'Death, childbirth and taxes, there’s never any convenient time for any of them.'

Margaret Mitechell.

12.1. Nature of Stamp Duty

The Bombay Stamp Act, 1958 is a fiscal enactment of daily importance to the citizen. On corresponding English Act, it has been stated by an reviewer, “of all the branches of revenue law, none in the experience of your reviewer, is one half so dull as stamp duties; and there is none on which it is more difficult to express an opinion with any degree of certainty.

The reason in each case is that, this subject has no underline principles; it springs basically from the Schedule to the Stamp Act, 1891, which was accurately described by Lord Raid in *Inland Revenue Commissioners v. Henry Ansbacher and Co.*, (1963) A.C. 191, 204, as ‘a mere conglomeration of uncoordinated provisions.’504 This aspect shows the difficulty of suggesting propositions.

For the visualizing the importance of Stamp Act, we may recollect that one of the causes of the American Revolution was the Stamp Act of 1765, introduced by George Grenville. The Act levied a duty on every “skin or piece of vellum or parchment or sheet or paper”, used for legal documents, commercial transactions etc. 505 Opposition to this legislation measure in the American Colonies was so strong, that the expenses of collection of duty exceeded the revenue realized.

12.1.1. Various Aspects of Stamp Duty

A taxing statute like the Act with which we are concerned involves the consideration of a number of theoretical and practical aspects. The rate structure could bear improvement, the practical working should be remedied where difficulty is caused by the defect in the content of the statute; avoidable uncertainty ought to be attended to; fundamental juristic principle should not be overlooked; sociological consideration may not be totally irrelevant; interpretation of the law ought to be uniformed; the kind of audience to reach the law is addressed and the class of citizens who will primarily be called upon to comply with it, as well as the nature of the transactions which will normally fall within its purview, are matters legitimately to be taken into account; above all, a well drafted law, easy of application and not difficult to understand, would ultimately result in benefit to the State as well as to the citizens.

Unfortunately, some of the aspects outlined above are not properly appreciated. Taxation law is often regarded as a technical branch of the law, not worthy of academic study of capable of being subjected to juristic discussion. The Stamp Act, if we may say so, is the Cindrella of the law. One hardly finds, except in judicial decisions relating to particular controversies or in official documents dealing with particular problems, studies discussing or exploring the basic principles underlined the taxing provisions of this particular Act. It is appropriate to make this observation in order to explain why, at some places it is necessary to consider the fundamentals of particular provision and have not limited the discussion to contours of the relevant problems as they appear on the surface.\footnote{Low Commission of India Sixty – Seventh Report on Indian Stamp Act, 1899 (February, 1977)}

12.1.2. Stamp Act: Self Executing Act

Unlike many other taxing measures the Stamp Act is a self executing Act in the sense that it is left to the party chargeable with tax to calculate the duty and then to put the proper stamp according to that calculation. The fact that
there is no machinery to oversee the operation of the Act, or to watch how far the citizens have complied with the Act, may, to certain extend, justify stringent provisions. But it must at the same time be remembered that the very fact that the duty is to be calculated by the ‘assesses’ throws a very heavy and onerous burden on the Legislature, in as much as this part of the task of the citizen is often difficult. If the Legislative Scheme is not indicated in clear and precise terms in the Act, it becomes still more difficult. It is only occasionally that citizen faces the authorities entrusted with the enforcement of the Act. However, whether or not, a particular case comes up before the authority, the law always operates and the citizen must decide for himself what, if any, is the amount payable as stamp duty. This renders it desirable that the substance and form of the law and manner of its implementation should maintain a certain quality.\textsuperscript{507}

12.2. Lines of Propositions

Having dealt with evolution of the statute, we may consider the lines on which propositions would be desirable. It is well taken that the Stamp Act is a taxing statute. It is not purely a “lawyer’s law”; and propositions of tax structure raises important matters of policy. In additions to that constitutional competence can be prime base of the propositions.

The Stamp Act is left very largely to a sort of “automatic operation”, in as much as it is applied to citizen themselves to their own transactions as evidence by the instruments; and the burden of its interpretation rests, not only upon the lawyer but also upon the layman. It is all the more necessary, therefore, that the act should, in its expression, be as clear as possible, so that people who desire to pay proper duty on their documents and who have no intension of evading the duty in anyway may clearly understand the obligation which rest upon them.

Then there are cases where the provisions of the law, though clear, can be, have been evaded by caring out the transactions in a fraudulent manner.

\textsuperscript{507} Low Commission of India Sixty – Seventh Report on Indian Stamp Act, 1899 (February, 1977)
Thirdly, there are cases where greater facility could be given to the public to avoid hardships, without making any serious inroads on the revenue.

Fourthly, there is need to introduce uniformity where diversions has arisen owing to conflict of decisions.

Finally, it will be advisable to synchronize the Act with technological development with a special reference to computerization.

12.3. Scope of the Propositions

There is, however, considerable scope for propositions of the Act in other respects, without materially affecting the rates of tax. Without claiming to be exhaustive, it may be said that even after keeping the above limitations in mind, propositions are possible in respect of-

(a) The structure and arrangement of the Act;
(b) The legal labels employed in the Act, to denote the various kinds of documents;
(c) Rectification of the unsatisfactory positions arising from conflicting decisions or otherwise, in regard to the charging section and connected provisions;
(d) Improvement of the machinery provisions;
(e) Reducing the multifarious variety of rates of stamp duty can be introduced.
(f) Incorporating in the Act itself, many of the remissions granted by notifications under section 9
(g) Inserting provisions for e-commerce.
(h) Recovery, by empowering the taxing authority.

Provisions on the above lines would considerably simplify the Act, and bring it up to date from legal point of view and would also contribute to the removal of the practical difficulties felt by reason of some of the drastic provisions of the Act.
12.4. Consideration for Propositions

It would be proper to mention that the consideration of the propositions with certain broad guidelines may be convenient to set out.

In the first place, it is considered legitimate to propose such changes as were necessary to rationalize the law or to simplify its working, and generally to avoid difficulties in implementation.

The general approach in this regard is based on firm belief that the smoother the working of law, the better will it be for all concerned. In this context postulate a conflict, between the interest of the revenue and the conveyance of tax payers.

Secondly, in the interest of easy accessibility of the law, it is proposed, where the circumstances so justified, to incorporate in the section exemptions of long standing.

Thirdly, where it was found that the provisions of the act, in particular, what can be conveniently described as the machinery provisions, have led to serious inconveniences or to unnecessary controversies in the courts or official circles or to avoidable delays, it was not shrunk from recommending suitable propositions. It is believed that, even though it may, at the first site, appear that a particular proposition proposed with this object liberalizes the law in favour of citizens, yet, ultimately, the revenue will also benefit, in as much as ignorance or misunderstanding of the law as well as the temptation to evade the law will be minimized. Moreover it is legitimate to point out that ordinarily speaking, a taxation law ought not to be so formulated as to encourage in the raising of dishonest defenses by litigants, particularly where the interest of the revenue can be safe guarded by other provisions.

