
THE INDIAN STAMP
ACT, 1899

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THE INDIAN STAMP ACT, 1899

Preamble states it is “the law relating to stamps which consolidates and amends the law relating to stamp duty”.

It is a fiscal legislation envisaging levy of stamp duty on certain instruments.

The basic purpose of Indian Stamp Act, 1899 is to raise revenue for Government

Applicability: Indian Stamp Act, 1899 extends to the whole of India except the State of Jammu and Kashmir. The Indian Stamp Act, 1899 is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899 with amendments to the same to suit the transactions peculiar in each State.

No. of Chapters in the Act: Eight (8)

No. of schedules in the Act: one (1) (specifies the rates of stamp duties on various instruments)

Power of Parliament in respect of Stamp Duty

- Parliament can make law in respect of stamp duty
- It can prescribe rates of stamp duty
- Rates prescribed by parliament in respect of bill of exchange, cheques, transfer of shares prevails all over India
- In case of states, stamp duty rates are prescribed by individual states
- The payment of proper stamp duty on instruments bestows legality on them.
- Such instruments get evidentiary value whenever produced in Courts of law.
- The stamp papers impressed with the desired amount of stamp duty are used both for judicial and non-judicial purposes

Power of Parliament in respect of Stamp Duty

- For the sake of ensuring uniformity of rates of duty with regard to certain instruments of a commercial nature such as bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, the power to prescribe the rates of duties on such commercial documents is vested with the Union Legislature and the power to reduce, remit or compound such duties on the commercial documents is also vested with the Central Government (Section 9 of the Indian Stamp Act).
- On the other hand the power to prescribe the rates of duties on non-commercial instruments is vested with the State Legislature and the power to reduce or remit such duties on non-commercial documents is with the State Government (Section 9 of the Indian Stamp Act).

List of Constitution dividing power to levy stamp duty among State and Central government

entry in Constitution	Power to levy stamp duty	instruments on which rates of stamp duty can be levied
1. Union List Entry 91	Vested only in Central Govt. The power to reduce or remit duties on these instruments is vested in the Union Government as per Section 9 of the Act. Apart from above, if CG levies stamp duty on other instruments, the rate will be applicable only in Union territories.	Mostly of commercial character. i. bill of exchange, ii. Cheques, iii. promissory notes, iv. bill of lading, v. letters of credit, vi. transfer of shares, debentures, viii) proxies and vii. receipt. W.r.t. above the stamp duty rates prescribed by Central Govt. is applicable throughout India **except Jammu & Kashmir.**

To be continued

List of Constitution dividing power to levy stamp duty among State and Central government

entry in Constitution	Power to levy stamp duty	instruments on which rates of stamp duty can be levied
2. State List, Entry 63	1. State Government (S/G) has powers to fix stamp duties on all documents except bill of ex-change, cheques etc.	Rates prescribed by S/G will prevail in that State. S/G can make law for other aspects of stamp duty also (i.e. matters other than quantum of duty).
3. List iii, Concurrent List: entry 44	It covers the matters in respect of which both Union and State Govt can make law.	However, if there is conflict between State law and Union law, the Union law shall prevail. This leads to different rates of stamp duty in different states w.r.t. same transaction. Central Govt. rates will be applicable in Union Territory and State Govt. rates will be applicable in that State.

The Indian Stamp Act, 1899 is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899 with amendments to the same to suit the transactions peculiar in each State

Important Definitions

Conveyance

The term "conveyance" includes a conveyance on sale and every instrument by which property (whether movable or immovable) is transferred inter vivos and which is not otherwise specifically provided for by Schedule. It does not include a will. [Section 2(10)]

Following are chargeable as conveyance: All transfers of property whether movable or immovable, on sale (which are not otherwise specially provided for by the Schedule), are chargeable as conveyances.

Not chargeable as conveyance: Transfers which are otherwise provided for in the Schedule are Composition Deed, Exchange of Property, Gift, Lease, Mortgage, Reconveyance, Release, Settlement, Transfer, Transfer of Lease and (Declaration of) Trust.

To be continued

Important Definitions

Conveyance: The expression “inter vivos” means during lifetime.

Instrument

i. Section 2(14) defines an “instrument” to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

ii. The definition is an inclusive definition, and is not necessarily restricted to those documents which are specifically mentioned in the definition.

iii. Briefly stated, an instrument includes conveyances, leases, mortgages, promissory notes and wills, but not ordinary letters or memoranda or accounts.

