



MANUAL ON AUDIT

OF

STAMP DUTY AND REGISTRATION FEE

Office of the Pr. Accountant General (Audit), Bihar, Patna

Revenue Audit Manual, Bihar

STAMP DUTY AND REGISTRATION FEE

ISSUED BY

Authority of the Accountant General (Audit), Bihar, Patna

PREFACE

This manual has been prepared for guidance of the officer and staff auditing (Stamp duty and Registration fees) receipt and refunds. In this manual, the relevant provision of the law and the procedure for Assessment and collection of stamp duty & registration fee have been set out. If in course of audit reference has to be made to the Act of the rules framed there under such a reference should be made to the section of the Indian stamp Act, 1899 and the Indian Registration Act, 1908 and the rules framed there under and not to paragraph of this manual.

1. The material contained in this manual may require modification in the light of further experience gained in the course of audit and subsequent orders and instructions issued by the State Government.
2. The Receipt Audit wing (State) will be responsible for keeping the manual up-to-date.
3. The manual should be treated as a guide only and the audit checks indicated should not be taken as exhaustive.
4. Errors and omissions in the manual may be brought to the notice of the Principal Accountant General (Audit), Bihar, Patna to whom suggestions for improvement as to be sent.

Principal Accountant General

CHAPTER-1

1.1. Legislative Back ground.

When a document is registered with a Registering Authority, Stamp duty and Registration fees are levied by the State Government under the powers given to the State Legislature by entries 63 and 66 of list-II of the seventh Schedule to the Constitution of India. Stamp duties other than duties of fees collected by means of Judicial stamp, but not including rates of stamp duty is a subject included in the concurrent list of seventh schedule to the Constitution (entry 44 of list III). There are therefore, both union and state legislations. The union legislation as amended in their application to Bihar have been adopted by the State Government.

The following Act and Rules regulate the levy of stamp duty and registration fee in Bihar:-

- (i) The Indian Stamp Act, 1899.
- (ii) The Bihar Stamp Rules, 1954.
- (iii) The Bihar Instrument valuation Rules, 1991.
- (iv) The Bihar Stamps (prevention of under valuation of instruments) Rules-1995.
- (v) The Bihar stamps (prevention of under valuation of instruments) Rules 2006.
- (vi) The Indian Registration Act, 1908.
- (vii) The Bihar Registration Rules 1937/2008.
- (viii) Spl. Marriage Act 1954
- (ix) Indian Christian Marriage Act, 1872.
- (x) Parsi Marriage & divorce Act, 1936
- (xi) Kaji Rules 1880.
- (xii) Birth, Death & Marriage Act 1886
- (xiii) Indian Society Act-1932

ORGANISATION

The Inspector General of Registration (IGR) is the organizational head of the Registration Department.

The levy and collection of stamp duty, registration fee, penalties and other dues under the Acts and Rules is administered by the Stamp and Registration Department headed by the IGR. The Department functions under the administrative control of the Secretary of Registration Department who is the chief revenue controlling authority. The IGR is assisted by a joint secretary, two DIGs and four AIGs at the Headquarters level. Further there are nine IROs at divisional level, 38 DRs, 38 DSRs, 83 SRs and 26 Joint Sub Registrar at the district/primary units are responsible for levy and collection of stamp duty and registration fee.

1.3 Important provisions of the Indian Stamp Act, 1899 and the Bihar stamp Rules, 1954 (including the Bihar Stamp Manual, 1955 have been set forth in chapter 2 to 8 and those of the Indian Registration Act, 1908 and The Bihar Registration Manual in chapter 9 to 13 of this manual.

CHAPTER-2

General Rules for interpretation of Stamp law and Registration law.

Some Definitions

Introduction

2.1 The Stamp Act is purely fiscal regulation. It is designed to secure revenue for the state or centre, Data of instruments and all its provisions must be constructed as having in view the protection of revenue and prevention of evasion of the revenue that is imposed. Being a fiscal enactment, the intention to tax a particular instrument must be clear and in case of debt the construction should be in favour of the subject.

The object of Stamp Act is:-

- (i) To raise revenue by taxing instruments,
- (ii) To penalize by excluding documents which are not stamped or insufficiently stamped as evidence and also
- (iii) To provide for penalty against evasion of stamp duty.

2.2 General Principle governing levy of stamp duty.

- (a) The substance of the instrument is done to be considered upon the question whether an instrument is liable to stamp duty and not merely the form of the instrument. The substance of the transaction is to be determined as it is disclosed by the instrument. The mere fact that a certain person chooses to give a certain file to an instrument by no mean makes it that instruments.
- (b) The sufficiency of stamp duty leviable on instrument must be determined by looking at the document and what is stated thereon and not any other evidence. The valuation for the purpose of stamp duty is also to be based on the value on the date, the instruments is executed and not with reference to subsequent changes.
- (c) The stamp duty payable is to be determined with reference to the law in force on the date of execution of the instrument, but the levy of penalty is to be determined with reference to the law in force at the time of presentation of the instrument in evidence. Title in no way affects the questions of stamp duty. The instrument has to be stamped according to its true instant and meaning of the bargain which it represents.

2.3 Definitions of some of the important terms used in this manual and as given is the Indian Stamp Act 1899 (as amended in its application of Bihar) are given below: -

CONVEYANCE

“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 1 or schedule 1A as the case may be.

(Of sec. 2 (10) of I.S Act 1899)

INSTRUMENTS

“Instruments” includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

Sec-2 (14) of I.S Act 1899)

INSTRUMENT OF PARTITION

“Instrument of partition” means any instrument whereby co-owners of any property divide or agree to divide such property in severally and includes also a final order for effecting a partition passed by Revenue Authority or any civil court and an award by an arbitrator directing a partition.

Sec-2 (15)

Note: - In the definition the true antithesis is between the original common ownership and the subsequent consequence thereof.

LEASE

Lease means a lease of immovable property and includes also:-

- (a) Patta.
- (b) A quabuliyat or other undertaking in writing not being a counterpart of a lease, to cultivate, occupy or pay or delivered 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.

(Sec-2 (16) of I.S. Act 1899)

Note:-The definition of lease in the Stamp Act is no definition at all. The real definition is to be found in the transfer of property Act in section -105 in which a lease has been defined as a lease of immovable property in 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, a share of crops services or any other thing of value, to be rendered periodically or an specified occasions to transfer by the transferee, who accepts the transfer an such terms.

The definition in the Stamp Act, by the use of the word includes, gives to a lease a much wider and comprehensive connotation.

(b) Lease and Licence:-

The test whether a document is a lease or not is whether it vests any exclusive interest in immovable property in the transferee or whether it gives him merely a right to enter on the property on and to do something thereon. A lease is a grant of property for a time by one who has a greater interest in the property. The consideration being usually the payment of rent.

‘A Licence’ on the other hand is a permission to do same act which without such permission would be unlawful to do.

MORTGAGE DEED

“Mortgage deed” includes every instrument whereby for the purpose of securing money advanced or to be advanced, by way of loan, or an existing or future debt or the performance of an engagement, one person transfers or create or in favour or another a right over or its respect of specified property. Sec-2 (17) of I.S Act 1899

POWER OF ATTORNEY

“Power of attorney” includes any instrument (not chargeable with a fee under the law relating to court fee for the time being in force) empowering a specified person to act for and in the name of the person executing it. Sec-2(21) of I.S Act 1899

SETTLEMENT

“Settlement” means any non testamentary disposition in writing of movable or immovable property made:-

- (b) In consideration of marriage,
- (a) 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
- (b) For any religious or charitable purpose :-

And includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing any instrument recording whether by way of declaration of must or otherwise, the terms of any such disposition.

