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**OFFICE OF THE ACCOUNTANT GENERAL (C&
RA)
ANDHRA PRADESH, HYDERABAD**

**STATE REVENUE
AUDIT
MANUAL**

**Stamp Duty & Registration Fee
(Third Edition)**

Issued by

The Accountant General (C & RA) Andhra Pradesh, Hyderabad.

PREFACE

The audit of receipts of Stamps and Registration Department was taken up in April, 1972, and the Manual was first issued in 1980. The present edition is a revised edition incorporating the amendments and changes upto the end of March 2007.

This manual has been prepared for the guidance of the embers of the State Receipt Audit Parties auditing the receipts and refunds relating to the Stamp duty and registration fees and the Headquarters Section which processes the local audit reports. This Manual, deals with the relevant provisions of the Law and the procedure for levy, assessment and collection of receipts from Stamp duty and registration fee General, references to the provisions of the Indian Stamp Act and Indian Registration Act or of the Rules or of the case law bearing on the application of the stamp and other laws to specific cases have also been given. During the course of audit if any reference has to be made to a particular provision of the law, such a reference should be made to the sections of the relevant Act or the Rules framed thereunder and not to the paragraphs of this Manual.

The Manual should be treated as a guide only and the audit checks indicated therein are not exhaustive.

Errors or omissions in the Manual may be brought to the notice of the Accountant General (C&RA), Andhra Pradesh to whom suggestions for improvement may also be sent.

The State Receipt Audit parties may also equip themselves with the important provisions of the relevant Acts such as Transfer of Property Act, 1882, the Indian Partnership Act, 1932, etc., which are relevant for the purposes of audit.

State Receipt Audit (Headquarters) section is responsible for keeping the Manual upto date.

Place : Hyderabad

Date:

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CONTENTS

<u>Chapter No.</u>	<u>Subject</u>
<u>Pages</u>	
Preface i	
1. Audit of Revenue	1-9
2. Legislative and Constitutional background	10-12
3. Organisational set up and functions of departmental officers	13-16
4. The Indian Registration Act	17-25
5. The Indian Stamp Act	26-
	33
6. Classification of documents	34-53
7. Market valuation scheme	54-62
8. Transfer duty	
63-64
9. Stamps-Supply and sale of stamps	65-66

10.	Records and Registers in Registration Offices	
	67-76
11.	Receipts under the Andhra Pradesh chit funds Act	
	77-80
12.	Special Marriages Act, 1954	
	81
13.	CARD Project	
	
	82-83
14.	The Andhra Pradesh Societies Registration Act.	
		2001.....84-85
15.	The Andhra Pradesh Stamp (Franking Impression of Stamps) Rules, 2005.

CHAPTER 1. **AUDIT OF REVENUE**

1.1. Introduction.- Article 151 of the Constitution of India enjoins that the Comptroller and Auditor-General of India shall submit reports relating to the accounts of the Union and States to the President or the Governor of a State, as the case may be, who shall cause them to be laid before each House of Parliament or Legislature. The word ‘Accounts’ in its totality includes both receipts and expenditure transactions. Section 16 of the Comptroller and Auditor-General’s (Duties, Powers and Conditions of service) Act, 1971, specifically enjoins upon the Comptroller and Auditor General to audit all receipts of the Union and of the States and to satisfy himself that the Rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are duly observed. For that purpose, the Comptroller and Auditor-General is authorized to undertake such examination of the accounts as he thinks fit and to report thereon. The scope of audit is largely left to the discretion of the Comptroller and Auditor General and under his guidance and instructions, the Accountants General conduct receipt audit.

1.2. AUDITING STANDARDS: Auditing Standards prescribe the norms of principles and practices, which the Auditors are expected to follow in the conduct of Audit. They provide minimum guidance to the Auditor (it means the Auditing Institutions represented by the Field Audit Party) that helps determine the extent of auditing steps and procedures that should be applied in the audit and constitute the criteria or yardstick against which the quality of audit results are evaluated.

The norms of Principles and Procedures to be followed by Audit are prescribed in "Auditing Standards" (2nd Edition, 2002) which, inter-alia, include the following:

A) Basic Postulates: The basic postulates for auditing standards are basic assumptions, consistent premises, logical principles and requirements which hold in developing auditing standards and serve the auditors in forming their opinions and reports, particularly in cases where no specific standards apply.

The Basic Postulates are :

- 1) The Supreme Audit Institution of India (SAI) should comply with the International Organisation of Supreme Audit Institutions (INTOSAI) auditing standards in all matters that are deemed material.
- 2) The SAI should apply its own judgement to the diverse situations that arise in the course of Government auditing.
- 3) With increased public consciousness, the demand for public accountability of persons or entities managing public resources has become increasingly evident so that there is a need for the accountability process to be in place and operating effectively.
- 4) Development of adequate information, control, evaluation and reporting systems within the Government will facilitate the accountability process, Management is

responsible for correctness and sufficiency of the form and content of the financial reports and other information.

5) Appropriate authorities should ensure the promulgation of acceptable accounting standards for financial reporting and disclosure relevant to the needs of the Government, and audited entities should develop specific and measurable objectives and performance targets.

6) Consistent application of acceptable accounting standards should result in the fair presentation of the financial position and the results of operations.

7) The existence of an adequate system of internal control minimises the risk of errors and irregularities.

8) Legislative enactments would facilitate the co-operation of audited entities in maintaining and providing access to all relevant data necessary for a comprehensive assessment of the activities under audit.

9) All audit activities should be within the SAIs audit mandate.

10) SAIs should work towards improving techniques for auditing the validity of performance measures

11) SAIs should avoid conflict of interest between the auditor and entity under audit.

B) General Standards: 1)The general auditing standards describe the qualifications of the auditor and the auditing institution so that they may carry out the tasks of field and reporting standards in a competent and effective manner. These standards apply to all types of audit for both auditor and audit institutions. While auditing, the auditor should be independent, competent and due care should be taken in planning, specifying, gathering and evaluating evidence and in reporting findings, conclusions and recommendations.

2) The legal mandate provided in the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 provides for full and free access for the CAG and his auditors to all premises and records relevant to audited entities and their operations and provides adequate powers to the CAG to obtain relevant information from persons or entities possessing it.

3) The audit department seek to create among audited entities an understanding of its role and function, with a view to maintaining amicable relationships with them. Good relationships can help the SAI to obtain information freely and frankly and to conduct discussions in an atmosphere of mutual respect and understanding.

C) Field standards (1): The purpose of field standards is to establish the criteria or overall framework for the purposeful, systematic and balanced steps or actions that the auditor has to follow. These steps and actions represent the rules of investigation that the auditor, as a seeker of audit evidence, implements to achieve a specific result.

(2) The field standards establish the framework for conducting and managing audit work. They are related to the general auditing standards, which set out the basic requirements for undertaking the tasks covered by the field standards. They are also related to reporting standards, which cover the communication aspect of auditing, as the results from carrying out the field standards constitute the main source for the contents of the opinion or report.

(3) The field standards applicable to all types of audit are:

a) The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out in an economic, efficient and effective way and in a timely manner.

- b) The work of the audit staff at each level and audit phase should be properly supervised during the audit; and a senior member of the audit staff should review documented work.
- c). The auditor, in determining the extent and scope of the audit, should study and evaluate the reliability of internal control.

i) **Planning:** The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out without wastage of resources in an economic, efficient and effective way in a timely manner.

- 1) the following planning steps are normally included in an audit:
 - a) Collect information about the audited entity and its organisation in order to assess risk and to determine materiality.
 - b) Define the objective and scope of the audit.
 - c) Undertake preliminary analysis to determine the approach to be adopted and the nature and extent of enquiries to be made later.
 - d) Highlight special problems foreseen when planning the audit.
 - e) Prepare a budget and a schedule for the audit.
 - f) Identify staff requirements and a team for the audit, and
 - g) Familiarise the audited entity about the scope, objectives and the assessment criteria of the audit and discuss with them as necessary.

ii). **Supervision:-** The work of audit staff at each level and audit phase should be properly supervised during audit, and a senior member should review documented work.

1. The following paragraphs explain supervision and review as an auditing standard.
2.
 - A. Supervision is essential to ensure the fulfillment of audit objectives and the maintenance of the quality of the audit work. Proper supervision and control is therefore necessary in all cases, regardless of the competence of individual auditors.
 - B. Supervision should be directed both to the substance and to the method of auditing. It involves ensuring that:
 - a. The members of the audit team have a clear and consistent understanding of the audit plan.
 - b. The audit is carried out in accordance with the auditing standards and practices of the SAI.
 - c. The audit plan and action steps specified in that plan are followed unless a variation is authorised.
 - d. Working papers contain evidence adequately supporting all conclusions, recommendations and opinions
 - e. The auditor achieves the stated audit objectives and
 - f. The audit report includes the audit conclusions, recommendations and opinions, as appropriate.
 - 2. All audit work should be reviewed by a senior member of the audit staff before the audit opinions or reports are finalised. It should be carried out as each part of the audit progresses. Review bring more than one level of experience and judgement to the audit task and should ensure that:

- a. All evaluations and conclusions are soundly based and are supported by competent, relevant and reasonable audit evidence as the foundation for the final audit opinion or report.
 - b. All errors, deficiencies and unusual matters have been properly identified, documented and either satisfactorily resolved or brought to the attention of a more senior SAI officer, and
 - c. Changes and improvements necessary to conduct of future audits are identified, recorded and taken into account in later audit plans and in staff development activities.
3. This standard emphasizes the importance of involvement of each higher level of supervision and does not in any way absolve the lower levels of audit staff carrying out field investigations from any negligence in carrying out assigned duties.

iii) Study & Evaluation of Internal Control: The auditor, in determining the extent and scope of the audit, should study and evaluate the reliability of internal control and depends on the objectives of the audit and on the degree of reliance intended. Where accounting or other information systems are computerized, the auditor should determine whether internal controls are functioning properly to ensure the integrity, reliability and completeness of the data.

iv) Compliance with Applicable laws and regulations: In performance audit an assessment should be made of compliance with applicable laws and regulations when necessary to satisfy the audit objectives. The auditor should provide reasonable assurance to detecting illegal acts that could significantly affect audit objectives and should be alert to situation or transaction that could be indicative of illegal acts that may have an indirect effect on the audit reports.

The following paragraphs explain compliance as an auditing standard.

1. Reviewing compliance with laws and regulations is especially important when auditing government programmes because decision-makers need to know if the laws and regulations are being followed, whether they are having the desired results, and, if not, what revisions are necessary. Additionally government organisations, programmes, services, activities, and functions are created by laws and are subject to more specific rules and regulations.
2. Those planning the audit need to be knowledgeable of the compliance requirements that apply to the entity being audited. Because the laws and regulations that may apply to a specific audit are often numerous, the auditors need to exercise professional judgement in determining those laws and regulations that might have a significant impact on the audit objectives.
3. The auditor also should be alert to situations or transactions that could be indicative of illegal acts that may indirectly impact the results of the audit. When audit steps and procedures indicate that illegal acts have or may have occurred, the auditor needs to determine the extent to which these acts affect the audit results
4. In conducting audits in accordance with this standard, the auditors should choose and perform audit steps and procedures that, in their professional judgement, are appropriate in the circumstances. These audit steps and procedures should be designed to obtain sufficient, competent, and relevant

- evidence that will provide a reasonable basis for their judgement and conclusions.
5. Generally, management is responsible for establishing an effective system of internal controls to ensure compliance with laws and regulations. In designing steps and procedures to test or assess compliance, auditors should evaluate the entity's internal controls and assess the risk that the control structure might not prevent or detect non-compliance.
 6. Without affecting the SAI's independence, the auditors should exercise due professional care and caution in extending audit steps and procedures relative to illegal acts so as not to interfere with potential future investigations or legal proceedings. Due care would include considering the concerned laws and relevant legal implications through appropriate forum to determine the audit steps and procedures to be followed.

v) **Audit Evidence:** Competent, relevant and reasonable evidence should be obtained to support the auditor's judgment and conclusions regarding organization, programme, activity or function under audit.

The following paragraphs explain audit evidence as an auditing standard.

1. The audit findings, conclusions and recommendations must be based on evidence. Since auditors seldom have the opportunity of considering all information about the audited entity, it is crucial that the data collection and sampling techniques are carefully chosen. When computer-based system data are an important part of the audit and the data reliability is crucial to accomplishing the audit objective, auditors need to satisfy themselves that the data are reliable and relevant.
2. Auditor should adequately document the audit evidence in working papers, including the basis and extent of the planning, work performed and the findings of the audit. Working papers should contain sufficient information to enable an experienced auditor having no previous connection with the audit to ascertain from them the evidence that supports the auditor's significant findings and conclusions.
3. Adequate documentation is important for several reasons, It will:
 - a. Confirm and support the auditor's opinions and reports
 - b. Increase the efficiency and effectiveness of the audits.
 - c. Serve as a source of information for preparing reports or answering any enquiries from the audited entity or from any other party.
 - d. Serve as evidence of the auditor's compliance with Auditing Standards
 - e. Facilitate planning and supervision.
 - f. Help the auditor's professional development.
 - g. Help to ensure that delegated work has been satisfactorily performed, and
 - h. Provide evidence of work done for future reference.
4. The auditor should bear in mind that the content and arrangement of the working papers reflect the degree of the auditor's proficiency, experience and knowledge.

vi). Analysis of Financial Statements: In all types of audit when applicable auditor should analyse the financial statement to establish whether applicable accounting standards for financial reporting and disclosure are complied with and should perform to such degree that a rational basis is obtained to express an opinion on financial statements.

- a. The auditor should thoroughly analyse the financial statements and ascertain whether:
- b. financial statements are prepared in accordance with acceptable accounting standards;
- c. Financial statements are presented with due consideration to the circumstances of the audited entity;
- d. Sufficient disclosures are presented about various elements of financial statements; and
- e. The various elements of financial statements are properly evaluated, measured and presented.

The methods and techniques of financial analysis depend to a large degree on the nature, scope and objective of the audit, and on the knowledge and judgement of the auditor.

2. Where the SAI is required to report on the execution of budgetary laws, the audit should include:

- a. For revenue accounts, ascertaining whether forecasts are those of the initial budget, and whether the audits of taxes, rates and duties recorded, and imputed receipts, can be carried out by comparison with the annual financial statements of the audited activity;
- b. For expenditure accounts, verifying credits to assist budgets, adjustment laws and, for carryovers, the previous year's financial statements.

3. Where the SAI is required to report on systems of tax administration or systems for realising non-tax receipts, along with a systems study and analysis of realization of revenue/receipts, detection of individual errors in both assessment and collection is essential to highlight audit assertions regarding the system defects and comment on their efficiency to ensure compliance.

D) Reporting Standards:

1. On the completion of each audit assignment, the Auditor should prepare a written report setting out the audit observations and conclusions in an appropriate form; its content should be easy to understand, free from ambiguity and supported by sufficient, competent and relevant audit evidence and be independent, objective, fair, complete, accurate, constructive and concise.
2. With regard to fraudulent practice or serious financial irregularities detected during audit or examined by audit, a written report should be prepared. This report should indicate the scope of audit, main findings, total amount involved, modus operandi of the fraud or the irregularity, accountability for the same and recommendations for improvement of internal control system, fraud prevention and detection measures to safeguard against recurrence of fraud/serious financial irregularity.

3. The audit report should be complete. This required that the report contains all pertinent information needed to satisfy the audit objectives, and to promote an adequate and correct understanding of the matter reported. It also means including appropriate background information.
4. In most cases, a single example of a deficiency is not sufficient to support a broad conclusion or a related recommendation. All that it supports is that a deviation, an error or a weakness existed. However, except as necessary, detailed supporting data need not be included in the report.
5. Accuracy required that the evidence presented is true and the conclusions be correctly portrayed. The conclusions should flow from the evidence. The need for accuracy is based on the need to assure the users that what is reported credible and reliable.
6. The report should include only information, findings and conclusions that are supported by competent and relevant evidence in the auditor's working papers. Reported evidence should demonstrate the correctness and reasonableness of the matters reported.
7. Correct portrayal means describing accurately the audit scope and methodology and presenting findings and conclusions in a manner consistent with the scope of audit work.
8. Objectivity required that the presentation through out the report be balanced in content and tone. The audit report should be fair and not be misleading and should place the audit results in proper perspective. This means presenting the audit results impartially and guarding against the tendency to exaggerate or over emphasis deficient performance. In describing shortcomings in performance, the Auditor should present the explanation of the audited entity and stray instances of deviation should not be used to reach broad conclusions.
9. The tone of reports should encourage decision-makers to act on the auditor's findings and recommendations. Although findings should be presented clearly and forthrightly, the auditor should keep in mind that one of the objectives is to persuade and this can best be done by avoiding language that generate defensiveness and opposition.
10. Being convincing requires that the audit results be presented persuasively and the conclusions and recommendation followed logically from the facts presented. The information presented should be sufficient to convince the readers to recognise the validity of the findings and reasonableness of audit conclusions. A convincing report can help focus the attention of management on matters that need attention and help stimulate correction.
11. Clarity requires that the report be easy to read and understand. Use of non-technical language is essential. Wherever technical terms and unfamiliar abbreviations are used, they should be clearly defined. Both logical Organisation of the material and precision in stating the facts and in drawing conclusions significantly contribute to clarity and understanding. Appropriate visual aids (such as photographs, charts, graphs and maps etc.,) should be used to clarify and summarise complex material.
12. Being concise requires that the report is not longer than necessary to convey the audit opinion and conclusions. Too much of details detracts from the report and conceals the audit opinion and conclusions and confuses the readers. Complete and concise reports are likely to receive greater attention.
13. Being constructive requires that the report also includes well thought out suggestion, in broad terms, for improvements, rather than how to achieve

- them. In presenting the suggestions due regard should be paid to the requirements of rules and orders, operational constraints and the prevailing milieu. The suggestions should be discussed with sufficiently high level functionaries of the entities and as far as possible, their acceptances obtained before these are incorporated in the report.
14. Timeliness requires that the audit report should be made available promptly to be of utmost use to all users, particularly to the auditee organisations and/ or Government who have to take requisite action.

1.3 Principles of Receipt Audit.- The authority for audit of Receipts is derived from section 16 of comptroller and Auditor General's Act, 1971, and governed by the general principles laid down in chapter IV of Section II of the Manual of Standing Orders(Technical). The instructions issued in this Manual are supplementary thereto and describe specifically the procedure to be followed in the audit of receipts from stamp duties (non-judicial) and registration fees.

1.4 Audit vis-à-vis Executive functions.- It is well-known that it is the primary Responsibility of departmental authorities to see that all revenues due to Government are correctly and properly assessed, realized and credited to government account. Audit should, however, satisfy itself in general that the departmental machinery is sufficiently safeguarded against error and fraud and that, so far as can be judged, the procedure is designed to give effect to the requirements of law. The Audit Department does not, however in anyway; substitute itself for the Revenue authorities in the performance of the statutory duties.

The most important functions of audit as broadly pointed have been framed by the Revenue Departments to secure an effective check on the assessment, collection and proper allocation of taxes and (2) to satisfy itself by adequate test-check that such regulations and procedures are actually being carried out. It should also be borne in mind that the basic purpose of audit is not only to see that all demands raised are promptly collected and credited to Government account but also to secure that those demands are correctly realized and they satisfy that requirements of law and that the Executive does not grant unjustified or unauthorized remission to tax payers. In the Audit of receipts, the general is more important than the particular. The detection of individual errors is an incident rather than object of Audit.

In taxation laws, lacunae may occur as a result of oversight of omission at the time of framing or enacting the laws. If the provisions of the law lead to consequences not intended at all in the policy or purpose underlying the law and the tax payer takes unfair advantage of such lacunae or provision by way of legal avoidance, audit may bring it to the notice of the Executive such legal evasions, the idea being not to critisize the Legislature but to enable the Government/Legislature to review the position and initiate remedial action wherever necessary to plug leakages of revenue.

Audit does not generally review the judgment exercised or decisions taken in individual cases by departmental officers but an examination of such cases in an important factor in judging the effectiveness of assessment procedure. Where, for

example, the information received in any individual cases is insufficient to enable Audit to see how the requirement of law has been complied with, Audit may consider it its duty to ask for further information to enable it to form the judgment required and to the effectiveness of the system. It is, however, towards forming a general judgment rather than to the detection of individual errors that the audit enquiries should be directed. This does not however, bar, irregularities being pointed out by Audit in individual cases, where substantial amounts are involved or where there have been serious violations of the law or the rules having the force of law. For the purpose of performing their functions effectively, members of the Audit Department will have access to the relevant records and papers of the Revenue Department but they should observe secrecy in the same way as the officers of the Revenue Department are expected to do. However, to discharge these functions effectively the staff engaged in receipt audit must be thoroughly conversant with the processes and procedures relating to the levy and collection of taxes and the laws and rules governing such processes etc.

1.5 Audit vis-à-vis judicial Pronouncements.- The Audit Department does not , normally question the decision of a High Court which is binding on the officers functioning within the jurisdiction of that High Court unless it is in any way modified or over-ruled by the Supreme Court. It is only in such cases where no authoritative interpretation of provisions of law by High Court or the Supreme Court is available that the Comptroller and Auditor General states what in his judgment is the correct requirement of law on the basis of the plain meaning of the statute and puts forward that view to the Department for its examination and acceptance.

1.6 In the subsequent chapters, the basic provisions of the Acts and the rules governing the assessment and collection of stamp duty and registration fees are set out. This is only a summary to enable the staff to grasp the essentials of the administration of the Indian Stamp Act 1899, and the Indian Registration Act, 1908. For a further and exhaustive study, the provisions of the Acts and the case laws on the subject must be referred to.

CHAPTER 2. **LEGISLATIVE AND CONSTITUTIONAL** **BACK GROUND**

2.1. Under Article 268 of the Constitution, Stamp duties on documents mentioned in the Union List (item9) shall be levied by the government of India but shall be collected and appropriated by the State within which such duties are leviable. Stamp duties fall broadly into two categories, viz. Judicial and nonjudicial. “Stamp duties other than duties or fees collected by means of judicial stamps but not including rates of stamp duty” is a subject included in the concurrent list of the seventh Schedule of the constitution of India (Entry 44, List III), while duties or fees collected by means of judicial stamps are included in the state list (Entry 3, List. II). Therefore, the duties or fees collected by means of judicial stamps are regulated by State Legislation (The Andhra Pradesh Courts Fees, and suit valuation Act, 1956, for the state of Andhra Pradesh).

