

PROVISIONS, APPLICABILITY AND RECENT AMENDMENTS TO THE MAHARASHTRA STAMP ACT, 1958

by

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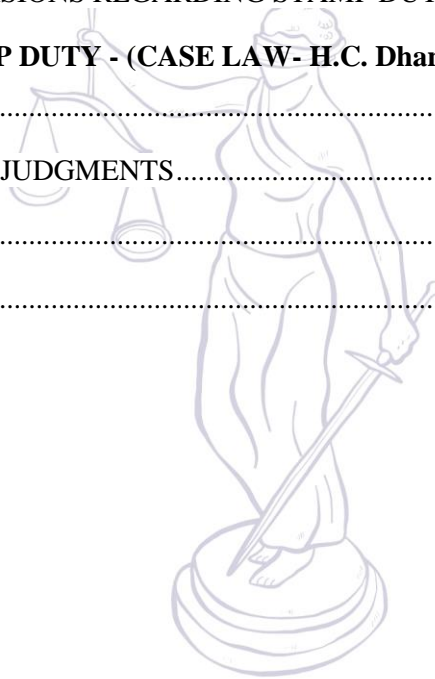
ABSTRACT

This paper deals with the Maharashtra Stamp Act, 1958 and the recent amendments related to the same. Stamp Duty is an important part of Land Law and the relevant provisions, application and relevant judgments of the same are discussed in the paper. Stamp duty is charges by the government levied on documents or instruments which have certain transactional nature which forms a part of the government exchequer. It is required to pay the adequate stamp duty as regards to the Maharashtra Stamp Act, which mentions the rate of stamp duty applicable on specific instruments such as transfer, agreement, conveyance, etc. Recent cases of stamp duty evasion have been rising in the State of Maharashtra which has led to certain amendments in the Maharashtra Stamp Act, 1958 which has also been discussed herein. The author has taken up the case law of *Trustees of H.C. Dhanda Trust v. State of Madhya Pradesh and Ors* of 2020, to analyze one such case of stamp duty evasion and has commented upon the judgment delivered therein. This paper duly encompasses all aspects of stamp duty in consonance with the Maharashtra Stamp Act, 1958 and discusses the measures which could bring about more clarity upon the current laws of stamp duty and consequence of evasion, in accordance with the stamp duty law in the state of Maharashtra.

Key Words: Maharashtra Stamp Act, Land law, Stamp duty evasion, Instruments, Amendments.

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1. INTRODUCTION

1.1 DEFINITION OF STAMP DUTY

Stamp Duty is a form of tax payable to the State Government for any transaction through an instrument or document occurring in the state of Maharashtra under the provisions of the **Bombay Stamp Act, 1958**.¹ Stamp duty is payable not for any specific transaction between two parties but rather for the contents of the documents which specifies the rights or liabilities. Any information which may be important for the purposes of calculating stamp duty must be duly mentioned in the document/instrument. **If absent, the Stamp Duty Valuation Officer can ask for details on the same.**²

Eg: In case of a document of transfer of property, several crucial details such as carpet area/built up area of the property, number of floors in the building area where it is located, etc are relevant details.

There are 63 types of instruments/documents which does attract stamp duty under the Act.³ Some of the more important and relevant ones are:

- **Agreement**
- **Conveyance**
- **Gift**
- **Exchange**
- **Certificate of Sale**
- **Deed of Partition**
- **Deed of Settlement**
- **Lease by Way of Assignment**

The amount of Stamp Duty chargeable can be found in the relevant provisions of Bombay Stamp Act which give an exact assessment of the respective rates⁴. The various categories of

¹ Archana Balasubramanian, *India: Stamp Duty and its Relevance*, Mondaq, (accessed September 5, 2022), <https://www.mondaq.com/india/contracts-and-commercial-law/1167220/stamp-duty-and-its-relevance>

² Doingbusinessinmaharashtra.org, https://www.doingbusinessinmaharashtra.org/Stamp_Duty_on_Transfer_Assets.aspx (accessed Sept 5, 2022)

³ Baldeo Prasad, *Indian Stamp Act, No 1 of 1879*. 14, London Printing Press 1879.