Sec 2(24) of I.S Act, 1899

Note:-

- (a) The definition of the terms in the Act suggests of creation of separate interests in favour of several persons who may have any legal or normal claim on the settler or for whom he may desire to make a provision.
- (b) A document can be a settlement if the property belong to the settler, whom the property is a joint family. A document by which the karta who is the father exercises the power to divide the joint family properly cannot be described as settlement.

RELEASE

“Release “that is to say,

Any instrument (not being such a release as is provided by section 23 A) whereby a person renounces a claim upon another person or against any specified property.

(Art. 55 Schedule IA) Pg-61 of sch. IA, I.S Act 1899

The essential of release deeds are:-

- (1) It does not pass a right to another but gives up the right or claim of the person executing it,
- (2) It must be in writing,
- (3) It must expressly state the right or claim given up.
- (4) Right or claim given up must be pro-existing and certain.
- (5) It must not tantamount to partition gift or transfer by conveyance.

Note-

- (1) A transfer by a trust in favour of a beneficiary is not release (but trust) there is no claim to be re-announced.
- (2) A partition deed by which co-owners divide property in severalty does not becoming a release: - the partition is an incident of division. It is a bilateral acts where as a release is an unilateral Act.

CHAPTER-3
INSTRUMENTS CHARGEABLE WITH STAMP DUTY.
RATES OF STAMP DUTY

- 3.1 All instruments are enumerated in schedule I, I A and I B of the Indian stamp Act, 1899 whether executed out of India or in Bihar, or out of Bihar and related to any property situated or to any matter or thing done or to be done in India or in Bihar and are received in India or in Bihar are chargeable with the duty of amount indicated in these schedules subject to the examination mentioned there in.

(Sect 3 of I.S Act 1899)

DOCUMENTS EXECUTED OUTSIDE BIHAR

- 3.2 Since the instruments mentioned in schedules I and IA constitute the subject matter of union registrations, the duty in respect of them is uniform throughout India. The duty in respect of the instruments mentioned in schedule IB differs from State to State as they are in the State list under the constitution. As such if a document mentioned in schedule IB is executed outside the State of Bihar and is received in Bihar for being acted upon it requires the duty prescribed for this state. For instance an adoption deed executed on a stamp of Rs. 30 in the state of Assam, when received in Bihar, will require an additional duty of Rs. 7 as the duty in this state is Rs. 37.

(Sec 3 (bb) as adopt by Bihar Act 6 of 1937)

3.3 SEVERAL INSTRUMENT USED IN A SINGLE TRANSACTION OF SALE, MORTGAGE OR SETTLEMENT

Several instrument used in single transaction of sale, mortgage or settlement: - If in the case of any sale mortgage or settlement of several instruments are employed to compute the transaction, the principal instrument only shall be enlargeable with the duty prescribed therefor in schedule IB and each of the other instruments shall be chargeable with a duty of two rupees instead of the duty (if any) prescribed for it in that schedule.

{Sec-4 (1) of I.S Act 1899 as adopted By Bihar stamp (Amendment) Act 1937}

3.4 HIGHEST DUTY ON PRINCIPAL INSTRUMENT

The parties may determine for themselves which of the instrument so employed shall, for the purposes of sub section (1) be deemed to be the principal instrument. Provided that the duty chargeable on the instrument so determines shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

Sect 4 (2) of I.S Act as adopted by Bihar Stamp (Amendment Act 1937)

Note: - (a) On a question whether any stamp duty was leviable on a supplementary deed proposing to rectify renting certain mistakes in boundary in a kabuliyat previously registered, it was held that if the parties with such a document be treated as part of the original lease they must pay the same stamp duty as would be payable, if a fresh lease were made.

(Board of Revenue Bihar file No- 117 of 1910)

3.5 Instruments relating to several distinct matters:

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

(Sec-5 of I.S Act)

Note: - A power of attorney executed jointly by a number of persons, which empowers the agent to perform on behalf of executants certain acts in respect of which there interests are separate and distinct an instrument comprising or relating to several distinct matters under Sec-5 of the I.S Act 1899 and requires under article 48 of the schedule I as may stamps as there are separate and distinct power given under it.

(Board of Revenue, Bihar, Circular No- 8 of Dec 1985)

3.6 The requirements of this section (Sec-5) as deductible from decisions of courts are:-

- (i) There should be distinct matters i.e. matters not connected with each other and not distinct contracts;
- (ii) There should be distinct consideration of each category.
- (iii) The various stipulations should not be subsidiary to one main clause.
- (iv) In case of instruments being executed by several persons in respect of the same or different parties, there should be community of interest for all them jointly.

- (v) The stipulation may be unnecessary i.e. the stipulation if omitted from the deed, would have been granted by a court of law viz as costs etc.

3.7 INSTRUMENTS WITHIN SEVERAL DESCRIPTIONS

Instruments coming within several descriptions in schedule I, IA, IB an instruments so framed as to come within two or more of the description in schedule I, IA or schedule IB and the duties chargeable there under are different, is chargeable only the highest of such duties. (Sec-6 of Stamp Act)

Example: - Where an instruments made a division of property by allotting the whole sale business to one partner and the retail business to the other partner, it was hold that the instrument operated both as a deed of dissolution of partnership as well as a deed of partition and therefore under Sec-6 of the Act, the higher duty payable for a deed of partition as payable on the instrument.

STAMP DUTY ON REGISTRATION OUT SIDE BIHAR

3.8 (a) Payment of the Bihar Stamp duty on copies etc. registered outside Bihar:-

If for completing a transaction of sale, mortgage or settlement, several instruments have been employed and instead of principal or the original instruments, a supplementary instruments counterpart, a duplicate or copy is received in Bihar the difference between the enhanced duty as payable in Bihar and that already paid in respect of the principal or original instrument, shall be realised before any of the aforesaid instruments can be admitted in evidence.

(b) Same as aforesaid the state Govt.

Sec-6-A (b) of Stamp Act 1899

CHAPTER-4

REDUCTION AND REMISSION

- 4.1.1 In exercise of the aforesaid powers, the State Government have allowed reduction and remission in many cases which are listed in Appendix-V to the Bihar Stamp Rules, 1954.

CHAPTER-5

PAYMENT OF DUTY

Duties payable in Non Judicial Stamp

5.1 All duties with which any instruments chargeable are paid by means of Non Judicial Stamps, under Rule 6 of the Bihar Stamp rules 1954, the instruments should be written on impressed Stamp of chargeable amount.

The cases in which duty is paid on instrument otherwise than by stamps are:-

- (a) When instruments are brought in the notice of the collector under section 31 of the Stamp Act for adjudication of duty, or under section 41 of the Stamp Act for voluntary payment of duty.
- (b) When excess duty and penalty are levied on the impounded documents.

In the above cases the stamp duty is paid in cash, the payment is indicated by the endorsement of the collector on the instrument. (Sec. 10 Stamp Act 1899)

ADHESIVE STAMP

5.2 Use of Adhesive Stamp

Following instruments may be stamped with adhesive stamp namely:-

- (a) Instrument chargeable with duty not exceeding ten naye paise except part of bills of exchanges, payable otherwise than on demand and draw on is sets.
- (b) Bill 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) Notaries acts and
- (e) Transfer, by endorsement of shares in any incorporated company or other body corporate.

(Sec-11 of Stamp Act)

CANCELLATION OF ADHESIVE STAMP

5.3 (1) (a) 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

(b) Whoever executes any instrument on any paper bearing an adhesive stamp shall at the time of execution unless such stamps has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

2. Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, so far as such stamp is concerned, be deemed to be unstamped;
3. The person required by sub section (1) to cancel an adhesive stamp may cancel it by writing or across the stamp his name or initials of the name or initials of his firm with true date of his so writing or any effectual manner.