The State Government ordered to restrict the use of non-judicial stamps and permitted the registering public to use only upto Rs.100 denomination stamps for the documents. It was also permitted to remit the remaining stamp duty including transfer duty through designated branches of State Bank of India/Hyderabad and other Nationalised Banks.

The power to legislate on rates of stamp duty (non-judicial) in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts vest in the Union Parliament (Entry 91 of Union List). In respect of other instruments, the Legislature of the State has exclusive power to legislate on rates of stamp duty (non-judicial) for that State (Entry 63 of State List).

Thus the fixation of rates of stamp duty in respect of the instruments (Widely employed in the course of trade and commerce) specified in entry 91 of the Union List is within the province of the Union Parliament, while fixation of rates stamp duty in respect of other instruments (entry 63 of List II) is within the realm of the State Legislature. But the entire proceeds of the stamp duties are assigned to the States in which they are levied.

2.2. The first all Indian Act on stamp duty was the stamp Act XXXVI of 1860. The Act of 1860 was succeeded first by Act of 1862 then that of 1869 which consolidated and amended the Act of 1862, and thereafter the Act of 1879, which consolidated and amended the Act of 1869. Ultimately the stamp law was codified in the Indian Stamp Act, 1899 (Act II of 1899) which is the basic Act in force from 1st July, 1899. The Act as amended from time to time by the Union and by the States by virtue of the devolution of powers which governs the imposition of stamp duties other than duties on stamps collected by means of judicial stamps. This act was extended in its application to the whole of India except the State of Jammu and Kashmir through the Indian Stamp (amendment) Act, 1955. Maharashtra, Gujarat, Karnataka and Kerala have enacted self-contained Acts modelled on the Central Act. So far as Andhra Pradesh is concerned this Act as amended by the State legislature has been made applicable.

The basis and procedure for the levy of stamp duties (non-judicial) are regulated by:

- (i) The Indian Stamp Act, 1899 (The basic Act).
- (ii) Union and State Legislations from time to time.
- (iii) Rules framed under the Indian Stamp Act, 1899.
- (iv) Judicial decisions interpreting the provisions of the Acts and the rules mentioned above.
- (v) Administrative instructions issued by the Chief Controlling Revenue Authority under Indian Stamp Act.

2.3. Basic features of the Indian Stamp Act. - The Indian Stamp Act is a fiscal legislation, the Primary object of which is to collect revenue and prevent its evasion. Section 3 of the Act is the charging section. It specifies the instruments chargeable with duty and prescribes the amounts thereof (instruments not covered by the Act are not chargeable to stamp duty). The duties prescribed by this Act are paid by the person specified in section 29 of the Act either by using impressed stamp paper of proper denomination or by affixing stamps of proper denomination on them as prescribed in Section 10 to 16 of the Act and Rules made thereunder. The power to reduce/ or remit stamp duties on the instruments specified in entry 91 of the Union list is vested with the Central Government while the power to reduce or remit or compound stamp duties in respect of other instruments is vested with the State government (Section 9).

B. Registration Fees

2.4. “Registration of deeds and documents” is included in the Concurrent List-List. III of the Seventh Schedule to the Constitution of India. (Entry 6- Transfer of property other than agricultural land, registration of deeds and documents). The power to legislate on this subject is vested in Union Legislature and the State Legislatures concurrently.

2.5. The Indian Registration Act.- The Registration Act 16 of 1864 which came into force from 1st January 1865 repealed earlier regulations on the subject and introduced the system of compulsory registration in India and made a division of documents into those which are compulsorily registrable and those which are registrable optionally. Act 16 of 1864 was followed by many other enactments (such as Act 20 of 1866, Act 8 of 1871 and Act 3 of 1877 all of which stand now repealed.). The Indian Registration Act, 1908, which came into force on the 1st January 1909, was enacted to consolidate the enactments relating to the registration of documents. It extends to the whole of India except the State of Jammu and Kashmir. Under Section 1(2) of the Act, the State Government may exclude any district or tracts in its territory from the operation of the Act. Several areas in Chodavaram and Srikakulam Districts are excluded from the operation of the Act (G.O. Ms. No. 243 Revenue dated 25-1-1950). This Act as amended from time to time by the Union and State Legislature and the rules made there under broadly outline the system of registration, assessment and collection of revenue under “Registration Fees” as obtaining at present.

2.6. Registration Act a regulatory measure.- The Act is not a fiscal statute, but a regulatory measure. Fees for registration of documents and other incidental receipts which arise in the Administration of the Indian Registration Act are not in the nature of a tax. They are fees collected for services rendered by the Registration department of the state.

2.7. Services for which fees are levied.- Section 78 of the Indian Registration Act, 1908, empowers the State Government to prepare a table of fees payable for registration of documents and other allied services rendered.

2.8. Fees generally at ad valorem rates. - Registration Fees is collected, with certain exceptions, mostly at ad Valorem rates irrespective of the nature of the document. The Registration Act does not by itself provide for grant of exemption of registration fees. As the state Government is empowered to prepare a table of fees, exemptions are given from time to time by means of amendments to the table of fees. A table of fees payable is time to time by government, the rates in force (at the time of local audit) have to be referred to by the local audit parties.

CHAPTER 3. ORGANISATIONAL SETUP AND FUNCTIONS OF DEPARTMENTAL OFFICERS

3.1. The Registration Department of the State Government is constituted for the administration of the Indian Registration Act, 1908, in its application to the territories subject to the State Government. The duties of the department include administration of the Indian Stamp Act. In the administration of the Indian Stamp Act, the officers of the Registration Department are subject to the control of Commissioner of survey settlement and Land Records (in the State of Andhra Pradesh) who is the Chief Controlling Revenue Authority.

3.2. Broadly, the organizational set up of the Registration department is as follows:

The Registration Act envisages a three tier structure of administration with the Inspector-General of Registration at the apex (assisted by the Assistant Inspectors General) and the District Registrars and the Sub-Registrars to be respectively in charge of the Registration District and the Registration Sub-District (Section 3 to 6 of the Indian Registration Act) into which the territory of the State is divided for administering the registration law.

3.3. Inspector-General of Registration. – The Inspector General of Registration exercises general superintendence over all the registration offices in the State. He makes rules, consistent with the Indian Registration Act which, after approval of the State Government and publication in the official Gazette, have the effect as if enacted in the Indian Registration Act (Section 69). These rules regulate inter alia the amount of fines imposed under Sections 25 and 34 of Indian Registration Act. Under section 70 of the Act, he exercises the power to remit wholly or in part the difference between any fine levied under section 25 or section 34 and the amount of the proper registration fee. He has discretion to remit in part the fee leviable under Article 13 of Table of Fees relating to searches in deserving cases. He is not, however, authorized to register any document under Indian Registration Act.

“The Inspector General (IG) may suo motto, call for and examine the record of any order passed or proceedings recorded by the Collector under section 47-A, if such order or proceeding recorded is found leading to loss of legitimate revenue due to disregard of market value by the District Registrar (Collector) based on mistake, omission, or failure to take into account any direct or collateral factual evidence affecting the market value of the property involved.

The IG may initiate proceedings to revise, modify or set aside such order or proceeding, provided such action for revision shall be initiated within a period of one year.

The IG shall also be responsible for administration of CARD. For this purpose the IG shall specify, from time to time, the configuration of hardware and the software to be used in different categories of registration offices.

(Authority: G.O.Ms.No.488 Revenue Department dt.19.06.1999).

Powers under Indian Stamp Act

The Inspector General of Registration is appointed to perform the functions of the Inspector General (stamps) under Rule 2(d) of the Indian Stamp Rules, 1925. The Assistant Inspector General of Stamps, Hyderabad, exercises the powers of a "Collector" under section 16 of the Indian Stamp Act with the limits of the twin cities of Hyderabad and Secunderabad subject to the general control of Inspector General of Registration and Stamps (Section 2(9) of the Indian Stamp Act.) Under section 73 of the Act and the rules framed there under, the Inspector General of Registration and Stamps authorizes any person to inspect the Registers, books or Records in the custody of any public officer in the State in order to secure stamp duty and discover any fraud in relation to stamp duty.

3.4. Deputy Inspectors-General of Registration and Stamps.- Grouping the registration districts in the State into (six) regions, the State Government have appointed Deputy Inspectors-General of Registration and Stamps subordinate to the Inspector-General. They discharge the duties as Inspectors of Registration offices under section 8 of the Indian Registration Act. They are authorized to inspect any public office in their jurisdiction, except courts, at district level with a view to detecting leakage on revenue of stamp duties (Section 73 of Indian Stamp Act). They conduct annual inspection of the offices of the Registrars.

There is vigilance Officer in the rank of District Registrar attached to each Deputy Inspector general's Office. He is in charge of a zone comprising a few districts and he conducts surprise check of sub-registrar's offices.

3.5. District Registrar. - The Registrar is in charge of the registration district. He superintends and controls the Sub Registrars in his district (Section 68 of Indian Registration Act). He discharges administrative as well as statutory functions. He is assisted by one or two Sub-Registrars called Joint Sub-Registrars in the registration work. His office consists of Administration and Registration Branch. The Joint Sub-Registrars lookafter the registration work. The Registrar has discretion to receive and register a document relating to the property situated in any place in his district on payment of additional fees (Section 30 of Indian Registration Act and Article 3 of Table of fees). The senior joint Sub-Registrar of the district registration office may also exercise this power (Section 11 of Indian Registration Act.). Under Section 47-A, the District Registrar is having the power to determine the market value of the property when a reference is made by a Sub-Registrar to that effect. The Registrar entertains applications under Sec 71 and appeals (under Sec 72) over the orders of Sub-Registrar refusing registration of the documents. He accepts sealed covers containing wills for deposit (Sec 42). He has powers to remit the fees for attendance at private residence or jail (note under Article 8 of Table of Fees) and safe custody fees (note under Article 9 of Table of fees) in deserving cases. He inspects each sub-Registry Office at least once in each year and comments inter alia on the deficiency in the levy of registration fees and stamp duties. If any, found by him during the course of his examination of the accounts and registers of the Sub-Registry.

Powers under the Indian Stamp Act

The Registrar exercises the powers of a Collector under certain sections of the Indian Stamp Act. He adjudicates as to the Stamp duty with which an instrument, brought to him for his opinion, is chargeable (Section 31) and certifies by endorsement on such instruments as provided for in Section 32. He impounds instruments not duly stamped which come to his notice in the performance of his functions as an officer in charge of public Office (Section 33). He insists on payment of proper duty and penalty of instruments impounded and referred to him under Section 38(2) and those impounded by him and certifies by endorsement as provided under Section 40.

In respect of certain instruments not duly stamped, he has discretion not to require payment of penalty (Section 41). When the duty and penalty (if any) leviable in respect of any instrument are paid under Sections 35, 40 and 41. The registrar as Collector certifies by endorsement on such instrument regarding such payment and on such endorsement it is admissible in evidence and is registrable as if duly stamped (Section 42).

Under Section 48 of the Act, the revenue authorities are empowered to recover duties, penalties and any other sums required to be paid to the department by resorting to sale of movable property or any process in force as for the recovery of arrears of land revenue.

In case of doubt as to the amount of duty with which an instrument is chargeable, he refers the case to the chief Controlling Revenue Authority (Commissioner of Survey, Settlement and Land Records in Andhra Pradesh) for decision under Section 56 and acts accordingly.

3.6. Sub-Registrar.- The Sub-Registrar is the field Officer entrusted with the registration of documents after classifying them properly. The revenues of the State mainly rest on the proper classification of documents. He accepts the documents registrable under section 17 and 18 of Indian Registration Act and assesses the fees according to the Table of Fees prepared by the State Government under Section 78 of Indian Registration Act. He has to follow the rules made by the Inspector General of Registration and approved by the State Government under Section 69 of the Act. He has to maintain a faithful record of the documents registered and prepare indexes to the documents registered. In case the registration of a document is refused he records the reasons in writing. He grants copies of records and issues encumbrance certificates on the properties with reference to the indexes prepared by him.

He has the power to impound any document not duly stamped when presented for registration (Section 33) and refer the case to the Registrar under Section 38(2) of the Act. When the stamp duty with which an instrument is chargeable depends on the duty paid on another instrument such as instrument coming under Sections 4, 25, 30 etc., the Sub-Registrar is empowered under Section 16 as ‘Collector’ to verify the latter instrument and endorse the certificate prescribed.

3.7. Assistants to District Registrars. - The posts of Assistant District Registrars have also been created to assist the Registrars of the District in their functions.

3.8. Functions of the Registration Department under other enactment.- The Inspector General appointed under Section 3 of the Indian Registration Act may hold simultaneously any other office under government. The Inspector General of Registration and Stamps, Andhra Pradesh is appointed to hold the following posts in the administration of the Acts shown against each:

- (i) Director of chits : The Andhra Pradesh Chit Funds Act 1971.
- (ii) Registrar of Marriages: The Special Marriage Act. 1954; the Hindu Marriage Act, 1955.
- (iii) Registrar of Firms : Indian Partnership Act, 1932.
- (iv) Registrar of Societies :
 - (i) Public Societies Registration Act No.1 of 1950 Fasli (Limited in its application to Telangana Area).
 - (ii) The society's registration, Act, 1860.

All the Concerned District Registrars shall exercise the powers of a Registrar under A.P. Societies Registration Act, 2001 (A.P.Act No. 35/2001) for Registration of documents for the purpose of Registration of Societies Registered under the said Act.
(Authority: G.O.Ms.No.744, Rev (Regn & Mandals) dt. 11-12-2001.)

3.9. Powers under the Andhra Court fees and Suits Valuation Act. 1956. In addition to the powers under these Acts, the Registering Officers are empowered to return the documents which are dutiable under the Andhra court fees and Suits Valuation Act, 1956, and which are unstamped or insufficiently stamped in order that the stamp duty or the deficiency in the stamp duty may be made good (Rule 34 of Andhra Pradesh Rules under Indian Registration Act).

CHAPTER 4. THE INDIAN REGISTRATION ACT

4.1. Article 246(2) of the Constitution and item 6 and 47 of List III of the Seventh Schedule confer upon the State Legislature and Parliament the power to make laws for the registration of deeds and documents and for the levy and collection of fees in respect of the registration of such deeds and documents. The levy and collection of fees for Registration of documents is governed by the provisions of Indian Registration Act, 1908 as amended from time to time. This central Act was amended in its application to Andhra Pradesh by Andhra Pradesh Act 5 of 1969 and Act 13 of 1966.

4.2. Objects of registration.- The main objects of registration are:

- (i) To provide a conclusive proof of the genuineness of the documents.
- (ii) To afford publicity of transactions:
- (iii) To prevent fraud:
- (iv) To afford facility for ascertaining whether a particular property has been dealt with: and
- (v) To afford security of title deeds and a facility of providing titles in case the original deeds are lost or destroyed.

4.3. The Registration Act deals only with documents and not with transactions as in the case of Transfer of Property Act. The Act does not require that a transaction affecting movable property should be carried out by a registered instrument. All that it enacts is that when a document is used to give effect to any transactions specified in Section 17 of the Act, such document should be registered. Non-registration in certain cases has the effect of rendering the documents in-effective even as between the grantor and the donee and excludes it from evidence.

4.4. In order to see that the object of registration is achieved, the Act made provision for registration of documents (Section 17 and 18) and prescribed that property is properly described with maps and plans (Section 21 and 22), that documents are presented within the time prescribed (Section 28) by proper persons (Section 32 and 40) and that document is registered after proper enquiry (Section 34) and a reliable record of the registered document is kept (Section 51).

Registration of Documents

4.5. Section 17 specifies the documents which are compulsorily registerable and Section 18 specifies those which may be registered at that option of the party. Levy of fees under the law of registration arises only when a document is registered or a service connected with it is rendered.

Documents compulsorily registrable under section 17 are given below:

1. All instruments of gift of immovable property (irrespective of value).

2. Other Non-testamentary instruments which purport or operate to create declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of rupees one hundred and upwards, to or in immovable property.
3. Non-testamentary instruments which acknowledge the re-receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title, or interest.
4. All Leases of immovable property (irrespective of value).
5. Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, assign, limit or extinguish, title or interest whether vested or contingent, of the value of rupees one hundred and upwards, to or in immovable property.
6. Authority to adopt a son not conferred by a will. (Section 17(3) of the Act).
7. Agreement to sell immovable property.

4.5.1. Exemptions under Section 17(2). - The following documents are exempted from compulsory registration:

- (i) any composition deed;
- (ii) any instrument relating to shares in a joint stock company;
- (iii) any debenture issued by any such company (see Section 17(2) (iii));
- (iv) any endorsement upon or transfer of any debenture issued by any such company;
- (v) any document not itself creating right, title etc. in immovable property exceeding Rs.100 but merely creating a right to obtain another document.
- (vi) any decree or order of court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding;
- (vii) any grant of immovable property by the Government;
- (viii) any instrument of partition made by a Revenue Officer
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883;
- (x) any order granting a loan under the Agriculturist's Loans Act 1884, or instrument for securing the repayment of a loan made under that Act;
- (xi) any order made under the charitable Endowments Act, 1890 (VI of 1890) vesting any property in a Treasurer of charitable Endowments or divesting any such Treasurer of any property.
- (xii) any endorsement on a mortgaged deed acknowledging the payments of the whole or any part of the mortgage money and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage: or
- (xiii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

4.6. Sections of Transfer of Property Act treated as supplemental to the Indian Registration Act, 1908. - The Registration Act makes registration optional in

the case of immovable property of the value of less than Rs.100. Thus, while under the Registration Act a sale or mortgage for Rs.99 need not be registered, yet under the T.P. Act such a sale (Section 54) or mortgage (Section 59) may be made either by a registered instrument or by delivery of property. Again while under the Registration Act a gift of movable property need not be registered, yet under the Transfer of Property Act such a gift (Section 123) may either be made by a registered instrument or by delivery. To remove this inconsistency between the Indian Registration Act and Transfer of Property Act, sections 54 (paras 2&3), 59, 107 and 123 of Transfer of Property Act are made supplemental to Indian registration Act.

Similarly, Section 5 of the Indian Trusts Act, 1882, lays down that no trust of immovable property is valid unless it is declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered or by the will of the author of the trust or trustee.

4.7. Optional Registration.- Registration is optional in the case of following documents (Sec 18):

- (a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property;
- (b) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- (c) Instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property;
- (d) Instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or immovable property;
- (e) Wills; and
- (f) Other documents not required by Section 17 to be registered.

4.8. Time limit for presenting documents.- No document (other than a will) shall be accepted for registration unless it is presented within four months from the date of its execution. A copy of a decree or order may be presented within four months from the date on which the decree or order was made. When the decree or order is appealable, then it may be presented within four months from the day on which it becomes final (Sec 23).

Note. - In computing the period of four months from the date of execution of the document, the day on which the document is executed should be excluded by virtue of Section 9(1) of the general Clauses Act 10 of 1897. Where there are several executants of a document, section 24 specifies the time for presentation of the document for registration.

When owing to urgent necessity or unavoidable situation, a document is presented after 4 months, the Registrar may permit registration on payment of a fine not exceeding ten times the amount of the proper registration fee in cases where the delay in presentation does not exceed four months (Section 25).

A will may be presented for registration at any time (Section 27).

4.9. No document (other than a will) shall be registered under this act unless the persons executing such document or their representatives appear before the registering officer within the time allowed for presentation under Section 23, 24, 25 and 26.

Provided that, if owing to urgent necessity or unavoidable situation all such persons do not so appear, the registrar, in cases where the delay in appearing does not exceed four months may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee in addition to the fine, if any, payable under section 25, the document may be registered (Sec 34(i)).

Thus, while the maximum period allowed in terms of Sections 23 and 25 for presenting a document is eight months that for the appearance of parties before the registering officer is 12 months in terms of the provision to Section 34 read with Sections 23 and 25.

The rate of fine for delay in presentation of documents is as follows: - (Rule 38 of the Registration Rules).

When the delay does not exceed one week after the expiration of the time allowed for presentation or appearance.	A fine equal to the registration fee.
When delay exceeds one week but does not exceed one calendar month.	A fine equal to twice the registration fee.
When the delay exceeds one month but does not exceed two months.	A fine equal to five times the registration fee.
When the delay exceeds two months but not exceed four months.	A fine equal to ten times the registration fee.

4.10. Place of Registration.- The territory of the State Government is divided into districts and sub-districts for the administration of the Act (Sec 5). Section 28 to 31 lay down the place of registration of a document.

A document affecting immovable property is presented for registration in the office of the sub-registrar in whose jurisdiction the whole or part of such immovable property is situated (Sec 28). Every other document not affecting immovable property or a copy of a decree or order may be presented for registration either in the office of the sub-registrar in whose jurisdiction the documents was executed or any other sub-registry office of the state at which all the executants and claimants under documents desire it to be registered (Sec 29). A District Registrar may in his discretion receive and register a document which is registrable by any sub-registrar, subordinate to him (Section 30).

Provided that such officers may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will (Proviso to Sec 31).

4.11. Time from which registered document operates.- A registered document operates from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration (Sec 47). In the cases of gifts however, the deeds take effect not from the date of its registration but from the date of its execution. Registration does not purport to create a new title but only affirms the title which was created by the execution of a deed. The title is complete when the deed is executed and the effect of registration is only to make it absolute and unquestionable.

4.12. Effects of non-registration.- The effects of non-registration mainly relate to the admissibility of the document as evidence when there is a dispute or when the matter is taken to a Court of Law. These aspects are dealt with in Section 49.

4.13. Certificate of Registration.- The Registering Officer endorses a Certificate containing the word 'Registered' duly signed, sealed and dated (Sec 60). The word 'Registered' in the Limitation Act (Schedule I Article 10) refers to the date of which the endorsement 'registered' is made and not the date on which the document was presented for registration. The registration of a document is deemed to have been completed after the endorsements (Sec 59) and certificate (Sec 60) made on the document are copied into the margin of the register book. The document is thereupon returned to the party (Sec 61).

4.14. Liability of the registering officer for loss to Government due to neglect on his part.- A registering officer will be liable for any loss to Government arising from neglect on his part in the registration of a document, making of a search or grant of a copy of document. If before a document is returned to the party, the registering officer detects that the fee was deficiently levied on such document, he may collect from the party the amount required to make up the deficiency, intimating the registrar (Rule 160 of the Registration Rules).