Following instances may be noted:

i. An unsigned draft document is not an “instrument” (because it does not create or purport to create any right, etc.).

To be continued

Important Definitions

ii. An entry in a register, containing the terms of hiring of machinery is an “instrument”, where it is authenticated by the thumb impression of the hirer. (Reason is, that it purports to create, a liability etc.)

iii. A letter which acknowledges receipt of a certain sum as having been borrowed at a particular rate of interest and for a particular period and that it will be repaid with interest on the due date is an “instrument”.

[These examples show, that the law looks to the substance and effect (or intended effect) of the text of the instrument and not the physical medium through which it is recorded.]

iv. The instrument and not the physical medium through which it is recorded.]

Important Definitions

Impressed stamp: it includes,

a. Labels affixed and impressed by the proper officer; and
b. Stamps embossed or engraved on stamp paper. Special adhesive stamps are labels.

The instrument is duly stamped if it has been duly stamped at the time of execution and is admissible in evidence, though the stamp is subsequently removed or lost.

Bond: A “bond” includes,

a. Any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
b. Any instrument attested by a witness not payable to order or bearer, whereby a person obliges himself to pay money to another; and
c. Any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

No document can be a bond unless it is one which, by itself, creates the obligation to pay the money.

Important Definitions

Chargeable:

i. As applied to an instrument executed or first executed after the commencement of the Act means chargeable under the Act and

ii. As applied to any other instrument, chargeable under the law in force in India when such instrument was executed or

iii. Where several persons executed the instrument at different times, first executed.

Receipt: It includes any note, memorandum or writing:

a. Whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received; or

b. Whereby any other movable property is acknowledged to have been received in satisfaction of a debt; or

c. Whereby any debt or demand, or any part of a debt or demand is acknowledged to have been satisfied or discharged; or

Important Definitions

c. Which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person. [Section 2(23)]

Marketable Security: “marketable security” means a security of such a description as to be capable of being sold in stock market;

i. In India or
ii. In the United Kingdom.

Stamp:

i. Means any mark, seal or endorsement by any agency or person duly authorized by the State Government; and
ii. Includes an adhesive or impressed stamp for the purposes of duty chargeable under this Act.

Instruments chargeable with duty (Sec . 3):

i. An instrument is to be chargeable with duty of the amount specified in Schedule I i.e. instruments not mentioned in Schedule I are not subject to stamp duty.
ii. Schedule I gives the list of instruments liable to stamp duty.
iii. The liability of an instrument to stamp duty is determined by the Act in force at a time the instrument is executed.

Section 3 provides that the following instruments shall be chargeable with duty of the amount indicated in Schedules:

1. Instruments mentioned in Schedule I which, not having been previously executed by any person, are executed in India. Where an instrument is executed in India, it does not matter whether it relates to property situated or to any matter or thing to be done in or out of India, the instrument is chargeable with duty.

Instruments chargeable with duty (Sec . 3):

2. Bills of Exchange and Promissory Notes executed (drawn/made)outside India but any of the following is done in India:
    i. Accepted/paid or
    ii. presented for acceptance/payment or
    iii. endorsed, transferred or otherwise negotiated in India.

    However, the bills of exchange which are payable on demand are not subject to stamp duty. Also Bills of Exchange and Promissory Notes executed outside India and acted upon outside India are also not covered by Indian Stamp Act.

To be continued

Instruments chargeable with duty (Sec . 3):

3. Instrument (other than Negotiable instruments) executed out of India are chargeable to duty if they relate to some property situated in India or to some matter or thing done or to be done in India.

Instruments mentioned in Schedule i:

1. Mortgage deed
2. Share Warrant
3. Trust Deeds
4. Instrument of partnership
5. Certificate of sale
6. Memorandum of agreement
7. Power of Attorney
8. Lease Agreement
9. Partition Award
10. Protest of bill or note (certificate by notary of dishonor of bill/note)

Instruments chargeable with duty (Sec . 3):

Some other examples are:

1. Court order sanctioning Amalgamation scheme
2. Instrument transferring MP/IMP
3. Sale of right to catch fish in lake.

Instruments chargeable with duty (Sec . 3):

However no duty is chargeable in respect following instruments:

1. Instruments for the sale, transfer or other disposition of any ship or vessel.
2. Any instrument executed by, or on behalf of, or in favor of, the government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;
3. Any instrument executed, by, or, on behalf of, or, in favor of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

How to decide nature of instruments?