Fourthly, apart from the conveyances of citizens, there are situations where widen consideration of public interest may have to override a very rigid enforcement of the revenue law. For example, the importance of the detection of crime in an efficient manner and without delay justifies the legislature in making a relaxation of the ordinary rule that an unstamped document shall not be acted upon by a public officer.
Finally, as far as possible the provision of the statute should be so framed as to maintain logic and consistency with the basic juristic principles. It may not be always easy to discover or to maintain a logical structure in every provision of the revenue laws. But that certainly should be the ideal, at least in regard to machinery provisions; these provisions do not affect the rate of tax, and are intended to deal with details of implementations. Lest this should sound to be abstract a statement, let it by stating that where the liability to pay stamp duty rests with a particular person who thus carries the primary duty, it is considered proper that the law should or looking this primary duty, impose a secondary section on some other person. This consideration is kept in mind in dealing with the vexed question of person on whom stamp duty can be compulsorily levied.

12.5. Shaping up the Indian Stamp Act, 1899

Indian Stamp Act, 1899 is one of the oldest legislations of India running from British times. It has been amended several times since its enactment however no comprehensive revision has been attempted. The Law Commission in its 67th Report has emphasized the need to revise the Stamp legislation in India and several of its recommendations have been given effect to in the proposed bill.

12.5.1. Amended Definition of Conveyance

For uniform application of the Stamp law on order of the High Court under section 391 of the Act, the definition of “Conveyance” under the Stamp Act is proposed to be amended to include the order of the High Court u/s 391.

The proposed amendment, if enacted, will put to rest the long drawn debate on stampability of Court Order.\(^{508}\)

In a case, has held that an order under section 391 of the Act is stampable. Stamp duty being state subject, different High Courts, have adjudicated the

issue differently. The outcome was there no uniformity as to cost of restructuring which greatly differed from one state to another.  

The Note on Clauses states thus:

“The definition of “conveyance” has been amended to include in its scope every such decree or final order of a court or revenue authority and any order of the Tribunal or in High Court sanctioning the scheme of reconstruction of companies including the banking companies, by which property is transferred between living persons. Also an explanation is added in order to make, the transfer of property by a co-owner to another co-owner, chargeable with the duty of conveyance.”

In a recent case, the Calcutta High Court has held that the arrangement between members of a family effected through 391-394 route is the nature of partition and has levied duty applicable on partition. However, the proposed amendment has clearly laid down the law in this respect and a rate of duty as high as five percent will henceforth be levied on any High Court orders.  

The amendment will adversely impact the restructuring, especially in case of small companies and groups concerns, thereby making the 391-394 route expensive. On the other hand, it is surely going to enhance the state revenue.

12.5.2. Lease Transactions Brought under Duty

Lease of movable property is also proposed to be made stampable by insertion of lease of movable property in the definition of Lease under clause 16. The definition is proposed to be made wider by including an “agreement to lease” also within the scope of definition of lease. Accordingly, all leases of movable property will now attract stamp duty applicable at the same rates as those for immovable property. Notably, the rate of duty, for a lease up to 5 years, is 2% of average annual rentals.

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509 Delhi Towers Ltd v. G.N.C.T. of Delhi, (Date of decision: December 2009)
510 SREI Infrastructure Finance Capital v. Income Tax Settlement Commissioner and Ors, Writ Petition (Civil) No. 1592/2012
Many Indian corporate, particularly, Multi National Companies source cars, Information Technology equipment, furniture, etc on lease. All these will have to suffer hefty rates of duty. Presently, most of them suffer stamp duty of only Rs 10 to Rs 100.

12.5.3. **Basis of Stamp Duty**

Market value has been defined to mean - in relation to any property which is the subject matter of an instrument, means the price which such property would fetch or would have fetched if sold in open market on the date of execution of such instrument as determined in such manner and by such authority specified in this Act or rules made there under or the consideration stated in the instrument whichever is higher.

A new clause has been inserted (clause 27-A) empowering the state government to fix and revise market value guidelines periodically. The computation of duty based on consideration in the Act is sought to be replaced by applying market value.

12.5.4. **Property Sales under Power of Attorney to Attract Duty**

In several states, a convenient device for people to avoid stamp duty on property sales was to provide possession of the property under a power of attorney. Typically, this power would also include a power to sell the property.

Now, the definition of “power of attorney” is proposed to be amended to make it clear that every instrument by which a person, except a legal practitioner is authorized to appear on behalf of the Principal in any proceeding before any court, tribunal or authority is a power of attorney, and will be stamped at the same rate as applicable on a conveyance.

12.5.5. **Imprisonment for Documents without Proper Stamps**

On a single day in our country, there may be lacs of stampable documents being executed and quite obviously not all documents are executed with
proper payment of stamp duty. For instance, if you are signing on an office voucher taking reimbursement of a conveyance expense of Rs 1000, you need to put a revenue stamp, and failure to put that amounts to an offence of unstamping or understamping.

The Bill proposes a rigorous imprisonment for a term which shall not be less than one month but which may extend to six months along with fine which may extend to ten thousand rupees for as menial an offence as failure to pay proper duty. If enacted, these penal provisions would mean undue hardship on the parties, for in most case, failure to put proper stamps may be unintentional and even if such an offence is committed intentionally to evade duties, any penalty over and above the pecuniary fines seems to be unjust. We have long forgotten the key principle that fiscal statutes need to provide for monetary penalty; it cannot be equated with a murder or rape to require imprisonment. The prisons of the country cannot even accommodate hardcore criminals; filling them up with offenders of stamp duty will be undue burden on the jailers.

12.5.6. Tax on “Record” of Securities Transactions

Maharasthra has been imposing this duty for quite a while, but its legality has not been put to serious test. The key principle of stamp law is that where there is an instrument (that is, document), there may be stamp duty. But as the duty is not a tax on the transaction, there can be no duty where there is no instrument.

The question becomes prominent in case of stock market “contract notes”, the flow of which is as follows. The transaction is mostly verbal; an investor wants to buy securities and instructs the broker to keep a tab and buy it when the prices are opportune. Commonly, there is no written instruction. The brokers buy the securities and send a contract note mostly these days in electronic form. There is no “instrument” at any stage. Maharashhra, being one of the states having its own stamp law, imposed duty on these transactions, making the record of these transactions liable to stamp duty.
Now, the stamp law is sought to be amended to take a cue from Maharashtra. Record of Transaction, (transaction being electronic or otherwise) effected by a trading member through stock exchange or an association has been included within the purview of “Instrument”. Under this article duty has been levied on record of transactions relating to sale and purchase of securities, futures and options trading and forward trading. This would mean every single instruction, even if given over the phone and every transaction effected in the stock market would become stampable.

The rate of duty is 0.01% or Rs 10000 per transaction, whichever is lower. If the turnover of shares alone at the Bombay Stock Exchange adds to about Rs 2000 crores on any trading day, this would mean state revenue of Rs 20 lacs per day, or Rs 500 crores per annum. Add to this the volume of derivatives, bonds, government securities, and so on.

There are several complicated questions on this duty. The question arises as to where the so called record will be deemed to have been executed- the place where the stock exchanges are located, in short, Maharashtra?

Needless to mention, this would amount to generating tremendous amount of revenue for the state of Maharashtra and may lead to regional disparity on collection of stamps, keeping in view the volume of trading taking place at the Bombay Stock Exchange and National Stock Exchange on a daily basis.