Sec-12 of stamp Act

PENALTY FOR NON CANCELLATION OF ADHESIVE STAMP

- 5.4** Any person required to cancel an adhesive stamp and fails to cancel such stamp in manner detailed above shall be punishable with fine which may extend to one hundred rupees.

Sec 63 of I.S Act 1899

OF THE TIME OF STAMPING INSTRUMENTS

5.5 Instrument executed in India

All instruments chargeable with duty and executed by person in India shall be stamped before or at the time of execution.

(Sec-17 of Stamp Act 1899)

5.6 Instrument executed out of India

- (1) Every instrument chargeable with duty executed only out of India and not being a bills of exchange, or promissory note, may be stamped within three months after it has not been first received in India.

- (2) Where any such instrument can not, with reference to the description of stamp prescribed therefore, 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 manner as the state Government may by rule, prescribe with a stamp of such value as the person so taking such instrument may require and pay for.

(Sec-18 of I.S Act, 1899)

INSTRUMENTS EXECUTED OUTSIDE BIHAR

- 5.7** Payment of duty on certain instruments liable to increased duty in Bihar under clause (bb) in Section 3:- If an instrument is executed in any part of India outside Bihar, and is received in Bihar in terms of clause (bb) of Sec-3 is chargeable with the duty payable in Bihar at that time. The difference in the duty already paid out of Bihar and that payable in Bihar is to be realized in respect of such instrument and difference in duty is to be made.

Sec-19 A of I.S Act 1899

TRANSFER OF PROPERTY IN CONSIDERATION OF DEBT

- 5.8** Transfer in consideration of debt of future payment etc :- (1) where any property is transferred to any person in consideration, wholly or in part, of any debt 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 in cumbrance upon the property or not, such debt, money or stock is so to be deemed the whole or part, as the case may be of the consideration in respect where of the transfer is chargeable with ad valorem duty.

Subject – by Bihar Act 15 of 1988. Vide SO. No 196 dated 31-03-1990

Explanation: - In case of a sale of property subject to a mortgage or other in cumbrance any unpaid mortgage money or money charged together with the interest (if any) due on the same shall be deemed to be part of the consideration for the sale.

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer, the amount of any duty already paid in respect of the mortgage.

Sec 24 of I.S Act & Bihar Stamp (Amendment) Act 1937

CHAPTER-6

FACTS AFFECTING DUTY AND DETERMINATION OF VALUE

Facts affecting duty to be set forth in instrument

- 6.1 The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall, be fully and truly set forth therein.

Sec.27 of I.S Act, 1899

CHAPTER -7

ADDITIONAL STAMP DUTY

- 7.1 Additional stamp duty on certain transfer of property : - In every municipality an additional stamp duty 2% (Two percent) on the value of the property shall be levied on transfers of immovable property in accordance with the provision contained in section-162 A of Bihar and Orrisa Municipal Act, 1922 (as amended by Bihar Act, III of 1959). No such additional duty shall however be imposed in that municipality where an improvement trust has been constituted under section 3 of Bihar planning and improvement trust Act 1951.
- 7.2 This duty is also leviabale on mortgage deeds on the amount secured by the instrument.
- 7.3 The stamp duty under these provisions is payable in the form of non judicial stamp along with the normal stamp duty.

CHAPTER- 8

Recovery of duties and penalties and refund there of

- 8.1 Recovery of duties and penalties – All duties, penalties and other sums required to be paid under this chapter may be recovered by the collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue.

(Sec 48 of I.S Act 1899)

Note- Recovery of duty and penalty can be enforced only against the persons from whom the same are due or in other words the obligation is a personal one and does not extend to the heir or representatives of such a person.

(Board of Revenue Bihar collection I file 150 of 1950)

Refund of stamp duty

- 8.2 Refund of stamp duty – where in the opinion of the chief controlling Revenue Authority stamp duty in excess of that which is legally chargeable has been charged and paid under Section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same refund the excess.

Sec 45 (2) of I.S Act 1899

Refund of value of stamp on debenture

- 8.3 When any duty stamped debenture is renewed by the issue of new debenture in the same terms, the collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less.

Provided that the original debenture is produced before the collector and cancelled by him by writing on or across it with the word “Cancelled” with his usual signature and the date there.

Sec. 55 of I.S Act 1899 Rule 22 Sec-I of Bihar Stamp Rule 1954

Refund of penalty

- 8.4 Refund of penalty when a copy of an instrument is sent to the collector under section 38 subsection (I), he may if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect to such instrument.

Sec- 39 (i) of I.S Act, 1899

8.5 When such instrument has been impounded only because it has been written in contravention of section13 or section 14 the collector may refund or remit the whole penalty so paid.

Sec-39 (II) of I.S Act 1899

Proviso to Sect-40 (i) of Act 1899

8.6 Where any penalty is paid under sec 35 or section 40. Revenue Authority may, upon application in writing made within one year from the date of the payment refund such penalty wholly or in part.

Sect 45(I) of I.S Act 1899

CHAPTER -9

REGISTRATION ESTABLISHMENT

9.1 Inspector General of registration

- (1) The State Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government

Provided that the State Government may instead of making such appointment direct that all or any of the powers and duties here in after conferred and imposed upon the Inspector General shall be exercised of and performed by such officer or officers, and within such local limits, as the State Government appoints in this behalf.

- (2) Any Inspector General may hold simultaneously any other office under the Government. Sec-3 of I.R Act 1908

9.2 Districts and sub districts:-

- (1) For the purpose of this Act, the State Government shall form districts and sub districts and shall prescribe and may alter the limits of such districts and sub districts.
- (2) The districts and sub districts formed under this section, together with the limits thereof, and every alteration of such limits shall be notified in the official gazette.
- (3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

(Sec 5 of I.R Act 1908)

9.3 Offices of Registrar and sub Registrar

- (1) The State Government shall establish in every district an office to be styled the office of the Registrar and in every sub districts an office or offices to be styled the office of the sub registrar or the offices of joint sub Registrars.
- (2) The State Government may amalgamate with any office of a Registrar, any office of a sub Registrar subordinate to such Registrar and may authorize any sub-Registrar whose office has been so amalgated to exercise and perform in addition to his own powers and duties all or any of the powers and duties of the Registrar to whom he is subordinate.

Provided that no such authorization shall enable a Sub Registrar to hear an appeal against an order passed by himself under this Act.

Section7 of I.R Act 1908

9.4 Inspectors of Registration Offices

- (1) The state Government may also appoint Officers to be called inspectors of Registration Offices, and may prescribe the duties of such officers.
- (2) Every such inspector shall be subordinate to the Inspector General.

Sec 8 of I.R Act 1908

CHAPTER- 10

OF THE CONTROLLING POWERS OF REGISTRARS AND INSPECTOR GENERAL

10.1 Power of Registrar to superintend and central Sub-Registrar

1. Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situated.
2. Every Registrar shall have authority to issue whether any complaint or other wise any order consistent with this Act which he considers necessary in respect of any Act or omission of any Sub-registrar subordinate to his or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

Sec 68 of IR Act 1908

10.2 Powers of Inspector General to superintend registration offices and make rules

- (1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the State Government and shall have power from time to time to make rules consistent with this Act –
 - (a) Providing for the safe custody of books, papers and documents.
 - (aa) providing the manner in which and the safeguards subjects to which the books may be kept is computer floppies or diskettes or in any other electronic form under sub section (1) of Sec 16 A.
 - (b) Declaring what language shall be deemed to be commonly used in each district.

(Section 69 of IR Act, 1908)

Power of Inspector General to remit fines

- 10.3 The Inspector General may also in the exercise of his discretion remit wholly or in part the difference between any fine levied under sec 25 or sec 34 and the amount of the proper registration fee.

