

## Lesson 6: Indian Stamp Act, 1899

### 1. Important Definitions (Section 2)

- **“Banker” [Section 2(1)]:** Banker includes a bank and any person acting as a banker [Section 3 of the Negotiable Instruments Act defines a banker as including persons or a corporation or company acting as bankers].
- **Bill of Exchange [Section 2(2)]:** “Bill of exchange” means a bill of exchange as defined in the Negotiable Instruments Act, 1881 and includes also a *Hundi* and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money.
- **Bill of exchange payable on demand [Section 2(3)]:** A “bill of exchange payable on demand” includes:
  - (a) an order for the payment of any sum of money by a bill of exchange or promissory note or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or in the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;
  - (b) an order for the payment of any sum of money weekly, monthly or at any other said period; and
  - (c) a letter of credit, that is to say, any instrument by which one person authorises any other person to give credit to the person in whose favour it is drawn.
- **“Bill of Lading” [Section 2(4)]:** Bill of Lading includes a ‘through bill lading’ but does not include a mate’s receipt.
- **“Bond” includes [Section 2(5)] : A “bond” includes:**
  - (a) any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed or is not performed, as the case may be;
  - (b) any instrument attested by a witness not payable to order or bearer whereby a person obliges himself to pay money to another; and
  - (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.
- **“Chargeable” [Section 2(6)]:** “Chargeable” as applied to an instrument executed or first executed after the commencement of the Act means chargeable under the Act and as applied to any other instrument, chargeable under the law in force in India when such instrument was executed or where several persons executed the instrument at different times, first executed. The word ‘Chargeable’ herein connotes instruments chargeable under the Indian Stamp Act, 1899 only and not under any other Act.

- **“Cheque” [Section 2(7)]:** “Cheque” means a bill of exchange drawn on specified banker not expressed to be payable otherwise than on demand.
- **“Conveyance” [Section 2(10)]:** The term “conveyance” includes a conveyance on sale and every instrument by which property (whether movable or immovable) is transferred *inter vivos*\* and which is not otherwise specifically provided for by Schedule. It does not include a will.  
*\*“inter vivos” means during lifetime.*
- **“Duly stamped” [Section 2(11)]:** Duly stamped as applied to an instrument means that instrument bears an adhesive/ impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for time being in force in India.
- **“Executed / Execution” [Section 2(12)]:** The words “executed” and “execution” mean “signed” and “signature” respectively when used with reference to instruments.
- **“Impressed Stamp” [Section 2(13)]:** “Impressed Stamp” includes:
  - (a) labels affixed and impressed by the proper officer; and
  - (b) Stamps embossed or engraved on stamp paper.
- **“Lease” [Section 2(16)]:** “Lease” means a lease of immovable property and includes also:
  - (a) a patta;
  - (b) a kabuliyat 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.
- **Marketable Security [Section 2(16A)]:** “Marketable Security” means a security of such a description as to be capable of being sold in stock market in India or in the United Kingdom.
- **“Promissory Note” [Section 2(22)]:** It means a promissory note as defined by the Negotiable Instruments Act, 1881. It also includes a note promising the payment of any sum of money out of a particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.
- **“Receipt” [Section 2(23)]:** It includes any note, memorandum or writing:
  - a) whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received; or
  - b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt; or
  - c) whereby any debt or demand, or any part of a debt or demand is acknowledged to have been satisfied or discharged; or
  - d) which signifies or imports any such acknowledgement, and whether the same

is or is not signed with the name of any person.

- **“Settlement” [Section 2(24)]:** “Settlement” means any non-testamentary disposition in writing of movable or immovable property made:
  - (a) in consideration of marriage;
  - (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide or for the purpose of providing for some person dependent on him; or
  - (c) for any religious or charitable purpose and includes an agreement in writing to make such disposition.

*Note: The definition of “settlement” excludes a will.*

- **“Stamp” [Section 2(26)]:** “Stamp” means any mark, seal or endorsement by any agency or person duly authorized by the State Government and includes an adhesive or impressed stamp for the purposes of duty chargeable under this Act.

## **2. Instruments Chargeable with Duty (Section 3)**

The following instruments shall be chargeable with a duty of the amount indicated in that Schedule as the proper duty therefor namely:

- Every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899.
- Every person bill of exchange payable otherwise than on demand or promissory note drawn or made out of on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiable in India.
- Every instrument (other than a bill of exchange or promissory note) mentioned in that schedule which not having been previously executed by any property situate or to any matter or thing done or to be done in India and is received in India.