12.5.7. Increase in Duty on Articles of Association

The Government has found a very lucrative tool for generating revenue by increasing the duty levied on the Articles of Association of a company by approximately 1500 times. The maximum duty that can be levied on Articles has been proposed to be made Rupees Five Lacs. The calculation of duty payable has been linked to the authorized capital of the company. It is pertinent to note here that in the existing set up, companies are required to pay fees based on the amount of authorized capital. The word “nominal or increased share capital” in Article 10 under Schedule I implies that stamp duty will also be payable uniformly on increase in authorized share capital which
was, at present, only payable in Bihar, Madhya Pradesh, Chhattisgarh, Gujarat and Goa. Article The proposed duty on Article of Association is surely an additional burden on Corporate India.

12.5.8. Other Important Amendments Proposed

- The charging section, section 3 has been proposed to be amended by insertion of a proviso that the duty will be recoverable on the basis of copy of an instrument, in case the duty is not paid on the original instrument.

- An Instrument not duly stamped is inadmissible in evidence. Where an instrument is drawn on stamp paper, it shall be deemed to be duly stamped if the stamp paper has been purchased in the name of one of the contracting party. To settle the conflict between various judicial pronouncements, it has been proposed to make compulsory that in case of instrument being written on stamp paper, the stamp paper should be essentially purchased on the name of one of the parties to the instrument. It implies that stamp paper purchased in the name of Advocates will not be capable of being used by the contracting parties.

- Clause 47-A has been inserted to deal with cases where the instrument on which duty is paid is undervalued. The Note on Clauses sets out the intention behind proposing the said clause and is read as under:

  “It provides the method to be taken recourse to in the event of instrument of transfer stands undervalued. Its object is to neutralize the effect of undervaluation of the immovable property conveyed under registered instruments. It fills the lacuna which was found by the Supreme Court in a case; it empowers the Collector to deal with those cases where the parties by arrangement deliberately undervalue the property with a view to defraud the government of the legitimate revenue by way of stamp duty.”

511 Himalyan House Co. Ltd. v. CCRA, AIR 1972 (899).
• The time limit for entertaining application for refund of stamps has been extended from six months to one year.

• In addition to above major changes in the Schedule regarding rate of duty are also proposed.

12.6. Survey and Propositions

Researcher has conducted a sample survey during March, 2009 to June 2010. A questionnaire containing 18 items was sent to 601 persons and it was responded by 408 persons. Certain propositions discussed herein are also based on response to survey report. The detailed survey report is enclosed herewith as Annexure-I and critical analysis of the questionnaire items is carried out in concerned chapters.

12.7. Propositions

The propositions can be divided into two groups; administrative and legal. Administrative propositions are well considered a change that is to be carried out in the execution of the statute for the purpose of improving the structure, operation and quality. On the other hand legal propositions are for considering an executing the existing act, it also advocates and suggests changes in the act, with aim of enhancing justice and efficiency.

12.7.1. Administrative Propositions

The administration seeks to secure potential tax revenue efficiently and effectively. The tax administration is as important as that in tax policy. Administrative propositions are summarily discussed here.

1. Online collection and accounting of duty by most institutions are proposed. Officers of the appropriate level should be empowered to endorse documents and accept duty on behalf of the government. This could be routinely done online by financial institutions, stock exchanges, insurance companies and the like. It would, in fact, be a
better alternative to stamps than franking. Appropriate verification mechanisms could be prescribed for departmental officers using documents and occasional physical checks. This would eliminate the need for stamps, franking machines and even methods like pass-books and revolving credit accounts which have been suggested in various reports and thoroughly modernize duty collection. Safeguards could be incorporated and powers granted to institutions made liable to withdrawal if they are found to be evading levy and collection of duty.\footnote{Annexure-I, Survey Report, Majority Responses, Item No. 5.}

2. Beginning should be made in improving physical infrastructure in sub-registrars’ offices. It is strongly proposed setting up modern offices spread over a single floor with personnel located in glass cubicles set opposite a comfortable public lounge provided with a computerized kiosk at which data concerning tax rates and procedures can be accessed in a user friendly manner over the internet. Such offices should be provided with basic facilities and given powers to incur the expenditure required to purchase consumables for computers and take and preserve registered documents.

3. The need to fill up departmental posts which are lying vacant should be assessed after working out requirements after computerization. Unauthorized persons found in sub-registrars’ offices should be kept out after the required personnel are put in place. Recruitment rules should be modified to ensure that personnel with computer skills are preferred for appointment.

4. It is proposed that regular departmental staff should be trained to use computers and used for managing systems when software development is completed. National Informatics Centre or other special personnel should not be taken on board for routine computer operations; they may be required only for creating a core systems
management group attached to the head office for trouble shooting and handling upgradation and similar issues.

5. Routine office management in sub-registrars’ offices also requires substantial improvement. Since it is possible to precisely specify the verifications required to be done by the sub-registrar for each kind of transaction, check lists could easily be prepared and brought into use.

6. There is also no departmental manual listing out procedures and requirements although there is an internal diary containing much of this information. This should be developed into an easily readable manual which can be used by both departmental staff as well as users. It should be made freely available to members of the public and put on the departmental website. It could also be broken down into brochures documentwise and these could be made available at all offices.

7. Administrative reform must also be focused on improving accountability for the department as a whole, for its different sections as well as for individual personnel. Time bound targets must be specified for all of them, which should be as objective, focused and simple as feasible. Such targets must also be linked to promotions and other incentives. Fixation of targets must be done with a clear understanding of the kind of behavior that would be promoted by each of them. At the departmental level, budgets and other facilities could be linked to macro performance ratios. There is a case for linking the provision of some additional amenities to achievement of a few pre-determined targets. Targets should not only be linked to revenue realization; performance should be judged as much by improvement in taxpayer compliance and public satisfaction as by quicker and more effective audit and successful imposition of prescribed penalties. Incentive techniques must be explored for taxpayers as well as personnel.

8. Measures to reduce such harassment must be explored as it is at the root of non-transparent, user-unfriendly departmental functioning.
Whether affidavits and strict penalties for false declarations could substitute for the No Objection Certificates could be considered. However, removal of such requirements may need to be made contingent on feedback from concerned departments on documents registered. In any case, wide publicity should be given to prescribed procedures, their rationale, exemptions and No Objection Certificate requirements through a citizen’s charter in which time limits for registration and avenues for grievance redressal are indicated.

9. Online transactions could substantially improve data collection mechanisms and understanding of the revenue productivity of different documents. To collate data relating to drafts collected by sub-registrars for stamp duty and registration fee payment obtained from sub-registrars’ offices and information regarding sale of stamps furnished by district treasuries to arrive at a reasonably accurate estimate of revenue realized. This could be reconciled with the treasury offices from time to time.  

10. The sub-registrar’s office is required to advise visitors to obtain encumbrance certificates before registration and ensure the genuineness of the title to property.

11. Agencies granting lands like local bodies etc. should be formally authorized to collect stamp duty and registration fees and exercise delegated powers to register documents on behalf of the registration and stamp officials. This should be done after they are linked online to the registration and stamp officials network.

12. It is essential also to specially combat the vulnerability of tax departments from the point of view of corruption. Strategy to combat corruption must limit the motives and opportunities for public officeholders to abuse their positions. There should also be focus on

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513 Annexure-I, Survey Report, Majority Responses, Item No. 5.
514 Ibid
the supply side of bribes. Caution must be exercised while offering incentives for revenue officials to ensure that they do not lead to overzealous harassment of taxpayers. Negative incentives should therefore complement positive ones. Independent taxpayer surveys will help identify elements of the organization or tax offices that harbor severe corruption.

