods even to increase the value by certain percentage as has been done prior to 2006 will be nothing but to create and administered price or value and such price or value may either cause injustice to the citizen or may become an easy tool for creating unaccounted money.


In regard to Stamp Act and the Registration Act in several judicial decision it is observed thus:

The Stamp Act and the Registration Act are not acts in pari materia, but both deal with the instruments and there validity. The object of Stamp Act is only to collect revenue. The object of Registration Act on the other hand is to “to prevent people being duped into purchasing property from a person who does not own it.” A solicitor who is entrusted with drafting an instrument will consult
both the Acts. The Bombay High Court it is not likely that the legislature would have used the same expression in the two acts as having different meanings.\textsuperscript{499}

In view of aforesaid objects of the Registration Act, 1908 documents of transfer of immovable property require compulsory registration under the provisions of the relevant sections of the Transfer of Property Act, 1882 and section 17 read with section 28 of the Registration Act, 1908 in the office of the sub-registrar within whose sub-district the whole or some portion of the property is situated. For obtaining title clearance certificate of any Solicitor/Advocate it will be necessary to obtain a search report of the property which is the subject matter of transfer instrument for a period of 30 years, in some cases 13 years, from the office of the concerned sub-registrar. Prior to computerization of sub-registry offices, the search clerk of solicitor/advocate were taking physical search from the relevant records of the sub-registry offices. With computerization now search records are not made available and the solicitors/advocates have to solely depend upon the Encumbrance Certificate (EC) issued under the signature of the sub-registrar with the disclaimer note. The disclaimer note clearly declares that the certifying authority is not giving any certificate on the genuineness of verification.

It is understood that the computerized program prepared by the National Informatics Centre, Gandhinagar in the year around 2006-07, however, somehow said program has, it seems some serious defects owning to which in many cases Solicitor/Advocates obtaining EC for the purpose of preparing title clearance report in respect to specified property, even if several instrument are on record showing their registration in the said office gets EC stating “No Data Available”.

For this very reason the basic object of the Registration Act “to prevent people being duped into purchasing property from a person who does not own it.”, or the said property is not having any mortgage charge etc., is totally lost with the result that at times Solicitor/Advocates issuing title report of property on the basis of such EC’s have to put adverse comment as the search of

\textsuperscript{499} Chandrashankar v. Bai Magan, 38 Bom 576.

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registration record is not found perfect and full proof. In light of prevailing position of the registration records as aforesaid it will be improper for citizen to wish State Government to provide full proof online search of registration records in the same way the Registrar of Companies is providing online search of his records for all the ROC offices situated throughout India at a very nominal charge.

11.9. Imposing Stamp Duty on E-Commerce

It is to analyze the nuances of the recent action taken by the State of Maharashtra by imposing the stamp duty and its impact on the electronic commerce, although the amendment was not being adopted by state, but the issue is concerning with the situation where the amendment if on being accepted would have carried serious inconsistency with the Stamp Act, Constitution of India and other related problems. It is also necessary to analyze possible solutions to cope up with conditions where the interest of state clashes with Central Legislation and lastly suggesting format which can be adopted for imposing duty on the electronic commerce.

11.9.1. Important Facts of the Case

GAIL has signed an agreement with the NSDL for providing this facility to the shareholders of GAIL. For subscribing to this system, shareholders would first need to de-materialize their shares. This can be done through any of the Depository Participants of NSDL. After this, shareholders can trade the shares without any physical deliveries of the share certificates and no stamp duty is payable at the time of transfer unlike in the case of physical transfer.

This excerpt indicates GAIL offering facility to all of their shareholders after opening Depository account; they can trade the shares without paying any stamp duty. But the position would have had not been the same as the State of Maharashtra some time before by its amendment under Bombay Stamp Act, 1958 has made all electronic transaction subjected to the Stamp duty. By doing so, they have not only disturbed its harmony with Indian Stamp Act, 1899 but also created a doubtful situation questioning about its consistency.
with the pillars of Constitutional of India. The major concern in this article is to analyze the nuances of action taken by the State of Maharashtra and its impact on the electronic commerce, what would have been possible solutions to cope up with this condition where the interest of state clashes with Central Legislation and lastly suggesting format which can be adopted for imposing duty on the electronic commerce.

11.9.2. Face to Face With Amendment

State of Maharashtra by introducing Bombay Stamp (Amendment) Ordinance, 2005 has levied stamp duty on electronic transaction through Stock Exchange. Article 51A of the same states: "Record of Transaction (Electronic or otherwise) effected by a Trading Member through a Stock Exchange or the Association Referred to in Section 10B." This amendment could not only have severe repercussion on the State's economy but also on the growth of electronic commerce throughout the nation.