⁴ James Alm, Patricia Clark Anneze, Arbind Modi, *Stamp Duties in Indian States: A Case for Reform 5*, (World Bank Publications 2004)

transactions as per the documents is set out in 62 articles which is present in Schedule 1 appended to the BSA. The type of each document may vary and is therefore further divided into three categories:

- *Instrument or document which has a fixed or unchanged stamp duty irrespective of the amount mentioned in the document.*
- *Instrument or document whose stamp duty varies with the value mentioned in the document.*
- *Instrument or document that attracts stamp duty based on the consideration set forth or the market value whichever is higher.*

Note: For ascertaining stamp duty on documents based on Categories I and II, the Schedule I can be referred to. However, documents falling under Category III would require an expert in valuation of stamp duty on documents.

Sec 30 of the Act states upon whom the liability of payment of stamp duty falls.

- *In the absence of any condition to the contrary, the stamp duty shall be paid by the purchaser.*
- *In cases of lease or Agreement to lease, stamp duty shall be paid by the lessee.*
- *In cases of instruments of exchange, it is to be paid by the parties in equal amounts.*

2. ANALYSIS

The Bombay Stamp Act, 1958 was into force from 16th February, 1969 and is applicable in the whole state of Maharashtra. The Act is intended to levy stamp duty on instruments and documents transacted in the State of Maharashtra. It is applicable on such instruments and documents executed in the state or sent for execution in Maharashtra. Basically, the Bombay Stamp Act, 1958 levies a certain amount of stamp duty on instruments/documents whereby any right or liability is, or purports to be, created, transferred, recorded, limited, extinguished or extended in any manner prescribed. **Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions is in general, obligated to, if it appears to him that such instrument is not duly stamped, impound the same.** Impounding or confiscating of instruments is to be performed by any person having the authority to receive evidence either through law or consent of parties and in charge of any public office if it appears to him that the document so produced before him is not duly stamped irrespective of whether the document is or is not legally valid. Such impounded instrument is to be produced before the Collector of Stamps to recover any stamp duty deficit on the same which is payable to the Collector along with a **penalty rate of 2% per month** on the amount of stamp duty adjudged to be evaded. However, the cap on the penalty rate is 200% on the amount of stamp duty so evaded.⁵ In addition, the accused can be prosecuted under **Section 42** of the BSA. One of the many means through which evasion of stamp duty is carried out is through non-disclosure of all facts and information relevant in determining the appropriate duty for the same. **Section 62 of the Bombay Stamp Act (BSA) states that any person which also includes persons employed or concerned in preparation of the instrument who with intent to defraud the government executes any instrument without setting forth therein the full and true facts or does any other act calculated to deprive the government of any duty or penalty under the Bombay Stamp Act is liable to be prosecuted under the said Act.**

⁵ Niket Khandelwal, *Stamp Duty Intricacies in India*, iPleaders, accessed Sept 5, 2022, <https://blog.ipleaders.in/stamp-duty-intricacies-india/>

2.1 ADJUDICATION OF STAMP DUTY IN BSA

Section 31 of the Bombay Stamp Act deals with the adjudication of stamp duty on an instrument. Adjudication determines the value of the stamps provided in each district. The value or chargeability of the stamps can be determined by providing:

- *Original document/s along with a single copy of the same.*
- *Information in Form II of the Bombay Stamp determination of correct market value of the property Rules 1981 in the form of affidavit on a Stamp paper.*
- *To the Collector of Stamps of the respective District, who is in charge of said Adjudication.*