What is to be considered while deciding the nature of the instrument- Substance of transaction or description (title or heading) of the instrument?

i. It is the substance of the transaction as contained in the instrument and not the form of the instrument that determines the stamp duty, though the duty is leviable on the instrument and not on the transaction.

ii. The entire document has to be looked upon to decide the true description of the transaction to know the stamp duty applicable to it.

iii. Where a single instrument contains several purposes, the instrument as a whole should be read to find out its dominant purpose.

Single Transaction effected by several instruments (Section 4)

If several instruments are employed for completing one transaction, stamp duty is payable only on the principal instrument at the prescribed rates and on the other instruments nominal stamp duty is payable (Section 4).

The conditions of sec 4 are:

i. Several instruments executed for completing a single transaction.

ii. The transaction must be sale/mortgage/ settlement.

Parties may determine for themselves which of the instruments will be employed shall be deemed to be principal instrument.

Exceptions to sec 4

i. Alteration of the term of first document

ii. Mortgage of part of property in favor of vendor.

Instrument relating to several distinct matters (Section 5)

i. Any instrument, comprising or relating to several distinct matters, shall be chargeable with the aggregate amount of duties with which separate instrument, each comprising or relating to one of such matters, would be chargeable under Indian Stamp Act.

ii. Where several distinct matters and transaction are embodied in a single instrument, the instrument is called the multifarious instruments.

Instrument relating to several distinct matters (Section 5)

Meaning of distinct matters: The expression “distinct matter” connotes distinct transactions.

The term distinct matter means the matters of different kinds such as:

i. Agreement for service and a lease.

ii. Similarly where a document under consideration is both an agreement for dissolution of a partnership and a bond, it is chargeable under section 5 with aggregate duty with which two such separate instruments would be chargeable.

Matters not considered to be distinct matters

Following matters are not considered to be distinct matters:

i. An agreement to refer any dispute whatever arising out of a contract.

ii. Covenants (terms and conditions) in a mortgage of land that the mortgagor will pay the taxes of the land.

iii. Documents purporting to be mere acknowledgement of other transaction.

iv. A provision in a deed of transfer of shares in a company that the transferee will hold the shares subject to the rules and regulations of the company.

Test of ‘Principal and Ancillary’ Transactions

i. The test is – “What is the leading object? Which is principal and which is ancillary?

ii. If an instrument taken with reference to its primary object is exempted then stamp duty cannot be charged merely because matter ancillary to it is included and that matter is chargeable to stamp duty.

Applicability of section 5:

i. If there is only one leading object, sec 5 will not apply.

ii. But if there is > one distinct matters, sec 5 is applicable.

Instruments coming within several descriptions (Sec 6 - multi description instruments)

i. Section 6 applies only where the instrument contains only one matter, but falls within two or more items in the Schedule. Section 6 covers cases where the instrument does not cover distinct matters but is ambiguous in regard to the various entries given in Schedule-I to the Act. In such cases, Section 6 clearly provides that the highest of the duties mentioned against the various descriptions against which the instrument is likely to fall is to be paid.

ii. The provisions of section 6 are subject to the provisions of Section 5 i.e. if the instrument is containing the distinct matters, then Section 6 shall not apply because in such situations Section 5 applies.

Instruments coming within several descriptions (Sec 6 - multi description instruments)

iii. However, nothing in the Act shall render chargeable, with duty exceeding one rupee, a counter part or duplicate, of any instrument chargeable with duty, in respect of which the proper duty has been paid.

The following types of transactions can be included in a multi-description instruments:

i. Documents of dissolution of partnership and partition deed.
ii. Bond (obligation to pay) and agreement for loan.
iii. Promissory note & Bond

Securities dealt in depository not liable to Stamp duty (Section 8A)

a. An issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped; (de-mat of securities)

b. Where an issuer issues certificate of security under Section 14 (3) of the Depositories Act, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act; (re-mat of securities)

Securities dealt in depository not liable to Stamp duty (Section 8A)

c. The transfer of:

   i. Registered ownership of securities from a person to a depository or from a depository to a beneficial owner;

   ii. Beneficial ownership of securities, dealt with by a depository;

   iii. Beneficial ownership of units, such units being units of a Mutual Fund including units of the Unit Trust of India established under sub-section (1) of Section 3 of the Unit Trust of India Act, 1963, dealt with by a depository shall not be liable to duty under this Act or any other law for the time being in force.