## **3. Extent Of Liability of Instruments to Duty (Section 4)**

Where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction:

- the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement and
- each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

### **Cases when Section 4 Not Applicable?**

- A lease is executed and got registered. A second document is executed altering the terms of the first document. The second document has to be stamped as a lease.

- A purchaser of land executes a mortgage of the land in favour of the vendor for a portion of the purchase money. The mortgage is liable to full duty as a separate instrument.

#### 4. Valuation for Duty under the Act [Sections 20 to 28]

- **Section 20** states that where an instrument is chargeable with ad valorem duty in respect of any money expressed in any currency other than that of India such duty shall be calculated on the value of such money in the currency of India according to the current rate of exchange on the date of the instrument.
- **Section 21** provides that in the case of an instrument chargeable with ad valorem duty in respect of any stock or any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the date of the instrument.
- **Section 23** provides that where interest is expressly made payable by the terms of the instrument, such instrument shall not be chargeable with a duty higher than that with which it would have been chargeable, had no mention of interest been made therein.
- **Section 23A** provides that in the case of an instrument (not being a promissory note or bill of exchange) which –
  - (i) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or
  - (ii) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security.

It shall be chargeable with duty as if it were an agreement or memorandum of an agreement, chargeable with duty under Article 5(c) of Schedule I to the Act.

- A release or discharge of any such instrument shall be chargeable only with the like duty.
- **According to Section 24**, where any property is transferred to any person in consideration (wholly or in part) of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, (whether being or constituting a charge or encumbrance upon the property or not), such debt, money or stock is to be deemed the whole or part, (as the case may be), of the consideration in respect whereof the transfer is chargeable with ad valorem duty. However, nothing in this section shall affect such a certificate of sale as is mentioned in Article 18 of the First Schedule to the Act.

**Examples:**

*(1) X owes Y Rs. 1,000. X sells a property to Y, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs. 1,500.*

*(2) X sells a property to Y for Rs. 500 which is subject to a mortgage to Z for Rs. 1,000/- and unpaid interest Rs. 200/-. Stamp duty is payable on 1,700.*

*(3) X mortgages a house of the value of Rs. 10,000/- to Y for Rs. 5,000/-. Y afterwards buys the house from X. Stamp duty is payable on Rs. 10,000/- less the amount of stamp duty already paid for the mortgage.*

- **According to Section 25**, where an instrument is executed to secure the payment of an annuity or other sum payable periodically or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance as the case may be shall for the purposes of this Act be deemed to be:
  - a) Where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;
  - b) Where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and
  - c) Where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance— the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.
- **Section 26** deals with cases where the value of the subject matter is in-determinate. The object of this section is to protect the revenue, in cases where an instrument is chargeable with ad valorem duty but such duty cannot be ascertained by reason of the fact that the amount of value of the subject matter of the instrument cannot be determined at the time of the execution of the instrument. This object is sought to be achieved by providing that the executants can value the instrument as he pleases but he shall not be entitled to recover under such document any amount in excess of the amount for which the stamp duty is sufficient.
- **Section 27** provides that the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable shall be fully and truly set forth in the instrument. “Value of any property” would mean that real value of the property in the open market at the time the document was executed and not at the time when the executants acquired it.

## **5. Persons liable to Duty [Section 29]**

**Section 29** deals with the persons responsible for payment of duty. Under this section, in the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne:

- in the case of any instrument described in any of the following articles of Schedule-I, namely:

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| <b>No. 2</b>     | Administration Bond  |
| <b>No. 6</b>     | Agreement relating to Deposit of Title-deeds, Pawn or Pledge   |
| <b>No. 13</b>    | Bill of Exchange   |
| <b>No. 15</b>    | Bond   |
| <b>No. 16</b>    | Bottomry Bond  |
| <b>No. 26</b>    | Customs Bond   |
| <b>No. 27</b>    | Debenture  |
| <b>No. 32</b>    | Further Charge   |
| <b>No. 34</b>    | Indemnity-bond   |
| <b>No. 40</b>    | Mortgage-deed  |
| <b>No. 49</b>    | Promissory-note  |
| <b>No. 55</b>    | Release  |
| <b>No. 56</b>    | Respondentia Bond  |
| <b>No. 57</b>    | Security Bond or Mortgage-deed   |
| <b>No. 58</b>    | Settlement   |
| <b>No. 62(a)</b> | Transfer of shares, in an incorporated company or other body corporate   |
| <b>No. 62(b)</b> | Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by Section 8 |
| <b>No. 62(c)</b> | Transfer of any interest secured by a bond, mortgage-deed of policy of insurance by the person drawing, making or executing such instrument.     |

- in the case of a policy of insurance other than fire insurance by the person effecting the insurance ;
- in the case of a policy of fire-insurance – by the person issuing the policy;
- in the case of a conveyance including a re-conveyance of mortgaged property by the grantee; in the case of a lease or agreement to lease by the lessee or intended lessee;
- in the case of a counterpart of a lease – by the lessor;
- in the case of an instrument of exchange – by the parties in equal shares;
- in the case of a certificate of sale – by the purchaser of the property to which such certificate relates; and
- in the case of an instrument of partition – by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue Authority or Civil Court or arbitrator, in such

proportion as such authority, Court or arbitrator directs.