4.15. Procedure where document relates to property which is not wholly situated in one Sub-district.- A document presented for registration may relate to immovable property, a part of which is situated outside the sub district of the same registration district or a different registration district. Sec 64 to 66 contain provisions prescribing the preparation and transmission of memorandum (and a copy of the document when the property is partly situated in another registration district). Thus the other registering officers are informed of the registration of a document affecting the property situated in their jurisdiction with requisite details. Based on the particulars contained in the memorandum, entries in the books and indexes are kept up-to-date.

4.16. Powers of the Inspector General of Registration. - Sec 69 empowers the Inspector General of Registration to exercise a general superintendence over all registration offices in the State. He makes rules consistent with the Act (subject to the approval of the State Government) regulating, among other things, the amount of fines imposed by the Registers under Sec 25 and 34 (prescribed in Rule 38). Under

Sec 70 he exercises discretion to remit wholly or in part the difference between any time levied under Rule 38 above and the amount of proper registration fee. Sec 69(1)(bb) enables the Inspector General to make rules providing for the grant of licences to Document writers. The fee leviable for the grant of such licence and for its yearly renewal are prescribed in Rule 203. Section 69(1)(b) enables the Inspector General to declare what language shall be deemed to be commonly used in each district.

4.17. Documents refused for registration. - The registering officer may refuse to register documents in the following types of cases. (Rule 161).

- i. Documents prepared in a language which is not commonly used in the particular area (Section 19).
- ii. Documents containing erasures, corrections etc. not attested by the parties (Section 20).
- iii. Documents not containing a proper and complete description of the property. (Section 21 and Section 22).
- iv. The date of execution is not stated in the document or correct date not ascertainable (Section 36)
- v. Documents presented after time bar (Sections 23, 24, 25, 26, 72, 75 and 77).
- vi. Documents presented by a person who has no right to present it (Sections 32,33,40 and 43)
- vii. Documents violating the relevant provisions of the Act.
- viii. The person by whom the document is presented appears to the Registering Officer to be a minor, an idiot or a lunatic or a representative of a deceased person by whom the document purports to have been executed. (Section 35).

4.18. Fees under the Registration Act.- Fees levied for registration and other services rendered under the Registration Act is not in the nature of a tax. Under section 78, the State government prepares a table of fees payable,

- (a) for the registration of documents,
- (b) for searching the registers,
- (c) for making or granting copies of reasons, entries, or documents,
The table of fees also contains.
- (d) extra or additional fees payable for every registration under sec30.
- (e) for the issue of commissions,
- (f) for filing translations,
- (g) for attending at private residences.
- (h) for safe-custody and return of documents; and
- (i) for such other matters found necessary by Government to effect the purposes of the Act.

Under sec 79 of the Act the table of fees so prepared is published in the official Gazette.

4.19. Concessional Fees. - Certain special concessions are allowed in respect of documents like receipts, counter-parts, ratification and rectification deeds, because the full fee would have already been levied on the principle deeds and it would cause hardship to levy the full fee again on such documents (which are merely ancillary in nature). Sometimes, however, the purpose for which the main document is intended is sought to be achieved through ancillary deeds under the guise of ratifications, rectifications etc., in that but for the execution of the latter, the title to property would not have passed from the executant to the claimant. Audit should be on guard against such seemingly simple deeds whose real purpose is different.

4.20. Levy of Registration fees. - The registering officer on presentation of document determines in the first instance what fee should be paid and after its payment, the presenting party may, if he is dissatisfied, refer this question to the Register. If the party feels aggrieved to the decision, he may appeal to the Inspector General. Such appeals to the Registrar or the Inspector General should be made within 30 days from the date of payment of fee or the date of making of the Registrar's order, as the case may be (Rule 182).

As per G.O.Ms.No. 2045 DT 28-11-2005, the Registration fee in respect of:

(i)Agreements falling under Articles 6(B), Partition Deeds, Release Deeds and Settlement Deeds under Article 40,46 and 49, Powers of Attorney falling under Clause (e) and (g) of Article 42 of Schedule-IA to the IS Act, 1899 is Rs.1,000, whereas, the instruments registered under Article 7 (i.e.) Registration of Agreements/Memorandum relating Loan Title Deeds 0.1% on the Deposit amount subject to a maximum of Rs.1,000, and in respect of Registration of Powers of Attorney falling under Clauses (a) to (d) and (f) of Article 42 is Rs.100/-.

(Authority : G.O.Ms.No.2045, Revenue (Registration-I) Department, dated 28.11.2005. The above orders applicable from 1st December 2005)

4.21. Refunds.- In the event of registration being refused, any fee or fine which may have been levied shall be refunded except fees, commissions, summonses, attendances and travelling allowances. Where such fees and allowances have been earned (Rule 183).

A refund of revenue to which the claimant is legally entitled will be sanctioned provided it is not time barred by limitation under the Indian Limitations Act, 1980 (i.e. after the expiry of 3 years).

In terms of Board's standing order 925, Registrars and Sub-Registrars are authorized to refund.

- (a) Fees and fines on documents refused registration or returned un-registered.
- (b) Undisbursed process fees, batta and traveling allowance levied in connection with the documents, presented to them for registration.

Board's Standing Order 927 states that the previous sanction of the Inspector General shall be obtained for the refund of any collection other than those referred to (i) in order/925. (ii) in Registration Rule 180 (relating to the refund of costs of appeal under Section 72 of the Indian Registration, Act) (iii) in the notes to Articles 8 and 9

of Table of Fees relating to the fees collected for attendance at a private residence or jail and for safe custody of documents.

4.22. Audit checks. - The following audit checks may be exercised while checking the receipts of registration fee:

- (i) The audit of registration fee mainly consists in seeing whether the fees realisable for the various services rendered by the department have been determined correctly, realised and credited promptly to Government. A test check of the registered documents should also be made to see that the registering authority has discharged, effectively his duty of verifying that the instruments have been properly stamped as required under the Stamp Act and other relevant legislation for the valuation indicated therein.
- (ii) Whether printed receipt books (manuscript receipt books prepared in the manner prescribed when printed receipt books are not available for supply) are brought to account first and used to secure against loss and misuse of receipt books.
- (iii) Whether fees realised for the various services rendered under the laws of registration and stamps have been correctly levied in accordance with the Table of Fees prepared under Section 73 of the Indian Registration Act and the amounts have been realized;
- (iv) Whether the daily cash balance in the accounts brought to Account-H correctly and verified with the cash balance;
- (v) Whether the amounts creditable as departmental revenue under the major head '030-Stamps and Registration Fee' are paid into the treasury on the next working day where the treasury is located in the same place as the office and in places where the treasury is not located in the same place on the days prescribed by the department.
- (vi) Whether the monthly reconciliation between the departmental figures of remittances and those of the treasury is made regularly;
- (vii) Whether fines leviable under the Acts Rules have been correctly levied wherever necessary and collected;
- (viii) Whether proper receipts have been granted and the amounts specified in the receipts (counter foils) have been brought to accounts as prescribed;
- (ix) Whether remissions and refund of fines have been authorized by competent authority and cross references have been made on the counterfoil of the receipt and against the original entry of the receipts in departmental accounts;
- (x) Whether fortnightly returns have been sent to Income Tax Authority in respect of the transactions above Rs. 30 lakh.
- (xi) Whether the documents deposited for safe custody and not claimed within the prescribed time, have been accounted for in the Register of unclaimed documents, fee for safe custody levied and brought to Account-B;
- (xii) In case of documents relating to immovable properties not wholly situated within the Sub-District/ District whether the proper fee for sending memo/copy under sections 64 to 66 of Indian Registration

Act has been realized according to the Table of Fees and brought to Account-A;

Note. - A memo book is maintained to enter the memos, despatched to other registering officers. Entries in this book may be traced in the Account-A.

- (xiii) Whether exemptions from the levy of stamp duty and registration fee in respect of documents relating to cooperative societies have been correctly allowed.

Court fees and Suits Valuation Act.-(i) Whether the application received under Section 16 bears the proper court fee under the Court Fees Act;

(ii) Whether the Registering officer is exercising the scrutiny required under Section 5 of the Andhra Pradesh Court Fees and Suits Valuation Act 1956 (Rule 34 of the Andhra Pradesh Rules under the Indian Registration Act. 1908).

CHAPTER 5. THE INDIAN STAMP ACT.

5.1. The Indian Stamp Act, 1899, is a fiscal enactment which taxes instruments in order to raise State revenues. The charging sections and other important provisions intended to check evasion of tax and penalize offences against stamp law are dealt with in brief from the revenue audit angle in the following paras:

5.2. Application of the Act. - The Indian Stamp Act as adopted by the State is applicable to the entire State of Andhra Pradesh. The Scope of some important sections is dealt with in the succeeding paragraphs.

5.3. Charging section. - Section 3 read with schedule-I and Schedule I-A specifies the instruments that are chargeable with stamp duty and the amount of stamp duty chargeable in each case. Documents not mentioned in the Schedule such as ‘wills’ are not subject to duty. Proviso 1 to the section exempts instruments executed by or on behalf of, or in favour of Government in cases where liability to pay duty would otherwise rest upon the Government under section 29. Any material alteration made with the consent of parties in an instrument after it is complete renders a new stamp necessary, as the effect is to make in substance a new instrument. An alteration is considered material when it changes the legal effect of the instrument by making change as regards the rights and liabilities of the parties or as regards their legal position or when it changes the legal identity or the character of the instrument either in its terms or the relation of the parties thereto. A rectification deed which is a document executed only to correct a clerical error in the document already executed earlier, does not cause a material alteration and hence no stamp duty is leviable.

Section 3 of the Act, as made applicable to the State of Andhra Pradesh contains an additional Schedule viz, Schedule-I-A for convenience. This schedule refers to all instruments (other than those mentioned in entry 91 of the Union list in the seventh Schedule to the Constitution of India) with regard to which the State Legislature has constitutional right to fix the rates of stamp duty. The rates of stamp duty in Schedule-I-A will apply to the instruments executed within the State of Andhra Pradesh or executed outside the State of Andhra Pradesh but relating to any property situate in the State or to any matter or thing done or to be done in the State and received in the State. In terms of Section 19-A if an instrument after becoming liable to duty in another State, on execution there becomes liable to duty also in Andhra Pradesh on receipt there, it must first be stamped in accordance with the law of the former State and where the rate of Andhra Pradesh is higher, it will require to be stamped with the differential amount that is in accordance with the law and rules in force in Andhra Pradesh.

5.4. Stamp duty chargeable on an instrument should be determined with reference to law in force on the date of the execution of the instrument but the levy of penalty is to be determined by reference to the law in force at the time of the presentation of the instrument in evidence (Sec 17).

5.5. Schedules to the Stamp Act forms part of the Statute and therefore, both should be read together. But in case of any inconsistency between the Schedule and

the Act, the latter shall prevail. Besides section 3 which is the charging section. Stamp duty is leviable under section 4(1), Proviso to section 6, proviso to section 28(4), section 28(5) and provisos (a) & (b) under section 35.

5.6. Section 4.- In the case of a sale, mortgage or settlement when several instruments are employed, instead of one, for completing the transaction, then the principal instrument only is chargeable with the stamp duty prescribed for conveyance, mortgage, or settlement and each of the other instrument is chargeable with nominal duty specified in Section-A. The party has the choice as to which instrument is to be treated as the Principal Instrument subject to the condition that the principal instrument should be charged with highest duty which would be chargeable in respect of any of the said instruments employed. This section contemplates on transaction effected by several instruments at the same time and not a series of instruments effecting different dispositions at different stages with regard to the same property.

5.7. Section 5. - When an instrument comprises or relates to several distinct matters it is chargeable with the aggregate amount of the duties which are separately payable if these matters are capable of being carried out through separate instruments. Distinct matters should be understood as matters not interdependent and stand distinctly by themselves.

Example 1: Partition into 3 shares of Rs. 25,000/-, Rs. 25,000/- and Rs. 30,000/- value of separated share being Rs. 50,000/- and also a gift settlement for Rs. 5,000/- to mother with reversionary right to daughter treating it as not essential to partition – held as partition and settlement falling under section 5 of I.S. Act.

Example 2: Company sold a piece of land for Rs. 3, 00,000/. Rs.5, 000/- were already paid and as security for payment of balance in yearly instalments, the purchases executed mortgage of the land. The conveyance was properly stamped with advalorem duty, but mortgage was stamped with stamp duty of one rupee, it was held that the mortgage deed was not employed for completing the sale but was independent transaction chargeable with stamp duty under Art. 35, falling under section 5.

The main test to find out whether a document comprised two distinct matters is to ascertain the leading object of the instrument and to see whether the second matter is only ancillary to the main object or is independent of it.

5.8. Section 6.- Subject to the provisions of Section-5 an instrument so framed as to come within two or more of the descriptions in schedule I or in Schedule I-A shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. e.g., an instrument containing dissolution on partnership and also partitions.

This would apply where the contract is essentially one transaction but answers two of the descriptions in the Schedules. According to this section, even instruments covered by exemption under one category of the Schedule are not necessarily protected if they also fall within another category. An instrument stamped for its

leading and principal object covers every thing accessory to that object and is not to be charged with any further duty.

5.9. the distinction between Section 4,5 and 6 is summarised below:

Section 4	Section 5	Section 6
Transaction single but completed in several instruments(i.e.) transaction one instruments- several	More than one transaction comprised in a single instrument (i.e.) transactions- several instrument-one; thus section-5 is the converse of section-4.	Transaction-one-instrument-one and the classification of the document is capable of being brought within the purview of morethan one item of the schedule-one of them being the principal and the others ancillary to it.

5.10. Section 9.- The section enables the Central Government to reduce or remit the duties in respect of the instruments mentioned in Entry-91 of the Union list in the Seventh Schedule to the Constitution. In respect of the other instruments (Schedule-IA) the State Government is empowered to do so. The reduction or remission under this section can also have retrospective effect.

5.11. Payment of duty.- Stamp duty is paid in the form of stamps (non-judicial) purchased and used in executing an instrument as prescribed. The stamps are issued by Government. Two kinds of stamps are available for payment of duty, viz., impressed Stamps and adhesive stamps. Sections 10 to 16 and the rules made under Section 10 regulate the description of stamps to be used for different kinds of instruments, use and cancellation of adhesive stamps and use of impressed stamp paper. They aim at checking the mis-use of stamps once used in connection with the execution of an instrument.

5.12. Duties may be paid in cash in the following cases:

- (a) When instruments are brought to the Collector Section-31 for adjudication of duty or under Section 41 with voluntary tender of duty.
- (b) When instruments not duly stamped are impounded the deficient duty and penalty are levied in cash.
- (c) Where duty is to be indicated by an impressed label under the Rules, the value of the label is paid in cash.

5.13. Section 11 of the Act and Rule 13 of the Rules specify the classes of instruments which may be stamped with adhesive stamps. Rule 17 specified the instruments which can be stamped with special adhesive stamps.

5.14. Denoting Duty.- Section 16. The duty with which an instrument is chargeable or its exemption from duty depends in certain cases on the duty actually paid in respect of another instrument. In such a case the Collector on application in writing, verifies both the instruments and denotes in the first instrument the payment of such last mentioned duty in the manner prescribed under the rules made for the purpose. The applications received in this regard are filed in petition files indicating

the number of registration of the document in the registering offices. The application should bear the proper court fee under court fees Act. Section 16 deals with instruments coming under Section-4, Article 25 and 30, provisos to Articles 35, 45 and 58 of Schedule I.

5.15. Time of stamping instruments.- Section 17 deal with the time of stamping instruments, section 17 provides that all instruments chargeable with duty and executed by any person in India will be stamped before or at the time of execution.

5.16. Valuation for duty.- Stamp duties are either fixed or ad valorem. Section 20 to 28 contain provisions governing the valuation of the instruments for levy of duty. According to Section 23, insertion of a provision as to payment of interest in an instrument does not effect the quantum of stamp payable in respect of such instrument. No additional stamp will be required because of insertion of a provision for payment of interest.

Section 24 lays down the mode of valuation in cases of transfer in consideration of debt. This section applied (1) where the consideration is wholly or part of a debt due to the transferee; (2) where the transfer is made subject to the payment of a debt due to another, whether constituting a charge or not. Where a property is subject to mortgage, the consideration for sale is deemed to be that amount of unpaid mortgage money or money charge, together with interest (if any) due on the sum in addition to the apparent consideration set out in the conveyance. The proviso to the section provides for reducing the duty paid originally on the mortgage from out of total duty payable for the transfer of the mortgaged property to the mortgagee. It was held by Bombay High Court that in order to be entitled for the deduction, the property transferred should be identical with that mortgaged and not be merely part of it. Board of Revenue, Madras in its proceedings 250-R Miscellaneous Dt. 2-3-1914 held that no reduction is admissible if the property sold happens to be portion of the mortgaged property.

The explanation under the section would not apply if the property is sold for a price which is the full value of the property and the vendor as part of the consideration, undertakes to clear the mortgage and release the property. The sale in such a case is not subject to mortgage even though the property sold is subject to it. In a sale subject to mortgage, the particulars of mortgage must be written in the sale deed in terms of section 27.

5.17. Section 26.- Deals with valuation of instruments where consideration consists of periodical payments like annuities.

5.18. As the value of the subject matter of the instrument is very important in determining stamp duty payable, section 27 enjoins on the executants to state fully and truly in the instrument to consideration, market value of the property and all other facts and circumstances affecting the chargeability of the instrument. Failure to comply with the requirements of this section with an intention to defraud the State makes the person liable to prosecution under sec 64.

Further a Registering Officer appointed under the Registration Act, 1908 or any other officer authorised in this behalf may inspect the property, which is the subject matter of such instrument, make necessary local enquiries call for and examine all the connected records and satisfy that the provisions of this section are complied with.

(Authority : *Amendment Act 8 of 1998 with effect from 1.05.1998*)

5.19. Section 29 specifies the party which should pay for the stamp required for that instrument.

5.20. Adjudication under Section 31.- A person is given the right to apply, in case of any bonafide doubt, for the authoritative opinion of the Collector under the Stamp Act, either before or after execution of an instrument, as to the stamp duty with which it is chargeable.

5.21. In case the instrument is already executed, the person applying for adjudication gets the benefit of obtaining the endorsement of the Collector under Section 32 on payment of the duty determined by the latter, without having to pay the penalty. On endorsement of the Collector under Section 32, the instrument is treated as if it was duly stamped from the beginning. It is acted upon and registered without any objection with regard to stamp. The Collector becomes *Functus officio* soon after the certificate is endorsed and he cannot review, modify or cancel his decision even if a higher duty is subsequently found payable on the instrument.

5.22. The certificate under Section 32 cannot be endorsed by the Collector if the instrument is brought to him after the expiration of one month from the date of execution. When a party seeks the adjudication of the Collector beyond the time prescribed in Section 32, the Collector has to impound the document under section 33 and proceed under section 40 to decide whether it is duly stamped.

5.23. Impounding of instruments.- In order to see that no instrument chargeable with stamp duly escapes the charge, section 33 casts a duty upon every person who has authority to receive evidence and every person in charge of a public office to impound an instrument not duly stamped when it is produced or comes to him in performance of his functions. The State Government determines which is a public office and who are officers in charge of public offices. All registering officers appointed under the Indian Registration Act exercises the powers under Section 33 of the Indian Stamp Act with regard to documents produced for registration.

5.24. The power to impound an instrument can be exercised by a registering officer only before he registers it but not after registration. Section 35 imposes an obligation on the Registering Officer to examine whether an instrument presented for registration is duty stamped. This has to be performed before registering the instrument.

5.25. An instrument can be sent to the Collector under Sec 38(2) of the Stamp Act only when it is impounded under Section 33 but not admitted in evidence on payment of penalty and or duty with the aid of section 35.

5.26. Section 38 prescribes the follow up action in respect of instruments impounded:

1. When a person invested with authority to receive evidence (officers of the court) impounds the instruments and admits it on payment of duty and penalty, he has to send an authenticated copy of the instrument along with a certificate stating the amount of duty and penalty levied and send such amount to the Collector. In such cases the Collector need not consider the stamp aspect but may refund whole or part of the penalty (Sec 39) levied in excess.
2. Any other officer impounding an instrument under Sec 33 has to send it in original to the Collector. The provisions of this sub-section are attracted in cases of instruments impounded under Sec 33 but are not admitted in evidence on payment of penalty and or duty with the aid of section 35. In respect of these instruments and the instruments impounded by him under section 33. The Collector examines and certifies as to the chargeability or otherwise of the instruments, requires the payment of proper duty and penalty and then returns the instruments to the officers who impounded the instruments (Sec 40).

5.27. Section 41.- The section provides for collection of deficit duty without penalty where an instrument not duly stamped by accident, mistake or urgent receipt is voluntarily produced before the Collector within one year of its execution.

5.28. Section 41-A.- In cases where 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 is payable, and after considering the representation received from the person determine by an order, the amount of duty due from such person (not being in excess of the amount specified in the notice) and such person shall pay the amount as determined.

In cases where the non-payment of duty was due to fraud, or collusion or misstatement, or suppression of facts, etc, the time limit for serving the notice is 10 years from the date of registration on such person to show cause why the amount required to makeup the deficient stamp duty should not be collected from the concerned along with penalty of 3 times of deficit stamp duty.

(Amendment Act.No.17 of 1986 with effect from 22-7-1986).

5.29. When the loss of revenue under the stamp law is made good by the operation of Sections 35, 40, 41 or 41A and the person admitting such instrument in evidence (under section 35) or the Collector (under Sections 40,41 and 41A) certifies by endorsement that proper duty/penalty has been levied, then, the instrument so endorsed is admitted in evidence, registered or acted upon and authenticated (Section 42) as it had been duly stamped.

5.30. Section 45.- Empowers the Commissioner & Inspector General of Registration and Stamps/Chief Controlling Revenue Authority to refund (1) wholly or in part penalty paid under section 35 or 40 and (2) stamp duty charged (under section

35 and 40) in excess of what is legally chargeable. The refund is allowed on application in writing made within the prescribed time limit.

5.31. Section 47-A. detailing the action to be taken in respect of instruments undervalued is dealt with in a separate chapter.

Under the provisions of section 48, all duties, penalties and other sums due may be recovered by distress and sale of movable property or by any other process for the time being in force for the recovery of arrears of land revenue.

5.32. Reference to the Chief Controlling Revenue Authority/High Court/Commissioner & Inspector General of Registration and Stamps. Under section 56, if the Collector, acting under sections 31, 40 or 41 feels doubt as to the amount of duty with which an instrument is chargeable, he may refer case of the C.C.R.A./C.I.G (A.P.). Under Section 57 the latter may send any case referred to him under section 56 or otherwise coming to his notice with his opinion thereon to the High Court of the State for advice.