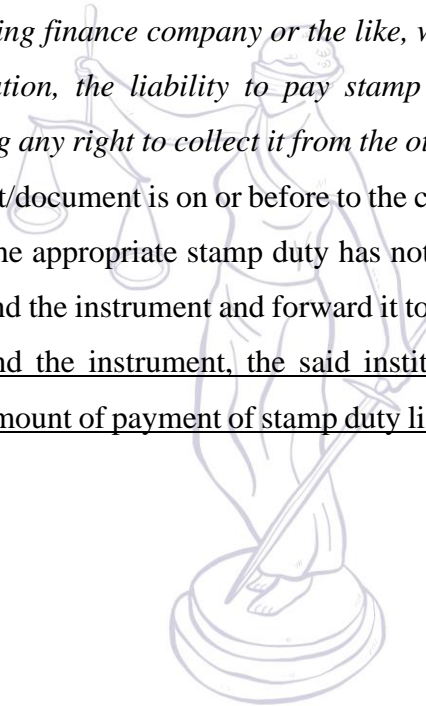
2.2 APPEAL AGAINST ADJUDICATION

If the stamp duty, as adjudged by the Collector of the District is not agreeable or is viewed by the party by whom stamp duty is payable to be inaccurate, he/she has the means to go for an appeal against the adjudication to the Chief Controlling Revenue Authority, as provided in **Section 53 of the Bombay Stamp Act**. Sec 28 of the Bombay Stamp Act casts the duty of full and honest disclosure of all facts and circumstances relevant to the transactions carried out by means of said instrument. **The type of transactions as determined by the Authority is pivotal in determination of the correct stamp duty that ought to be paid.**

Note: Stamp duty is usually not payable on the title or the heading of the document but rather is dependent on the recitals as mentioned in the document.

2.3 INSERTION OF SEC 30 A IN BSA

After the insertion of Section 30, Section 30A was added to the Act⁶. It contains details of stamp duty payable by financial institutions. *Notwithstanding anything contained in Section 30, Section 30 A states that if any instrument mentioned in clause a) to g) of the Stamp Act is executed on or subsequent to the commencement of the Maharashtra Tax Law (Levy and Amendment) Act, 2013, in favor of or by any financial institutions such as banks, non-banking financial companies, housing finance company or the like, which creates any right in favor of any such financial institution, the liability to pay stamp duty shall be on such financial institution without affecting any right to collect it from the other party.* In any case wherein the execution of the instrument/document is on or before to the commencement of the Maharashtra Tax Law Act, 2013, and the appropriate stamp duty has not been paid, it is the responsibility of the institution to impound the instrument and forward it to the Collector. If the said financial institution fails to impound the instrument, the said institution would become liable for a penalty equivalent to the amount of payment of stamp duty liable to be paid on such instrument.

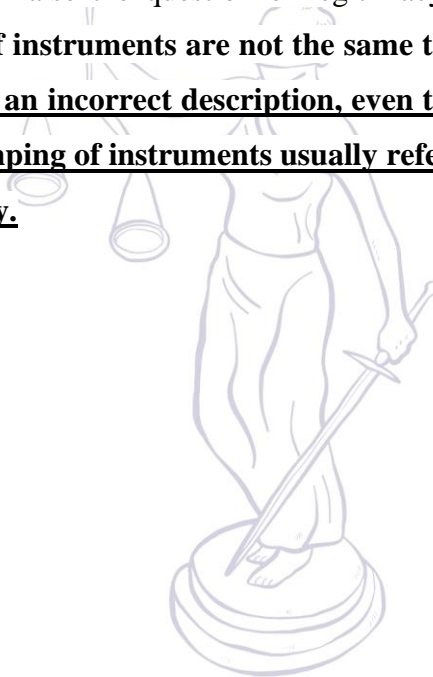


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⁶ Deepak Diwan, Kabir Diwan, Bharat's Commentary on Indian Stamp Act with Central/State Acts & Rules 49 (Bharat Law House Pvt Ltd 2020)

2.4 IMPORTANT PROVISIONS REGARDING STAMP DUTY

The non-payment or an inadequately stamped instrument would be liable to be deemed as inadequate payment of stamp duty even if the said inadequacy was caused by an accident or mistake. This could result in impounding of instrument and levied penalty through no intention of defrauding. Hence it becomes a necessity that the required amount is paid in accordance with the law. With regards to evidence while presenting certain documents insufficiently stamped, the issue of payment of stamp duty is required to be brought to the notice of the court at the earliest in order to raise the question of legitimacy of the same. **‘Improper’ and ‘insufficient’ stamping of instruments are not the same thing. Improper can be taken to be an instrument having an incorrect description, even though it is sufficiently stamped whereas insufficient stamping of instruments usually refers to the inadequacy of amount of payment of stamp duty.**