## 6. Methods of Stamping

- Section 10 provides that all duties with which any instrument is chargeable shall be paid and such payment shall be indicated on such instrument by means of stamps according to the provisions contained in the Act or when no such provision is applicable thereto, as the State Government concerned may by rule direct.
- The rules may among other matters regulate:
  - in the case of each kind of instrument, the description of stamps which may be used;
  - in the case of instruments stamped with impressed stamps, the number of stamps which may be used;
  - in the case of bills of exchange or promissory notes, the size of the paper on which they are written.
- There are two types of stamping namely:
  - Adhesive Stamping.
  - Impressed Stamping.

## 7. Time of Stamping Instruments

- **Instruments executed inside India:** Section 17 provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.
- **Instruments executed outside India:** Section 18 relates to foreign instruments (other than bills and notes), received in India; Foreign bills and notes received in India have been dealt with in Section 19.
- **According to Section 18,** every instrument chargeable with duty executed only out of India and (not being a bill of exchange or promissory note) may be stamped within three months after it has been first received in India.
- **As per Section 18(2)** provides that where such instrument cannot with reference to the description of stamp prescribed therefor be duly stamped by a private person, it may be taken within the said period of three months to the Collector who shall stamp the same in such a manner as the State Government may by rule prescribe with a stamp of that value as the person so taking such instrument may require and pay for.

## 8. Adjudication as to Stamps

- As per Section 31(1), When any instrument whether executed or not and whether previously stamped or not is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable and pays a fee of such amount (**not exceeding five rupees and not less than fifty naye paise**) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which in his judgment, the instrument is chargeable.
- As per Section 31(2), Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly. However, no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.
- As per Section 32(1), when an instrument brought to the Collector under section 31 is in his opinion, one of a description chargeable with duty, and
  - a) the Collector determines that it is already fully stamped, or
  - b) the duty determined by the Collector under section 31, or such a sum as with the duty already paid in respect of the instrument is equal to the duty so determined has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.
- As per Section 32(2), when such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.
- As per Section 32(3), any instrument upon which an endorsement has been made under this Section shall be deemed to be duly stamped or not chargeable with duty as the case may be and if chargeable with duty shall be receivable in evidence or otherwise and may be acted upon and registered as if it had been originally duly stamped.
- Proviso to Section 32(3) categorically provides that the Collector shall not make any endorsement on any instrument under Section 32, where –
  - any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case



may be;

- any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or
- any instrument chargeable **with a duty not exceeding ten naye paise** or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

## 9. Instruments not duly Stamped Treatment and Consequences

- Section 33 contains a mandate on certain officials to impound an instrument which is not duly stamped.
- Section 33(1) provides that every person having by law or consent of parties, authority to receive evidence and every person in charge of a public office, except an officer of police before whom any instrument, chargeable in his opinion with duty is produced or comes in the performance of his functions shall if it appears to him that the instrument is not duly stamped, impound the same.
- For the purposes of this section, the State Government may determine what offices are public offices. The Section also provides that the instrument must be impounded before it can be admitted in evidence. Once it is admitted in evidence, the instrument cannot be impounded at a later stage and a court after it becomes functus officio cannot rectify an earlier error.
- Where a Magistrate issued a warrant with a view to discovering registers kept by the accused containing documents not stamped in accordance with the provisions of the Stamp Act, and in course of the search, the registers were seized and produced before the Magistrate, it was held that the documents thus produced could be impounded as the word 'comes' is sufficiently wide to include documents produced by the search under a search warrant
- An arbitrator has the consent of parties to adjudicate the issues coming before him and where the parties tender evidence, an arbitrator has a statutory duty under Section 33(1) to check whether the instrument so produced is duly stamped and if not, to impound the same.
- However, this shall not compel any Magistrate or Judge of a Criminal Court to examine or impound (if he does not think it fit to do so) any instrument coming before him in the course of any proceeding other than possession proceedings and maintenance proceedings. Also, a Judge of a High Court can delegate the duty of examining and impounding any instrument to any other person appointed by the court in this behalf.