(Sec 70 of I.R Act 1908)

CHAPTER 11
BIHAR STAMP (PREVENTION OF UNDER VALUATION)
INSTRUMENTS RULE 1995

11.1 Guidelines register of Minimum value: - For the purpose of assisting the registering officer in finding out actual market value of properties (as accurately as may be possible) the District Collector, within the area of his district shall after classifying the lands of rural or urban area prepare a register showing estimated minimum value of the land/properties of that category as per procedure laid down in rule-6.

Bihar Stamps (prevention of under valuation) Rule 5

11.2 Procedure for the fixation of estimated minimum value

1. The District collector shall obtain from the concerned Registering Officer the figure relating to the five conveyances of highest value of each category of land/property situated within each halka of every revenue circle and ward of notified area municipality /corporation that have been registered/ presented for registration in the preceding financial year.
2. The average value of conveyances of five highest value obtained under sub rule (1) pertaining to each category of land/property shall be deemed to be the estimated minimum value of land/property of that category in that area and shall be so fixed, provided that if less than five conveyances or no conveyance of land/property of that category of a particular area have been registered/presented for registration in the preceding financial year, the collector shall determine the estimated minimum value of that category at the same rate as that determined for the similar land/property of an adjoining area.

Explanation: – The ‘Guidelines Register’ supplied to the officer is intended merely to assist them to ascertain prima- facie whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price; such entries will not fore close the enquiry of the collector under sec. 47A, of the Act nor fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness of other wise of the value expressed in the document.

(Rule-6 of Bihar Stamp prevention 1995)

11.3 After preparing the Guidelines Register of estimated minimum value of land/property, the collector shall without delay send the same to the registering officer concerned for needful.

(Rule-7 of Bihar Stamp prevention 1995)

11.4 The collector shall revise the Guidelines Register of estimated minimum value every two years, provided that any delay in such a revision shall not render current register invalid. Provided further, that no register which is due for revision for more than a year shall be deemed valid without the prior written consent of the Inspector General, Registration, Bihar.

(Rule 8 of Bihar Stamp prevention 1995)

11.5 (1) Instruments in which the value set forth is less than estimated minimum value indicated in the Guidelines Register supplied by the collector shall be referred by the Registering Officer to the collector at the time of admission for determination of appropriate market value as per procedure laid down under rules 11 and 12.

(2) The registering officer shall refer such instruments to the collector along with form I referred to in the appendix of the rules and maintain a copy of the form in his office as record and shall also maintain a register in form-VI.

(Rule 9 of Bihar stamp prevention Rule 1995)

11.6 (1) If the value set forth in the instrument is according to the estimated minimum value indicated in the guidelines register supplied by the collector but the registering officer has reason to believe that, the market value is higher than the estimated minimum value, he shall refer such instruments to the collector at the time of admission after recording his reasons in writing for fixation of appropriate market value as per procedure laid down in Rule 10 and 12.

(2) The registering officer shall refer such instruments to the collector along with form-I referred to in the appendix of rules and maintain a copy of the same in his office as a record.

(Rule-10 of Bihar Stamp prevention 1995)

11.7 Procedure to be followed under section 47 A(1) and (3) of the Act on receipt of reference

- (a) In the matter of instruments, referred by the registering officer to the collector under section 47A(1) of the Act for determination of the market value on the instrument called for by the collector under sec. 47A (3) of the Act, notice will be given to the following persons by the collector in form-II or III (as the case may be) amended as to the rules:-
- (i) Every executant by whom the instrument is executed.
 - (ii) Every claimant in whose favour instrument is executed.
- (b) Through the above notice the parties on the person concerned will be directed by the collector to file their representation and adduce evidence regarding the value of the property.
- (c) If the collector considers it necessary he may record the statement of any person to whom the notice is given under sub rule(a)
- (d) For the purpose of enquiry, the collector
- (i) May call for information of record from any office or a government office or office of autonomous bodies.
 - (ii) May examine any government official or authority and record their statements.
 - (iii) May inspect properties after giving notice to the party concerned.

(Rule-11 of Bihar Stamp prevention 1995)

11.8 Order of determination of market value

- (1) Considering the objections and representation received from the persons to whom the notice is given under sub rule (a) (I) (II) of Rule -11 and (I) after examining the records produced, and (II) after carefully considering all facts and evidence adduced. The collector shall pass an order in writing determining the market value of the properties and duties payable on the instrument communicate the order to the parties and take steps to collect the difference in the duties payable. The basis which the market value was arrived at shall be clearly indicated in the order.
- (2) A copy of order shall be communicated to registering officer for his record.
- (3) The collector shall, after collecting the difference in amount of stamp duty, if any, give a certificate in form V by endorsement of the instrument.

(4) The collector shall, as far as possible, have also regard to the following points in arriving at the final market value in addition to the factors enumerated under rule-3.

(a) In the case of land.

- (I) Points, if any, mentioned by the parties to the instruments or any other persons, or which come to light through records and evidence in course of enquiry which requires special consideration.
- (II) Value of adjacent land or land in the vicinity.
- (III) Average yield of the land, the nature and number of crops, nearness to road or market, distance from village, site, level of land, transport facilities, irrigation facilities, and susceptibility to flood water logging and drought.
- (IV) The use of land domestic, commercial, industrial, agricultural purposes and the likely appreciation of value when an agricultural land is being converted to a residential, commercial, industrial etc use

(b) In case of house sites

- (I) The general value of house sites in the locality.
- (II) Nearness to roads railway station.
- (III) Nearness to market shops and the like.
- (IV) The use of land, domestic, commercial industrial, agricultural purposes likely appreciation of value when an agricultural land is being converted to a resident commercial industries use,
- (V) Development activities, industrial improvements in vicinity ,
- (VI) Land and valuation of sites with references to taxation records of the local authorities concerned,
- (VII) Any after features having a special bearing on the valuation of the site and,
- (VIII) Any special features of the case represented by the parties,

(c) In the case of buildings

- (I) All the points enumerated in clause (a) above,
- (II) The possibility of conversion of building after transfer from residential to commercial or industrial use,

- (III) Property tax/municipal tax /water tax/wealth tax/ both current and recent enhancement made in any of them,
- (IV) Rate of depreciation,
- (V) Any other special feature of the case which has come to light in course of investigation,
- (d) Properties other than land house, sites and building**
- (I) The nature and condition of the properties ,
- (II) Purpose for which the property is being used, and
- (III) Any other special features having bearing as the valuation of the property.

(Rule 12 of Bihar Stamps prevention Rule 1995)

CHAPTER 12

Registration of Documents

12.1 **Objects of registration of documents :-**

The item “Registration of deeds and documents” appears as entry No-6 in the list-III of Seventh Schedule to the constitution of India. In accordance with articles -246 (2) the parliament and legislatures of the State have concurrent powers to make laws on the subject. The Indian registration Act 1908, a law passed by the central legislature and modified by the both central and states legislatures from time to time regulates the registration of deeds and documents throughout India.

The object and purpose of the Registration Act, amongst other things, is to provide a method of public registration of documents so as to give information to people regarding legal right and obligations arising or affecting a particular property, and to perpetuate documents which may after wards be of legal importance, and also to prevent fraud. Registration lends inviolability and importance to certain classes of documents.

The Registration Act strict only at documents and not at the transaction. The act does not require that a transaction affecting immovable property should be carried out by a registered instrument. All that it enacts is that when a document is employed to effectuate any of the transactions specifies in section 17 of Indian Registration Act, such documents must be registered.

Of REGISTRABLE DOCUMENTS

12.2 **Documents of which registration is compulsory :- Registration of the following documents is compulsory :-**

- (a) Instruments of gift or immovable property
- (b) 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 one hundred rupees and up wards, to or in immovable property.
- (c) Non testamentary instruments which acknowledge the receipt or payment of any considerations on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest and

- (d) Leases of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent;
- (e) 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, declare, assign, limit, or extinguish whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property.