Internal audit divisions and anticorruption units within the department should be supplemented by effective judicial support, external reviews (including external audits) and interaction with taxpayer associations. Contact between officials and taxpayers could be reduced through withholding taxes, using third party data for tax assessment.

13. Corruption can be also kept under control by improving taxpayer awareness of rights and obligations by publicizing procedures through brochures, web sites (regularly and correctly upgraded by an institutionalized system), kiosks and the like and enforcement (not mere announcement) of citizens’ charters. As far as possible, payment mechanisms should be integrated into normal commercial methods by collecting tax through banks. On line filing of returns should be facilitated and taxpayers permitted to ascertain the processing stage of pending applications, the reasons for delay etc. Enquiries must be conducted swiftly on complaints received against departmental personnel and penalties enforced without delay. We must also guard against newer forms of corruption that could enter by the back door even after modernized systems are put into place. A common method of introducing middlemen into tax departments is by preventing the public from having access to the required forms. Apart from encouraging on line interaction, we must also arrange for forms to be automatically printed out at kiosks and other sale points.

14. Much of the preparatory work is practically complete for computerizing generation of guidance values. Concerted action over a period is all that is required to bring in this radical improvement. In the effectiveness
and user friendliness of departmental offices, it may be reiterated that computerization at the superficial level of scanning registered documents or networking offices to improve regular data would be inadequate to enhance the performance and image of the department. It is proposed that State Government should move in the direction proposed as rapidly as possible in the interest of revenue and better compliance.

12.7.2. Legal Propositions

Taxation Departments figure at the top of the list of the Government Departments crying out for reforms. A great deal of improvement can come from overhauling the tax structure itself, reducing rates and slabs and removing exemptions as well as form publishing tax payers obligations and departmental procedures. Law reforms is the process by which the law is modified and shaped over time to better reflect the said social values that society feels are important. The law cannot stand still a major function of the legal system is to reopen to changing values and concerns with the society, resolve issues as they develops, overcome problems that occur in legal cases or events, promote equity and respond to scientific or technological developments. Law reform is essential if the law is so remain relevant to change in society. A Law reform tends to be gradual process, with wide spread community consultation and involvement. Indeed, one criticism of law reforms is that it is too slow. That is particularly the case with respect to technology, and advances in technology. Here, legal propositions are made to make necessary amendments in the Act.

1. It is necessary to tackle the prevalent practice of transferring ownership without executing a document by making purchasers equity holders in property and shifting only the equity to them which is being used to evade duty on conveyance, which directly reduces the collection of stamp duty. Definition of “conveyance” in stamp act should be amended to cover the same and it is also proposed to amend Section
17 of the Registration Act at the State level to include such transactions under the definition of “conveyance”.

2. In the definition of “Conveyance” every final order of revenue authority should be included.

3. In Section 3 of the Bombay Stamp Act, 1958 i.e. in charging section, there is no provision of levying duty on duplicate copy in absence of the original one. It is a proposition to insert the same in charging section.

4. In proviso (2) of Section 3 of the Bombay Stamp Act, 1958, in two last lines “any ship or vessel register under the Bombay Costing Vessels Act, 1838, or the Indian Registration of Ships Act, 1841” are mentioned. The Indian Registration of Ships Act, 1841 has already been repealed by the Merchant Shipping Act, 1958 and therefore proviso (2) of Section 3 requires amendment by the authority.

5. The stepped slab pattern of Stamp Duty should be replaced with the rate that is only applied above the threshold rather than the entire value of the property. It is also proposed that the State Government should raise the threshold for stamp duty at a regular period.

6. It appears that there is no need of additional duty levying separately. Section 3A of the Bombay Stamp Act, 1958 should be deleted and the rate of the additional duty should be merged with basic duty.

7. As per section 9 of the Bombay Stamp Act, 1958; the State Government is having power to reduce, remit or compound duties. Some stringent correction through amendment is required to regulate and control the powers.

8. Tax amnesty schemes are proposed by the state government for the purpose of speedy recovery and to reduce permanent burden of recovery on administration. Legally state government is not competent
to announce this type of schemes, as legislature empowers to collect
duty executives are supposed to recover all the legitimate dues.
Powers are not assigned to the executive to forgo legitimate dues in
the act. Proposition is to insert specific provision in Section 9 of the
Bombay Stamp Act, 1958 by assigning power for declaring amnesty
scheme.

9. Stamp Duty receipts should be invested in housing, particularly in
affordable housing sector. Legal support for the proposition can be
given in Bombay Stamp Act, 1958.

10. A proposition is for introduction of a penalty for non-registration of
registrable documents since this is the most common evasion
technique and as the Stamp Act is directly linked with Registration Act.

11. An offence as failure to pay proper duty should be dealt with hard
hand. It is proposed to make a provision for a rigorous imprisonment
for a term which shall not be less than one month but which may
extend to six months along with fine which may extend to ten thousand
rupees for a menial an offence as failure to pay proper duty.

12. In Bombay Stamp Act, 1958 the stamp authority is not having power for
provisional attachment of the property for recovery of dues. There are
no special powers for special mode of recovery too. The act is silent
about the first charge of the government on property for collection of
pending recovery.515

13. The powers given to collector for search and seizer are very limited.
Say if the Collector is having information that a certain place there are
some fake stamp papers; at present the Collector is not competent to
get the place searched under Bombay Stamp Act, 1958. The
proposition is to enhance the provisions of search and seizer. In fact, in

515 Annexure-I, Survey Report, Majority Responses, Item No. 9.
a powers to assign to the authority for production of records, inspection and search and seizer for the proper execution, are required in any fiscal Act.516

14. The proposition is to consider transferring stamp duty from the buyer to seller in the case of conveyance including reconveyance of mortgaged property.

15. The proposition is to give powers to Collector for valuation purpose under section 32A. For the purpose of discharging his functions under Section 32A, the collector should have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the specified matters.

16. For the fair and true execution of market value provisions, continuous valuation of properties is must. It should be the responsibility of the state government to create an exclusive setup for that. The proposition is to make a clear provision for such setup in the Bombay Stamp Act, 1958.

17. Section 75 of the Bombay Stamp Act, 1958 makes provision for transaction of the act and selling the act at price not exceeding twenty five paise per copy. It is proposed it should be made legal responsibility of the State to get the latest amended Act to be published and translated in Gujarati language every year. The Act so published should be sold at a price not exceeding twenty five rupees per copy.

18. State Government is having powers to make rules to generally carry out purposes of act under section 69 and 70. It is proposed that all rules made under this section should be laid before the State Legislature.

516 Ibid, Item No. 17.
19. It is desirable that inspection powers in Bombay Stamp Act, 1958 should be inserted to examine the records of developers who are suspected of undervaluing property and evading stamp duty.


21. Schedule I, Article 13 of Bombay Stamp Act, 1958 indicates description of the instrument “Award” which does not include awards passed by revenue authorities. Especially awards issued under Land Acquisition Act are in true sense conveyance. Hence it is proposed that in such cases proper stamp duty, in case of land acquisition award, should be equivalent to the rate of conveyance. The alternative way to this; the definition of conveyance should cover the final orders of revenue authorities.