## 10. Apportionment (Section 28)

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| <b>Section 28(1)</b> | Where a person contracts the sale of property <i>as a whole</i> and thereafter conveys to the purchaser the property <i>in separate parts</i> , the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration is set-forth for each separate part in the conveyance and thereafter the conveyances shall be chargeable with <b><i>ad valorem</i></b> in respect of such distinct consideration.                               |
| <b>Section 28(2)</b> | Where the contract is for the sale of a property as a whole to two or more purchasers jointly or by any person for himself and others, and the property is conveyed to them <i>in parts</i> by separate conveyance, then each distinct part of the consideration shall be chargeable with <b><i>ad valorem</i></b> duty in respect of the distinct part of the consideration so specified.   |
| <b>Section 28(3)</b> | Where a person, after contracting to purchase a property from another and before the property has been duly conveyed to him, enters into a contract to sell the property to a third person, and the contract is given effect to only by one conveyance from the owner of the property to the sub-purchaser directly. The stamp duty payable is on the consideration paid by the sub-purchaser.<br><b><i>Note: This provision avoids double payment that would otherwise arise.</i></b> |
| <b>Section 28(4)</b> | Where a person contracts for the sale of property and before obtaining a conveyance in his favour, enters into a contract to sell the property in parts to other persons, the conveyances which may be executed directly by the owner to each sub-purchaser would be liable to be charged with duty in respect of the consideration paid by the sub-purchaser, original price for the whole and the aggregate price paid by the sub-purchasers subject to a minimum duty of Re. 1/-.   |
| <b>Section 28(5)</b> | When a person contracts to sell a property to another person and again contracts to sell the same property to a third person and such third person obtains a conveyance first from the seller with whom he had contracted and later gets another conveyance of the same property from original seller, the duty is to be charged on the consideration received by the original seller subject to a maximum of Rs. 5/-.   |

## 11. Use of Adhesive Stamps

The following instruments may be stamped with adhesive stamps, namely:

- (a) Instruments chargeable with a duty not exceeding ten naye paise except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) Bills of exchange and promissory notes drawn or made out of India;
- (c) Entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) Notarial acts; and
- (e) Transfers by endorsement of shares in any incorporated company or other body corporate.

*Note: The rules framed under the Stamp Act as well as under the relevant state laws invariably provide that the adhesive stamps shall carry special words, to indicate the use to which the stamps can be put.*

## 12. Cancellation of Adhesive Stamps

- **As per Section 12 (1):**
  - Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and
  - Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.
- **As per Section 12(2):** Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.
- **As per Section 12(3):** The cancellation of an adhesive stamp may be done by the person concerned by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner. This sub-section lays down as a guidance one of the ways in which an adhesive stamp can be cancelled.

## 13. Denoting Duty (Section 16)

- Where the duty with which an instrument is chargeable or its exemption from duty depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty shall if application is made in writing to the Collector for that purpose and on production of both the instruments ***be denoted upon such first mentioned instrument*** by endorsement under the hand of the Collector of Stamps or in such other manner as the rules of the State Government may provide.
- The object of this section is to spare parties to an instrument,
  - the inconvenience of having to produce (in cases in which the duty payable on an instrument depends upon the duty already paid on another instrument) and
  - the original or principal instrument in order to prove that the second instrument has been duly stamped.

#### **14. Admission of Instruments (WHERE NOT TO BE QUESTIONED)**

Where an instrument has been admitted in evidence, such admission shall not except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

#### **15. Admission of improperly stamped instruments (Section 37)**

- Opportunity is given to a party of getting a mistake rectified when a stamp of proper amount but of improper description has been used.
- The State Government may make rules providing that where an instrument bears a stamp of sufficient amount but of improper description, the instrument may on payment of the duty with which the stamp is chargeable be certified to be duly stamped and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

#### **16. Dealing with Instruments Impounded (Section 38 to Section 40)**

- **Instruments impounded, how dealt with (Section 38):** When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof and shall send such amount to the Collector or to such person as he may appoint in this behalf. In every other case, the person so impounding an instrument shall send it in original to the Collector.
- **Collector's power to refund penalty (Section 39):** When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. When such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may refund the whole penalty so paid.
- **Collectors power to stamp instruments impounded (Section 40):**  
The Collector when impounding any instrument under Section 33 or receiving any instrument under Section 38(2) not being an instrument chargeable with duty not exceeding 10 naya paisa only or a bill of exchange or promissory note shall adopt the following procedure:
  - i. if he is of the opinion that instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped or that it is not so chargeable as the case may be;
  - ii. if he is of the opinion that such instrument, is chargeable with duty and is not

duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of INR 5/- if he thinks fit and amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of INR 5/-.