The State Government may, by order published in the official gazette, exempt from the operation of these provisions any leases executed in any districts or part of a district, the terms granted by which did not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

- (f) Authorities to adopt “a son” executed after 01.01.1872 and not conferred by a will are also to be registered.

(Sec 17 of I.R Act, 1908)

EXEMPTION FROM REGISTRATION

12.3 The provisions in sub paragraphs (b) and (c) of the preceding paragraph do not apply in the following cases :-

- (i) Any composition deed ; or
- (ii) Any instrument relating to share in a joint stock of company notwithstanding that the assets of such company consist in whole or in part of immovable property ;or
- (iii) Any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right title or interest , to or in immovable property except in so far as it entitles to the holder to the society afforded by a registered instrument where by the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trust for the benefit of the holders of such debentures; or
- (iv) Any endorsement upon or transfer of any debenture issued by any such company ; or
- (v) Any document not itself creating, declaring, assigning, limiting or extinguishing any right title or interest of the value of one hundred rupees and upwards to or in immovable

- property, but merely creating a right to obtain another document which will, when executed create, declare, assign, limit or extinguish any such right, title or interest, or
- (vi) Any decree or order of a 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; or
 - (vii) Any grant of immovable property by the government ; or
 - (viii) Any instrument of partition made by a Revenue Office ; or
 - (ix) Any order granting a loan or an instrument of collateral security granted under the land improvement Act, 1871, (XXVI of 1871) or the Land Improvement Loans Act 1883.
 - (x) Any order granting a loan under the agriculturists loans Act 1884 (XII of 1884, XIX of 1883) or instrument for securing the repayment of a loan made under this Act, or
 - (xi) Any order made under the Charitable Endorsement Act 1890 (Vi of 1890) vesting any property in a treasurer of chargeable endowment or divesting any such treasurer of any property; or
 - (xii) Any endorsement on a mortgage deed acknowledging the payment 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.

(Section 17 of I.R Act 1908)

12.4 The registration of the following documents is optional :-

- (a) Instrument (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) Instrument acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitations or extinction of any such right, title or interest ;
- (c) Leases of immovable property for any term not exceeding one year and leases exempted under section -17,

- (d) Instrument transferring or assigning any decree or order of 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 as contingent, of a value less than one hundred rupees to or in immovable property.
- (e) Instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property,
- (f) Wills and
- (g) All other documents not required by section 17 to be registered.

(Section 18 of IR Act 1908)

EFFECT OF NON REGISTRATION OF DOCUMENTS

12.5 Effect of Non-Registration of documents – Required to be registered :-

No document required by section 17 or by any provision of the transfer of Property Act 1882 (4 of 1882), to be registered shall –

- (a) affect any immovable property comprised there on or;
- (b) Confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power unless, it has been registered.
- (d) Jarring such power unless, it as been registered.

However an unregistered document affecting immovable property and required to be registered may be received as evidence of a contract in a suit for specific performance under chapter II of the specific Relief Act 1877 or as – evidence of any collateral transaction not required to be affected by registered instrument

(Section 49 of I.R Act 1908)

12.6 DOCUMENTS IN LANGUAGE NOT UNDERSTOOD BY REGISTERING OFFICER :-

If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

(Section 19 of IR Act 1908)

TIME LIMIT FOR PRESENTING DOCUMENTS FOR REGISTRATION

- 12.7 Time for presenting documents: No document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.

Provided that a copy of a decree or order was made or where it is appealable, within four months from the day on which it becomes final

(Section 23 of IR Act 1908)

SEVERAL EXECUTANTS

- 12.8 Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four month from the date of each execution

(Section 24 of I.R Act 1908)

REGISTRATION OF TIME BARRED DOCUMENTS

- 12.9 (1) If owing to urgent necessity or unavoidable accident, any document executed or copy of a decree or order made, in India is not presented for registration till after the expiration of the time here in before prescribed in that behalf the Registrar in case where the delay in presentation does not exceed four months, may direct that, on payment of a time not exceeding ten times the amount of the proper registration fee such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar who shall forth with forward it to the Registrar to whom he is subordinate.

(Sect 25 of I.R Act, 1908)

DOCUMENTS EXECUTED OUT OF INDIA

- 12.10 When a document purporting to have been executed by all any of the parties out of India is not presented or registration till after the expiration of the time here in before prescribed in that behalf the Registering Officer, if satisfied.

- (a) That the instrument was so executed , and
- (b) That it has been presented for registration within four month after its arrival in India may on payment of the proper registration fee, accept such document for registration.

(Section 26 of IR Act 1908)

NO TIME LIMIT FOR WILL

12.11 A Will may at any time be presented for registration or deposited in manner here in after provided

(Section 27 of IR Act 1908)

PLACE OF REGISTRATION

12.12 Save as in this part otherwise provided, every document mentioned in clauses (a),(b),(c),(d) and (e) of sub section 1 and sub section 2 of section 17 in so far as such documents affect immovable property and in clauses (a),(b),(c),and (cc) of section 18 shall be presented for registration in the office of the Sub-Registrar within whose Sub District the whole of the property to which such document relates is situated in the state of Bihar.

(Section 28 of IR, Act 1908)

DOCUMENTS NOT EFFECTING IMMOVABLE PROPERTY

12.13 (i) Every document not being a document which affects immovable property for registration either in the office of the Sub-Registrar in whose Sub District the document was executed or in the office of any other Sub-Registrar under the jurisdiction of the Bihar Government.

(ii) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose Sub District the original decree or order was made or where the decree or order does not affect immovable property in the office of any other Sub Registrar under the jurisdiction of Bihar Government.

(Section 29 of IR Act 1908)

REGISTRATION BY REGISTRAR IN CERTAIN CASES

12.14 (i) Any registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

ii) The Registrar of a district in which a presidency town is included and the Registrar of Delhi District may receive and register any document referred to the Section 28 of IR Act 1908 with regard to the situation in any part of India of the property to which the document relates (deleted vide Act 48 of 2001)

(Section 30 of IR Act 1908)

REGISTRATION AT THE RESIDENCE

- 12.15 In ordinary cases the registration or deposit of documents shall be made only at the office of the officer authorized to accept the same for a registration or deposit on special cause being shown may 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.

(Section 31 of IR Act 1908)

PROPERTY SITUATED IN SEVERAL SUB DISTRICT, DISTRICTS AND STATES

- 12.16 Procedure where document relates to land in several sub-district :- Every Sub Registrar and registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district shall make a memorandum there of and of the endorsement and certificate (if any) thereon , and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose Sub-District any part of such property is situated and such Sub-Registrar shall file the memorandum in his Book No-1

(Section 64 of IR Act 1908)

PROCEDURE WHERE DOCUMENT RELATES TO LAND IN SEVERAL DISTRICTS

- 12.17 (i) Every Sub-Registrar on registering any non testamentary document relating to immovable property the Registrar shall forward a memorandum of such document to each Sub-registrar subordinate to himself in whose Sub-District any part of the property is situated.
- (ii) The Registrar on receiving the same shall file it in his Book No-1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to Sub-District in whose district any part of such property is situated, and every sub-Registrar receiving such memorandum shall file it in his Book No.1

(Section 65 of IR Act 1908)

PROCEDURE WHERE DOCUMENT RELATES TO LAND IN OTHER STATES

- 12.18 On any document being registered by the Registrar of a district in which a presidency town is included, and by the Registrar of Delhi relating to immovable property situated in any part of India, a copy of such document and of the endorsement and certificate thereon shall be forwarded to every Registrar within whose District any part of the property to

which the instrument relate is situated. The Registrar on receiving such copy shall forward a memorandum of such document to each Sub Registrar subordinate to himself in whose Sub-District any part of the property is situated. The Sub Registrar on receiving the memorandum file it in his Book No-1