22. In case of Power of Attorney given without consideration, authorizing agent to permanently alienate any immovable property, when the attorney is given for a period of more than one year, the rate of conveyance may be higher, as Power of Attorney can be a tool for transfer of property in such cases.

23. Recently, the Parliament enacted the Factoring Regulation Act, 2011 and in addition to statutory provision for factoring transactions, added Section 8D to the Indian Stamp Act, 1899, declaring that documents for assignment of receivables in favour of a factor shall be exempt from Stamp Duty. Analogous, provisions should be made in the Gujarat Act.

24. Stamping Duty on electronic transactions through stock exchange should be introduced in Gujarat. Successful e-Commerce tax can be collected through proper system for maintaining neutrality, fairness and
simplicity. It is always desirable to avoid double taxation. This may in turn bring a better revenue collection.

25. To mitigate the disincentive effects for entities which are developing from firms into incorporated companies for economic and industrial reasons, we may reduce stamp duty and registration fee requirements for firms in which partners continue to hold controlling shares for a minimum lock-in period of 5 years.

26. Central Government has enacted Limited Liability Partnership Act, 2008. New form of business organization is provided through this Act. As there is no specific entry in the Schedule for the instrument of Limited Liability Partnership, hence it does not attract any Stamp Duty. New articles should be inserted in Schedule I for levy of the Stamp Duty.

12.8. Propositions and Draft Amendments

From the above discussed propositions, here selected proposition are placed with justifications and draft amendments in the Bombay Stamp Act, 1958. It is worth mentioning here that detailed discussions and background of following propositions are made in relevant chapters. The considered propositions are also having support of the sample survey conducted.  

12.8.1. Propositions on Definition of Conveyance

Clause (g) of Section 2 covers the definition of ‘Conveyance’. The definition is inclusive one. Though sub-clause (ii) of Clause (g) covers “every instrument”, specifically, orders of revenue authorities are not covered in it. As a result orders issued by revenue authority in case of land acquisition etc. are not getting any stamp duty. Hence, it is advisable to add the words ‘orders issued by revenue authorities’ in the definition of ‘Conveyance’.

Survey Report at Annexure-1 of the Research Study
12.8.1.1. Draft Bill Item

(1) “In sub-clause (iii) of clause (g) of Section 2 after the words “every decree of final order of any civil court” following words shall be inserted “every final order of a revenue authority;”.”

12.8.2. Propositions on Charging Section

Section 3 of the Bombay Stamp Act, 1958 is a charging section. There are two propositions for this section. Firstly, in absence of original instrument received in the State, its counterpart, duplicate or copy is chargeable with Stamp Duty under section 7 of the Act. Unfortunately, the said conditions are not mentioned in the charging section. It is necessary that provision of charging section should carry that condition. Secondly, in proviso (2) of Section 3, in last two lines references made of the Indian Registration of Ships Act, 1841, the said act has already been repealed by the Merchant Shipping Act, 1958 and therefore proviso (2) requires amendments.

12.8.2.1. Draft Bill Item

(1) “In proviso (2) of Section 3 words and figures mentioned, “Indian Registration of Ships Act, 1841” shall be substituted with words and figures, “Merchant Shipping Act, 1958.”

(2) “After proviso (2) of Section 3 of the following proviso shall be inserted, namely;

“(3) Where no proper stamp duty has been paid on the original instrument which is chargeable to duty at the rate of the amount indicated in the Schedule as proper stamp duty, therefore, then a copy of such instrument or record relating to the transaction shall be chargeable with the duty at a rate on the amount which is indicated in the Schedule as the proper duty for the original of such instrument.”
12.8.3. Instrument Chargeable with Additional Duty

By the amendment made by Gujarat 15 of 2003, additional Panchayat Stamp Duty levied under Sections 207 and 209 of Gujarat Panchayat Act, 1993, prior to 1st April, 2003 has been included within the ambit of Section 3A. Ten different types of instruments are chargeable with additional duty. The logic behind section is to allocate the collected amount of additional stamp duty to Panchayats. The experience shows that the purpose is not served. On the contrary, the basic rate of stamp duty on sale deed is 3.50 per cent and with additional stamp duty to be levied under Section 3A at rate of 40 per cent of 3.50 per cent, total duty works out to 4.90 per cent on the instrument. It is difficult to digest such complicated rate of stamp duty. As a matter of fact, out of the total document executed and registered in the state almost 90 per cent of documents are of sale deeds in any given year. The rate of stamp duty on sale deed, should be, therefore, such that normal person can calculate it and pay it by means of stamps of available denomination without difficulty. It is therefore, proposed that Section 3A should be deleted and amount of additional duty may be merged in basic stamp duty rate.

12.8.3.1. Draft Bill Item

(1) “Section 3A shall be deleted”

12.8.4. Propositions on Exemption Section

Under Section 9 of the Bombay Stamp Act, 1958, State Government is having power to reduce, remit or compound duties. While going through the provisions, it becomes clear that for granting exemption there “should be a class”. In other words it can be said that exemption cannot be for a particular person and not for an instrument executed by such person. But the cases are there that exemptions are issued to individual also. Therefore, it is advisable that restriction and control is necessary for granting such exemptions. Naturally, legislature of the state can be given the power for discussion on exemptions that can be a control on executing of the State Government.
Hence, it is proposed that the exemptions granted should be placed on the table of legislature.

12.8.4.1. Draft Bill Item

(1) “After proviso (b) in Section 9, proviso (c) shall be inserted;

“(c) Provided further that all the rule or order made and published in the official gazette under sub-section (a) shall be laid before the state legislature in next assembly session.”.”

12.8.5. Propositions for Provision of Amnesty Scheme

It is an issue of discussion whether government should declare Amnesty Scheme or not. It is said that amnesty schemes are nearly corrosive as they offer relief to tax evader and panelize honest tax payers. But government offers tax amnesty schemes. Tax amnesty is a limited time opportunity for a specified group of tax payers to pay a defined amount, in exchange for forgiveness of tax liability. Generally, no act has specific provision for such schemes.

For speedy recovery of stamp duty pending dues, State Government has declared 4 different scheme in past. All the schemes intended to dispose of pending 32A cases. The detail of disposal of 32A cases during scheme period are under;

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Period</th>
<th>32A cases cleared</th>
<th>Revenue Realised in Rs. Crore</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>01.08.1998 to 30.11.1998</td>
<td>1,25,875</td>
<td>49.49</td>
</tr>
<tr>
<td>2.</td>
<td>01.07.2004 to 31.03.2005</td>
<td>1,39,750</td>
<td>80.47</td>
</tr>
<tr>
<td>3.</td>
<td>01.05.2006 to 30.06.2006</td>
<td>24,711</td>
<td>18.33</td>
</tr>
<tr>
<td>4.</td>
<td>01.05.2007 to 31.10.2007</td>
<td>26,877</td>
<td>21.95</td>
</tr>
</tbody>
</table>

**Source:** Finance Department, Government of Gujarat, Gandhinagar.
In terms of true legal interpretation of the act, Executives are not competent to declare such schemes. The fiscal statute is getting power from statute to collect tax. Executive have no right to pardon or forgo any tax, which is supposed to be legally levied. On the other side, to collect the possible revenue and reduce the administrative burden on executive, amnesty schemes may be a better tool. Therefore, the proposition is to give legal remedy by making a provision in the Bombay Stamp Act, 1958 for Amnesty Scheme.