Power to reduce stamp duty (Section 9)

- Government can reduce or remit whole or part of duties payable
- Reduction can be for whole or part of territories and for particular class of persons
- Government can compound or consolidate duties in case of issue of shares or debentures by companies
- Government means central government in case of bill of exchange, cheque, receipt etc and
- State government in case of stamp duties on other documents.

Duties how to be paid (Section 10)

- This Section provides as to how and the manner with which the duties are to be paid and indicated on instruments by means of stamps. The Section enjoins that the State Government may make rules as regards to the description of stamps, number of stamps, etc., for being used for instruments.
- Ex : In the case of Bill of Exchange, Hundi stamps have to be used. In case of Letter of Allotment of Shares, Letter of credit, Promissory note and proxy, special adhesive stamps shall be used.

Adhesive Stamps

Use of adhesive stamps [Section 11]

The following instruments shall be stamped with adhesive stamps:	
a. Instruments chargeable with a duty or not exceeding 10 naya paisa	N.A. to parts of bills of exchange payable otherwise than on demand and drawn in sets;
b. bills of exchange and promissory notes	drawn or made out of India;
c. entry as an advocate, vakil or attorney	on the roll of a High Court;
d. notarial acts;	
e. transfers by endorsement of shares in any incorporated company or other body corporate.	

i. Adhesive stamps shall carry special words, to indicate the use to which the stamps can be put.

ii. Section 11 uses the word ‘may’ and not the word ‘shall’. This means that instruments referred to in Section 11 can also be written on an impressed stamp.

Cancellation of Adhesive Stamps (Sec.12)

Purpose of cancellation is that the same stamp cannot be used again.

If a person fails to cancel the stamp, he becomes liable to penalty u/section 63.

Sec12 (2) : Any instrument bearing an adhesive stamp which has not been cancelled is deemed to be unstamped.

Mode of Cancellation of Adhesive Stamps

Sec.12 (3): It merely lays down as a guidance one of the ways in which an adhesive stamp can be cancelled.

i. By writing on or across the stamp his name or initials, or

ii. By writing the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

Instruments on which duty is levied

Consequences of non-Compliance

If stamp is not cancelled effectively:

The Instruments shall be deemed to be unstamped

Example: A pro-note is stamped with several adhesive stamps, all the stamps must be cancelled.

And if anyone stamp is not cancelled, the instruments shall be deemed to be unstamped.

Penalty: for not cancelling stamp effectively is max. Rs.100.

Instruments on which duty is levied

Instruments stamped with impressed Stamps how to be written (Writing Paper – Section 13):

i. Instrument shall be written upon stamp paper in a manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

ii. The expression, ‘face of the instrument’ is not to be interpreted as meaning that the document must commence on the side on which the stamp is impressed or that both sides of the paper or parchment may not be written upon.

iii. An instrument need not be only on that side on which the stamp is embossed.

iv. If the instrument begins and ends on the reverse side, it is not duly stamped.

Only one instrument shall be written on one stamp paper (Sec 14)

If an instrument chargeable with stamp duty has already been written, then second instrument chargeable with stamp duty shall not be written on same stamp paper.

However, an endorsement can be made upon any instrument for the purpose of:

i. Transferring any right created/evidenced thereby.

ii. Getting the receipt of any money or goods the payment or delivery of which, is secured thereby.

The object of Section 14 is to prevent a stamped paper which has been used for one instrument, from being used for another instrument thereby avoiding payment of duty in respect of second instrument

Material Alteration (Sec 14)

A. "Material alteration" is one which;

   i. Alters (or purports to alter), the character of the instrument itself and

   ii. Which affects (or may affect) the contract which the instrument contains or alters evidence of any charge, or

   iii. Varies the liability under the instrument in any way.

An alteration which vitiates the instrument as could cause it to operate differently was also held to be a material alteration. An alteration which may affect the contract which the instrument contains is a material alteration.

Sec 15 – Consequences of not following Sec 13/14

If an instrument is written in contravention of sec13/14, it shall be deemed to be –

(i) unstamped and, (ii) to be inadmissible in evidence as not being duly stamped.

Denoting Duty (Sec 16)

As stated in Sec 4 an instrument is charged with primary instrument at rates specified in Schedule 1 and stamp duty of Rs 1/- on ancillary instruments, secondary instruments may be presented before Collector to note down the fact of duty paid on ancillary instruments or exemption thereof due to duty paid on primary instrument.