Further, the statement at the end of the ordinance provides: To cope up with the new form of trading after inception of the Depositories Act, 1996 and the Information Technology Act, 2000 and to facilitate stamp duty collection, a simplified category wise structure as delivery and non-delivery transactions is being introduced.

11.9.3. Inconsistency with Section 8A of Indian Stamp Act, 1899

While making this amendment the framers as we can gather from the statement have really strained themselves to cope up with Depositories and Information Technology Act, 2000, without even realizing that they are going against the spirit of Indian Stamp Act, 1899. As the language of Section 8A of the Indian Stamp Act provides; securities not liable to stamp duty, where in an insurer issues a securities to one or more depositaries, then such securities need not be stamped. Also, transfer if registered ownership of shares from the person to depositaries or from depositaries to a beneficial owner shall not be liable to any stamp duty. Hence, we can say that to the extent the transaction in government or other securities are conducted through depositaries this
provision of Indian Stamp Act exempt them from Stamp duty. Making such transaction liable under Stamp duty by adding word “electronic transaction” made it inconsistence with the Section 8A of the Indian Stamp Act. Where in Indian Stamp Act is undoubtedly a Central Law and have overriding effect over any state made law, if found not in consistency.

11.9.4. Inconsistency with Information Technology Act, 2000

However, another school of thought advocates that it is discriminatory to exempt Stamp duty on all those transactions which occurs via electronically through depositories account. As procedure for paper-based documentation and electronic transaction is more or less same except for the point that former is more time taking and complicated and requires lots of paper work where as the later one is easy and less time consuming and denies physical documentation on the part of the investor. But the moot question is can this difference be considered as sufficient to allow discrimination on the basis of payment of Stamp duty.

The possible answer is not in visualizing the problem from same suggested portal but it need to adopt a purposive interpretation. As we have seen that with the advent of Information Technology Act, 2000 in our country a due recognition was being given to the electronic transaction and records as practice of commerce. As the title of the Act states and to further quote:

"An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as electronic commerce, which involve the use of alternatives to paper based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934"

Intention of the Act was amply clear that it has been enacted to facilitate the commercial transactions and impact transaction. Above mentioned Acts have
been amended accordingly to give due recognition electronic transaction and
to take Information Technology Act, 2000 in consonance with them. This Act
basically ruled out the age old concept of paper based documentation process
by providing new data messaging services Data messaging service is a better
and feasible option in hand at present; on using it you get a better
replacement on the concepts like that of writing, signature and language etc.
These electronic data can be produced for n- number of times with no
question as to its originality. Also, by this electronic revolution it became easy
for the investor from any part of the country to keep his shares and securities
with him in liquidated form. But in developing countries like India information
technology is still at the nascent stage, especially in relation to the electronic
transaction. Imposing Stamp duty on such initiatives would in turn hamper the
usage of the e-commerce. If the decision has been allowed to carry out, then
investors will get impacted since brokers will pass on stamp duty charges to
them, which will result into discouragement of all initiatives taken in order to
promote the system of electronic commerce.

11.9.5. Other Related Problems

Success of Western Stock Exchange in trading electronically with Stock and
Commodity inspired India to introduce replica of the Western Electronic
Transaction system in India. Information Technology Act, 2000 provides
electronic trading platform form to get access to trade electronically to any
place throughout the country. If State of Maharashtra levy Stamp duty on
electronic transaction taking place in the state via Bombay Stock Exchange or
National Stock Exchange where as at the same time such Stamp duty in
exact form (i.e. not in the form of capital gain tax) has not been charged by
other State then it will lead to paradoxical situation. This meant that the stamp
duty applicable in Maharashtra had to be paid over and above the duty
payable in other states in case of trade outside the state, but routed through
the Bombay Stock Exchange or the National Stock Exchange.
11.9.6. **Inconsistency with Article 286 of Constitution of India**

The impugned amendment also goes in violation of Constitution of India as Article 286 provides;

“Restrictions as to imposition of tax on the sale or purchase of goods –

No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.”

Where as if the State of Maharashtra imposes the Stamp duty on all electronic transaction which have been occurring either via Maharashtra to other states or via other states to Maharashtra. These situations will result into imposition of duty contrary to the Constitutional Law as they have to no authority to command transaction outside the State and hence giving them extra-territorial operation. The act of State cannot take any stand because the essence of electronic commerce is to abolish the boundaries between States and Countries. This amendment will work as an inspirational source for other States to enact same kind of amendment. Simple reason for it would be right to earn revenue with just actions, hence on validating this amendment the possibility in future for States to come up with same kind of amendment cannot be ruled out. In such a situation different States will come up with different figure to satisfy their economic needs.