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3. EVASION OF STAMP DUTY (CASE LAW- *H.C. Dhanda Trust V. State Of Madhya Pradesh And Ors*)

Stamp Duty evasion has been increasing in recent times with a number of cases coming forward of stamp duty evasion worth crores. In 2018, an FIR was issued against 28 people including builders, registrars and sub-registrars for allegedly evading stamp duty of about 5 crores resulting in a massive loss to the government exchequer. The informant disclosed that through tampering of software, the rate of stamp duty of properties within the jurisdiction of Municipal Corporation of Gurugram was reduced from 7% to 5% through the involvement of builders and registrars who colluded to show properties in Sihi and Kherki Daula as being outside of the purview of municipal limits. Cases such as these are expected to invite stringent punishment. However, it was held in the case of *Trustees of H.C. Dhanda Trust v. State of Madhya Pradesh and Ors.* Of 2020 that the lack of adequate stamp duty paid by the Appellants i.e. Trustees of H.C. Dhanda could not justify the imposition of ten times the deficit amount by the Collector. The reasoning given was that the purpose of penalty in cases of evasion of stamp duty is **generally preventive and not retributive**. In this case penalty of ten times the deficit which was the maximum which could be imposed could not be seen as preventive. Therefore, The court held that imposition of penalty has to be exercised in a fair and reasonable manner and that *'the amount of penalty not exceeding ten times is not an amount to be imposed as a matter of force.'* Considering the facts and circumstances, it was held that it was not a case for imposition of maximum penalty and passed an order to reduce the same by half i.e. five times the deficient stamp duty payable.

3.1 OTHER LANDMARK JUDGMENTS

- *Omprakash v Lakshmi Narayan*⁷

In this case, Section 35 of was the subject of interpretation. Sc held that any authority with the power of receiving evidence shall not admit it unless the same is properly stamped. Such a document needs to be adequately stamped before any possibility of

⁷ 2014 (1) SCC 618

taking it as evidence arises. In the matter of an insufficiently stamped instrument, it would attract a penalty rate of ten times the amount deficiency of payment.

- *SMS Tea Estates Pvt Ltd. V Chandmari Tea Co Pvt Ltd.*⁸

SC held that in case of an arbitration agreement present in a document, which is not duly stamped, it cannot be executed without payment of appropriate stamp duty. Such an instrument is liable to be impounded until payment.

- *Hindustan Steel v. Dilip Construction Co*⁹

This case is a cornerstone for understanding the main aim behind the stamp duty legislation. Held that the main objective behind this particular legislation was to formulate a revenue stream for the government. Also, it was held that certain provisions of the legislature such as provisions for stamp duty will not hinder or halt the proceedings of a case i.e. **the party would not lose a case basis only the lack of proper stamping of instruments presented as evidence in the court.**

- *Chillakuri Gangulappa v RDO, Madanpalle and Ors*

The court in this case provided a step-by-step procedure regards impounding of instruments when found to be unduly stamped.

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⁸ (2011) 14 SCC 66.