However, the Collector has the discretion to remit the whole penalty leviable under this Section, in a case where the instrument has been impounded only because it has been written in contravention of Section 13 or Section 14.

## **17. Prosecution for offences against Stamp Law**

Section 43 deals with prosecutions for offences against the Stamp Law. This section provides that a levy of a penalty or payment thereof in respect of an unstamped or insufficiently stamped document does not necessarily exempt a person from liability for prosecution for such offence.

However, the proviso to the section clarifies that no such prosecution shall be instituted in the case of any instrument in respect of which a penalty has been paid unless it appears to the Collector that the offence was committed with the intention of evading the payment of proper duty. On receipt of copy of the instrument impounded under Section 38, the Collector can initiate criminal proceedings if he sees reasons there for.

## **18. Allowance and Refund**

- Section 49 deals with different circumstances in which refund would be admissible in respect of impressed stamps not used. The section applies only to impressed stamps and not adhesive stamps.
  - Clause (a) of the section refers to cases where the stamp paper is spoiled before any document has been written thereon, or is spoiled in the course of writing and before execution.
  - Clause (b) refers to cases where the document has been written out wholly or in part but not executed.
  - Clause (c) refers to bills of exchange payable otherwise than on demand and promissory notes, when these have not been accepted or made use of.
  - Clause (d) deals with refunds after execution.
- Section 49 provides that subject to such rule as may be made by the State Government as to the evidence to be required or the enquiry to be made the Collector may on application made within the period prescribed in Section 50 and if he is satisfied as to the facts make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:
  - the stamp on any paper inadvertently and un-designedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

- the stamp on any document which is written out wholly or in part; but which is not signed or executed by any party thereto;
- in the case of bills of exchange payable otherwise than on demand or promissory notes:
  1. the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance provided that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon;
  2. the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;
  3. the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed, or being a promissory note may have been delivered to the payee. However, another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid with the spoiled bill or note;
- The stamp used for an instrument executed by any party thereto which:
  1. has been afterwards found to be absolutely void in law from the beginning;
  2. has been afterwards found unfit by reason of any error or mistake therein for purpose originally intended;
  3. by reason of the death of any person by whom it is necessary that it should be executed without having executed the same or of the refusal of any such person to execute the same cannot be completed so as to effect the intended transaction in the form proposed;
  4. for want of the execution thereof by some material party, and his inability or refusal to sign the same is in fact incomplete and insufficient for the purpose for which it was intended;
  5. by reason of the refusal of any person to act under the same or to advance any money intended to be thereby secured or by the refusal or non-acceptance of any office thereby granted totally fails of the intended purpose;

6. becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;
7. is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;
8. is inadvertently and un-designedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped.

However, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

## **19. Penalties ( Section 62 to72)**

- As per Section 62(1), any person:
  - a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of or in any manner negotiating, any bill of exchange (payable otherwise than on demand) or promissory note without the same being duly stamped; or
  - b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
  - c) voting or attempting to vote under any proxy not duly stamped shall, for every such offence be punishable with fine which may extend to five hundred rupees.
- As per Section 63, any person required by Section 12 to cancel an adhesive stamp, and failing to cancel such stamp in the manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees .
- As per Section 64, any person who, with intent to defraud the Government—
  - a) executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such instrument are not fully and truly set forth; or
  - b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or
  - c) does any other Act calculated to deprive the Government of any duty or penalty under this Act;shall be punishable with fine which may extend to five thousand rupees. An intention to

evade payment of proper stamp duty or intention to defraud the Government of its stamp revenue is necessary.

- As per Section 65, any person who:
  - (a) being required under Section 30 to give a receipt, refuses or neglects to give the same; or
  - (b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered shall be punishable with fine which may extend to one hundred rupees.
- As per Section 66, any person shall be punishable with fine which may extend to INR 200/- if he:
  - (a) receives or takes credit for any premium or consideration for any contract of insurance and does not, within one month after receiving or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or
  - (b) makes, executes or delivers out any policy which is not duly stamped or pays or allows in account, or agrees to pay or to allow in account, any money upon, or in respect of, any such policy.
- As per Section 67, if any person drawing or executing a bill of exchange (payable otherwise than on demand) or a policy of marine insurance purporting to be drawn or executed in a set of two or more and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist shall be punishable with fine **which may extend to one thousand rupees**.
- As per Section 71, Magistrate other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.
- As per Section 72, Every such offence committed in respect of any instrument may be tried in any district or presidency town in which instrument is found as well as in any district or presidency town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

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