(Section 66 &67 of IR Act, 1908)

(Section 67 of IR Act, 1908 omitted by Act, 48 of 2001)

CHAPTER-13

FEES AND FINES

REGISTRATION FEE

13.1 **Section 78 of the Indian Registration Act, 1908 authorises the State Government to prescribe the fees payable:-**

- a. For the registration of documents,
- b. For searching the registers,
- c. For making or granting copies of reasons, entries of documents, before, on or after registration, and of extra or additional fees payable,
- d. For every registration under section 30 of IR Act, 1908,
- e. For the issue of commissions,
- f. For filing translations,
- g. For attending at private residences,
- h. For the safe custody and return of documents, and
- i. For such other matters as appear to the State Government necessary to effect the purposes of this Act,

(Section 78 of IR Act, 1908)

DELAY IN PRESENTING A DOCUMENT FOR REGISTRATION

13.2 Fines (i) if owing to urgent necessity or unavoidable accident, any document executed, or, copy of a decree or order made in India is not presented for registration till after the expiration of time of four months of execution, the registrar, in case where the delay in presentation does not exceed four months, levy a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(ii) Any application for such direction may be lodged with a Sub-Registrar who shall forthwith forward it to the registrar to whom he is subordinate

(Section 25 of IR Act 1908)

APPEARANCE BEFORE REGISTERING OFFICER

- 13.3 No document shall be registered unless, the persons executing such document, or their representatives, assigns or agents authorized, appear before the Registering Officer within the time allowed for presentation under Section 23,24,25 and 26 of the I.R Act 1908.

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where to 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.

(Section 34 of IR Act 1908)

REMISSION OF FINES

- 13.4 Application for remission of fines levied under section 25 & 34 of the IR Act 1908 may be filed with the registering officer, but no such application shall be accepted until the fine has been paid when such application has been accepted, it shall be forwarded to the Inspector General of registration with the remarks of the registering officer. The IG may in the exercise of his discretion remit wholly or in part the difference between any fine levied under Section 25 or Section 34 of IR Act, 1908 and the amount of the proper registration fee.

(Section 70 IR Act 1908 and note (b) below article L in S.O. No 1371 dated 06-12-74)

CHAPTER-14

Realisation and Deposit of fees

- 14.1** All fee for registration of document are payable on the presentation at the document, but should not be realized until the document has been formally accepted for registration except Travelling allowances, all fees and fines shall be entered into Treasury/Sub-Treasury without unnecessary delay.

(Sec. 80 of I.R. Act, 1908, Rule 39 Bihar Rule 1937

Rules 242 (a) of Bihar Reg. Manual)

Further in term of Government of Bihar Resolution (Additional Finance Commissioner Expenditure letter No.-4-28/2005/631 dt 24.11.2005) the procedure for deposit of all State Government Receipts can be made at an authorised Branch of State Bank of India. In compliance with the aforesaid resolution, the procedure for deposit of challan relating to Stamp duty, Registration fee and Land Revenue has been revised vide letter No. M-1043/2005-239 dated 4/2/2006, issued by Commissioner- Cum-Secretary, Registration Department, Government of Bihar.

PAYMENT OF FEE INTO TREASURY/SUB TREASURY:-

- 14.2** All fees and fines realised shall be entered in the Fee Book. The fees shall be remitted on the day following the day to which the receipts relate to treasury/sub treasury from offices situated at the head quarters of district, sub-district by means of challans where the sub-treasury are not open, daily on the day on which they are opened

(Para-242 (a (b) Bihar Registration manual)

- 14.3** The fees from office other than district/sub. divisional headquarters shall be remitted to the treasury/sub treasury by means of money order addressed to the District Registrar in round figures in multiplies of Rs. 10 keeping the balance in hand. The details of fees remitted shall be given in coupons. On receipt of acknowledgement, it shall be retained after comparing with the advice.

(Para 242 of Bihar Reg. Manual)

Responsibility for loss of Government

- 11.4.** The registering officer shall be held personally responsible for the safe custody of fees until they are paid into treasury/sub treasury as the case may be.

(Para-24 of the Bihar Registration Manual)

CHAPTER-15

REFUND OF FEES

REFUSAL OF REGISTRATION

- 15.1** Registration fee may be refunded by registering officer in the event of registration being refused or not taking place for other reasons. Fine may be refunded only if the fine is remitted by the Inspector General of registration under section 70 of I.R Act, 1908. Fees for commission or visit and travelling allowance may be refunded if the application for the commission or visit be withdrawn before the visit is paid or the commission is executed

(Para 329,330, 332 and 333 of Bihar registration manual volume-11)

REFUND OF EXCESS FEES

- 15.2** Refund may be made of fees levied in excess under article IV or any other Articles.

(Para 334 of Bihar Registration Manual Vol.-II)

REFUND HOW TO BE MADE

- 15.3** When a refund has to be made, notice should be issued to the party concerned to take back the money on presenting the receipt given under section 52 of the Indian Registration Act. 1908.

CHAPTER 16
REGISTERS AND RECORDS

Registers maintained in registration offices

16.1 The following registers are to be maintained in the office of every District registrar and Sub-Registrar:-

- I. Book –I Register of Non testamentary documents relating to immovable property
- II. File Book No-I (in two volumes)
- III. Book No-II- Record of reasons for refusal to register
- IV. Book No-III- Register of wills and authorities to adopt.
- V. Book No-IV- Misc. Register
- VI. Book No-V- Register of deposits of wills.
- VII. Register of powers of attorney.
- VIII. Register of visits and commission
- IX. Register of thumb impression

(Rule 4, 5, 6, 7& 8 of Bihar Registration Rules)

16.2 They have been elaborated in the subsequent paragraphs.

16.3 Register of Non testamentary documents relating to immovable property.

Book-I- in the register of non testamentary documents relating to immovable property. In this book all documents registered under section-17 and 18 of the Indian Registration Act, 1908 which related to immovable property and are not wills are entered copied. Full details of the property, Stamp duty and Registration fee paid, Sl. No of the deed etc are also recorded therein. It is open to public inspection and copies of entries in it are given to all persons applying for them on payment of the prescribed fee.

(Section 51 of IR Act 1908)

16.4 FILING OF COPIES AND MEMORANDUM MAPS & PLANS

File Book No-1 (In two vols) :- These file books are meant for filing (pasting in) copies and memoranda received from other offices under Sec. 64,65,66,67 and 89 of the Indian Registration Act, 1908 (One file under Sec. 89 and the other under the rest of the Sections) as well as the maps and plans presented with manuscript of typed documents

and translations and copies of documents in foreign languages presented for registration. These file books are part and parcel of Book No. 1 and are maintained in separate volumes with view to prevent the injury to the binding and disturbance of paging which would result if these documents were filed in Book No-1.

(Rule 5 of Bihar Registration Rules)

16.5 Records of reasons for refusal to register

Book No-II: - This book is meant for recording reasons for refusal to register. This book is open to Public Inspection, and copies of entries in it are given to all persons applying for them. In the event of applicants being persons executing the documents the registration of which has been refused, or their representatives or agents the copy is given free of charge.

(Sect. 51 and 71 (i) of IR Act, 1908)

WILLS AND AUTHORITIES TO ADOPT

16.6 Book No. III: - This is the register in which wills and authorities to adopt are copied, after they have been accepted for registration. This book is not open to public inspection, nor are its index but copies of entries in it are given on payment of the prescribed fees, to the persons executing the documents to which such entries relate, or to their agents and after the death of the executants (but not before) to any persons applying for such copies. The District Registrar must enter not only copies of the wills etc registered by himself, but also copies of the wills opened on the death of the testator or on the order of the court for the production of wills under deposit :-

(Rule 93 of Bihar Registration Rules and Section 41, 45 and 46 of IR. Act, 1908)

MISCELLANEOUS REGISTER

16.7 Book No-IV: - This is the miscellaneous register in which the documents which do not relate to immovable property are copied. It is not open to public inspection, nor are its indexes. Copies of entries in it are given on payment of the prescribed fees, only to the parties executing or claiming under the documents to which such entries relate, or the agents or representatives of such persons.