11.9.7. **Finding Solution for E-Commerce**

Relying on above discussion we would like to conclude by saying that firstly, for any nation state's economic growth technology factor cannot be overlooked completely as both should go hand in hand, even though one area has to sacrifice a bit. Since involvement of technology with law is not broaden much in developing countries like India as still we are trying to put it in a frame. If one or the other State will continue to making laws discharging their
own interest then it will result into blockage for progress. If we want electronic commerce to flourish in country, then it should be liberated from the clutches of restrictions like Stamp duty etc. resulting obstacle in its growth. It should be treated like a newborn child who needs support to walk, we should nourish this concept so that we can reap benefit out of it at later stage.

However, at the same time there are various other compelling reasons for the State to impose Stamp duty on transactions independent of the fact whether it is an electronic one or not, like in this issue the government has justified the move on the ground that proprietary trades are routed through members or between members of stock exchange and that records are generated and should be subjected to Stamp duty.

Possible solution to this can be given in two folds; Firstly at its verge stamp duty on such transaction should be ignored. Secondly, if not feasible for the state’s economy then with the help of Center’s initiative States should brought methods which not only provides for successful e-commerce tax but also provides system for maintaining neutrality, fairness and simplicity, and to encourage all desirable economies activity, new and old. Rules that provide certainty and prevent double-taxation should be made. All these criteria are seemingly satisfied if the State tries to opt for transactional tax which should be based on payment of duty on the basis of transaction and should have characteristic of applicability all over the country. It will in turn bring a better revenue collection and that to on uniform rate, where evasion would almost be impossible. Unlike the system where Stamp duty is a voluntary service as you cannot detect the evader in case if he tries to evade it.

### 11.10. Factors Impeding Factoring

Factoring as a form account receivables financing has been a widely acceptable made of asset-backed financing word over. Under factoring, business concerns sell their invoices i.e. accounts receivables to a factoring company is exchange for an immediate advance on the invoice value, thereby, allowing companies to cash in on their sales without having to wait for payments to come in from customers in due course. Thereafter, the factor
collects the fall amount from the debtors and pays the balance amount due to the business concerns. These services usually provided for a fee which is dependent on the sales volume, number of customers, number of invoices and credit notes and degree of credit risk in the customer or the transaction.\textsuperscript{500}

Recently, the Parliament enacted the Factoring Regulation Act, 2011, and in addition to statutory provisions for factoring transactions, added section 8D to the Indian Stamp Act, 1889, declaring that documents for assignment of receivables in favour of a Factor shall be exempt from stamp duty.

In spite of a clear provision for exemption, notwithstanding anything contained in any law for the time being in force, which excludes applicability of all state stamp duty laws, there is a reluctance in availing benefit of such exemption on account of apprehension that States may prescribe a rate of stamp duty on factoring transactions and in that case, the stamp duty exemption will not be available.

\textbf{11.10.1. Constitutional Validity}

If one examines the constitutional provisions under which the above amendment to Indian Stamp Act was enacted by the Parliament, it is clear that apprehension that the State law may negate the exemption by prescribing rate of stamp duty is unfounded and misplaced. The distribution of legislative powers with regard to stamp duties clearly makes a distinction between the charging provisions and powers to prescribe the rates of duty. While there is a clear demarcation of powers to prescribe rates of stamp duty in the Union List and State List, the charging provision for stamp duties is made concurrent, which can be exercised by both the Parliament and the States.

11.10.2. Past Amendments in Various Acts

In the past, Parliament has exercised the legislative powers of charging stamp duties by declaring exemptions to stamp duties by amending the Indian Stamp Act, 1899 thrice. The Depositories Act, 1986, added section 8A exempting securities dealt with in depository from stamp duties, the Securities Contracts (Regulation) Act, 1956, was amended in 2005 to add section 8B exempting stamp duties on corporatization of Stock Exchanges and Warehousing (Development & Regulation) Act, 2007, added section 8C for exempting negotiable warehouse receipts from stamp duties.

The Parliament has recently again exercised its power to declare exemption to factoring transactions by adding section 8D to the Indian Stamp Act, 1899. It is true that power to prescribe stamp duty rates is excluded from Entry 44 of List III (Concurrent List) and is divided between Parliament and state legislatures. Power to prescribe stamp duty rates on instruments such as bills of exchange, promissory notes, bill of lading, letters of credit, policy of insurance, transfer of shares, debentures, proxies and receipts vests in the Parliament (Entry 91 of the Union List) and for all other instruments or documents, power to prescribe rates belongs to the state legislatures under Entry 63 of the State List.