5.33. Under section 70, the Chief Controlling Revenue Authority (C.C.R.A.) or any officer generally or specially authorized by it may stay any prosecution under the Act or compound the offence and the amount of any such composition is recoverable in the manner provided by Section 48.

5.34. Section 73.- Under Section 73, every public Officer or any person having in his custody, any register, records, papers etc, the inspection whereof may tend to secure any duty or to prove or lead to the discovery of any fraud or omission in relation to any duty, should permit any person authorised by the Collector in writing, to enter upon any premises, and to inspect for such purposes the registers, records, papers etc, and to take such notes and extracts found necessary, without fee or charge and if necessary to seize them and impound the same under proper acknowledgement. If such seizure relates to registers in the custody of a bank, it can be done only after a notice of thirty days to make good the deficit stamp duty is given. To facilitate such inspection, the person having custody of the registers, records etc. should produce them before the officer authorized by the collector and if the authorized person is of the opinion, that any instrument is chargeable with duty and is not duly stamped, the proper stamp duty must be made good from the person liable to pay the stamp duty and in case of default shall be recovered as an arrear of land revenue.

(Amendment Act No. 17 of 1986 w.e.f.22.7.1986)

The Amendment was struck down by the Andhra Pradesh High Court in Judgment dated 27th September 1996. However, the original provisions of Section 73 of I.S.Act, 1899 in regard to inspection of public offices were not effected by this judgment. This was also clarified by the Commissioner of Registration & Stamps in September 1997. In April 1959, Deputy Inspectors General of Registration & Stamps, Zonal Officers of each region in the State were authorized to inspect any public office under section 73 of I.S.Act with a view to detecting leakage of revenue by way of non-levy of stamp duty. Subsequently, District Registrars, Assistant District Registrars at district level and Deputy Collectors of Flying Squads/Vigilance

Officers at regional level were also authorized to inspect public offices under section 73.

5.35. Section 75 empowers the State government to make rules to carry out the purposes of this Act and to prescribe fines not exceeding Rs 500.

The State Government may by notification in the Official Gazette, delegate all or any of the powers conferred on it by sections 2(9), 33(3)(b), 45(1), (2), 56(1), 70(1),(2), 74 & 78 to the CCRA and under section 9(1)(b) to the C & IG (R&S)

CHAPTER 6. **CLASSIFICATION OF DOCUMENTS**

6.1. The pre-requisite for correct assessment of stamp duty is the correct classification of a document. All the instruments chargeable to stamp duty are not defined in the Stamp Act and some of the definitions are not exhaustive. Clear understanding of the definitions in the Stamp Act and other Act such as the Transfer of Property Act, General Clauses Act etc; is necessary for the correct interpretation of the Acts. An acquaintance with up-to-date case laws in this regard is essential for correct classification of documents and assessment of stamp duty.

6.2. Definitions of certain terms in common use taken from other Acts or from court decisions have been give below.

(i) Bond: - 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 and not payable to order or bearer, where 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.

ii) **Conveyance:** - Conveyance includes a conveyance on sale, every instrument and every decree or final order of any Civil Court, by which property whether movable or immovable, or any estate or interest in any property is transferred to, or vested in or declared to be of any other person, intervivos, and which is not otherwise specifically provided for by Schedule-I or Schedule-IA, as the case may be.*(Authority: AP Amendment Act No.8 of 1998 w.e.f. 1-5-1998).*

iii) **Instrument:** - Instrument includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded.

iv) **Attested:**- “Attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executants sign or affix his mark to the instrument. (Sec 3 of Transfer of Property Act).

v) **Boards “Standing Orders”:**- The erstwhile Board’s standing orders are only executive instructions issued for the guidance of the officers who carry out the policy of the then Board of Revenue. Beyond that they do not have any statutory force or force of law, contravention of which would be hit by Sec 23 of the Indian Contract Act (S.A. No.668 of 1972 A.P.F.R.A.W.R. Dated 24-1-1975).

vi) **Transfer of Property:-** Sec 5 of the Transfer of Property Act defines transfer of property as an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and “to

transfer of property” is to perform such act. “Living person” in the above definition includes a company, or association or body of individuals, whether incorporated or not.

It is of interest to note that Transfer or Property Act, but for certain exemptions does not apply to transfer by operation law, but is limited to transfers by action of parties. Transfers by operation of law occur in cases of testamentary and intestate succession, forfeiture, insolvency and court sales

A transfer by means of a will or testament is outside the provisions of the Act.

- vii) **Coparceners:** - A term in Hindu Law. The term is used to signify the persons in a joint Hindu family who are entitled to succeed to the estate of deceased or who are entitled to demand partition of the joint family property.
- viii) **Chose-in-action:** - A thing to get possession of which an action must be brought (Actionable claim).
- ix) **Disposition:** - Giving away or giving up by a person of some which was his own (CA No. 128 of 1969 & 1341 of 1971).
- x) **Assignment :**- Transfer of claim, right to property to another (CA No.128 of 1969 & 1341 of 1971)
- xi) **In severalty:-** He who holds lands or tenements in severalty or is sole tenant thereof is he that holds them in his own right only without any other person being joined or connected with him in joint interest during his estate therein (Wharton. Law lexicon 14th Edition).
- xii) **Document:-** According to Section 3(10) of the General Clauses Act 1897 “document” shall include any matter written, expressed.
- xiii) **Gift :- Gift if not defined in the Stamp Act.** Its definition in other Acts are as follows :

From transfer of Property Act:

Section 122 of the Act defines ‘gift’ as the transfer of certain existing movable or immovable property made voluntarily and without consideration by the donor to the donee and accepted by or on behalf of the donee.

- xiv) **Lease.**

(i)**From Transfer of property Act:-** “ A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money”. (Sec 105).

(ii)**From Indian Registration Act:** - A lease includes a counter-part, Kabuliyat, an undertaking to cultivate or occupy and an agreement to lease (Sec 2(7)).

(iii)As per the definition of Lease under section 2(16) of the Act, Lease means a lease of immovable property and also includes:

- (a) a patta
- (b) a kubuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property:
- (c) any instrument by which tolls of any description are let;
- (d) Any writing on an application for a lease intended to signify that the application is granted."

All leases are compulsorily registerable documents with effect from the year 1999

(iv) From a Court Decision:- A lease in the transfer of a right to enjoy the premises; whereas a license is a privilege to do some thing on the premises which otherwise would be unlawful (B.M Lall Vs. M/s. Dunlop Rubber Company (India Limited) AIR 1968 SC 175).

(xv) Non-testamentary:- A document which is plainly intended to be operative immediately non-testamentary.

(xvi) Property:- Property that which belongs to a person exclusive of others and can be the subject of bargain and sale to another (Potters Vs. Commissioner (1854) 10 (Ex. 147).

A trade mark was held to be property when the property consisted of a goodwill comprised in the reputation obtained by advertisement of a particular kind of a soap sold under the trade mark.

(Benjamin Brook Company vs. Commissioner)

Transfer of goodwill of a business is chargeable as a conveyance.

(xvii) Debts or choses-in-action are movable properties under the General clauses Act. Book debts are property.

A share and interest in a partnership and assets thereof is property.

Assignment of benefit of a contract is a conveyance of a chose-in-action. An exclusive licence to use and vend an invention protected by a patent within a limited district is property.

(xviii) Reversioner: - Article 56 of Hindu law of Succession lays down that reversioner meant a person, male or female who on the death of the limited heir or in some cases on sooner determination of the estate by remarriage of the limited heir succeeded to the estate as the heir of the last full owner and included a presumptive reversioner.

(xix) Testamentary:- Testament is solemn declaration relating to the disposition of personal property to take effect after the owners' death according to his desires and direction; a will 'Testamentary' Relating to a will; given by a will; 'will' shall include a codicil and every writing making a voluntary posthumous disposition of property.(Section 3(64) of General Clauses Act).

(xx) Will: - 'Will' according to Indian Succession Act, 1925 means the legal declaration of the intention of a testator with respect to his property which he desires to be carried in to effect after his death. A codicil is an instrument made in relation to a will. It explains, alters and makes additions to its dispositions. It is deemed to be a part of the will.

The tests of a valid will are:

- 1 Existence of intention to take effect the death of the testator;
2. execution in accordance with the formalities prescribed by law;
3. Revocability; and
4. Existence of some disposition of property.

(xxi) Trust: Indian Trusts Act. 1882:- A trust is defined as an obligation annexed to the ownership of property and arising out of confidence reposed in and accepted by the owner of declared and accepted by him for the benefit of another or of another and the owner (Sec 3).

(xxii) Distinction between trust and Power of Attorney:

<i>Trust</i>	<i>Power of Attorney</i>
<ol style="list-style-type: none">1. The intention to create trust is clear from the recitals for efficient management and for the benefit of the owner and for the family members, etc.2. Powers are conferred on the trustee to manage the properties, to dispose of them and sue or be sued on behalf of the owner.3. Will be in force till a certain thing happens.	<ol style="list-style-type: none">1. Provides for ratification of the acts of the agents.2. Provides for revocation of the power of attorney.

(R.S Janahi Devi vs. A.B. Ramaswamy reported in the Andhra Weekly Reporter dated 13th August 1976, vol, XLII. Parts 5 and 6).

(xxiii) The distinction between the various terms is indicated below:

- (a) **Bond and Agreement:-** In the case of a bond the party who is obliged to pay money to the other is liable for the sum stipulated in the instrument. In the case of an agreement, however the quantum of damages has to be fixed by court. (In the case of Hamdard Dawakhana (Wakf) Delhi (1967) 69 L.R. (D) 270).
- (b) **Bond and Promissory Note:-** A document which on the face of it, is not payable to bearer or order and is attested by a witness is a bond. It cannot become a promissory note because of explanation to Sec 13 of

- the Negotiable Instrument Act. (1971 Madras 290). A promissory note may be payable on demand or payable after a certain period.
- (c) ***Lease and Mortgage:-*** If the transfer was intended by the parties for the enjoyment of the property by the transferee it is a lease and if it was intended solely to secure the amount advanced by him, it is a mortgage.
- (d) ***Receipt and Reconveyance/Release:-*** If a document styled as receipt, contains, besides acknowledgement of receipt of money, a mention to the extinguishment of mortgagee's claims in the mortgage, it has to be treated as a reconveyance / release.

If the document merely acknowledges receipt of money giving reference to the original mortgage deed and nothing more, it will have to be treated as a receipt only.

- (e) ***Release and Partition:-*** A document termed as release of part right executed by a father in respect of some ancestral property and some self acquired property, while take 'A' schedule property as consideration and relinquishing right over 'B' schedule property, has to be treated as partition since father, can direct a partition as a karte of a Hindu undivided Family.
- (f) ***Settlement and Trust:-*** A trust deed which was executed by a husband in favour of his wife, whereby the property was kept in wife's possession and she was appointed as manager of the family and as managing trustee was held as a settlement deed.

6.3. Certain important decisions of the courts relating to interpretation of the provisions of Stamp Act etc., are given below:-

- (i) "Instructions in the stamp Manual are only administrative instructions which cannot bind the courts which are to consider the matter in the light of provisions of law and lay down the correct principle applicable to the case". (Subramanian Chettair vs. R.D.O. A.I.R. 1956 M. 454).
- (ii) "Stamp duty is leviable on the instrument and not on the transaction. It is the substance of the transaction as embodied in the instrument and not the form of the instrument that determines stamp duty".
(Sahayanidhi Virudhunagar Ltd. Vs. Subramanya Nadar, AIR 1951, Mad, 209 (F.B)).
- (iii) "In order to determine whether a document is sufficiently stamped, the court must look at the document itself as it stands and not at any collateral circumstances which may be shown in evidence. The Nature of a document can be determined only from the language it employs and the purpose which is intended to serve". (Uttamchand vs. Prema and AIR 1942, LAB 265)
- (iv) Partition.- Partition really means that where initially all the coparceners had subsisting title to the totality of the property of the family jointly, that joint title is by partition transformed into

separate titles of the individual coparceners in respect of several items of properties allotted to them separately.

As per item 40 to Schedule I-A to I.S.Act, an instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes also final order for effecting a partition passed by any revenue authority or any civil court and an award by an arbitrator directing a partition (and a memorandum regarding past partition)
(Authority: Amendment Act 17 of 1986 w.e.f. 16.8.1986).

If the document, whatever be the name given to it by the parties purports or operates to divide the properties, it is required to be stamped as an instrument of partition. (Venkatappa Naidu Vs. Naidu MUSAL NAIDU AIR, 1934, MAD 204).

An instrument where the consideration for release was payment of cash out of the joint assets or where it forms common property was an instrument of partition. (T.N. Nanjundasetty vs. State of Mysore, 1964, Mys. 124).

A release deed by which some members of a family separate themselves from the family in consideration of their being paid by the releases i.e., the other members a certain sum by the sale of the family properties is liable to be stamped as partition deed.

(The chief controlling Revenue Authority vs. B.A. Mallayya (1971) IMLJ 177).

In order that there may be division of property, within the meaning of the word 'divide' in section 2(15), the deed of partition must mention the entire property which is divided and its division must be shown in separate lots between the co-owners. (Mt. Thekura vs. Sukh Raj singh, A.I.R. 1953, A-350).

In a partition the true antithesis is between the original common ownership and the subsequent cessation of that common ownership. (24 AIR 1937, MAD, 308).

(v) Release and gift/ Conveyance:- The supreme court held that a release deed could only feed title but could not transfer title and that a renunciation must be in favour of a person who had already title to an estate, the effect of which was only to enlarge the right.

Hence it was held that a registered document releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by the releasor and attested by two witnesses.

(Kuppuswami Chettiar vs. Arumugham Chettiar, AIR 1967 SC-1 396).

it was also held that a registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the releasee for valuable consideration may operate as a conveyance if the document clearly indicates an intention to effect a transfer in favour of person having no interest.

(T. Mammo vs. K. Ramunni AIR 1966, SC 337).

Release involves renunciation of claims. In order that a renouncing member may become separate from the other members of the family the renunciation must be in respect of the entire interest in respect of all the joint family properties (Tulsi Bai vs. Haji, Baksh AIR 1936 LAB 476) and must be in favour of all the remaining coparceners. In the case No 83 of 1970 (Subhadramma vs. District Registrar, Nellore) (Judgement delivered on 18-1-1974) the Andhra Pradesh High Court held that a release by a coparcener has to be executed in favour of all the remaining coparceners as a body. When however, the release was executed in favour of one or some of the remaining coparceners (and not all the coparceners) for consideration it was held to be a conveyance.

(vi) Release or conveyance on sale:

(B. Prakasa Rao vs. Board or Revenue, Andhra Pradesh case No. 3 of 1974 High Court of Andhra Pradesh 19-7-1976).

P. who owned a house sold an undivided 1/20th share in the building to S for a consideration of Rs. 1,000/- through a registered document, sixteen days later P by another document purported to have released his right in 19/20th share of the same building in favour of S for consideration of Rs. 19,000/-.

Held: - The latter document is a conveyance on sale. Having fixed the value of the buildings at Rs. 20,000/- 1/20th share was sold on 27-5-1973 for Rs. 1,000/- and the remaining 19/20th share was conveyed 16 days later for precisely the balance of the value of Rs. 19,000/-. The document feature of a sale is the transfer of ownership for a price. It is significantly stated in the document that P was not getting any income from the building and therefore did not want to keep it. These are the characteristics of a sale and not of a release. Warranties of the title and possession of the building and covenants to save and indemnify S against all encumbrances, etc., are the essential characteristics of a sale deed.

(vii) Dissolution of partnership and sale:- Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara vs. Dewas Cine Corporation (C.A. No. 2163 OF 1966).

G and H entered into an agreement to carry on business in partnership as exhibitors of cinematograph films. Each partner who was an owner of a theatre brought his theatre in to the books of the partnership as an asset of the partnership. The partnership was dissolved and on dissolution, it was agreed between the partners that the theatres should be returned to their original owners. In the books of accounts maintained by the partnership, the assets were shown as taken over at the original price less the depreciation allowed, the depreciation being equally divided between the two partners.

A partner may in an action for dissolution insist the assets of the partnership be realised by sale of its assets but where in satisfaction of the claim of the partner to his share in the value of the residue determined on the footing of an actual or notional sale, property is allotted, the property so allotted to him cannot be deemed in law to be sold to him. The adjustment of the rights of the partners in a dissolved firm is not a transfer, not is it for a price.

(Supreme Court decision reported in Income Tax Journal volume 11-7. dt. 10-4-1968 page 444 to 447).

Section 29 of the Indian partnership Act Rights of transferee of a partner's interest.

- (1). A transfer by a partner of his interest in the firm either absolute or by mortgage, or by the creation by him of a charge on such interest does not entitle the transferee, during the continuance of the firm to interfere in the conduct of the business or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profit of the transferring partner and the transferee shall accept the account of profits agreed to by the partners.
- (2) If the firm is dissolved, or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share, of the assets of the firm to which the transferring partner is entitled as for the purpose of ascertaining that share, to an account as from the date of dissolution.

Section 42. Subject to contract between the partners, a firm is dissolved.

(c) by the death of a partner and (d) adjudication of a partner as an insolvent.

“if a partner dies, his executors or devisees have no right to insist on being admitted into partnership with the surviving partners, unless some agreement to that effect has been entered into by them”.

(Tatam Vs. Williams 3 Hare 347 reported in ‘Law of partnership’ by Premnath Chanda on page 215).

“Where one of the partners of firm transfers his share in the firm without the consent of the other partners, the transferee does not get the status of a partner in view of Sec 31 of Indian Partnership Act”.

(Ramprasad Singh vs. Shivanandan Misra, AIR 1963 Patna 149, quoted on page 126 ibid).

“Where partner’s interest is transferred to a stranger the transferee does not become a partner and transferor does not cease to be a partner”.

(Sundra Bai vs. Ram Lal, AIR 1942 Flag L. Jour. 22 of Page 216 ibid).

Deed of dissolution creating charge on assets of Partnership:

N. Guruva Reddy vs. The District Registrar, Hyderabad.

In a deed of dissolution of partnership, clause 9 reads as follows:

“The continuing parties to this agreement hereby create a charge on the assets of the partnership subject only to the first charge in favor of Andhra Pradesh State Financial Corporation, Hyderabad, for the payment of the amount mentioned above to the various outgoing partners”. The document in so far as it creates a charge, can only be considered to be a mortgage deed and nothing else. Two distinct matters viz, the rights of the parties of the agreement at the time of the dissolution and creation of charge on the assets of the partnership were provided for by the deed. The matter must be held to be two distinct matters or transactions and the charge cannot be said to be merely ancillary to the dissolution of the partnership. Under the Indian partnership Act, there is no implied right or statutory right in favour of an outgoing partner for the security of his share in the assets of the partnership which he is entitled to seek at the time of retirement or dissolution. (As such) clause 9 of the partnership deed, which creates a charge must be held to be a separate and distinct matter from the terms of the deed of dissolution.

Under the circumstances, it must be held that the document under consideration was both a deed of dissolution and a mortgage deed and hence the stamp duty has to be charged under relevant Article of the Schedule to the Stamp Act read with Sn. 5 and Sn. 6.

(Decision of the Andhra Pradesh High Court reported in the Andhra Weekly Reporter dated 1-10-1976 Vol. XL II Part-4.3)

There can be no release of a property by one person in favour of another if they are not co-owners at the time of the formation of original partnership. The Chief Controlling Revenue Authority A.P. Hyderabad had expressed the view in August, 1971 (BPRT No. 1887/71 dt. 17-8-1971) that an outsider who was not a member at the time of original partnership but who purchased the share of one of its partners, could not be considered as a co-owner and the document executed in his favour by one of the co-owners, relinquishing his right in the properties of partnership would be a conveyance and not a release.

(Govt. of A.P. Memo. No. 3825/U2/81-82, Dt. 18-07-1985).

Addanki Narayanappa & others Vs. Bhaskara Krishnappa & others 1966 AIR page 1800. S.C. (Prs. 16-17) 21st January 1966.

A.K. Sarkar K.N. Wanchoo and J.R. Mudholkar, JJ. Civil Appeal No. 299 of 1961.

- (A) Partnership Act 1932. Sec 14, 15, 29, 32, 37, 38 and 48 - Interest of Partner in partnership property during subsistence of partnership and after its dissolution-Nature of the provisions of Ss. 14, 15, 29, 32, 37, 38 and 48 make it clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profit if any, accruing to the partnership from the realisation of this property and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of partnership, however no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Cl. (a) and sub-Cl. (i) (ii) & (iii) of Cl. (b) of S. 48. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by S. 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners. Lindly on Partnership, 12 Edn. P. 375 Ref. to English and Indian Case Law discussed AIR 1947 Lah 13 (FB) Approved. AIR 1959 and Pra 380(FB). Affirmed.(Paras 3.5).
- (viii) Agreement or Leases:- (a) Whether a Contract for Collection of tolls is a lease falling within the definition of clause (16) of section 2 of Indian Stamp Act Prachayat Samithi, Narisipatnam (petitioner) vs. Kethevarapu Kannamma, C.R.P. No 1211 of 1971-A.P High Court.

In an auction the respondent took the contract for collection of toll from the Panchayat Samithi (Petitioner) for a period of 6 months. A document was executed where by the respondent agree to abide by certain terms including the payment of the amount. As the respondent was in arrears the Panchayat Samithi instituted a suit for the recovery of the arrears and filed the document which the respondent executed in favour of the Samithi. An objection was taken under the Stamp Law that the document was a lease within the meaning of Sec 2 clause 16 of the Indian Stamp Act. The lower court upheld the objection and directed the petitioner to pay the Stamp duty together with penalty. The petitioner came with a revision petition seeking the judgement of the High Court against the said order of the Lower Court.

Held: A casual reading of the definition of lease indicates that any instrument by which tolls of any description are let come within the definition of the term 'lease' in so far as the question of letting tolls concerned there is no dispute between the parties when once that is admitted that by and under the document tolls are let, then it would have been an instrument by which tolls of the appropriate description are let and as a result such instrument can be a lease within the meaning of clause (16) of Sec 2 of the Act.

- (b) The Forest Department conducted auction of forest produce. In the agreement to be executed by the successful bidders Stamp duty was required to be levied as though they were leases. The matter came before the Supreme Court where it was decided that the agreement in question possesses characteristics of licences and did not amount to lease.