The object of this section is to save the parties from the trouble of producing the second instrument by providing that the payment of duty on the second instrument may be denoted on the first instrument by endorsement under the hand of the Collector.

In order to avail the benefit of this section, the party concerned must make an application in writing to the Collector, mentioning that the duty has already been paid on an earlier instrument, by virtue of which the second instrument is chargeable with a lesser duty or is exempted from duty. The Collector shall denote the duty paid or exemption thereof.

Instruments executed in India – When shall instrument be stamped ? (Sec 17)

i. This Section makes provision as regards the time of stamping of instruments executed in India.

ii. Stamp duty should be paid before or at the time of execution. Affixing of stamp after execution is invalid.

iii. However, Section 10A allows payment of cash into Government Treasury when there is shortage of stamps in any district or stamps of required denominations are not available, within four months from the date of its execution or first execution.

Instruments executed outside India (Sec 18)

i. This Section applies to instruments other than Bills and Notes executed out of India and received in India, which attract duty according to the law in India.

ii. A Power of Attorney executed outside India but to be acted upon in India requires to be stamped in India, and that within the time prescribed by this Section i.e., within three months after their arrival in India.

iii. If such document is presented after the expiry of the said three months but before one year from the date of its execution, the Collector, if satisfied that the omission to stamp it has been occasioned by accident, mistake or urgent necessity, take action under Section 41 & 42 to validate it. Such instruments presented after one year from the date of execution should be impounded under Section 33.

To be continued

Instruments executed outside India (Sec 18)

Section 18(2) provides that;

i. Where such instrument cannot with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector who shall stamp the same in such a manner as the State Government may by rule prescribe, with a stamp of that value as the person so taking such instrument may require and pay for.

ii. Where an instrument is brought to the Collector after the expiry of three months, the Collector may, instead of declining to stamp it, validate it under Sections 41 and 42 if he is satisfied that the omission to stamp in time was due to a reasonable cause.

Bills of exchange / Promissory notes (Sec 19)

i. Applicable to BoE payable otherwise than on demand or promissory note drawn or made out of India.

ii. They must be stamped and the stamp cancelled, before the first holder in India deals with the instrument, i.e., presents the same for acceptance or payment, or endorses transfers or otherwise negotiates the same in India.

To be continued

Bills of exchange / Promissory notes (Sec 19)

Proviso to Section 19: If;

1. At any time any bill of exchange or note comes into the hands of any holder thereof in India,
2. The proper adhesive stamp is affixed thereto and cancelled in the manner prescribed by Section 12 and
3. Such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person, and at the time required by the Act, then such stamp shall (so far as relates to such holder), be deemed to have been duly affixed and cancelled. However, nothing contained in the proviso shall relieve any person from any penalty incurred by him, for omitting to affix or cancel a stamp.

Valuation of duty

Sec	Basis of charging stamp duty on instrument	Considerati on expressed	How to calculate stamp duty?
20	Ad valorem	Money expresses in currency other than Indian currency	Convert value of instrument in Indian currency according to current rate of exchange …on the date of instrument. The Central Government notifies from time to time, in the Official Gazette the rate of exchange for conversion of certain foreign currencies into Indian currency for this purpose and such rate shall be deemed to be the current rate.
21	Ad Valorem	w.r.t. any stock or any market- able security	• Calculate the duty on the value of such stock/security. • Where the shares are quoted on the stock exchange, it is easy to ascertain the price of the shares or stock. • However, where the shares or stocks are not quoted on any stock exchange, the valuation has to be based upon the average of the latest private transactions or the value on the date of instruments itself. • If, there have been no dealings at all, then unless some other reliable evidence of market value is forthcoming the value is to be taken at par.

To be continued

Valuation of duty

Sec 22 provides that if such price or value is mentioned in the instrument for the purpose of calculating duty, it shall be presumed (until the contrary is proved) to be correct.

23	Where interest is expressly made payable by the terms of the instrument,	Such instrument shall not be chargeable with a duty higher than that with which it would have been charge- able, had no mention of interest been made therein.
	For instance, a promissory note for Rs. 10,000 is drawn with the recital of interest at the rate of 18 percent per annum, payable by the promisor; stamp is leviable on the basis that the instrument is for Rs. 10,000 only.	
23A	Where an Instrument (other than BoE/ PN) is given …..Pledge	When marketable security is deposited as a security for Money advanced/to be advanced by way of loan or for an existing or future debt
	OR	
	where such instrument. gives marketable security	for redemption of duly stamped transfer (mortgage) or as a security for duly stamped transfer
	It shall be chargeable with duty as if it were an agreement or memorandum of an agreement, chargeable with duty under Article 5(c) of Schedule I to the Act. A release or discharge of any such instrument shall be chargeable only with the like duty.	