(Rule 44 of Bihar Registration Rules and section 51 of IR Act, 1908)

REGISTER OF DEPOSIT OF WILLS

16.8 Book No. V: - This is the register which is kept only in the office of the District Registrar. This register is meant off for recording transactions relating to the deposit and withdrawal of sealed wills.

(Rule 8 of Bihar Registration Rules and Section 51 (a) of IR, Act 1908)

REGISTER OF POWER OF ATTORNEY

16.9 Register of power of attorney: - This Register is meant for recording abstract of power of attorney with date of authentication.

(Para 193 of Bihar Registration manual valume-II)

16.10 Register of visits and commissions: - This is the Register of visits and commissions under section 31, 33 and 38 of Indian, Registration Act 1908 made by the Registering Officer.

(Rule 7.29 of Bihar Registration manual volume-III)

16.11 Register of Thumb impression: - This is the register of thumb impressions of the executor of a document and witness there to.

(Para 127 to 133 of Bihar Registration manual volume-III)

INDEXES

16.12 INDEX OF DOCUMENTS: - In every Registration Office, index of all documents copied or filed are maintained. The entries in them are made, so far as practicable, immediately after the Registering Officer has copied or filed a memorandum of the document to which it relates. These indexes are prepared on loose printed form. At the end of the year all used sheets are bounded in their proper alphabetical order.

(Section 54 of IR Act 1908; Rule 72 to 75 of Bihar Registration Rule)

16.13 Four such indexes as detailed below are made in all the Registration Offices:-

Index No.-1 –This index shall contain the names and addition of all persons executing and of all persons claiming under every documents entered or memorandum filed in Book No-I

(Section 55 (II) of IR Act 1908, Rule 72 of Bihar Registration Rule)

Index No-II – This index contains such particulars as mentioned in section 21 of the Registration Act relating to every document registered as memorandum filled in Book No.-I. The names of town or villages where the property effected is situated the name of the mohalla or hamlet in the case of village are entered in this book.

(Section 55(3) of IR Act 1908 and Rule 79 of Bihar Registration Rule)

Index No-III – This index contains the names and additions of all persons executing every will and authority entered in Book No-III and of the executor and persons respectively appointed there under, and after the death of the testator or the donor (but not before) the names and adding of all persons claiming under the same

(Section 55 (4) of IR Act 1908 and para 171 of Bihar Registration manual volume –II)

Index No-IV – This index contains the names and additions of all persons executing and of all persons claiming under every document entered in Book No-IV.

(Section 55 (5) of IR Act 1908)

SUBSIDIARY BOOKS

16.14 Register of application for copies: - Application for copies which are received by the Registering Officer are entered in this Register. It contains complete information in respect of Book No, document No, No. of words, copies and fees charged for copy.

(Section 57 of IR Act, 1908 Para 211(G) of Bihar Registration Manual volume-II)

16.15 Register of searches: - Any Degree holder may apply for the search Book No –I & II and indexes I & II on payment of prescribed fee.

(Rule 100 of Bihar Registration Rules)

16.16 Register of Inspection: - Application for inspection of Book No I & II and of the indexes relating to Book No –I by any person desirous of inspecting the same are recorded in the Register of Inspection. These books and indexes are open to inspection on payment of prescribed fee by any member of the public.

(Section 57 of IR Act 1908, Para 211(h) of Bihar Registration Manual Volume-III)

16.17 Destructions of unclaimed documents : – documents (other than wills) remaining unclaimed in the office of the District Sub Registrar for a period exceeding two years are destroyed under the supervision of the District Registrar.

(Section 85 of IR Act 1908)

FEE BOOK

16.18 Register of fees: - A fees book is maintained in all Registration offices. This book is written up daily. The daily totals under each heads of receipts such as Registration, search, inspection copy etc, are transferred daily to the cash book. The number and date of the treasury challan, through which the amount of fee was remitted into the treasury is noted against each day.

(Para 120 of Bihar Registration Manual Volume-III)

16.19 Receipt Books: - When a document is presented for Registration a receipt for such document and also for each and every amount received by the Registering officer is granted.

(Rule 25 (2) 37, 87 (2) of Bihar Registration Rule, Section 52 of IR Act 1908)

16.20 Register of Documents impounded:- Whenever it appears to a Registering Officer that a document presented for Registration is not duly stamped, he shall not realise the registration fee but shall impound the document at once under section 33 of the Indian Stamp Act 1899 (11 of 1899) and shall enter it without delay in the register of impounded documents.

(Rule 25 (1) of Bihar Registration Rules)

16.21 Catalogue of Registers and Books: - A list of records to be kept permanently and are to be kept for certain fixed years is to be prepared in the form in Appendix-IV-B of the Bihar Registration manual volume-II.

(Para 82 (b) of the Bihar Registration manual volume-II)

Inspections

16.22 Inspections of district offices and rural offices: - The Inspector General of Registration should inspect all district offices once in two years and as many rural offices as he conveniently can (Para 42 of Registration manual volume-II). The district Registrar should Endeavour to inspect every office under him once a year. The inspectors of Registration should inspect all offices in their jurisdiction once a year. The inspections Report should chronologically file in each office and the defects noticed in inspection report and steps taken to remove them should be entered in the defect register.

(Para 52 of Bihar Registration manual volume-II)

Electronic Records

16.23 Records to be kept in the Registration Offices :- (i) Each District Sub Registrar's Office shall be a central office of electronic data for the District. and the database of the subordinate offices shall be transferred to it.

16.24 Preservation and maintenance of Registers :- (1) The books and the register to be maintained as computer files and the matter and frequency of printing of those hard copies which are required shall be in accordance with following table :-

Sl. No	Name of Register	Frequency of generation of pdf file	Hard copy of pdf file to be printed or no.	Frequency of printing of hard copy
1	Book-I	After about 600 paras	No	Record wise
2	Book-III	After about 100 pg	No	„
3	Book-IV	„	No	„
4	Book-V	Annually	Yes	Annually
5	Index-I, II, III & IV	„	No	No
6	Catalogue Register	„	Yes	Annually
7	Fees Book (including Stamp duty, BT Act & service charge)	Monthly	No	Daily
8	Pending Register	Annually	No	No
9	Book-II Refusal Register (Manual orders of registering officers interred in the computer	Annually	No	Case wise

(Revised Bihar Registration Rule 2008 Rule 40)

Own database before being forwarded in the CD,DVD or any electronic form meant for the office of the Inspector of Registration Offices :-

- (2) All Registering Officers shall maintain electronic records as well as Book and Register of hard copies in their offices as prescribed in rule 42.
- (3) The electronic data pertaining to the transactions of a Sub Registry office shall also be kept in the office of the registrar in the manner prescribed in sub rule(5)

- (4) The CDS-DVD or the electronic record shall be prepared of the electronic database, of pdf files of Books and Registers and scanned registered documents by each office. One copy of the CD-DVD or any electronic form shall be sent to the office of the Inspector of Registration offices through the District Sub Registrar and the other copy of the CD shall be sent to the Inspector General of Registration directly by the Registering Officer at a frequency directed by the IGR.
- (5) The CDS-DVD or any electronic record for data base, registers and scanned registered documents shall be labeled in form -12 (a), 12(b) & 12(c) respectively.
- (6) The database CDS-DVDs or any electronic form shall be written each month in 3 copies. CDs for electronic files of Books and Registers shall be written as prescribed in rule 42 in one copy as per the requirement of the office. The pdf. files of all Books and Registers of a registering office shall be written on CD in 3(three) copies at a frequency maintained in rule 42. Remaining two copies shall be sent to IRO and IGR respectively for preservation at the end of the calendar year.
- (7) Each office of the District Sub Registrar shall be a central office of electronic database for the district and the database of the subordinate offices shall be transferred in its own database before forwarding the CD, DVD or any electronic form meant for the IGR.
- (8) The registering Offices shall be responsible for ensuring that the CDS are written and transmitted in time and the Books and Registers of hard copies are bound regularly.
- (9) Every Registering Officers shall be responsible for the preservation and safe custody of registration records, including those of previous years, which have been accumulated in, or have been transferred to his office.