12.8.5.1. Draft Bill Item

(1) “After Section 9, new Section 9A shall be inserted;

“9A. State Government may, by order published in the Official Gazette; declare an Amnesty Scheme for a specific period for specified instruments or class of instruments.

Provided that all such order so published shall be laid before the state legislature in next assembly session.”.”

12.8.6. Propositions on Duties by Whom Payable

When an instrument contains a specific agreement as to which party shall borne the expense of providing proper stamp duty, that agreement shall prevail and the provision of Section 30 of Bombay Stamp Act, 1958 do not apply to such instrument. When an instrument contains no such specific agreement then the person specified in respect of different description of instruments shall borne the expense of providing proper stamp duty on such instrument.

The seller of the property, as generally in a better position to afford paying stamp duty than buyer as they have generally built up more equity. Making sellers pay stamp duty rather than buyer would automatically exempt all buyers, and cost the government no less of revenue. It is likely that stamp duty would be some extent, be factored into price of property by the seller, but
buyers would find it easier to make out mortgage to cover that extra cost than save for stamp duty, which is what they have to do at present.

12.8.6.1. Draft Bill Item

(1) “In Clause (e) of Section 30, the word ‘seller’ shall be substituted to word ‘purchaser’.”

12.8.7. Propositions on Section 32A

As per Section 32A of Bombay Stamp Act, 1958, the collector is determining the market value in the case referred to him. The Collector of the district, after giving the parties concerned a reasonable opportunity of being heard, determines the true market value of the property which is the subject matter of the instrument and the proper duty payable thereon. Looking to the numbers of the cases referred to the deputy collector, the state government has left with no option but appoint ‘deputy collectors’ as ‘collector’ in respect of the areas allotted to them. The deputy collector declared as collector is neither having judicial power, non-magisterial power in that capacity. Therefore, the proposition is made to empower the collector with powers of civil court.

12.8.7.1. Draft Bill Item

(1) “After sub-section (4) of Section 32A, sub-section(5) shall be inserted;

“(5) For the purpose of discharging his functions under this section, the collector shall have the same powers as are vested in civil court under the Code of Civil Procedure Code, 1908, while trying a suit, in respect of the following, namely:

(a) Summoning and enforcing the attendance of any person and examining him on oath;
(b) The discovery and production of documents;
(c) Receiving evidence and affidavits;
(d) Requisitioning any public record or copies thereof from any court or office;
(e) Issuing or commissioning for the examination of any witness;
(f) Any other matter which may be prescribed.”.

12.8.8. Propositions Regards to Adjudication

Section 31 of the Bombay Stamp Act, 1958, provides for ‘Adjudication as to proper stamp’. At present in the said section there is no provision for demanding additional duty and time period for such payment. In addition to that there is no provision for penal interest. Therefore, it is necessary to make such provision by inserting such details in the section.

12.8.8.1. Draft Bill Item

(1) “After the sub-section (3) of Section 31, the following sub-sections shall be inserted namely;

“(4) After such adjudication the Collector shall issue notice to the person to pay stamp duty and call upon such person to pay additional duty within a period of sixty days from the date of receipt of notice and in case such person makes payments of the additional stamp duty within said period of sixty days, no penalty shall be levied on such person:

Provided that in case such person fails to pay the stamp duty so demanded within said period of sixty days, he shall be liable to pay penalty at the rate of two per cent of the deficient portion of stamp duty, for every month or part thereof, from the date of execution of such instrument, or the date of the first receipt of such instrument in the state, as the case may be.”

“(5) When the instrument refer to in sub-section (1) is brought to collector after four months of its execution, the collector shall
12.8.9. Propositions on Impounding of Instruments

The power of impounding instrument is given to public officers. The police officers are not having such powers. That is but natural that police officer cannot be given power of sub-section (2) of Section 33. But here question is what if such instrument comes before the police officer? No such directions are given in the section. Secondly, the words, “in the state” in sub-section (2) of Section 33 are not required. On the contrary these words are creating ambiguity in the interpretation. Code of Criminal Procedure Code, 1898, is repealed and hence amendment is required in Section 33.

12.8.9.1. Draft Bill Item

(1) “In Section 33 of the Principal Act;

(a) In sub-section (1), for the words “except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his function, shall, if it appears to him that such instrument is not duly stamped, impound the same”, the words “except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his function, shall, if it appears to him that such instrument is not duly stamped, impound the same whether or not such instrument is valid in law.” shall be substituted;

(b) In sub-section (2);

(i) In the opening portion the word, “in the state” shall be omitted;

(ii) In the proviso in clause (a) for the words and figures, “Chapter XII or Chapter XXXVI of the Code of the Criminal
procedure, 1898”, the words and figures, “chapter IX or part D of chapter X of the code of criminal procedure, 1973” shall be substituted;

(c) After sub-section (3), the following sub-sections shall be inserted, namely;

(4) When the person refer to in sub-section (1) detects that any instrument or a copy thereof is not duly stamped, he shall fought with make a reference of such matter to the Collector.

(5) The collector may, either suo moto or on a reference made to him, call for original instrument for ascertaining whether it is duly stamped or not and in case, the original instrument is not produced within the period specified time by the Collector, he may require the payment of the proper duty on the amount required to make-up such duty together with the penalty as provided in clause (b) of sub-section (1) of section 39.”.

12.8.10. Propositions for Change in Provision in Section 34

Section 34 of bombay stamp act, 1958 makes provisions for instruments not duly stamped inadmissible in evidence. The existing penalty provision is illogical. It should be in form of percentage related with time period. As Criminal Procedure Code, 1898 is repealed, that amendment is also required in section 34.

12.8.10.1. Draft Bill Item

(1) “In clause (a), for the words, “a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.”, the words, “a penalty of two per cent of the deficient portion of stamp duty for every month or part thereof, from the date of execution of instrument or one hundred rupees, whichever is more” shall be substituted.”
(2) “In clause (d), for the words and figures, “Chapter XII of Chapter XXXVI of the Code of Criminal Procedure, 1898”, the words and figures, “Chapter IX or part D of Chapter X of the Code of Criminal Procedure, 1973”, shall be substituted.”

12.8.11. Propositions on Inspection

As per Section 67, Collector is empowered to authorize any person to inspect the record of public office but not to seize and impound the records. Secondly, the position of ‘electronic records are not mentioned’ in Section 67, hence, to strengthen the execution in cases of fraud or omission, such additional powers are required to be given to the Collector.

12.8.11.1. Draft Bill Item

(1) “For Section 67 of the principle act, the following sub-section shall be substituted, namely;

“Every public officer having in his custody any registers, books, records (electronic or otherwise), papers, documents or proceedings, the inspection thereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty shall, at all reasonable time, permit a person who has been authorized in writing by the Collector to make inspection of such registers, books, papers, documents, records (electronic or otherwise) and proceedings or to take such notes and extracts thereof, as he may deem necessary, without free or charge or where necessary, to seize and to impound under Section 33.”.”