⁹ 1969 AIR 1241

4. CONCLUSION

Recently, The Governor of Maharashtra on, February 9, 2021, promulgated the Maharashtra Stamp (Amendment and Validation) Ordinance, 2021 with immediate effect. Two key amendments to the Maharashtra Stamp Act, 1958¹⁰ have been introduced in relation to stamping of documents about multiple transactions and stamp duty rates in case of mortgage by deposit of title deeds and mortgage deed. These amendments were earlier deliberated by the Maharashtra Cabinet and approved on December 9, 2020. The recent changes brought about by the Maharashtra Stamp (Amendment and Validation) Ordinance 2021 has emphasized on the applicability of the Coastal Gujarat Judgment in the state of Maharashtra¹¹. To reiterate, in the Coastal Gujarat Judgment, the Hon'ble Supreme Court of India interpreted the expressions '*distinct matters*' and '*distinct transactions*' as appearing in **Article 5 of the Gujarat Stamp Act, 1958** (Gujarat Stamp Act) and had laid down the principle to look through the underlying transactions to determine the stamp duty incidence. However, the Ordinance has been introduced with retrospective effect dating as far back as 11 August 2015 (the date of the Coastal Gujarat Judgment), it is to be observed whether the Government of Maharashtra applies the Ordinance and whether the past transactions covered by the Ordinance would also be re-examined especially where the mortgage documents have been adjudicated in consonance with the then applicable law.¹² The Ordinance as well as the amendment to **Section 5 of the Maharashtra Act may be seen as a step taken to increase the revenue of Maharashtra although it currently has one of highest stamp duty rates in India**. Coming to the punishment for stamp duty evasion, reducing the penalty on evasion which was done in the above discussed case of *H.C. Dhanda Trust v. State of Madhya Pradesh and Ors.* Of 2020, in my opinion, would not be a concrete way of prevention of further such incidents occurring in the future. This judgment, in my opinion is overreach of the Judiciary wherein the powers or discretion of the Collector to levy duty according to his own discretion has been violated. Seeing the growing number of stamp evasion cases, increasing the penalty to ten times the amount of the deficit is by no means, violation of the legislative intent and is within the ambit

¹⁰ Recent Amendments to the Maharashtra Stamp Act, AZBPartners, 2021, https://www.doingbusinessinmaharashtra.org/Stamp_Duty_on_Transfer_Assets.aspx accessed on Sept 5, 2022.

¹¹ Rolwine Alwa, *India: Amendments to Maharashtra Stamp Act*, Mondaq, 2022, <https://www.mondaq.com/india/financial-services/1158386/amendments-to-maharashtra-stamp-act-increase-in-the-ceiling-on-stamp-duty-for-security> accessed on Sept 6, 2022.

¹² *Cabinet Approves Amendment to Maharashtra Stamp Act, 1958*, Free Press Journal, 2021, <https://www.freepressjournal.in/mumbai/cabinet-approves-amendment-to-maharashtra-stamp-act-1958-deets-inside> accessed on Sept 5, 2022.

of the Act. It is not up to the Judiciary to interpret and take into one's hands the prerogative of the Collector, which has been lawfully delegated to him, especially when there has not been any violation of any provision of the law. In fact, the imposition of the maximum penalty is justified in the said case where the amount of loss incurred by the exchequer is substantial and such strict penalties become necessary, in the prevention of further cases of stamp duty evasion in India.



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5. REFERENCES

BOOKS REFERRED

- Baldeo Prasad, *Indian Stamp Act , No 1 of 1879*. 14, (London Printing Press 1879).
- James Alm, Patricia Clark Anneze, Arbind Modi, *Stamp Duties in Indian States: A Case for Reform 5*, (World Bank Publications 2004)
- Deepak Diwan, Kabir Diwan, *Bharat's Commentary on Indian Stamp Act with Central/State Acts & Rules 49* (Bharat Law House Pvt Ltd 2020)

JOURNALS AND ARTICLES REFERRED

- Archana Balasubramanian, *India: Stamp Duty and its Relevance*, Mondaq, <https://www.mondaq.com/india/contracts-and-commercial-law/1167220/stamp-duty-and-its-relevance>
- Doingbusinessinmaharashtra.org, https://www.doingbusinessinmaharashtra.org/Stamp_Duty_on_Transfer_Assets.aspx
- Niket Khandelwal, *Stamp Duty Intricacies in India*, iPleaders, <https://blog.iplayers.in/stamp-duty-intricacies-india/>
- Recent Amendments to the Maharashtra Stamp Act, AZBPartners, https://www.doingbusinessinmaharashtra.org/Stamp_Duty_on_Transfer_Assets.aspx
- Rolwine Alwa, *India: Amendments to Maharashtra Stamp Act*, Mondaq, 2022, <https://www.mondaq.com/india/financial-services/1158386/amendments-to-maharashtra-stamp-act-increase-in-the-ceiling-on-stamp-duty-for-security>

- *Cabinet Approves Amendment to Maharashtra Stamp Act, 1958*, Free Press Journal, 2021, <https://www.freepressjournal.in>



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