The second question that came up for consideration was whether the security deposits paid by the bidders should be considered as mortgages and stamp duty leviable under Article 35(c) of schedule to Indian Stamp Act. The court held that they are not mortgages as no right over the security deposits was created in favour of State Government.

Board of Revenue vs. A.M. Ansari C.A. Nos. 67 and 22 to 28 of 1969 (17-3-76).

- (c) A.P. High Court case No. 128 of 1981 Dt. 5-8-85. K. Venkatadri Sarma vs. Inspector General of Registration and Stamps A.P. Hyderabad.

Lease-cum-sale agreement executed in connection with the allotment of a house by the A.P. Housing board is an agreement (Hire purchase agreement)- governed by Article 6 of schedule 1-A (Article-31(a)IV or 31(c) is not attracted).

Held: Sec 3 is the charging section and it is clear that the levy of the duty on the instrument but not on the transaction. However, in order to determine the nature of instrument the court has to look into the nature of the transaction covered by the instrument. An agreement to lease is not a

lease for purpose of Transfer of Property Act or the Indian Stamp Act. In the present case though the word “rent” is used it is only by way of an agreement that the agreed price is being taken by way of instalments. The deed does not create the present demise. Even for the purpose of evicting the allottee a separate special procedure is provided without leaving the rights to be worked out under general law treating the allottee as tenant. Hence it is an agreement to hire the building till the property is conveyed to the allottee.

- (c) The Inspector General of registrations and Stamps A.P. Hyderabad in his proceeding No. S1/8313/79 DT. 25.8.80 had clarified that agreements to plant coconut trees on government lands, canal banks, etc., and to enjoy fruits are to be treated as leases.
- (ix) Mortage by conditional Sale:- The Supreme court has taken the following circumstances into account to decide that a document is a mortgage by conditional sale (Vide Mahesh Bhagat vs. Ram Saran Mehta, AIR 1968 Supreme Court, 1466. P.L. Bapuswamy vs. N. Pattay Gounder, AIR 1966 Supreme Court (902)).
1. The existence of the relationship of debtor and creditor between the parties.
 2. The existence of Security for the repayment of debt.
 3. The condition for repurchase was embodied in the same document. If the parties intend the document even in such a case to be a sale, they must specify their intention by clear and express words.
 4. The consideration for the transaction is less than the real value of the property.
 5. The patta was not transferred.
 6. The consideration for reconveyance is the same amount as the consideration for the original transaction.
- (x) Agreement relating to mortgage by deposit of title deeds.- (Union Bank of India vs. Lakh Ram and Co) When the debtor with the creditor, title deeds of his property, with an intent to create a mortgage no registered instrument is required under section 59 as in other cases of mortgage. It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over, by a borrower to the lender, of documents to title to immovable property with the intentions that those documents shall constitute a security which will enable the creditor, ultimately, to recover the money which he has lent. But if the parties chose to reduce the contract to writing, this implication of law is excluded by their express bargain and the document will be the sole evidence of its terms. In such a case, the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of mortgage. It follows that in such a case the document which constitutes the bargain regarding security requires registration under section 17 of the Indian Registration Act as a non-testamentary instrument creating an interest in immovable

property where the value of such property is one hundred rupees and upwards. If a document of this character, is not registered, it cannot be used in evidence at all and the transaction itself cannot be proved by oral evidence either (Decision of the Supreme Court).

In order classify an instrument as agreement relating to deposit of title deeds it should merely contain the bargain between the parties with regard to deposit of title deeds and conditions subsidiary and ancillary thereto. But if it contains all the provisions which are normally found in a mortgage deed the mere fact that it also contains a bargain with regard to deposit of title deeds will not make it an agreement for the deposit of title deeds.

The documents relating to deposit of title deeds containing the following recitals or conditions have to be classified as simple mortgages.

- (a) Where the deed contains many provisions which are never found in agreement with regard to deposit of title deeds such as provisions with regard to acceleration of the due date for the payment of mortgage debt.
 - (b) Where a document evidencing the deposit of title deeds containing a condition enabling the lender to sell the immovable property on default of payment on the agreed date, the power of sale creates interest not only in the title deeds but in the properties themselves and the document is classifiable as a regular mortgage.
 - (c) Where a document contains a clause irrevocably appointing the mortgagee receiver to be appointed, to sign for and on behalf of the mortgager to do all acts including the power of sale of properties, such document has to be classified as a mortgage cum-power of Attorney for consideration.
 - (d) The Inspector General of Registration and Stamps, A.P. Hyderabad in his memo No. G4/6006/81, dt. 28-4-82 had clarified that an agreement relating to deposit of title deeds containing an undertaking given by the borrower to keep the property free from encumbrance and not to create any charge on the property as long as the document in question is operative should be classified as simple mortgage.
- (xi) Power of Attorney or Usufructuary Mortgage:- (A) Bapiraju and others vs. District Registrar, Srikakulam). A power of Attorney contained among other things, the following four conditions:
- (1) the agent shall work, on behalf of the Principal, the mines mentioned in schedules A and B to the plaint;
 - (2) the agents may, in their discretion, appropriate the net sale proceeds towards the decree amount due to them;
 - (3) the principal agreed not to revoke, cancel, or modify the power of attorney in question, unless and until the amount due to the

- agents under the compromise decree is completely discharged; and
- (4) there should be an accounting and ascertainment of the net sale proceeds worked out during the period and appropriated to the decree amount. The agents were put in possession of the properties. In view of these conditions the Board of Revenue was of the opinion that the properties were held as security in satisfaction of the decree debt, and that the document is usufructuary mortgage.

The power of attorney was executed pursuant to a compromise decree in connection with the recovery of certain sum owned by the principals to the agents. The contention on behalf of Government, is that the compromise decree and the power of attorney read together amounts to a mortgage with possession and though styled a power of attorney, it should be stamped as a mortgage with possession.

The decision of the Supreme Court in S. Chattanath Karayalar vs. The Central Bank of India Limited (515) 1966 II SC. J.P. 317 (320) is not a case under the stamp Act. The question for consideration in that case was, whether the status of the third defendant therein in relation to a transaction as an overdraft account was that of a surety or a co-obligant. It was held that there was an integrated transaction constituted by three documents executed between the parties on the same day, and their legal effect was to confer on the third defendant the status of a surety and not of a co-obligant. Their lordship held that the principle is well established that if a transaction is contained in more than one document between the same parties must have been read and interpreted together and they have the same legal effect for all purposes as if they are one document. The principle is unexceptionable, but it is of no assistance in deciding the question in controversy in the instant case.

In view of the forgoing discussion we hold that the document in question is liable to be charged with duty only as a power of attorney but not as a mortgage with possession (Reported in Registration Gazettee, dated 28-12-1966).

- (xii) Mortgage/ Power of attorney for consideration / Mortgage with Possession.-
(a) Power of attorney given for consideration and authorising the attorney to sell any immovable property for & on behalf of the principal is chargeable to Stamp Duty under Article 42(e) of Schedule I-A to Indian Stamp Act, 1899 at rates applicable to conveyance for the amount or value of consideration mentioned there in.

By Amendment Act.No.21 of 1995 to the Indian Stamp Act 1899, (w.e.f.1.4.1995), any power of attorney when given for

construction on, development of, or sale or transfer (in any manner whatsoever) of, any immovable property, such a power of attorney is chargeable with a Stamp Duty @ 5% on the Market Value of the property.”

(Authority: Amendment Act 21/1995 w.e.f 1.4.1995).

Further, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of I.S.Act, 1899 (Central Act II of 1899), the Governor of A.P. reduces the stamp duty payable under Article 6(B) of schedule-IA ibid, in respect of documents relating to Agreements or Memoranda of Agreements of sale/construction/development of immovable properties to 1% on the sale consideration or estimated cost of construction/development, as declared by the parties in the document, subject to a maximum of Rs. 20,000/- and if it is combined with GPA clause then 1% on the sale consideration or estimated cost of construction/ development, as declared by the parties in the document, subject to a maximum of Rs. 50,000/- on the condition that the stamp duty so paid shall not be adjustable at the time of registration of consequent/ subsequent sale deeds in pursuance of such Agreement duly registered the Registration Act, 1908.

(Authority: G.O.Ms.No. 1475 Rev (Regn.II) Dt. 30-7-2005).

Sometimes simple mortgage deeds also contain the clauses of appointment of mortgagee as power of attorney and authorising the attorney to sell the mortgaged immovable property and the classification of such document, is different. In some documents, besides the usual conditions of mortgages certain specific clauses are included empowering the mortgagees to sell the properties in the event of default and another clause irrevocably appointing the mortgagees as attorneys to do all acts, deeds and things in the name and on behalf of the mortgagor which the mortgagor ought to do, such documents have to be classified as power of attorney for consideration under Article 42(e) of Schedule I-A and charged to stamp duty under section 6 of the Indian Stamp Act.

- (b) As per explanation under Article 35(b) of schedule I-A to Indian Stamp Act, a mortgagor who gives or has given the mortgagee a power of attorney to collect rents, or gives or has given to the mortgagee a lease, of the property mortgaged or part thereof is deemed to have been given possession thereof within the meaning of the article.

Accordingly, a document satisfying the above explanation has to be classified as a mortgage with possession. Documents of mortgages with possession attract levy of transfer duty/Transfer of Property Tax under the provisions of local Acts.

In exercise of the powers conferred by clause (a), subject to a maximum of Rs. 1000/- if the power of attorney is given in favour of Family. In other cases it is 1%.

**(Authority:G.O.Ms.No.1128 Rev (Regn.I) Dept. Dt.
13-6-2005).**

- (xiii) Paripassu agreements.- Paripassu agreements are agreements whereby a borrower takes loans from two or more financial institutions or parties (by offering all or any such securities as simple mortgage of lands and building equitable mortgage of immovable properties, deposit of title deeds without any formal document, hypothecation of movable properties etc.) and the borrowers and ledgers agree *inter alia* that rights in the properties created in favour of the lender/lenders would, *inter se* rank paripassu (on equal footing or proportionately) or priority for any lender over the others for all intents and purposes.

Paripassu agreements usually come into existence in the following circumstances.

- (i) An industrialist or a firm or a company obtains credit facilities from financial institutions by offering all or any of the securities viz, simple mortgage. Mortgage by deposit of title deeds, hypothecation of movables etc.
- (ii) When the borrower takes loans from more than one institution, the subsequent creditors insist that their rights in the mortgaged properties shall rank paripassu with the earlier creditors. Thus the mortgagor and mortgagee enter into an agreement to bring all the creditors on par so far as their mortgage rights are concerned.

In modern business practice the parties are resorting to obtain huge amounts of loans running to several lakh of rupees or unregistered and unstamped documents styled as memorandum of deposit of title deeds and then getting the paripassu agreements alone registered. This agreement is containing several clauses and conditions relating to appointment of Receivers, Power of sale of the properties, provision for insurance of the properties and distribution of money received from Insurance companies to the creditors towards advances etc. These conditions are not subsidiary or ancillary to deposit of title deeds. According to judicial decisions if a document contains all the provisions which one would normally found in a mortgage deed, then the mere fact that the document also contains the bargain with regard to deposit of title deeds will not make it an agreement for the deposit of title deeds. By incorporating such conditions in the paripassu agreements a charge being created over the immovable property themselves. Hence paripassu agreements attract duty not only as agreements but also as simple mortgages in respect of all the loans obtained earlier on equitable mortgages chargeable with higher duty under Article 35 of Schedule I-A read with sec 6 of the Indian Stamp Act.

(xi) Sale Agreements.-(a) In the case of Neerukonda Hanumantha Rao vs. Puthumbaka Narayana Prasad and others (case No. SA 626 of 1980) the High Court of Andhra Pradesh Hyderabad held on 18-11-1983 that when the effect of the recitals in the agreement is that title has been conveyed with absolute rights of alienation etc., the mere clause that a regular sale deed would be executed at a later date does not take away the character of the document as being a sale deed. As a result in the enactment Act No. 17 of 1986 passed on 22-7-1986 (w.e.f. 16-8-1986) a new article 47-A has been introduced in the Schedule I-A to Indian Stamp Act to bring the agreement to sell with possession to be charged at conveyance rates. As per explanation under Article 20 of Schedule I-A to the Indian Stamp Act as amended in the enactment Act No. 17 of 1986 dt.22.07.1986.

The above position is changed w.e.f. 1.4.1995 as a result of Amendment Act No. 21 of 1995 to Indian Stamp Act, as Explanation I is added to Article 47-A which states that an Agreement of sell followed by or evidencing delivery of possession of the property agreed to be sold the Article 47-A shall be chargeable as a "Sale" under.

Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to Clause (b) of Article 6, the Stamp duty, if any already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed.

The above position is applicable only to Agreement of Sale evidencing/agreeing to deliver possession of property. However, when the aspect of possession of property is not disclosed in the Agreement of sale, such document is chargeable with stamp duty @ 5% on the market value or Advance paid by the purchaser whichever is higher under Article 20 of Schedule – IA to the Act. In such cases also, when a sale deed is executed in pursuance of the Agreement of Sale, the duty already paid on the Agreement is to be adjusted.

(Authority: Amendment Act No.21 of 1995 w.e.f. 1.4.1995)

Further, as per G.O.Ms.No. 1475, Revenue (Regn.II) dt. 30-07-2005, the Governor of A.P.under Clause (a) of sub-section of section 9 of IS Act, 1899, reduces the stamp duty payable under section 6(B) of Schedule-IA to the Act, in respect of documents relating to Agreement of Sale of immovable properties to 1% on the sale consideration as declared by the parties subject to a maximum of Rs. 20,000/- on the condition that, the stamp duty so paid shall not be adjustable at the time registration of subsequent sale deeds in pursuance of such Agreements.

(xv) Small land holders who mortgage their lands with Cooperative societies, Grameena Banks, etc., are exempt from levy of stamp duty and registration fee (the limit of holding is 5 acres of wet or 10 acres of dry). While arriving the

quantum of land holding 2 acres of dry are considered equal to 1 acre of wet. Lands classified in land Revenue records as “Irrigated dry” are to be treated as wet when such ‘irrigated dry’ land is irrigated from a permanent water source of the government.

6.4. Audit Checks. - The following audit checks may be exercised.

- (i) Copies of documents of files in books 1,3 and 4 should be test checked to the prescribed extent with a view to seeking that they have been adequately and properly stamped as per the provisions of the Stamp Act and other relevant legislation. The classification of documents should be checked with reference to recitals.
- (ii) Documents attracting ad valorem duty are likely to be misclassified as documents attracting fixed duty. Special care may be taken in respect of such cases of possible misclassification.
- (iii) In order to select documents for scrutiny Account-A may be reviewed thoroughly and miscellaneous documents, documents with higher value and other documents where there is a possibility of misclassification may be selected.
- (iv) While checking the rectification deeds it should be seen whether there is change in the extent of area and boundaries of property. If so a suitable comment may be included about the material alteration involved.
- (v) While checking the gift settlement deeds it should be seen:
 - (a) Whether a gift of site to a Panchayat for construction of Office building is properly classified as “pure gift” and proper transfer duty levied on the transaction.
 - (b) Whether the gifts for religious purpose made in favour of Deity or Murthy are properly classified as “pure gifts”.
 - (c) Whether the gift made in favour of institutions such as local authorities, choultries, devasthanams etc., for religious and charitable purposes in memory of the dead or to perpetuate the name of a particular person or persons were classified as “pure gift”.
(SD & RF is exempted in respect of Gift Deeds, Settlement deeds if executed in favour of Government perpetuating the memory of living or dead persons vide G.O.Ms.No.877, Revenue Dept., dt.30.10.04)
- (vi) While checking the dissolution of partnership cum release deeds it should be seen whether the releasors and releasees are existing partners of the partnership firm (not assignees or legal heirs).
- (vii) While verifying the Trust deeds it should be seen whether authors of Trust are included in the Managing Trustees.
- (viii) While commenting the objection on misclassification of power for consideration as simple mortgage it must be ensured that the documents contain the following recitals or clauses.

- (a) It should be for power of attorney as defined in Section 2(21) of Indian Stamp Act.
- (b) It should be given for consideration and authorising the attorney to sell any immovable property.
- (ix) Whether exemptions from levy of Stamp duty and registration fee in respect of documents relating to cooperative societies have been correctly allowed.
- (x) Whether deduction of Stamp Duty already paid is allowed under Sec 24 of Indian Stamp Act without the requirements of Sec 16, ibid, having been fulfilled (viz, the application in writing having been received and the certificate of verification of stamp duty borne by the earlier document having been denoted by the Collector. Here sub-registrars exercise the function of collector for denoting the duty under Section 16 of the Indian Stamp Act.).
- (xi) Whether the differential duty (under Sec 19A of Indian Stamp Act clause (bb) of the first proviso to sec 3) is realised in respect of instruments executed outside the State.
- (xii) Whether fines leviable under the Acts/Rules have been correctly levied and collected.
- (xiii) Whether remissions and refund of fines have been authorized by competent authority and cross reference have been made on the counterfoil of the receipt against the original entry of the receipts in departmental accounts.

Redevolution of duties of members of State Receipt Parties as per C.A.G's Circular No. 6 of 1984. Registration fee and Stamp duty.

H. Registration fee and stamp duty.

1. Audit Officer

1. Review of items marked with asterisk and discussion of outstanding local Audit Report paras.
2. Checking correctness of valuation by comparison and by cross check with records of other departments and giving suitable directions and guidance to Asst. Audit Officer/ Auditor in this regard.
3. Arrangements for custody of stamps and account of Stamps received and sold.
4. Returns/ reports from and to Inspectors, Inspector General and Collectors,
5. Delays resulting in revenue locked up by reference to Collector or otherwise and other system defects.

II. Assistant Audit Officer/Section Officer

1. Audit of Stamp duty assessment on instrument and documents (court fee documents e.g., plaints as and when their audit is taken up) in addition to review at least 10 per

cent high value cases to be audited by Audit Officer by allotting to himself.

2. Check of registration fee charge.
3. Check of exemptions, refunds and penalty and fines.

III. Auditor

1. Tracing of 10% of debit and credit entries in stamps and Registration office with corresponding credit and debit entry as per cash book/treasury records.
2. Check of cash books (main and subsidiary) and other registers including receipt books.
3. Check of receipts other than Registration fee and Stamp duty.

CHAPTER 7. MARKET VALUATION SCHEME

7.1. Section 47-A in the Indian Stamp Act. - The stamp duty is mostly ad valorem. Therefore there is a possibility of evasion of stamp duty by undervaluation of instrument. In order to safeguard the financial interests of Government against such undervaluations a new section viz., Sn. 47-A was introduced in the Stamp Act by Act 22 of 1971.

Section 47-A lay down that if a registering officer appointed under the Registration Act, 1908, (Central Act 16 of 1908), while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon:

Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.

7.2 On receipt of a reference under sub-section (1), the Collector shall, after giving the parties an opportunity of making their representation and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid:

Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him:

Provided further that where after the determination of market value by the Collector, if the stamp duty borne by the instrument is found sufficient, the amount deposited shall be returned to the person concerned, without interest.

(3) The Collector may also suo motto call for, within two years of their registration, instruments which were not referred to him already and examine them to see whether properties mentioned therein were correctly valued and properly stamped. Under section 47-A of the Indian Stamp Act 1899, the A.P.Prevention of undervaluation Rules 1975 were framed.

(3-A) (i) The Inspector General may suo motto, call for and examine the record of any order passed or proceeding recorded by the Collector under sub section (3), and if such order or proceeding recorded is found leading to loss of legitimate revenue due to disregard of market value by the Collector, based on mistake, omission, or failure to take any factual evidence effecting the market value of the property, may make

such enquiry or cause such enquiry and inspection of the property to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order in reference there to as he thinks fit:

Provided that the powers conferred under this clause shall be invoked within a period of six months from the date of order or proceeding issued by the Collector under section (3);

(ii) the power under clause (i) shall not be exercised by the authority specified there in in respect of any issue or question which is the subject matter of an appeal before, which was decided on appeal by the appellate authority.

(iii) no order shall be passed under clause (i) enhancing any duty unless an opportunity has been given to the party to show cause against the proposed revision of market value and deficit stamp duty;

(iv) where any action under this sub section has been deferred on account of any stay order granted by the Court in any case, or by reason of the fact that another proceeding is pending before the Court involving a question of law having a direct bearing on the order or proceeding in question, the period during which the stay order was in force or such proceeding was pending shall be excluded in computing the period of six months specified in the proviso to clause (i) of this section for the purpose of exercising the power under this sub-section.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or (3) may appeal to the appellate authority. All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

(4A) Any person aggrieved by the order of the Inspector-General under sub-section (3A) may appeal to the High Court within a period of two months from the date of receipt of such order.

(5) The appellate authority shall be –

- (i) in the cities of Hyderabad and Secunderabad, the City Civil Court,
- (ii) elsewhere-

(a) the Subordinate Judge or if there are more than one Subordinate Judge, the Principal Subordinate Judge, having jurisdiction over the area in which the property concerned is situated; or

(b) if there is no such Subordinate Judge, the District Judge having jurisdiction over the area aforesaid.

(6) For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument referred to in sub-section (1):

Provided that in respect of instruments executed by or on behalf of the Central/State Government or any authority/body incorporated by or under any law for the time being in force and wholly owned by Central/State Government, the market value of any property shall be the value shown in such instrument.

(Authority: A.P.Amendment Act No.8 of 1998 w.e.f. 1.5.1998 and Act.No.14 of 1999 w.e.f.1.7.1999).

The Government (vide G.O. Ms. No. 2046 Revenue (Regn-I) Department dt. 28.11.2005) by a notification w.e.f. 1.12.2005 reduced the stamp duty on sale deeds of land, buildings, and plant and machinery by limiting the stamp duty to the amount arrived at on the auction amount declared in the sale deeds of land building and plant and machinery of the individual units disposed off by the implementation Secretariat of the Public Enterprises Department.

Further, the Governor of Andhra Pradesh reduces the Stamp Duty payable on all Sale Deeds of Plant and Machinery (movable or immovable i.e. whether fastened to earth or severed) in respect of normal sale/conveyance transactions, to 2% on the Book Value shown in the financial accounts as on the closing date of the immediately preceding financial year. These orders are effective from 1st December, 2005.

(Authority: G.O.Ms.No.2046, Revenue (Registration. I) Department, dated 28.11.2006.)