At present in Bombay Stamp Act, 1958, there is no provision for inspecting private places. Even in case of a fraud or printing of fake stamp papers: stamp authority does not have any powers of inspection. Prevailing situation is not desirable for proper execution of the Act. The proposition is to empower the
Collector for inspection of private places too. The power of search, seizer and impound can be given by inserting new section in the Act.

12.8.12.1. Draft Bill Item

(1) “After Section 67 of Principle Act, the following section shall be inserted namely;

“67A (1) Where the Collector has reason to believe, any fraudulent activities are being conducted or any of the instruments specified in Schedule has not been charged with duty at all, or has been incorrectly charged with duty and that any information, registers, books, records (electronic or otherwise), papers, documents or proceedings relating to such instrument are kept in any premises, he shall record his reasons in writing and authorize an officer not below the rank of sub-registrar as defined in Section 6 of the Registration Act, 1908, to call for necessary information or to enter upon such premises to inspect them or to take notes and extract thereof as such officer deems necessary or to seize and to impound them under Section 33.

(2) Every person, who has been required by the officer authorized under sub-section (1) to produce the information registers, books, records (electronic or otherwise), papers, documents or proceedings shall produce the same and all reasonable time, permit such office to inspect them and to take such notes and extract thereof, as he may deem necessary.”.

12.8.13. Propositions for Recovery Power

Pending recovery is a big issue for stamp authorities. In fact, this is so, because of lake of recovery powers. Nowhere recoverable amount of stamp duty is mentioned as first charge of the property. It is but natural that any transaction can take place only if purchasing party is having consideration amount. That amount can be the right source for recovery. To recover that
amount powers of provisional attachment should be given to the authority. In addition to that, during the pending recovery person can transfer the property fraudulently, that should be stopped. The person who is liable to pay the dues to the authority may deposit money to third party, say, financial institutions etc., recovery in this case can be realized if the authority is empowered for that. This can be done by inserting provisions for special mode of recovery.

12.8.13.1. Draft Bill Item

(1) “After sub-section (2) of Section 46 following sub-sections shall be inserted;

“(3) Notwithstanding anything contained in any law or contract to the contrary, the Collector may, at any time or from time to time, by notice in writing, a copy which shall be forwarded to the person against whom stamp duty dues are pending, at his last known address require-

(a) Any person from whom any amount of monies is due, or may become due to a person, who has to pay stamp duty dues, on whom notice has been served under sub-section (3) or

(b) Any person who holds or may subsequently hold monies for or on account of such person, who has to pay stamp duty dues, to pay to the Collector, either forthwith upon the monies becoming due or being held or within the time specified in the notice (but not before the monies become due or is held as aforesaid) so much of the monies as is sufficient to pay the amount due by the person in respect of the arrears of stamp duty, penalty or interest under this Act, or the whole of the money when it is equal to or less than that amount.

(4) (a) Where during the pendency of any proceedings, the Collector is of the opinion that for the purpose of protecting the interest of
Government revenue, it is necessary to do so, he may by order in writing attach provisionally any property belonging to person; from whom dues are to be recovered, in such manner as may be prescribed.

(b) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of order made under sub-clause (a) of sub-section (4).

(5) Where a person after any stamp duty has become due from him creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any office property in favour of any other person with the intension of defrauding Government revenue, such charge or transfer shall be void as against any claim in respect of stamp duty or any other sum payable by the person from whom dues are to be recovered.

(6) Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a person on account of stamp duty, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such person.”
PART-V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazzette. The date of publication to be reported.)

The following Bill is published with consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules :-

THE GUJARAT STAMP (AMENDMENT) BILL, 20__.

GUJARAT BILL NO. ___ OF 20__.

A BILL

further to amend the Gujarat Stamp Act. 1958

It is hereby enacted in the _____________ Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Stamp (Amendment) Act. 20__

(2) It Shall come into force on such date as the State Government may, by notification in the Official Gazzette, appoint.

2. In the Gujarat Stamp Act. 1958, in Sections

(1) “In sub-clause (iii) of clause (g) of Section 2 after the words “every decree of final order of any civil court” following words shall be inserted “every final order of a revenue authority;”.”
(2) “In proviso (2) of Section 3 words and figures mentioned, “Indian Registration of Ships Act, 1841” shall be substituted with words and figures, “Merchant Shipping Act, 1958.”

(3) “After proviso (2) of Section 3 the following proviso is inserted, namely;

“(3) Where no proper stamp duty has been paid on the original instrument which is chargeable to duty at the rate of the amount indicated in the Schedule as proper stamp duty, therefore, then a copy of such instrument or record relating to the transaction shall be chargeable with the duty at a rate on the amount which is indicated in the Schedule as the proper duty for the original of such instrument.”

(4) “Section 3A shall be deleted”

(5) “After proviso (b) in Section 9, proviso (c) shall be inserted;

“(c) Provided further that all the rule or order made and published in the official gazette under sub-section (a) shall be laid before the state legislature in next assembly session.”

(6) “After Section 9, new Section 9A shall be inserted;

“9A. State Government may, by order published in the Official Gazette; declare an Amnesty Scheme for a specific period for specified instruments or class of instruments. Provided that all such order so published shall be laid before the state legislature in next assembly session.”

(7) “In Clause (e) of Section 30, the word ‘seller’ shall be substituted to word ‘purchaser’.”

(8) “After sub-section (4) of Section 32A, sub-section(5) shall be inserted;

“(5) For the purpose of discharging his functions under this section, the collector shall have the same powers as are vested in civil court under the Code of Civil Procedure Code, 1908, while trying a suit, in respect of the following, namely:
(a) Summoning and enforcing the attendance of any person and examining him on oath;
(b) The discovery and production of documents;
(c) Receiving evidence and affidavits;
(d) Requisitioning any public record or copies thereof from any court or office;
(e) Issuing or commissioning for the examination of any witness;
(f) Any other matter which may be prescribed.”.”

(9) “After the sub-section (3) of Section 31, the following sub-sections shall be inserted namely;

“(4) After such adjudication the Collector shall issue notice to the person to pay stamp duty and call upon such person to pay additional duty within a period of sixty days from the date of receipt of notice and in case such person makes payments of the additional stamp duty within said period of sixty days, no penalty shall be levied on such person:

Provided that in case such person fails to pay the stamp duty so demanded within said period of sixty days, he shall be liable to pay penalty at the rate of two per cent of the deficient portion of stamp duty, for every month or part thereof, from the date of execution of such instrument, or the date of the first receipt of such instrument in the state, as the case may be.”

“(5) When the instrument refer to in sub-section (1) is brought to collector after four months of its execution, the collector shall proceed in accordance with the provisions of Section 33 and 39.”.”

(10) “In Section 33 of the Principal Act;

(a) In sub-section (1), for the words “except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance office function, shall, if it appears to him that such instrument is not duly stamped, impound the same”, the words “except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his function, shall, if it appears to
him that such instrument is not duly stamped, impound the same whether or not such instrument is valid in law.” Shall be substituted;

(b) In sub-section (2);

(i) In the opening portion the word, “in the state” shall be omitted;

(ii) In the proviso in clause (a) for the words and figures, “Chapter XII or Chapter XXXVI of the Code of the Criminal Procedure, 1898”, the words and figures, “Chapter IX or part D of Chapter X of the Code of Criminal Procedure, 1973” shall be substituted;

(c) After sub-section (3), the following sub-sections shall be inserted, namely;

(4) When the person refer to in sub-section (1) detects that any instrument or a copy thereof is not duly stamped, he shall fought with make a reference of such matter to the Collector.