To be continued

Valuation of duty

24	Where any property is transferred to any person i. in consideration (wholly or in part) of any debt due to him, or ii. subject to the payment or transfer of any money or stock, (whether being or constituting a charge or encumbrance upon the property or not), Such debt, money or stock is to be deemed the whole or part, (as the case may be), of the con-sideration in respect whereof the transfer is chargeable with ad valorem duty. However, nothing in this section shall affect such a certificate of sale as is mentioned in Article 18 of the First Schedule to the Act. illustrations: i. A owes B Rs. 1,000/-. A sells a property to B, the consideration being Rs. 500/- and the release of the previous debt of Rs. 1,000/-. Stamp duty is payable on Rs. 1,500/- ii. A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000/- and unpaid interest Rs. 200/-. Stamp duty is payable on 1,700. iii. A mortgages a house of the value of Rs. 10,000/- to B for Rs. 5,000/-. B afterwards buys the house from A. Stamp duty is payable on Rs. 10,000/- less the amount of stamp duty already paid for the mortgage.
	Proviso to Section 24 operates for the benefit of assignee of the mortgage When the mortgaged property is sold to the mortgagee along with other properties, the stamp duty already paid is to be deducted from the duty payable on the deed of sale.

To be continued

How to compute duty in case of annuities

Valuation of an annuity will be material, where

i. The payment of annuity or other sum payable periodically is secured by an instrument or

ii. Where the consideration for a conveyance is an annuity or other sum payable periodically.

The amount secured by such instrument or the consideration for such conveyance, as the case may be, shall be deemed to be:

i. Where sum payable is for a definite period, so that total amount to be paid can be previously ascertained, such total amount shall be deemed value.

ii. Where the payment is in perpetuity or for an indefinite period, not terminable with any life in being at the date of such instrument or conveyance the amount payable for 20 years would be taken for assessment of the duty.

   Calculated from the date on which first payment becomes due.

How to compute duty in case of annuities

iii. **Where the payment is in perpetuity or for an indefinite period, terminable** with any life in being at the date of such instrument or conveyance the amount payable for 12 years would be taken for assessment of the duty.

Calculated from the date on which first payment becomes due.

Illustration

By a document, 'A' binds himself and his posterity (descendants) on the security of some immovable property for the annual payment to a temple of Rs. 2,200/-. It is a mortgage deed, chargeable with duty calculated on 20 years' payment.

To be continued

Sec. 26 Where the value of the subject matter is indeterminate (applicable where stamp duty is leviable on ad valorem basis):

i. The object of this section is to protect the revenue, in cases where an instrument is chargeable with ad valorem duty, but such duty cannot be ascertained by reason of the fact that the amount of value of the subject matter of the instrument cannot be determined at the time of the execution of the instrument.

ii. This object is sought to be achieved by providing that the executants can value the instrument as he pleases, but he shall not be entitled to recover under such document any amount in excess of the amount for which the stamp duty is sufficient.

iii. Under the combined operation of Sections 26 and 35, a lessee under the mining lease is entitled, upon payment of the proper penalty, to recover the royalty provided for in the stamp originally affixed to the lease.

To be continued

Section 26 applies only when the instrument is chargeable with ad valorem duty and Section 26 has two provisos;

first Proviso

In the case of mining lease, the stamp duty is to be calculated on the estimated value of the royalty or the share of the produce, as the case may be.

Second Proviso: Where an instrument has, by accident or mistake, been insufficiently stamped:

The deficiency is made up in proceedings under Section 31 or 41 and the Collector having certified the amount paid, it shall be deemed to be the stamp actually used at the date of execution.

By reason of this proviso, the amount claimable under the instruments would be the amount for which the duty as certified by the Collector had been paid and not the amount for which duty was originally paid.

To be continued

Sec.27 – Consideration to be set out

Mention fully and truly in the instrument

i. The consideration and
ii. All other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty.

“Value of any property” would mean that real value of the property in the open market at the time the document was executed and not at the time when the executant acquired it.

Sec.29 – Duty by whom payable

This Section specifies the persons who should bear the Stamp Duty payable in respect of each class of Documents under the Stamp Act in the absence of any agreement to the contrary between the parties.