7.3. Statement of market valuation.- According to Rule 3 of Andhra Pradesh Stamp (prevention of undervaluation of instrument) rules, 1975 the Registering Officer, before registering an instrument, has to satisfy himself that the party has enclosed to the instrument, a statement, giving the market value in respect of each of the properties separately. He may for the purpose of satisfying himself as to whether the market value of the consideration has been correctly furnished in the instrument or not, make such enquiries, as he may deem fit. He may elicit from the persons concerned any information having a bearing on the subject and call for and examine any records kept with any public officer or authority.

The registering officer may also refer to the registers containing market value guidelines prepared under the Andhra Pradesh Market Value Guidelines Rules 1997.

(Authority: G.O.Ms.No.529 Rev. (Reg.I) dt.21.6.1997)

Further, if the Registering Officer is of opinion that the market value of the property affected by the instrument is not correctly furnished, he shall keep the document pending and without delay refer the matter to the Collector with details of his assessment of the market value arrived at by him in the Form-I. No copy to such document shall be granted notwithstanding anything contained in any of the provisions of any other Act or Rules.

The Registering officer shall maintain a register of such references to the Collector in Form-IV and obtain acknowledgement from the Collector. The Collector shall also maintain office-wise Register of references received from each Registering Officers in Form-V.

(Authority: G.O.Ms .997, Rev. (U), Dt. 14.8.8.1986 w.e.f. 16.8.1986).

7.4. Valuation by the Collector.- As per Rule 4(4) the Collector, after considering representation, if any, received from the person to whom notice under sub-Rule (1) has been issued, and after examining the records and evidence before him shall pass an order, in writing, provisionally determining the market value of the properties or the consideration and the duty payable. The basis on which the

provisional market value or Consideration was determined shall be clearly indicated in the order.

In terms of Rule 7, the Collector after considering the representations received in writing those urged at the time of hearing and after careful consideration of all the relevant factors and evidence placed before him, shall pass an order determining the market value of the properties of the consideration therefore the deficit amount of stamp duty shall be paid, communicate the order to the Parties and take steps to collect the deficient amount of stamp duty, if any. The Collector shall, after receipt of the reference under sub-section (1) of Section 47-A dispose of the case expeditiously. A copy of the order shall be communicated to the registering officer concerned for his record. If the parties to the document fail to prefer an appeal within 2 months under Rule 9 from the date of receipt; of Collector's order under Rule 7, or fail to pay the deficit stamp duty is not recovered by coercive process under Section 48 of the Act, and Registering Officer shall destroy the document after a period of 5 years from the date of Collector's order under sub-section (2) of Section 47.

(Authority: G.O.Ms.No.997 Rev. (U) dt. 14-8-1986 w.e.f. 16-8-1986)

7.5. Valuation by the appellate authority.- Rule 12 states that in case, the appellate authority i.e., city civil court in the twin cities and sub-ordinate or District judge, elsewhere, does not accept the valuation of the properties or the consideration determined by the Collector, it shall determine the correct market value of the properties or the consideration and the duty payable on the instrument.

The appellate authority shall embody its decision and the reasons therefor in an order and communicate it to the appellant, the Collector and the registering officer concerned. After receipt of the orders issued by the Appellate authority under sub-section (4) of Section 47-A if the parties fails to pay deficit stamp duty if any, or if such deficit stamp duty is not recovered by coercive process under Section 48, the Registering officer shall destroy the document after 5 years from the date of the orders of the Collector under sub-section (2) of Section 47-A. If any Officer by conducting spot inspection or otherwise detects that a document is under-value and reports to the Collector with his assessment of the value of the property affected by the document within 2 years from the date of registration of such document the Collector shall exercise his powers under sub-section (3) of Section 47-A.

(Authority: G.O.Ms.No.997, Rev. (U) dt.140801986 w.e.f.16-8-1986.)

7.6. All District Registrars are Collectors under Section 47-A

7.7. Valuation of Lands. - For the guidance of the registering officers to decide whether the properties in any of the instrument under reference were undervalued "basic registers" indicating the market values of the different types of Agricultural lands, survey number-wise and also those of the urban land according to the wards and blocks are supplied. The following executive instructions were issued by Inspector General of Registration and stamps for arriving market value of house sites. Lands having survey number in the documents and described as "Gramkantham" (Village sites) have to be treated as house sites and rates fixed for house sites have to be adopted. (IGR & S proceedings No. MV/903/77 dt. 20-12-77).

The I.G.R. & S. in his circular Lr. No. MV3/977/85 dated 30-4-85 has clarified that if the agricultural land is converted into small plots and the plots are sold out through sale deeds as house sites, it attracts, stamp duty as house sites and not as agricultural land.

The basic register rate per acre should be adopted when agricultural lands are sold in bulk and minimum house site rate should be adopted when they are sold in bits admeasuring 10 cents or less (4 guntas or less). In case when agricultural lands are purchased in bulk by industrialists, Educational/Religious institutions, Co-operative Housing societies etc., the registering officers need not insist for adoption of house site rate. However they should make sincere efforts to elicit the real consideration involved in the transaction as it would generally be higher than the basic register and stamp duty should be levied on such higher rates only.

(Authority: Proceedings No. MVI/20363-A/90, dated 10-08-1990 of the I.G. & R.S.)

7.8. Valuation of building. - For valuation of buildings also guidelines were given from time to time indicating the rates for construction of different types of buildings on plinth area basis including depreciation tables showing the rates of depreciation per rupee on capital cost. Expected life of the building is based on the type construction.

TYPE OF CONSTRUCTION	LIFE
(i) R.C.C. Roof. Jack archroof Madras Terrace & Cuddapah Slab buildings	80 years
(ii) Houses having roof with Mangalore Tiles, Shabad stones, Tin Sheets, Acc sheets, Zinc sheets Country Tiles and Mud roofs.	60 years
Houses having roof with palm leaves constructed on walls with bricks and Chagiti Midde	40 years

As per C& IG Proceedings No.MV5/9380/2006, dt.28.07.2006, depending the age of the buildings, the depreciation is allowed. No depreciation is allowed in respect of buildings or structures whose age is up to 10 years. If the age of the building is above 10 years, 1% of depreciation is allowed for each year over and above 10 years subject to maximum of 50%.

Valuation of House Buildings & Flats is assessed based on the structure values given by the C&IG vide Proceedings ibid.

(iii) For arriving the value of amenities provided to houses buildings i.e., water, electricity, sanitary fittings etc., certain percentages were prescribed to calculate the value bases on the total cost of house buildings. No separate value need be calculated for residential wells as it has been included in the amenities provided under 'Water'. For agricultural wells a uniform rate of Rs.8, 000/- (w.e.f.15-5-85) for each well may be added irrespective of diameter, depth and age of the well.

- (iv) **Valuation of multistoried flats.** - The value of the flats of multi-storyed buildings should be arrived at with the help of the data furnished to the registering officers for calculating the value of building. (Proceedings I.G.R. & S No. SI/32372/84 dated 30-4-85).

The parties executing documents are required to give the details of the relevant buildings in the Form in annexure I-A or fully described in the recitals of the document so as to enable the Registering Officer to workout the market value of the property in Annexure-I-B/CARD Checkslips. These include the area of site, built up area, type of construction, age of the building, etc., Annexure I-A forms part of the document.

The registering officer should adopt the highest of the following as market value of the property.

- (a) Consideration mentioned in the document.
- (b) Value estimated by the party as indicated in recitals Annexure I-A.
- (c) Eighteen times the annual rental value.
- (d) Market value as calculated by the registering officer (Annexure I-B)
- (e) For the buildings used for Shops, Commercial establishments and offices, the 18 times of Average Annual Rental Value (AAR) based on the Annual Rental Value prescribed by the Inspector General of Registration & Stamps is to be considered.*(Authority : IG's Circular Memo No. MVI/20955/2001, dated 21.08.201 w.e.f. 1.09.2001)*

If the value of the property arrived at by the Registering Officer is higher than that declared by the executants or the consideration set forth in the document, the Registering Officer shall keep such instrument pending and refer the matter to the Collector for determination of market value of property and proper duty payable thereon.

7.9. Value of land sold or purchases by Govt. concerns.- Government issued instructions to all Registering Officers that the value mentioned in the sale deeds may be accepted where land is sold or purchased by the concerns wholly owned by Govt. (Vide Govt. Memo. No. 2012/U2/ 76-2 DT. 28-7-76).

Further, by an amendment to Section 47-A, the value of the property shown in the instruments executed by or on behalf of the Central Government or the State Government or any authority or body incorporate by or under any law for the time being in force and wholly owned by Central/ State Government, shall be the value for the purpose of Stamp Duty.

(Authority: Amendment to Section 47-A by Act 8 of 1998 w.e.f. 1.5.1998

7.10. Calculation of market value of open terrace and incomplete structures are furnished below (which are effective from 7.11.2001)

(Authority: C&IG's Proceedings No. MVI/30324/2000 dt. 2-11-2001 with effect from 7-11-2001)

For computing the market value of an open terrace -Adopt 70% of market value of the site.

Incomplete Structures:

Up to foundation level- 25% of the proposed construction's value

Up to lintel level- 40% of the proposed construction's value.

Up to slab level- 60% of the proposed construction's value.

Up to finishing level - 80% of the proposed construction's value.

(Authority: C&IG's Proceedings No. MVI/30324/2000, dated 2.11.2001 w.e.f. 7.11.2001 & Proceedings No. MV5 /9380/2006, dt. 28.7.2006.)

7.11. For any variety of houses not covered by the guidelines, the District Registrars should contact the Executive Engineer Roads and Buildings concerned and ascertain suitable rates for application.

(I.G.R. & S. Proceedings No. S1/32372/84 Dt. 15-5-85)

7.12. Important Executive Instructions. - Some important executive instructions issued for the guidelines of the Registering Officers are given below:

- (1) **Higher value given by the party.- how dealt with.-** If the party gives a higher market value than that given in the Basic Register, the value given by the party should be adopted by the Sub-Registrar and a suitable note added in the remarks columns under the relevant entry in the copy of the extract with the Sub-registrar and a note of the value should be submitted to the District Registrar with the details of the document who should incorporate in the Basic register against the relevant survey number. The higher value adopted by the party should be treated as the market value and adopted for future transactions also in respect of the particular survey number or portion thereof as the case may be. (Proceedings No. MV-3/312/85 dt. 27-9-85).
- (2) **Market valuation scheme applicable to property in Andhra Pradesh State Only.-** The market value scheme should be applied only in respect of the properties situated in the State of Andhra Pradesh. (Proceeding No. MVA/1130/75 Dt. 25-8-1975).
- (3) **Applies to mortgage by conditional sale.-** The provision of the Act 22/71 apply to mortgage by conditional sale. (Proceeding No. MVA/1130/75 Dt. 25-8-75).

Collection of registration fees before delivery of the documents.- The procedure laid down in Registration Rule 160(ii) has to be followed for collection of Registration fees until a suitable provision is made for the purpose. (Proceedings No. MVA/18/76 DT. 16-3-1976).

Rectification deeds.- Rectification deeds altering the survey number of previously registered deed without altering the extent and boundaries where the market value of the wrong number is lesser than the market value of correct number should be treated as rectification deeds creating rights and charged to stamp duty on the difference in such value. (Proceedings No. MVA/1130/75 DT. 25-9-1975).

Methods of Valuation.- Capitalised value of the building should be arrived at by multiplying the annual rental value (as ascertained from the municipal property tax receipt in the executant's possession by the figure 18 which is the number of years purchase adopted for land acquisition purposes. (Proceedings No. MV/EE/II/975 DT. 22-5-1975).

As the rates for marble flooring etc., have not been fixed, until further orders, the additional value for such flooring may be ascertained from the parties and added to the value arrived at on the basis of the existing formula. (Proceedings No. MVA/1130 /75 DT. 9-8-1975).

Basic Registers.- a permanent Record.- Basic registers should be maintained permanently. (Proceedings No. MV/1130/75 DT. 9-8-1975).

Register of cases referred to Collectors.- A register of cases referred to collector under Section 47-A should be maintained in the form communicated by the Inspector General in his proceedings Dt. 25-6-1975. (Proceedings No. MVA/1526 DT. 7-8-1976).

Valuation of hutment.- Since hutments, i.e., cottages raised on bamboos or thatties covered with mud are not covered by the prescribed formulae, the valuation in such cases given by the parties may be adopted if found reasonable. (Procedings No. MVA/1130/75 DT. 25-9-1975).

Certificates.- Reclassification of Lands.- In cases where the classification of certain survey numbers was not given in the Basic Registers but the maximum and minimum values were fixed for wet and dry lands, the parties may be asked to bring certificates from village officers as regards the nature of the land affected by the document.

High rise structures with ACC/TIN/ZINC sheets such as (a) Cinema Halls, Mills, Factories etc., with walls exceeding 10 feet height (b) in respect of Poultry Farms are to be valued as under:

(i) Areas covered by Mpl. Corporations/Municipalities, Urban Development Authorities, and Notified areas including the Gram Panchayats falling within their master plan areas and urban agglomeration areas & in respect of Secunderabad Cantonment areas : (a)Rs.320/-per Sq. ft. and (b) Rs.250/- per sq.ft.

(ii) Areas falling within Gram Panchayat: (a) Rs.290/- per sq.ft. And (b) Rs.240/- per sq.ft.

The above rates are applicable from 1.08.2006.

(Authority: C&IG's Proceedings No. MV5/9380/2006 DT. 28-07-2006)

7.13. The following points may be looked into while verifying the market values of the properties:

- (i) that the correct rates for the lands and plots as mentioned in the basic registers and for the buildings as mentioned in the executive instructions were applied.
- (ii) That the age of the building mentioned in Annexure IA recitals by the party agrees with the information available in the documents and the plan of the building;
- (iii) That the life of the building was correctly adopted and that correct depreciation rates were followed.
- (iv) That no items of the building such as compound wall first or higher floors etc., were omitted while calculating the market value (For this purpose, it would be necessary if plans of the buildings are verified);
- (v) that the consideration which was higher than the market value in respect of the last transaction was adopted for the future transactions;
- (vi) that CARD check slip or Annexure I-B was prepared correctly;
- (vii) that the annual rental value was verified from the municipal tax receipt;
- (viii) that the highest of the amount of consideration market value of the capitalised value represented by 18 times the annual rental value was adopted;
- (ix) that market values were adopted in cases of mortgages by conditional sale also;
- (x) that valuation of mines, quarries, etc., was done after consulting the concerned authorities on mining; and
- (xi) And that all cases of undervaluation detected by the department were referred to the revenue authorities.

CHAPTER 8. TRANSFER DUTY

8.1. Under the provisions of the various local bodies' Acts mentioned below, a duty in the form of a surcharge on the stamp duty in respect of transfers of immovable property situated within the limits or in the area under the jurisdiction of the local bodies is levied on the under-mentioned instruments.

1. Andhra Pradesh Gram Panchayat Act, 1964 (Sec 69 and 73). Andhra Pradesh Panchayath Raj Act, 1994 (Sections 60 & 69)
2. Andhra Pradesh Municipalities Act, 1965 (Sec 80, 82, 120 & 121)
3. The Hyderabad Municipal Corporation Act, 1955 (Sec 197 & 261).
4. The Cantonments Act, 1924 (Sec 60 & 61).
5. Andhra Pradesh District Boards (Andhra area) Act, 1920.

Description of Instrument	Amount on which duty shall be levied	Levied under the Act(s)
Sale of immovable property	The amount or value of the consideration for the sale as set forth in the instrument or market value whichever is higher.	Acts (1), (2) & (3) mentioned above.
Exchange of immovable property	The consideration equal to the value of the property of the greater value as set forth in the instrument or market value whichever is higher.	____ Do ____
Gift of immovable property	The value of the property as set forth in the instrument or market value whichever is higher	____ Do ____
Mortgage with possession of immovable property	The amount secured by the mortgage as set forth in the instrument	____ Do ____
Lease in perpetuity of immovable property	An amount equal to 1/6 th of the whole amount or value of the rents which would be paid or delivered in respect of first 50 years of the lease as set forth in the instrument.	Act (1) & (2) ibid.

Note: Under Hyderabad Municipal Corporation Act 1955, item (v) is excluded and item (IV) exists modified as Mortgage.

8.2. Transfer duty means the duty on transfers of property. An instrument of sale, exchange, gift, mortgage with possession, lease in perpetuity of immovable property on which transfer duty is leviable. All the provisions of the Stamp Act and the rules made hereunder shall also be applicable to the Transfer duty. The transfer duty to be levied or collected is as under:

(i) Transfer Duty on transfers of property has been fixed at 3% and 2% for Flats/Apartments in respect of Panchayats vide Notification-I of G.O.Ms.No.239 Panchayat Raj and Rural Department (PTS.III), dt.30.06.2005.

(ii) Duty on transfers of property in all the Municipal Corporation areas has been fixed at 2% without any deduction towards collection charges vide G.O.Ms.No.622, Mpl. Admn. & Urban Development (T.C.I) Department, dt.27.06.05.

(iii) Duty on Transfer of property in all selection/special grade Municipalities has been fixed at 2% without any deduction towards collection charges vide G.O.Ms.No.623 Mpl. Admn. & Urban Development (TC.I) Department, dt.27.06.05.

(iv) Duty on Transfer of property in Municipalities (other than Selection or Special Grade Municipalities) has been fixed at 3% without any deduction towards collection charges vide G.O.Ms.No.624, Mpl. Admn. & Urban Development (TC.I) Department, dt.27.06.05.

(v) Tax on transfer of property in Municipal Corporations and Municipal areas of the State has been fixed at 2% without any deduction towards collection charges on all sale deeds of flats/apartments vide Notification-II of G.O.Ms.No.625, Mpl. Admn. & Urban Development (TC.I) Department, dt.27.06.05. These orders are applicable from 1.07.2005 and transfer duty so collected in respect of properties situated within a Panchayat are allocated to the Panchayat, Panchayat Samithi and Zilla Parishad in the ratio of 3:1:1. The amounts collected in cash are directly remitted to the account of the concerned local body after deducting five percent of the total receipts as collection charges.

8.3. The Andhra Pradesh Gram Panchayat Act contains a provision for the exemption from levy of transfer duty. However, no such provision exists in the Andhra Pradesh Municipalities Act.

8.4. The following audit checks may be exercised in respect of the receipts relating to transfer duty;

- (i) that the duty was properly collected in the form of stamps in areas outside the limits of Municipal corporation of Hyderabad and Cantonment and allocated in the prescribed ratio to the concerned local bodies;
- (ii) that the duty collected in cash in areas within the limits of Municipal Corporation of Hyderabad and cantonment is promptly remitted into the Bank to the accounts of the Concerned local bodies.
- (iii) That the collection charges are retained by the department before allocation or remittance to the local bodies;
- (iv) That the amounts allocated to the local bodies are got adjusted to the accounts of the local bodies through the treasuries;
- (v) That the statements sent by the sub-Registrars to the district Registrar are prepared correctly; and
- (vi) that no exemptions are allowed where such exemptions are not provided in the Acts.

CHAPTER 9. **STAMPS: SUPPLY AND SALE OF STAMPS**

9.1. Judicial and non-judicial stamps are printed at the Indian security Press at Nasik Road. The Inspector General of Registration, Andhra Pradesh is appointed by the State Government to perform the functions of the Inspector General of Stamps, Andhra Pradesh under the Indian Stamps Rules, 1925 (as applied in Andhra Pradesh). Inspector General of Stamps sends a consolidated forecast of all stamps required in the state (Andhra Pradesh) to the Controller of Stamps, Nasik Road, after obtaining the necessary information from the local depots.

9.2. Every treasury is a local depot for the custody and sale of stamps and Government may establish local depots at places where there is no treasure. Every sub-treasury is a branch depot for the sale of stamps. The General Stamp Office, Hyderabad is a local depot for the custody and sale of stamps in the Cities of Hyderabad and Secunderabad. Sub-Registry Offices of the Registration Department where sale counters for stamps are opened are for this purpose, treated as a sub-depots of the branch depot (in the sub-treasury) Concerned.

9.3. Treasury Officers and Officers-in-charge of local depots forward to the Accountant General and to the Inspector General of Stamps. Andhra Pradesh returns regarding the sale of stamps in the form of plus and minus memoranda. The treasurer of the District Treasury and the Sub-Treasury Officer of every sub-treasury are ex-officio stamp vendors who sell stamps of all values to applicants including the licensed stamp vendors. They maintain detailed accounts of the stock of stamps and their sale.

9.4. The rule regulating the grant of discount and the grant of licences to licensed vendors for the sale of judicial and non-judicial stamps are prescribed in B.S.No. 77 (G.O. Ms. Ns. 1238 Revenue dt. 5-8-1964)

9.5. Losses of stamps shall be written off-in-accordance with the rules prescribed by the Govt. in this regard.

9.6. Sale of stamps in Sub-Registrar Offices of the Registration Department.- With a view to eliminating difficulties experience by the registering public sale depots have been opened in certain sub-registry offices for sale of stamps in cash to the public. The Sub registrars in charge of the sub-depots will be ex-officio vendors for sale of stamps to public. They obtain supplies from branch depots (viz., sub-treasury) generally once in a week by means of indent (in duplicate). The supply to be kept in these sub-deposits should not fall short of probable demand of one week. At places where both the branch depot (in sub-treasury) and the sub-depot (in sub-registry office) are located, the sale of stamps to licensed stamp vendors is made by the Branch Depot only. Physical verification of stamps in sub-depots in sub-registry offices is conducted by the District Treasury Offices; The stamp vendors also sell the stamps to public.

9.7. Accounts and Registers. - Separate stock Ledgers for each category of stamps viz., non-judicial, judicial, court fee labels and copy stamps etc., are

maintained and stocks received from sub-treasury (G.S.O. in twin cities) are entered under attestation by the sub-Registrars with dated initials.

9.8. Sale Register.- Sale registers are maintained separately for each category of stamps. Every sale is individually recorded giving the denomination sold, value, number of sheets, particulars of persons who tendered the money and the persons for whom the stamps are purchased.

At the end of each day the number and value of each denomination of stamps sold as worked out in the sale register is posted in the relevant stock ledger as sales and the balance struck and attested by the sub-registrar with his dated initials.

9.9. Cash Book.- Cash book is maintained to post the indent number, value of the indent, and cash received. Stamps are delivered to the parties against indent (in prescribed form duly filled in and signed) and cash for the value of the indent. Sale proceeds are remitted through challan by the shroff on the next working day under the relevant sub-head pertaining to 030 stamps and Registration Fee (B) Stamps judicial or (C) Stamps non-judicial as the case may be.

9.10. Records are maintained and monthly returns are sent to the sub-treasury officer as prescribed by the Inspector-General of Stamps.