(5) The collector may, either suo moto or on a reference made to him, call for original instrument for ascertaining whether it is duly stamped or not and in case, the original instrument is not produced within the period specified time by the Collector, he may require the payment of the proper duty on the amount required to make-up such duty together with the penalty as provided in clause (b) of sub-section (1) of Section 39.”.”

(11) (1) “In clause (a), for the words, “a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.”, the words, “a penalty of two per cent of the deficient portion of stamp duty for every month or part thereof, from the date of execution of instrument or one hundred rupees, whichever is more” is substituted”.

(2) “In clause (d), for the words and figures, “Chapter XII of Chapter XXXVI of the Code of Criminal Procedure, 1898”, the words and figures, “Chapter IX or part D of Chapter X of the Code of Criminal Procedure, 1973”, shall be substituted”.”
For Section 67 of the principle act, the following sub-section shall be substituted, namely;

“Every public officer having in his custody any registers, books, records (electronic or otherwise), papers, documents or proceedings, the inspection thereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty shall, at all reasonable time, permit a person who has been authorized in writing by the Collector to make inspection of such registers, books, papers, documents, records (electronic or otherwise) and proceedings or to take such notes and extracts thereof, as he may deem necessary, without free or charge or where necessary, to seize and to impound under Section 33.”

After Section 67 of Principle Act, the following section shall be inserted namely;

“67A (1) Where the Collector has reason to believe, any fraudulent activities are being conducted or any of the instruments specified in Schedule has not been charged with duty at all, or has been incorrectly charged with duty and that any information, registers, books, records (electronic or otherwise), papers, documents or proceedings relating to such instrument are kept in any premises, he shall record his reasons in writing and authorize an officer not below the rank of sub-registrar as defined in Section 6 of the Registration Act, 1908, to call for necessary information or to enter upon such premises to inspect them or to take notes and extract thereof as such officer deems necessary or to seize and to impound them under Section 33.

(2) Every person, who has been required by the officer authorized under sub-section (1) to produce the information registers, books, records (electronic or otherwise), papers, documents or proceedings shall produce the same and all reasonable time, permit such office to inspect them and to take such notes and extract thereof, as he may deem necessary.”

After sub-section (2) of Section 46 following sub-sections shall be inserted;

(3) “Notwithstanding anything contained in any law or contract to the contrary, the Collector may, at any time or from time to time, by notice in
writing, a copy which shall be forwarded to the person against whom stamp
duty dues are pending, at his last known address require-

(a) Any person from whom any amount of monies is due, or may become
due to a person, who has to pay stamp duty dues, on whom notice has
been served under sub-section (3) or

(b) Any person who holds or may subsequently hold monies for or on
account of such person, who has to pay stamp duty dues, to pay to the
Collector, either forthwith upon the monies becoming due or being
held or within the time specified in the notice (but not before the
monies become due or is held as aforesaid) so much of the monies as is
sufficient to pay the amount due by the person in respect of the arrears
of stamp duty, penalty or interest under this Act, or the whole of the
money when it is equal to or less than that amount.

(4) (a) Where during the pendency of any proceedings, the Collector is of the
opinion that for the purpose of protecting the interest of Government
revenue, it is necessary to do so, he may by order in writing attach
provisionally any property belonging to person; from whom dues are to
be recovered, in such manner as may be prescribed.

(b) Every such provisional attachment shall cease to have effect after the
expiry of a period of one year from the date of order made under sub-
clause (a) of sub-section (4).

(5) Where a person after any stamp duty has become due from him creates
a charge on or parts with the possession by way of sale, mortgage,
exchange or any other mode of transfer whatsoever of any office
property in favour of any other person with the intention of defrauding
Government revenue, such charge or transfer shall be void as against
any claim in respect of stamp duty or any other sum payable by the
person from whom dues are to be recovered.

(6) Notwithstanding anything to the contrary contained in any law for the
time being in force, any amount payable by a person on account of
stamp duty, interest or penalty for which he is liable to pay to the
Government shall be a first charge on the property of such person”."
(15) “In sub-clause (iii) of clause (g) of Section 2 after the words “every decree of
final order of any civil court” following words is inserted “every final order of
a revenue authority;”.”
STATEMENT OF OBJECT AND REASONS

It is proposed to amend the definition ‘conveyance’. So that stamp duty shall be charged on orders issued by revenue authorities; by which property whether movable or immovable is transferred to, or wasted in, in any other person, *inter vious*, in which is not otherwise specifically provided by the Schedule-I.

Section 3 of the Bombay Stamp Act, 1958, is so proposed to amend that in absence of original copy of copy duplicate copy can be chargeable for Stamp Duty. For the reason of the simplicity in calculation of Stamp Duty Section 3A is proposed to be deleted. As it is found necessary to insert specific provision for amnesty scheme; new section is proposed to be inserted.

Proposition is for shifting the liability to pay Stamp Duty from Buyer to Seller by making necessary change in Section 30 of the Principal Act. It is proposed to empower the stamp duty collecting authority by making provisions in the Act. Procedural part of adjudication is taken care of by making proposal to insert provisions in Section 31.

It is proposed to give powers to the Collector of a Civil Court for the smooth execution of Section 32A. At present recovery of pending dues is a major issue, hence proposition is to empower stamp duty collecting authority for impounding, the documents along with powers of search and seizures.

(Name of the Revenue Minister)
MEMORANDUM REGARDING DELEGATED LEGISLATION

This bill involves the delegation of legislative power in following respect:-

Clause 1:- Sub-Clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Place:

Date: (Name of the Revenue Minister)

By order and in the name of the Governor of Gujarat.
12.8.15. Propositions on Articles of Schedule I

Schedule I of Bombay Stamp Act, 1958 contains 59 different Articles. Schedule I gives details of description of instruments, rate of proper stamp duty and kind of stamps to be used. The articles themselves are numerous and might appear to have been devised meticulously. The alphabetical arrangement is undoubtedly convenient and there is sufficient cross referencing; a feature not often noticed in legislative manners. Notwithstanding this scaffolding of categories created by the legislature for building up its own scheme of taxation, disputes do arise in practice as to whether a particular instrument falls in one category or the other in so far as such disputes arise from the avoidable fact that human relationships are of an infinite variety and people do not always enter into transactions with the articles of the Stamp Act in mind, such disputes may be difficult to avoid. But, in so far as the disputes arise by reason of obscurity or ambiguity in the description of an instrument in a particular article or by reason of avoidable overlapping with a view to considering whether any improvement could be devised, so that disputes might be reduced in frequency and complexity, even if they cannot be totally eliminated. Such amendment would reduce the occasions for resorting to the provisions in Sections 4 to 6 of the Bombay Stamp Act, 1958 which might be described as designed to operate in the last resort when the court must decide the dispute one way or the other in order to determine the proper amount of duty chargeable. There is no specific proposition to suggest any substantial changes regarding the rate structure in respect of the instruments.

12.9. A Clincher on Stamp Duty

Finally, it is said that only perfection cannot be improved. No tax can be perfect, Stamp Duty cannot be an exception to that, as a poet has said, “Whoever hopes a faultless tax to see; hopes, what never was, or is, or e’er shall be.”