Sec.30 – Obligation to give Receipt in certain cases

This section imposes obligation to give a stamped receipt when a person

i. Received money in cash exceeding Rs. 20/-; or
ii. Receives a bill of exchange, cheque or promissory note for an amount exceeding Rs. 20/- in value; or
iii. Receives movable property of value exceeding Rs. 20/- in part satisfaction of a debt.

This obligation only arises when a demand for receipt is made by the person paying such money/NI/MP.

i. The primary duty of stamping lies in all cases on the person executing the instrument as Section 17 directs that the instruments chargeable with duty shall be stamped at or before executing an instrument without the same being duly stamped.

To be continued

Sec.30 – Obligation to give Receipt in certain cases

ii. Section 29 would apply only in the absence of a special agreement between the parties as stated in the opening words of the section.

iii. An agreement to bear the cost of preparation of an instrument implies an agreement to pay stamp duty also on it.

iv. Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

Mode of payment of Stamp duty or mode of stamping:

There are two modes of payment of stamp duty:

1. Adhesive Stamps; and
2. Impressed Stamps.

Sec.31 & 32 – – Adjudication as to proper Stamp

- This section provides to give a person who is in doubt about the stamp duty attracted on an Instrument the facility of getting the duty determined authoritatively by the Collector. The Section empowers the Collector to determine the duty on an instrument brought to him, whether it is already stamped or not, and executed or not. The power vested in the Collector is to be exercised subject to the proviso to Section 32, that is, within the time limit prescribed therein.

To be continued

Sec.31 & 32 – Adjudication as to proper Stamp

- Section 32 confers powers on the Collector to certify by endorsement on an instrument brought to him under Section 31 that the full duty with which it is chargeable has been paid. The instrument which must be the original instrument should be brought before the Collector for determination of duty according to the procedure laid down in Section 31. The Collector then endorses on the instrument that the duty as determined by him has been paid and the instrument is property stamped. But there are three exceptions that the Collector cannot endorse an instrument – (1) if it is an instrument executed in India but brought to him after one month of the date when it was executed or first executed, (2) if it is an instrument executed or first executed out of India and brought to him more than three months after it had been received in India, and (3) if the instrument is a promissory note or a bill of exchange, or an instrument chargeable with duty not exceeding with duty not exceeding ten naya paise.

Sec.33 – Examination and Impounding of Instruments

- Section 33 provides for the impounding of instruments not duly stamped. It imposes an obligation on Courts and public officers to examine every document produced or coming before them to ascertain, in case such document attracts stamp duty, whether it has been duly stamped. The main object of this Section is to protect the revenue, and the Court or Public Officer authorised by this section must exercise the powers under this section suo moto.

Sec.35 – Instruments not duly stamped inadmissible in evidence

- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.
- This Section provides as to how the instruments not duly stamped produced in evidence are to be dealt with for realisation of the Stamp Revenue. There is no provision to levy deficit duty and penalty on the basis of the Certified Copy. Deficit stamp duty and penalty cannot be collected when the party contends that the document was a forged one.

Sec.37 – Admission of improperly stamped instruments

- This is a remedial section which refers to admission of improperly stamped instruments where improper description of stamps are used by inadvertence. The Government may make rules providing that where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped and any instrument so certified shall be deemed to have been duly stamped as from the date of its execution.

Sec.38 – Instruments impounded how dealt with

- This section lays down the procedure to be followed after a document has been impounded under Section 33. Where after such impounding the document has been admitted in evidence upon payment of duty and penalty as provided in Section 35 or of duty as provided in Section 37, the Court so admitting the document must furnish to the Collector (1) an authenticated copy of the document, (2) a certificate stating the amount of the duty and penalty, or duty only, as the case may be, that has been levied, and (3) the amount recovered. In other cases, that is, where the document has not been admitted in evidence, the Court has to send it in original to the Collector for levy of duty and penalty as provided in Section 40. The Court has no jurisdiction to take any further action in the matter thereafter.

Sec.41-A – Recovery of Stamp duty not levied or short levied

- If any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why the proper duty or the amount required to make the same should not be collected from him.

  Provided that where the non-payment was by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of duty, the Collector may within twenty years from the date of registration serve a notice on such person to show cause why the proper duty or the amount required to make up the same should not be collected from him.