9.11. The indent number is marked on the indent as noted in column No. 1 of the sales register. The serial numbers of the indents are commenced afresh every day.

9.12. While examining the records relating to the stock and sales of stamps the following points merit consideration:

- (a)That the full particulars of the stamps sold are recorded in the sale register in serial order under the signature of the Sub-Register.
- (b)That the Register is daily closed and stock account is tallied.
- (c)That the sale proceeds are remitted without any delay to the correct head of account.
- (d)That the sales are made on proper indents and the indents cash receipts are cross-referenced;
- (e)That the physical verification of stocks is conducted regularly every year by the District Treasury Officer.
- (f)The plus and minus memorandum prepared by the local depots are checked, verified and tallied.

CHAPTER 10 **RECORDS AND REGISTERS IN REGISTRATION** **OFFICES**

10.1. Registering Officers appointed under the Indian Registration Act, 1908, are authorised to register and keep record of the documents presented for registration. They register the documents and render services incidental to or connected with registration. The Indian Stamp Act, 1899, casts a duty on the registering officers to examine whether the documents presented for registration are instruments chargeable with stamp duty and if so, whether they are duly stamped. The Indian Registration Act and the rules made thereunder provide for proper documentation of the process of registration and other allied functions of the registering officers.

Registering Officers are also required under the State enactments to ensure that proper duty on transfer of property imposed for the benefit of the local bodies is paid and accounted for. Under the law of Income Tax, they are to render certain returns to the income tax authority and to insist on the production of certificates of tax clearance by the parties registering the documents. They are also to examine whether a document dutiable under the Andhra Pradesh Court Fees and Suits valuation Act, 1956, is sufficiently stamped before registration. The Register-books and indexes of the contents of the Register books accounts, and other records maintained by the Registering Officers are dealt with briefly in this chapter from Revenue audit angle.

10.2. Register Books. - As per Section 51 of the Indian Registration Act the following books shall be kept in the registration offices: **Book-1** is a register of Non-testamentary documents relating to immovable property. All documents or memoranda registered under Section 17, 18 and 89 which relate to immovable property (other than will) are entered or filled in this book. A file book is also maintained corresponding to Book-1 to file copies of maps and plans relating to immovable property which accompany the documents under Section 21(4), copies and memoranda of registered instruments received under Section 64 to 67 copies of certificates and orders received under Section 89 and such other communications mentioned in Rule 12 of the Registration Rules framed by I.G.(R&S) under Section 69 of the Indian Registration Act, 1908.

The book (with its indices) is open to public inspection and copies of entries in it (and its indices) are given to persons applying for them on payment of the prescribed fee, vide Section 57(i).

10.3. Book 2. - is a record of reasons for refusal to register documents. When document is refused registration and on appeal ordered to be registered or when the refusal is confirmed, a note of the fact is entered in this book. Copies of entries in it are given to all persons applying for them. When the applicants are the executants of the documents the registration of which is refused or their representatives, or agents the copy is given free of charge.

10.4. Book 3. - is a register of wills and authorities to adopt. This book is not open to public inspection. Copies of entries in it and its index are given on payment of the prescribed fee to the persons executing the document to which such entries

relate or to their agents and after the death of the executants (but not before) to any person applying for such copies vide Section 57(2).

10.5. Book 4.- is a miscellaneous register in which all other documents (registered under clauses (d) & (f) of Section 18) which do not relate to immovable property are entered. Copies of entries in it and its index are given, on payment of prescribed fees, only to the parties executing or claiming under the documents to which such entries relate or to the agents or representatives of such persons, vide Section 57(3).

10.6. Book 5.- is a register of deposit of wills, kept in the office of the Registrars only. It records the deposit of sealed covers purporting to contain wills deposited and their subsequent withdrawal.

Note: A rectification deed or a cancellation deed shall be registered in the same class or register book as that in which the original document which it cancels or rectified has been registered.

10.7. Documents admitted to registration are copied in the books appropriate therefor in the order of their admission and in the manner prescribed by the Inspector General of Registration. Every entry of a registered document is an exact copy of the original. With the sanction of Inspector-General of Registration special volume of Book-1 or book-4 in the form of file book with numbered butts, is also opened for registering documents of a temporary character and leases which are prepared on forms printed in the manner prescribed so as to avoid the necessity of copying the documents.

In the file book corresponding to Book-1 shall be filed:

- (a) Copies of maps and plans mentioned in Section 21;
- (b) Copies and memos of registered instruments received under Section 64 to 67.
- (c) Copies of certificates and orders received under Section 89;
- (d) Returns of lands acquired under Land-Acquisition Act;
- (e) Communication received from officers of other departments intimating the cancellation, modification or rectification of transactions evidenced by papers previously filed; and
- (f) Copies of instruments of collateral security executed under the Land Improvement Loans Act received from Revenue Officers (Rule 13(i)).

10.8. The following audit checks in respect of books 1.3 and 4 may be applied:-

Copies of document or file in Books 1.3 and 4 should be test checked to the prescribed extent with a view to seeing that they have been adequately and properly stamped as per the provisions of the Stamp Act and other relevant legislation.

10.9. Accounts.- A Registering Officer is required to grant receipts for documents presented for registration, powers of attorney presented for authentication, sealed covers deposited and for fees or fines levied. He has to bring them to account at once. Registration fee forms major part of cash held by a registering officer. At

stations where there is a treasury and the treasury is open, the collections should be remitted daily to the treasury provided that such remittance need not be made on any day when the total collections to be remitted do not exceed Rs. 5 [Rule 187 (u)].

The following Accounts are prescribed:

10.10. Account-A.- It shows the daily registrations in Book 1,3 and 4 and the fees realised thereon such as fee for registration, fee for copying documents in the register books, fee for copying endorsements on documents, fee levied for filing a translation under section 19 of Indian Registration Act, fee levied for registration by a District Registrar under Section 30 of the Indian Registration Act and fee for each copy of memorandum of document relating to immovable property made under section 64, 65 and 66 of Indian Registration Act.

The form of Account contains 21 columns in which important particulars of each registration, such as the number signed to the registration, book and volume in which the entry is made, nature of document (as assessed by the registering officer), value of the document, value of the stamps borne by the document under the Indian Stamp Act, fees levied under the law of registration, amount of Tax/duty on transfer of property levied for the benefit of the local bodies, dates of purchase of stamps, execution, presentation, registration and return of documents are noted.

The following audit checks may be applied while auditing Accounts-A:-

- (i) Whether proper receipts have been granted and the accounts specified in the receipts (counter-foils) have been brought to the accounts prescribed;
- (ii) In case of documents relating to immovable properties not wholly situated within the Sub-District/District, Whether the proper fee for sending memo/copy under Sections 64 to 66 of Indian Registration Act has been realised according to the Table of fees and brought to Account-A;

Note: A memo book is maintained to enter the memos despatched to other registering officers, Entries in this book may be traced in Account-A.

- (iii) Whether the extra fee (in the Sub-Districts to which Registration Rule 200 is made applicable) on instruments not written by licensed document writers is levied and brought to Account-A; (there is a column "Number of licence of document writer" in Account-A),
- (iv) In the case of documents under test check, whether the entries made by the registering officer in Account-A regarding the nature of the document, value of the document and the stamp borne by the document are themselves correct; (thus can be seen only by reading the document transcribed in the Register book volumes, notes and endorsements, depositions/if any recorded in the deposition register);

Note: In other cases the correctness of registration fees stamp duty etc., are checked only with reference to the entries made by the Registering officers in Account-A.

- (v) When sub-registry office operates in itinerating centre in any village for the benefit of the registering public whether the fees levied for registrations have been brought to Account-A of the office and remitted as prescribed;
- (vi) In order to select documents for scrutiny, Account-A may be reviewed thoroughly and miscellaneous documents, documents with higher value and other documents where there is a possibility of mis-classification may be selected.

10.11. Account B.- It shows fees other than the fees realised or account of registrations, searches and copies, return of documents, etc., by post, process fees, batta and traveling allowance of witnesses. This account thus accommodates rents of buildings and all other receipt of miscellaneous nature such as fee for deposit of sealed covers purporting to contain will and for withdrawal of sealed cover (Article 6 of T.F.) fee for attesting power of attorney (Article 7 of T.F.). The following audit checks may be applied while Auditing Account B;

Whether the documents deposited for safe custody and not claimed within the prescribed time have been accounted for in the register of unclaimed documents, and whether fee for safe custody was levied and brought to Account B.

10.12. Account C.- This is a suspense account of cash held by a registering officer in course of his duties. It shows the receipts and disbursements of accounts of such as fees under Marriages Act, 1954, deficit stamp duty and penalty and adjudication fees levied under the Indian Stamp Act. Undisbursed pay and allowances, subsistence allowance, traveling allowance for attendance at private residence and the like. Any amount received either by money order or with a covering letter is ledgered in this account in the first instance and when the amounts are transferred to Accounts A, B, D the payments are indicated on the disbursements side.

Registration fee collected for pending document has to be accounted for in Account A and not in Account C as per Registration Rule 180 read with standing order 1215(a).

The same audit checks as mentioned at Account A will apply here.

10.13. Account D.- It shows the applications received for searches and copies and the fees collected therefor viz, fee for search or inspection of a single entry, fee for general search or inspection of any number of entries (Article 13 of T.F.) fee for granting copy of reasons, entries or documents (Article 14 of T.F.) fee for applications for an inspection or search or a copy of extract of any document or record in a registration office (Article 15 of T.F.). Fee for searches is generally payable in advance.

Audit Checks.

Whether all applications for copies, searches, or inspection have been ledgered in Account D and filed after levying proper fee.

Where the results of search indicated in the office copies of the encumbrance certificates reveal the existence of an additional property whether the extra fee has been collected.

10.14. Account G.- This is a daily account showing the number of documents admitted to registration, copies, pending returned, and unclaimed, attested powers of attorney unclaimed, and applications for copies and encumbrance certificates admitted and complied with and the number of unclaimed copies and encumbrances certificates.

The Register is mainly designed to have an effective watch over the daily progress of work and the work that is in arrears.

10.15. Account H.- This is a consolidated account showing the total cash balance at the close of each day. Cash balance from the Accounts A, B, C, D, of balance of permanent advance shown in the contingent register, cash balance, if any relating to the administration of other Acts is posted in this account at the close of each day and the total worked out. This account enables a registering officer to have a verification and analysis of the cash balance with him.

Audit Checks

Whether the daily cash balance in the accounts is brought to Account H correctly and verified with the Cash balance.

10.16. Receipt Books.- Receipts in two distinct forms are prescribed one for cash receipts ledgered in Account B and other for documents and all other fees received. Receipts for documents are granted in the serial order of the number assigned to the documents. Total amount of fees levied in all cases is noted in figures as well as in words. Printed receipt books are supplied and taken to stock register on their receipt and accounted for.

When printed receipt books are not available use of manuscript receipt books is permitted by the Inspector General of Registration subject to the Condition that they are page numbered and used in the manner prescribed.

Audit Checks

- (i) Whether printed receipt books (Manuscript receipt books prepared in the manner prescribed when printed receipt books are not available for supply) are brought to account first and used to secure against loss and misuse of receipt books.
- (ii) Whether fees realised for various services rendered under laws of registration and stamps have been correctly levied in accordance with the Table of Fees prepared under Section 78 of the Indian Registration Act and the amount have been realised.

IV. Other Records and Registers

10.17. Surcharge Ledgers and connected Returns.- For the benefit of the local bodies, the Andhra Pradesh Municipalities Act, 1965 (Sections 82 and 120) and the Andhra Pradesh Gram Panchayat Act, 1964 (Section 69 and 73) provide for the levy of a duty on transfer of property in form of a surcharge on stamp duty on specific instrument, viz., sales, gifts, exchange mortgages, mortgage with possession and leases in perpetuity relating to immovable property situated in the limits of a municipality and a gram Panchayat respectively. As the duty is not paid in cash except in Municipal Corporation Hyderabad but in stamps at the time of execution of the documents its allocation to the local bodies concerned in the prescribed ratio after retaining 5% towards collection charges for the Registration Department requires book adjustment through treasury officer. To facilitate this allocation and the adjustment the Registering Officers are required to maintain surcharge ledgers (village-wise). The transfer duty shown in Account A against the document registered is transferred to the ledger folio of the concerned village Municipality in which the immovable property is situated. The totals of these ledgers are worked out monthly and agreed with the total transfer duty recorded in Account-A.

Monthly Statements and quarterly statements in prescribed form based on the ledgers are prepared and sent by the sub registrars to the Registrars. Similar statements are prepared from the ledgers maintained by the Registrar in respect of the documents registered in his office. All these statements are consolidated in the Registrar's office and authorisations issued to the treasury officer for carrying out the requisite book adjustment of the amounts allocated to the local bodies (Gram Panchayats-Panchayat Samithis, Zilla Parishads in case of properties situated in Panchayat areas in the ratio of 3:1:1 respectively and Municipalities) and the amounts creditable to the department towards collection charges.

Section 261 of the Hyderabad Municipal Corporation Act, 1955, provides for levy and collection in cash of a tax on transfer of property situated in the Municipal limits of Hyderabad and Secunderabad. Cash received on this account is distinctly shown in Account-A. 5% of the proceeds being collection charges of the department is transferred to Account-B and remitted as departmental receipt.

The balance of the amount is remitted through separate challans to the credit of the corporation and the particulars of challans noted in Account-A.

10.18. Similarly the cantonment Board of Secunderabad with the previous sanction of the Central Government imposes a duty on transfer of immovable property (in form of surcharge on the stamp duty on instruments of specified description) in respect of the whole or part of the immovable property situated within the limits, of the cantonment (section 60 of the Cantonment Act, 1924). The transfer duty collected by registering officers in cash is credited to the cantonment Board withholding 5% towards collection charges creditable to the department. The audit checks to be exercised are indicated in chapter 8.

10.19. Minute Book.- Every registering officer is required to maintain a Minute Book and enter a brief record of each day's proceedings in respect of every

document on which a presentation endorsement is made. Entries in this register include entries in respect of document presented for registration but returned for correction under Rule 31(ii), documents put aside pending appearance of parties and witnesses, documents kept pending having been referred to the registrar for orders, documents returned unregistered at the request of the party presenting it, etc.,

The register also gives reference to the final disposal of the documents entered in it.

10.20. Register of Unclaimed Documents.- A register is maintained to show all documents registered or refused registration, lying unclaimed and certified copies and encumbrance certificates which are returned undelivered by the post office, for which safe custody fee is leviable. When the documents for which safe custody fee is leviable(under Article 9 of T.F) are claimed. Safe custody fees is collected and the amount so collected is brought to Account-B for remittance as departmental receipt.

10.21. Register of Impounded Documents (In sub-Registry Office).- In every sub-registry office, this register is maintaining to enter therein every document impounded under section 33 and to watch its disposal with reference to the orders of the Registrar. The Registrar is reminded when a document entered in this register is about to be time-barred for registration. In respect of the document impounded, the Sub-Registrar collects the deficit stamp duty and penalty under the order of Registrar and bring the collection to Account-C for remittance. If the payment of deficit stamp duty and penalty for which a notice is issued by the Sub-registrar is not made within a reasonable time, the matter will be referred to the Registrar for recovery under Section 48 of the Indian Stamp Act.

10.22. File of application for searches and copies and file of certificates of encumbrance issued on general searches.- Applications for searches and copies are filed in three separate file books, each with a separate set of serial numbers running by calendar year.

1. File of applications for general search;
2. File of applications for single search and copy containing all applications for searches or for copies of registered documents or entries in Book 1 to 4 and for copies of documents pending and refused registration;
3. File of applications for copies of miscellaneous records such as appeal orders, depositions and other miscellaneous papers.

Note: The expression “General search” is applied to a search for more than one document concerning a specified property or a specified person. The expression “single search” covers a search for a single entry or document.

A file containing each copy of the encumbrance certificate issued by the registering officer is also maintained in a separate file book in which the various certificates will be numbered consecutively in a separate series for each calendar year. A certificate of encumbrance contains a complete list of all acts and encumbrances affecting the property specified in the application.

10.23. Statement of fees foregone.- The Registration Department is a service department. In the levy of fees under the law of registration, certain exemptions from payment of fees are allowed to members of some co-operative societies and land mortgage banks belonging to some specified categories. But the exemptions amount to a subsidy by Government to the Cooperative Department as the latter reimburses to the Registration Department quarterly the fees foregone on account of such exemptions. In order to facilitate this adjustment in account, registering officers maintain a statement of fees foregone. Monthly statements of fees foregone are sent by the sub-registrar to the Registrar in forms prescribed separately for documents registered, searches and certified copies and other services rendered.

The Registrar's office consolidates these statements (incorporating the fees foregone by the registration branch of his office) for the registration district and forwards a quarterly statement to the Inspector General of Registration. After obtaining the acceptance of the cooperative department, the Inspector-General initiates the requisite adjustment in accounts debiting the cooperative department and crediting the Registration department to the extent the fees are forgone.

10.24. Files of compounding offences under the Stamp Law.- Registrars are empowered by the Board of Revenue to sanction prosecutions under Section 70 of the Indian Stamp Act in cases of undervaluation and to stay such prosecutions of compound any offence. A note for compounding an offence is added at the foot of the transcription of the document and separate file is maintained by the Sub-Registrar to contain the orders of the Registrar and the particulars of the compounding fee collected and remitted.

10.25. Files of Statements (Annexure-IA and IB) Regarding the value of buildings.- Under Rule 3 of the Andhra Pradesh stamp (prevention of under-valuation of instruments) Rules 1975, the executant of an instrument mentioned in Section 47-A of the Indian Stamp Act is required to attach a statement to the instrument containing his own assessment of the market value of the items of property affected. If such item is a building, a statement (Annexure IA) is prescribed to furnish details of the building.

With reference to the details furnished by the executants in Annexure I-A the registering officer works out the value of the building in accordance with the instructions issued from time to time. These statements (Annexure IA & IB) are filed separately in bound volumes. The statements bear the number and date of registration of the document to which they relate. The statement thus contain the basic information for valuation furnished by the executant and the assessment of the value made by the registering officer.

Audit Checks.- It may be seen that all the relevant particulars are furnished in Annexure IA and that Annexure IB is prepared correctly based on the information furnished in Annexure IA recitals of the document.

10.26. Register of cases referred to Collector under Section 47-A of Indian Stamp Act.- References made to the Collector under Section 47-A are noted in a statement in form prescribed in Rule 4 of the Andhra Pradesh Stamp (Prevention of under valuation of Instruments) Rules, 1975. A register maintained by the registering

officer also serves as an office copy of each statement forwarded to the Collector, for determination of market value and the proper stamp duty. Besides the details prescribed in the statement, this register provides additional columns to record the number and date and gist of orders of the Collector, number and date and gist of orders of appellate authority, if any.

Audit Checks.- It may be seen that the register is maintained with up-to-date information and that all the columns are properly filled in.

10.27. Register of documents adjudicated by District Registrar (Under India Stamp Act).- The register is maintained in the registrar's office to watch the receipt and disposal of the documents dealt with under Section 33 or 38(2) of the Indian Stamp Act. The register records, inter alia, the date of communication of the decision of the District Registrar to the party or to the Sub-Registrar and particulars of payment of deficit stamp duty and penalty.

10.28. Register of appeals and inquiries.- A register is maintained in every Registrar's Office to enter the appeals filed under Section 72, applications under Section 73 and inquiries under Section 74 of the Indian Registration Act and to watch their disposal.

10.29. Register of documents certified by District Registrar as Collector under Section 31 and 32 of Indian Stamp Act.- Separate registers for ledgering the daily transactions relating to Section 31 and 32 and those relating to section 41 and Section 42 of the Indian Stamp Act are maintained. The serial numbers assigned to the transactions ledgered in these registers commence and terminate with each calendar year. The duty paid under Section 32 or Section 41 and the fee levied under Section 31 of the Indian Stamp Act are remitted into the treasury through separate challans under the prescribed heads of account.

10.30. Copies of Accounts A to D sent monthly by the Sub-Registrars are reviewed in the office of the District Registrars and review remarks, if any, communicated to the Sub-registrars.

Each Sub-Registry office is inspected by the Registrar atleast once in each official year. Part-I of the report contains the results of verification of cash, serious omissions and irregularities, loss of stamp, fees and the like. Part-II contains the omissions and irregularities not sufficiently serious for inclusion in Part-I.

Offices of the Registrar are annually inspected by Inspector General of Registration/ Deputy Inspector General of Registration. These inspection reports are recorded in the offices inspected after requisite action is taken.

10.31. Records relating to reconciliation of receipts. - The Revenue receipts of the Department are accounted for under the Major Head '0030-Stamps and Registration Fees' with the following Sub- Heads/ Detailed Heads of Account.

Judicial 101- Court Fee realized in Stamps 102- Sale of Stamps Other receipts

Stamps Non-judicial 102- Sale of Stamps 103- Duty on impressing of documents
800- Other receipts

Registration fee 104- Fees for registering documents other receipts
SH (77) – User Charges.

Every Sub-Registrar prepares for each month a statement (known as IV(a) Statement) in duplicate showing the registrations and revenue remitted in the month under 'D' Registration Fees and obtains the certificate of verification of the treasury Officer thereon. One copy is sent to the registrar concerned and the other is retained in his office. The statement is accompanied by the details of remittances (challan-wise). The Registrar prepares a consolidated statement (IV (a) statement) for his Registration District incorporating therein the revenue remitted by his office as well, and sends it to the Inspector General of Registration for purpose of reconciliation with the figures booked by the Accountant General under the Major Head.

The remittances made relating to deficit stamp duty, penalties, etc., falling under the sub-major head 'C' Stamps-Non-Judicial are posted in the challan posting registers separately by the Sub-Registrar who gets them verified by the Treasury Officer and sends a statements of reconciliation to District Registrar. Consolidated statements of reconciliation are prepared by the District Registrar for his registration District and sent to the Inspector General.

The Inspector General of Registration receives the statements of reconciliation with the treasury figures in respect of the remittances made for sales of non-postal stamps covered by the sub-major heads B.-Stamps Judicial and C.-stamps Non-Judicial from all the District treasury Officers and the General Officer, Hyderabad. The reconciliation of the receipts under the Major head is made by the Inspector General of Registration with the figures in the accounts maintained by the Accountant General, Andhra Pradesh.

10.32. Periods of preservation of records.- Registration Rule 192 and Appendix XXXIII to registration manual, part-I volume-II (Standing Order 967(b)) deal with the periods of preservations of books and file. The following records among other things are preserved permanently. Books 1 to 5 Indexes I to IV and subsidiary Indexes, files of translations, files of appeal, orders and judgments and order of courts and deposition books.