11.10.3. Clear Interpretation

It is clear that power to prescribe rate of stamp duty on a document of assignment of receivables is with the States. But if any State enacts a law for prescribing the rate of duty on assignment of receivables, such a law will be clearly inconsistent with section 8D of the Indian Stamp Act, 1899, which exempts documents recording assignment of receivables from stamp duty. The State will therefore be required to obtain assent of the President before enacting such a law under article 254(2) of the Constitution. Power to prescribe rate of tax cannot override the charging provisions declared by a law of Parliament, enacted pursuant to entry 44 in the Concurrent List.
The meaning of Entry 44 of the Concurrent List is that excluding the power to prescribe the rate, the charging provisions of the law relating to stamp duty can be made both by the Union and State Legislature, in the Concurrent sphere, subject to Article 254 in case of repugnancy.\textsuperscript{501}

It is, therefore, inconceivable that the Parliament having declared a policy to exempt stamp duty on assignment of receivables will grant President's assent to States to enact laws prescribing rate of duty on such exempted documents and defeat the object for which exemption is granted under section 81D of the Indian Stamp Act, 1899. Such stamp duty exemption has been granted by a Central Law, even on conveyance of immovable property belonging to Stock Exchanges, which has the effect of overriding existing provisions in all State Stamp Duty Laws prescribing rates of duty on conveyance of immovable property to the extent provided by the Central Law.

The apprehension that States may prescribe rates of stamp duty for documents relating to Factoring transactions is, therefore, unfounded and there is no reason why SMEs and other entities should be discouraged to avail the benefit of exemption of stamp duty granted by the Central law.\textsuperscript{502}

**11.11. Uniform Duty Structure for Stock Exchange**

The Central Government plans to have a uniform duty structure for stock market transactions. This may be covered by Indian Stamp Act (Amendment Bill), 2011. Under the proposed bill, stamp duty will be collected by Stock Exchanges from the seller and then passed on to the states where the seller is based. Against the current practice of stamp duty rates in states on stock market transactions, the government is planning to propose a uniform rate of 0.003 per cent on future and options trading and for currency derivatives rate of 0.001 per cent.

To give same relief to stock market investors, the Central Government is also considering a cut in Securities Transaction Tax. The intent is to rationalize Securities Transaction Tax and synchronize it with developed countries. This


\textsuperscript{502} Legal issues on factoring in India at https://india-financing.com
may encourage more investment and enhance liquidity in the stock market. Basically Central Government is planning to bring uniform duty structure and wants to do away with stamp duty on buyers to encourage investment. Only sellers would be required to pay the stamp duty. Under the proposed system, the state where the securities sold will get the duty. If the seller is abroad, the state where the broker’s dealing office is based will get the duty. Stock Exchanges have been already asked to make a database of sellers for identifying their locations in both delivery and non-delivery transactions. The proposal is to have 0.10 per cent duty for delivery based clients and for delivery based proprietary trading, 0.002 per cent duty for non-trading based clients in the capital market and 0.001 per cent for non-delivery based proprietary trading. Currently, 0.001 per cent duty is levied on delivery based while 0.002 is paid on intraday trading.

11.12. Stamp Duty Collections can be Raised

Collections from stamp duty and registration fees on property and capital transactions can be more than doubled, through an innovative approach, progressive policy and transparency.

In Gujarat, where property transactions are often regarded as shady and undervalued to avoid payments *viz a viz* stamp duty and registration fees, an innovative approach in this regard may result in much larger collection, he added.

According to the study titled Trade Policy & Tax Regime: State Level Initiatives, Maharashtra alone accounts for over 20 per cent of stamp duty and registration fees and taxes on property transactions as the state has streamlined compliance and tax administration, thereby curbing evasion.\(^{503}\) Smaller states like Delhi, Kerala, Haryana and Punjab too maintain robust collections on this account, a fact reflective of the real estate industry in these states, the study said, calling on other states to emulate Maharashtra’s example.

Taxes on property and capital transactions cover two important aspects; stamp duty and registration fees, besides land revenue and tax on urban immovable property tax.

As stamp duty and registration fees collections show strong growth, state governments should do away with land revenue and property tax or factor this at the time of sale or purchase and make it a onetime payment.

A marginal raise in motor and commercial vehicle tax and urged the government to abolish the passenger and goods tax. Policy makers should focus on increasing efficiency of tax collections with a customer friendly approach.