Sec.47-A – Instrument of Conveyance

- This Section applies to Conveyance, Exchange, Gift, Partition, Settlements, Release deeds, Agreement relating to constructions, development or sale of any immovable property. The Stamp duty in respect of Sales is payable on the consideration or the market value of the property conveyed whichever is higher. In respect of Gifts, Exchanges, Partition, Release falling under Art.46A&B, it is payable on the Market value of the property. If it is not so paid, the Registering Officer shall make a reference to the Collector under Section 47-A before registering the document. The Collector determines the market value after following the procedure prescribed and collect the difference in duty if any. If the party is aggrieved, he can appeal to the civil court.

Sec.56 – Control of, and Statement of case to Chief Controlling Revenue Authority

- This Section provides for making reference by the Collectors acting under Section 31, 40 or 41 to the Chief Controlling Revenue Authority regarding chargeability of instruments.
- The Collector before whom a document is brought before him for Adjudication under Section 31 or received by him under Section 38 is in doubt about the duty chargeable, he may refer the case for the opinion of the CCRA.

Sec.73 – Books etc., to be kept open for Inspection

- This Section empowers the Collector or any person authorised by him in writing to conduct audit in public offices to detect fraud in payment of proper stamp duty.

E-Stamping

E-Stamping

i. E-Stamping is a computer based application and a secured way of paying Non-Judicial stamp duty to the Government;

ii. The benefits of e-Stamping are:

- E-Stamp Certificate can be generated within minutes;
- E-Stamp Certificate generated is tamper proof;
- Easy accessibility and faster processing;
- Security; Cost savings and User friendly

RATES OF STAMP DUTY IN RESPECT OF CERTAIN IMPORTANT ARTICLES IN SCHEDULE - IA
TO THE INDIAN STAMP ACT, 1899

NATURE OF DOCUMENT	RATE OF STAMP DUTY
Sale	5%
SALE AGREEMENT CUM GPA	5%
DEVELOPMENT AGREEMENT CUM GPA	1%
DEVELOPMENT/CONSTRUCTION AGREEMENT	0.5% of MV of L:and and Construction
PARTITION AMONG FAMILY MEMBERS	1%
PARTITION AMONG CO OWNERS	1%
RELEASE	3%
SETTLEMENT AMONG FAMILY MEMBERS	2%
SETTLEMENT TO OUTSIDE FAMILY MEMBERS	3%
MORTGAGE	4% with possession 0.5% with out possession
DEPOSIT OF TITLE DEEDS	to family member Rs 1000/-, other 1%
SPECIAL POWER OF ATTORNEY	Rs 20/-
WILL	No Stamp required
LEASE	1to 5 years - 0.4%, 6 to 10years- 1%, 11 to 20yeaars – 6%, 21 to 30 years – 15%, more than 30 years -3% on the MV

What is meant by duly stamped

- Duly stamped means instrument bears an adhesive or impressed stamp
- Not less than proper amount
- And such stamp has been affixed or used in accordance with law in force in India
- In case of adhesive stamp it has to be effectively cancelled so cannot be used again
- Impressed stamp has to be written in such a way that it cannot be used for other instrument and stamp appears on face of instrument
- If stamp not so used treated as un-stamped
- When stamp duty not adequate document treated as not duly stamped

Revenue Stamp

- Revenue Stamp: Revenue
- Stamps are used for
- Acknowledging the receipt of
- Money

Foreign Bill Stamp

Foreign bill stamp is a special adhesive stamp bearing the words Foreign Bill. Such kind of stamp is generally used in case of bills of exchange and promissory note drawn out of India.

Brokers Note Stamp

- Brokers note is a special adhesive stamp bearing the words Broker's Note. Such kind of stamp is used in case of transactions through brokers or agent to his principal intimating the purchase or sale on account of such principal

Insurance Policy Stamp

- Insurance Policy stamp is used by the insurance department to authenticate the insurance policies.

Share Transfer Stamp

- Share transfer stamps are used by financial institutions in respect of transactions pertaining to Shares.

Summary

- The Indian Stamp Act, 1899 is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899 with amendments to the same to suit the transactions peculiar in each State.
- In the case of mining lease, the stamp duty is to be calculated on the estimated value of the royalty or the share of the produce, as the case may be.
- “Value of any property” would mean that real value of the property in the open market at the time the document was executed and not at the time when the executant acquired it.
- If an instrument chargeable with stamp duty has already been written, then second instrument chargeable with stamp duty shall not be written on same stamp paper.
- However, nothing contained in the proviso shall relieve any person from any penalty incurred by him, for omitting to affix or cancel a stamp.