CHAPTER 11 **RECEIPTS UNDER THE ANDHRA PRADESH** **CHIT FUNDS ACT**

11.1. Introduction.- The Act is passed to regulate the chit funds in the State.

The Inspector General of Registration and Stamps who is appointed as the Director of chits in terms of Section 51 of the Act, administers the Act through the Registrars and Inspecting Officers. The registrars of the Registration district functions as the Inspecting Officers while the Sub-Registrars act as the Registrars of chits within the limits of their jurisdictions under the Indian Registration Act.

11.2. Some important definitions.

1. Chit.-“Chit” means a transaction, whether called chit fund, chitty, or by any other name, by which its foreman enters into an agreement with a number of subscribers that every one of them shall subscribe a certain sum of money or a certain quantity of grain or other commodity, by installments for a definite period and that each subscriber in his turn, as determined by lot or by auction or by tender or in such other manner as may be provided for in the agreement, shall be entitled to a prize amount, whether payable in cash, kind or any other article of value.

2. Chit Agreements.-“Chit Agreement” means a document containing the articles of agreement between the foreman and the subscribers relating to the chit and filed under Section 6.

3. Chit Amount.-“Chit Amount” means the sum total of the subscriptions payable by all the subscribers for any installment of a chit without any deduction for discount or other wise.

4. Discount.-“Discount” means the sum or money or the quantity of grain or other commodity, which a prized subscriber has under the terms of the chit agreement to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscribers or for both.

5. Dividend.-“Dividend” means the share of a subscriber in the discount available under the chit agreement for rateable distribution among the subscribers at each installment of the chit.

6. Foreman.-“Foreman” means the person who under the chit agreement is responsible for the conduct of the chit and includes any other person discharging the functions of the foreman under Section 30.

7. Prize Amount.-“Prize Amount” means the difference between the chit amount and the discount, and, in the case of a fraction of a ticket means the difference between the chit amount and the discount proportionate to the fraction of the ticket; and when the prize amount is payable otherwise than in case, the value of the prize amount shall be the value at the time it becomes payable.

8. Subscriber.-“Subscriber” includes a person who holds a fraction of a ticket and also a transferee of a ticket or a fraction thereof by assignment in writing or by operation of law.

9. Ticket.-“Ticket” means the share of a subscriber in a chit and the expression fraction of a ticket shall be construed accordingly.

11.3. Registration of chits.- The Chit Funds Act requires that a person conducting a chit should register the proposed bye-laws of the chit with the Registrar (Section 3) and file the chit agreement (Section 6). Amendments to bye-laws can be made under Section 9 (2) by paying the prescribed fee vide rule 8(2) under the Act.

11.4.1 Security to be given by the Foreman.- Under section 11 the foreman will have to file a copy of the minutes of each draw after paying the prescribed fee. Under Section 12, the foreman is required to execute an indenture of mortgage and trust before applying for the certificate of commencement in favour of the Registrar as trustee creating a charge in a property sufficient to the satisfaction of the registrar or deposit an amount not less than half the chit amount in any approved bank or invest in Government securities of the face value or market value, whichever is less, of not less than half of the chit amount. The security in respect of one chit can be accepted as security for another conducted by the same foreman after the termination of the first chit. The security under this section has to be furnished in respect of each chit.

As per Rule 16, the receipt or the pass book in respect of cash deposited in an approved bank under Section 12 shall be delivered to the Registrar and in case of Government Securities transferred in favour of the Registrar under the Same section, he will keep them in safe custody under his control in a Government Treasury.

11.4.2. Certificate of commencement of chit.- Under Section 7 the Registrar grants a certificate of commencement of chit on being satisfied that the bye-laws of the chit have been registered and the chit agreement has been filed and the security required under Section 12 has been furnished by the foreman. Every foreman has to file with the Registrar under Section 16 a balance sheet relating to the period of account audited either by a qualified auditor or by a chit auditor appointed under Section 51.

11.4.3. Inspection of chit books.- The Registrar or any officer authorised by the Director of chits may inspect the chit-books and all records under the provisions of Section 37(1).

A copy of the winding-up order by court will have to be filed by the petitioner in the winding-up proceedings and of the receiver with Registrar (Section 46).

11.4.4. Audit of chit accounts.- In cases where the registrar is of the opinion that the accounts of any chit are not properly maintained he can get the accounts audited by a chit auditor Section 51(4).

When the audit under Section 16, 37, or 51(4) is conducted at the premises of the foreman or outside the office of the registrar an additional fee has to be paid for each such audit.

In terms of Section 52 any person may, on payment of the prescribed fee, inspect the documents kept by the Registrar and obtain a copy or extract of any document to be certified by the Registrar.

11.5. Fine and penalties for offences under Chit Fund Act.- Whoever contravenes the provisions regarding the registration of bye-laws, or regarding the issue of any notice etc., relating to a chit, the bye-laws of which have not been registered regarding the obtaining of a certificate of commencement shall be punishable with imprisonment upto one year or with fine upto Rs. 500/- or both.

11.6. Levy and collection of fees.- Section 53(1) lays down that fees are to be levied at the rates prescribed by government from time to time in respect of the following;

- (a) the registration of the bye-laws of a chit under Section 3.
- (b) filing with the registrar of the chit agreement and copies of documents under Section 11,20,21,29 and 32.
- (c) the grant of a commencement under Section 7.
- (d) the audit of the accounts of the foreman and the issue of an audit certificate under Section 51.
- (e) the inspection of documents under Section 52.
- (f) the certified copy of extract of document under Section 52.
- (g) such other matters as may appear necessary to give effect to the purposes of the Act.

11.7. Refunds. - The registrar may with the previous sanction of the inspecting Officer, refund any fee paid to him in excess of the amount prescribed or any fee that is earned (i.e., fee paid in connection with the registration of the bye-laws, the filing of a document or other service to be performed by the Registrar where such registration or filing is not actually effected or the service is not actually rendered.).

11.8. Registers maintained in Registration Offices.- The following are the important books and forms prescribed by the Director of Chits for maintenance by the Registrars vide his proceedings No. CF/8/1971 DT. 27-7-1971.

- | | | |
|-----|---------|--|
| 1. | Form IA | Register of by-laws registered or filed. |
| 2. | Form IB | Particulars of documents registered or files. |
| 3. | Form 2 | Daily account of Fees |
| 4. | Form 3 | Register of securities |
| 5. | Form 4 | Register of receipts and disposal of balance sheets. |
| 6. | Form 5 | Audit Register |
| 7. | Form 6 | Record Registers |
| 8. | Form 7 | Register of prosecutions |
| 9. | Form 8 | alphabetical index of foreman of chits |
| 10. | Form 9 | Memorandum acknowledging receipt of documents |
| 11. | Form 10 | Receipt books for fees |
| 12. | Form 11 | monthly statistical returns |

(Authority: Proceedings No. CF/8/1971 of 27-07-71)

The amounts of receipts are credited to the Head of Account “104-other General Economic Services-(b) Regulation of other business Undertakings-V. Administration of Chit Funds Act” and the expenditure is debited to the Head of Account “304-Other General Economic Services-regulation of other business undertaking-Administration of chit funds Act”.

11.9. Recovery of amounts due from a foreman.- In terms of section 64, all amounts due from a foreman to the Registrar or any other officer under this Act by way of any fee will be recovered as arrears of land revenue.

11.10. Audit Checks.- During local audit of Registration Offices the following checks may be exercised in connection with the chit fund records :

- (i) that all the moneys due to Government by way of fees are correctly assessed, collected and remitted to the correct head of account.
- (ii) that the refunds are made in respect of the cases provided in the Act and in the rules – under sanction by competent authority and that necessary notings are made against the original entries and in the original documents.
- (iii) that security to the extent necessary has been obtained and properly accounted for and that it has been released or adjusted to a fresh chit only after the termination of the earlier chit and under the orders of competent authority.
- (iv) that the inspections/audit prescribed in the Act are being conducted regularly.
- (v) that action in respect of amounts due from the foreman is taken under revenue recovery Act.

CHAPTER – 12 **SPECIAL MARRIAGE ACT, 1954**

12.1 Marriages under Special Marriage Act :- The Special Marriage Act 1954 (Central Act) deals with the solemnization of marriage between any two persons subject to the fulfillment of the conditions laid down, therein. The Inspector General of Registrations and Stamps appointed as the Registrar General of Marriages administers this Act through the District Registrars and the Registering Officers who function within their territorial jurisdiction as the Marriage Officers for the purpose of this Act. The Andhra Pradesh Special Marriage Rules 1959 are made under section 50 of the Act for carrying out the purposes of this Act.

12.2. Hindu Marriage Act, 1955 :- The Hindu Marriage Act, 1955 (25 of 1955), became law on the 18th May, 1955. It applies to all Hindus, Buddhists, Jains or Sikhs. It applies also to all other persons who are not Muslims, Christians, Parsis or Jews unless they establish that they were not governed by Hindu law, custom or usage prior to the Act.

As per Amendment Act 2 of 1978, the minimum age of marriage is increased from fifteen to sixteen for females and from eighteen to twenty-one for males.

The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

CHAPTER – 13

CARD Project

In exercise of the powers conferred by sub-section (1) of the Section 16 of the Registration Act, 1908 as amended by clause (3) of the Registration (Andhra Pradesh Amendment) Ordinance, 1998, the Commissioner & Inspector General of Registration and Stamps prescribes the software to all offices of Registration Department notified by the Government of Andhra Pradesh through G.O.Ms.No. 44 Rev.(Regn.I) Dept., dt. 12-1-99 and G.O.Ms.No.696 Rev (Regn.I) Dept., dt. 30-10-01 under sub-section (1) of the section 70-B of Registration Act, 1908 as amended by Registration Act, 1999 (Andhra Pradesh Second Amendment Act 16 of 1999) for the purposes of carrying out the process of registration with the help of electronic devices like computers, scanners and compact disks.

In view of the above, the CARD Project (Computer Aided Administration of Registration Department) was introduced w.e.f. 05-02-1999 in the department with a view to provide transparency to enhance speed, efficiency of registration and to issue allied certificates and also to eliminate unproductive work. It also give true picture to parties concerned w.r.t. rates of duties/fee payable separately for each instrument. Once a document is registered cannot be altered or rectified in the system after scanning. However, it provides Registering Officers/ Parties concerned to rectify any document at a later stage through Rectification deeds only.

The following is the procedure being followed by the Registration Officers for registration of documents under the CARD System.

(1) **Procedure:** The documents presented to Registration Officer (R.O.) shall be scrutinized by them w.r.t. classification and the appropriate transaction code assigned/ticked on the input form, initialed and passed to the computer counter. The details of the documents so sent shall invariably entered into computer and registration check slip printed, initialed by DEO and given to the party concerned. The deficit stamp duty, if any, shall be collected in cash duly issuing printed computer receipt. The document together with check slip and cash receipt for DSD shall be presented to R.O. for causing registration process following the existing instructions and procedure involving broadly, endorsing, presentation and admission of documents.(To the extent possible, rubber stamps shall be used for the standard endorsements to save delay). After this process is over, a regular number shall be assigned and the document shall be sent for scanning by using the Imaging Software to ensure the good quality of all pages of the document. The document, after scanning, shall be returned to the party concerned duly obtaining acknowledgement.

Note: (1) The serial number assigned by the computer (C.S.No.) will be treated as the ‘pending document number’ for all practical purposes, till a regular number is assigned. However, in case a document is to be registered manually and kept pending, shall be given a pending number.

(2) Copying of documents, endorsement certificate have been dispensed with effect from 5-2-1999.

(2) **Presentation at Private residence:** The existing procedure shall be followed in respect of documents necessitating attendance at a private residence, to the extent of presentation and admission of execution only. Further process shall be carried out on the computer.

(3) The documents scanned should be archived at the end of each day on to the CD/tapes in triplicate. After testing the CD's/tapes so archived, the system should be permitted to delete the images of documents so scanned and a copy of each CD's/tapes shall be sent IG(R&S) and Concerned DR under acknowledgement and another copy preserved safely with R.O.

(4) The system may fall out of order at times. In such cases, all the instruments have to be registered manually duly endorsing specific reasons necessitating to resort to manual system in the minute book. On restoration of system, the documents registered manually shall be entered into the computer.

CHAPTER-14

THE ANDHRA PRADESH SOCIETIES REGISTRATION ACT 2001 (Act No.35 of 2001)

Prior to the enactment of Act 35 of 2001, (received the assent of the Governor on the 9th October, 2001 and the said assent is hereby first published on the 10th October, 2001) the law relating to the Societies and their registration has been governed by the Societies Registration Act, 1860 (Central Act 21 of 1860) in the Andhra and by Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (Act of 1350 Fasli) in the Telangana Area of the State of Andhra Pradesh. In order to have a comprehensive law and to secure uniformity, the present Act is enacted to provide for Registration of Societies throughout the State for promoting Art, Fine Arts, Charity, Crafts, Religion, Sport, Literature, Culture, Science, Philosophy, Political Education or any public purpose and for matters connected therewith or incidental thereto. The word ‘society’ means an association of persons having common interest, beliefs, objects or profession. In a recent case under the Central Act the word “charitable purpose has been incorporated to include religious purpose also”.

If an application for registration of a society presented to Registrar by complying with all the provisions of this Act, is not disposed within a period of thirty days, the society shall be deemed to have been registered from the date of its presentation.

The societies should not be registered with undesirable names and that it should not be registered by a name, which contravenes the provisions of the Emblems, and Names (Prevention of Improper Use) Act, 1950 (Sec.6).

(1) Short title, extent and commencement: - This Act may be called the Andhra Pradesh Societies Registration Act, 2001.

Definitions :- In this Act, unless the context otherwise requires, -

- 1.‘Bye-laws’ means the bye-laws of a society;
- 2.‘Committee’ means the executive committee appointed under Section 14 or any person or body of persons to whom the management of the affairs of a society is entrusted by its bye-laws;
- 3.‘Court’ means in the cities of Hyderabad and Secunderabad, the City Civil Court, and elsewhere, the Principal Civil Court of original jurisdiction.
- 4.‘Financial Year’ means the period of twelve months for which the accounts of a society are required to be made up by the bye-laws and if the bye-laws do not so provide, the period of twelve months ending with the 31st March of each year;
- 5.‘Government’ means the State Government of Andhra Pradesh;
- 6.‘Member’ means a person, individual or body corporate, who/which, having been admitted to membership in any society has not resigned or ceased to be a member, or been removed from membership, in accordance with the bye-laws of that society;

- 7.‘Memorandum’ means the memorandum of association of a society as originally framed or as altered, from time to time, in pursuance of the provisions of this Act or the Societies Registration Act, 1860 (Central Act 21 of 1860) or the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (Act 1 of 1350F) as the case may be;
- 8.‘Notification’ means a notification published in the Andhra Pradesh Gazette and the word notified shall be construed accordingly;
- 9.‘Officer’ includes any director, manager, treasurer, trustee, secretary, member of the Committee, or any person appointed by a society to sue and be sued on its behalf and any other person empowered under the rules or the bye-laws to give directions in regard to the business of a society;
- 10.‘Registrar’ means an officer of the Registration Department, not below the rank of the Sub-Registrar as may be specifically empowered by the Government to exercise the powers of a Registrar under this Act;
- 11.‘Society’ means a society registered or deemed to be registered under this Act; and
- 12.‘Special Resolution’ means, resolution passed by a majority of the total members of the society and not less than three-fifths of the members present and voting in a meeting.

Records and Accounts to be maintained by every Society:

The following accounts, records and documents are to be maintained by every Society, namely –

- (a) a copy of this Act with up to-date amendments incorporated;
- (b) a copy of its registered memorandum along with up to-date byelaws with amendments made from time to time;
- (c) the minutes book;
- (d) accounts of all sums of money received and expended by the society and their respective purposes;
- (e) accounts of all purchases and sales of goods by the society;
- (f) accounts of all assets and liabilities of the society;
- (g) an up to-date register and a list of all members with voting rights for the current year prepared within thirty days of the closure of the society’s financial year;
- (h) copies of the audit reports, and if any, and compliance reports thereon; and
- (i) all such other accounts, records and documents as may be required by this Act.

Audit Checks:

1. Whether the requisite fee was collected at the time of registration of a Society has to be seen in audit.

CHAPTER – 15

THE ANDHRA PRADESH STAMP (FRANKING IMPRESSION OF STAMPS) RULES, 2005

Governement of Andhra Pradesh through G.O.Ms.No.1455, Revenue (Registration-I), dated 26th July, 2005 have introduced A.P. Stamp (Franking Impression of Stamps) Rules, 2005.

(1) Scope and extent of use of the Franking Machine :- The Franking Machines shall be used for franking impression of stamps upto a value of Rs.1,000/- on all kinds of instruments under the provisions of the Indian Stamp Act, 1899 and the rules made thereunder.

Provided that the franking may be made to denote stamp duty upto Rupees two lakhs on very non-registrable instruments by the departmental counters and authorised users like Banks and Corporate Institutions, vide G.O.Ms.No.599, Revenue (Regn.I), dt.26.05.2006.

Procedure regarding use of Franking Machine by the Proper Officer :-

(1) Franking Machines shall be installed at the Office of the Commissioner and Inspector General of Registration and Stamps, Hyderabad Offices of the District Registrars and Offices of the Sub-Registrars and in any other office as may be authorised by the Chief Controlling Revenue Authority in Andhra Pradesh for impressing Stamps indicating the payment of stamp duty on the instruments chargeable with duty.

(2) The machine shall be operated under the strict control and supervision of the Proper Officer after the machine is installed in the presence of the Proper Officer.

Before the machine is put to use, the same shall be authorisedly loaded and sealed by the Assistant Inspector General (Stamps), Office of the Commissioner & Inspector General of Registration and Stamps or District Registrar or Sub-Registrar or such other Officer authorised by the Commissioner & Inspector General of Registration and Stamps/Chief Controlling Revenue Authority.

The Proper Officer other than the District Registrar shall take permission in writing from the District Registrar well in advance regarding periodical loading of the machine.

The access code to the numeric of the Franking Machines shall be exclusively with the Assistant Inspector General (Stamps).

The Proper Officer shall ensure that the seals are not tampered within any way by any person or that the machine is not handled by any unauthorized persons.

The Proper Officer shall be responsible for the custody of the machine.

On receipt of the application, the Proper Officer, after satisfying himself of the payment made by the parties, shall emboss the instruments by means of Franking Machine with the requisite amount of Stamp Duty. Thereafter the Proper Officer shall affix his signature in the space provided on the impressed stamps.

All the applications received for stamping shall be kept in a file, each being serially numbered and the particulars entered in the Register.

(3) Use of Franking Machines by the authorized users :- (1)

An authorization for use of Franking Machine may be granted by the Commissioner and Inspector General of Registration and Stamps/Chief Controlling Revenue Authority on application, filed by the intending user along with an undertaking and Indemnity Bond duly stamped.

The intending user shall pay a fee of Rs.1,000/- for grant of Authorization for use of the Franking Machine along with the application.

The Chief Controlling Revenue Authority reserves himself/herself the right for refusing or canceling an authorization without assigning any reasons for the same.

The authorization for each Franking Machine may be renewed every year on payment of a Fee of Rs.1, 000/-. The renewal will be subject to satisfaction of the Commissioner and Inspector General of registration and Stamps/Chief Controlling Revenue Authority about proper use of the machine.

The authorized machine shall be utilized for franking/impressing stamps on the instruments as specified in Rule 3 by the authorized user only.

The authorized user shall send account of the monthly use of the machine in respect of each instrument to the District Registrar on or before 15th of the succeeding month.

The Government or the Chief Controlling Revenue Authority shall not be responsible for any loss or damage caused to the authorized user on account of misuse or mis-handling of the machine or for any damage caused to the machine or loss of the machine on any ground.

The authorized use is not permitted to keep with him any unserviceable or worn-out Franking Machine.

The authorized user must take adequate steps to guard against the fraudulent use of the machine.

The authorized user shall maintain the following records separately for each franking machine.

Franking Machine Register regarding posting in Form No.8
Franking Machine Record Book in Form No.9

The authorized user shall not sell or transfer or dispose of in any manner whatsoever the Franking Machine.

(4) Payment by the authorized users, setting or re-setting machine and sealing thereof :- (1) The authorized user shall pay in advance a minimum sum of rupees fifty thousand of advance Stamp Duty, through, a Banker's Cheque or Demand Draft or Challan for which he wishes the machine to be set at the time of purchase of machine.

Whenever authorized user wishes to deposit any sum in advance and to have the meter of the machine reset, he shall produce the Franking Machine and the record book register regarding the posting in the Office of the district Registrar for verification.

The entries in respect of advance payments should be made by the setting or the resetting officer, in the Franking Machine record book of the authorized user and the concerned office records shall be got attested by the concerned Officer.

The seal of Franking Machine and pliers for the lead seal for sealing Franking Machine shall remain in the personal custody of the officer authorized, to use them.

The authorized user shall ensure that the seals on the Franking Machine are not tampered with or broken or handled in any way.

No person or official other than those authorised for the purpose shall break or tamper with the seal in any way.

The authorized user shall immediately stop using the machine and bring the matter to the notice of the authorizing authority and the District Registrar concerned, in the following cases :-

Breaking or tampering with the seals;
Discrepancy in the meter readings;

Franking or impression on any instrument shall be allowed upto an amount of Rs.1,000/- only.

The Assistant Inspector General (Stamps), Office of the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad and District Registrars shall maintain the following Registers, namely :-

Master Ledger in Form No.10; and
List of Authorised Users in Form No.11

The above Registers shall be verified every year by the Deputy Inspector General of Registration and Stamps concerned.

Records to be verified in audit:

- (i) Whether loading and reloading figures have been entered in the prescribed forms or not and the returns are properly send to the authorities concerned.
- (ii) Whether Indemnity Bond duly stamped was accompanied with the application filed by the intending user or not.
- (iii) Whether requisite amount of fee was paid by the intending user for grant of authorization.
- (iv) Whether the requisite amount of fee was collected at the renewal of authorization every year.
- (v) Whether proper records are maintained by the authorised user or not.
- (vi) Whether the amounts so received by way of licence fee, renewal fee advance payments etc were properly remitted in the Government account.
- (vii) Whether the reconciliation of receipts of Franking Machines was done with those of Treasury figures.

The above check are only illustrative and not exhaustive.