(Revised Bihar Registration Rule 2008 Rule 39)

CHAPTER-17

PROCEDURE FOR REGISTRATION

- 17.1 Scrutiny of documents:-** When documents are presented for registration, the Sub-Registrar examines the documents to see that they have been presented within time allowed, the instruments have been properly stamped and that the executors of the documents, where required, have submitted the certificate from the Income Tax Authorities as required under section 230 A of the Income Tax Act 1961.
- 17.2 Collection of fees: -** The Sub Registrar thereafter collects the registration fee according to the table of fees prescribed by the Government which are based on the value of property declared, grants a proper receipts to the payee and records the amount received in the cash book.

CHAPTER-18
AUDIT SCRUTINY

18.1 Audit scrutiny of Registration fee and stamp duty mainly consists in seeking:-

- (i) Receipts – whether a proper receipt has been granted for the fee realised.
- (ii) Remittance in to the treasury – Whether all moneys received are accounted for in the cash book and remitted into the treasury, the next day and the remittances are supported by receipted treasury challans.
- (iii) Fee- Whether the fees reliable for the various services rendered by the Registration Department have correctly been determined and realised.
- (iv) Reconciliation – whether monthly reconciliation between the departmental figures of remittances and those of the treasury has been regularly done.
- (v) Fines – whether files leviable under the act and the rules have been levied and collected wherever necessary.
- (vi) Remission and Refund- whether remission and refund of fines have been authorized by the competent authority.
- (vii) Accounting of documents- whether a proper accounts of receipt books and other saleable forms has been kept.
- (viii) Levy of stamp duty- Documents copies are filled in Book No-I & Book No-IV should be studied and scrutinised to see whether the stamp duty has been levied on the instrument according to the substance of the transaction embodied therein and not according to the name given to the instrument by the parties.
- (ix) Income Tax certificate- Whether the certificate under section 230A of the Income Tax Act, 1961 from the Income Tax Officer wherever necessary has been furnished.
- (x) Levy of additional stamp duty – Whether the additional stamp duty, whenever leviable has been levied and collected.
- (xi) Fees and penalty- whether the fees including penalty for extension of time under section 25 & 34 of the Registration Act have been correctly levied at the proper time.
- (xii) Fee for memorandum- In case of documents relating to immovable properties not wholly situated within the sub-District of the Sub Registrar, whether proper fee for sending memorandum or copy has been realised from the executors of the instrument.

- (xiii) Court fee stamp- Whether all the application for copies bear the court fee stamps and that they have been purchased.
- (xiv) Fee for copying and Inspection – Whether the fee for copying, searching and inspection have been noted on the respective application.
- (xv) Realisation of Difference in stamp duty- whether in the case of instruments executed outside Bihar or in any part of India and received in Bihar in terms of clause (bb) of the first provision of section 3 read with section 19 A of the stamp Act, 1899 the difference in stamp duty already paid out of Bihar and that payable in Bihar has been realized in respect of such instruments.
- (xvi) Fee for return of unclaimed documents- whether the documents which could not be delivered within one month of the registration have not been returned to the claimants until the prescribed fee was charged from then.

18.2 The following action should also be taken regarding contention of assessments with the records of Income Tax, wealth Tax, Gift Tax and Estate duty (i) particulars of all gifts exceeding rupees fifteen thousand may be collected by field parties and forwarded to R.A (state) headquarters in the following Performa for onward transmission to R.A central for verification by central Receipt Audit parties from Gift Tax angle:-

Sl. No.	Name and complete address of the transferor i.e doner	Name and complete address of the transferer i.e donee	Value of property	Location of the property	Vol. No. and Book No.	Date of Registration	Documents Number	Remarks (i.e, IT, G.I.R. No) RA No if available
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- (ii) Sales of immovable properties may be listed by the Audit party in the above Performa separately for
 - (a) Properties valued at Rs. 40,000/- to Rs. 50,000/- where registration Authority has not ensured compliance of requirements of section 230 A of I.T Act 1961

- (b) Properties valued at Rs. 50,000/- or more where the registering authority has not ensured compliance of the above provision of the Income Tax Act and
- (c) Properties value at Rs. 50,000/- and more where the registering authority has ensured compliance of the provisions of the Income Tax Act 1961 these right may be rewarded to the R.A (State) Headquarters for onward transmission to R.A (Central) Headquarters for seeing whether capital gains Tax is attracted in these cases.
- (iii) All gift tax cases will be listed by the Income Tax receipt Audit parties and given to state receipt audit parties through R.A (State) Headquarters to verify whether the same valuation has been adopted for purpose of both the Act.

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Check list for the Audit of Stamp & Registration Department

1. Examination of valuation of different types of deeds executed during the period such as Rent, Lease, Sale and Agreement. Power of Attorney Development Agreements etc.
2. Checking of calculation of SD & RF required as per valuation determined according to Minimum Valuation Register.
3. Realisation of required SD & RF as per valuation recorded in deed or Actual Valuation and its proper remittance into treasury.
4. Checking of under valuation & subsequent short realization of SD & RF.
5. Proper implementation of MVR rates to derive the valuation of property.
6. Examination of spot verification report to check whether valuation of property was done properly as per actual use of land.
7. Checking of Marriage fee & Registration fee whether remitted into treasury properly.
8. Checking of entry of every amount drawn through Bills into cashbook.
9. Checking of Bank statement & drawal/deposit to watch proper maintenance of cashbook.
10. Realisation of SD & RF from Sandghat/Stone chips and scrutiny of Agreements made between the Governor & Agency.
11. Checking of guidelines of MVR prepared by district Evaluation committee.
12. Amount of rent realized from deedwriters.
13. Report- return submitted to H.Q. to check proper reporting.
14. Checking of target & achievement to watch percentage achieved against target fixed by Government.
15. Reconciliation of all types of fee realized by office with treasury challan.

Check list for the Audit of Stamp & Registration Department of Apex units

1. Monitoring file to watch shortcomings in field visit.
2. Report- return file to watch proper reporting by the field offices.
3. Target- achievement file to watch percentage of achievement against target fixed by department.
4. Complain cases file and action taken report
5. Minutes of monthly meeting to watch its proper implementation in field offices.
6. Important orders/ circulars issued by the department to watch proper implementation in field offices.
7. File of purchase of Stamp paper to check whether purchase done as per requirement.

**Audit Design Matrix for compliance Audit of Prohibition, Excise and Registration (Registration)
Department**

Sl.No.	Audit Objectives/Sub Objectives	Audit Questions on selected matters	Audit Criteria	Data collection and analysis method	Audit evidence
1	The efficiency and adequacy of the system for collection of Stamp Duty and Registration Fee, Search Fee and Marriage Fee etc.	<p>1. Whether system was put in place in accordance with notifications/circulars issued by the Department/Govt.</p> <p>2. Whether adequate inspection was conducted for preventing of leakage of Govt. revenue.</p> <p>3. Whether collected amount was remitted into treasury under respective head of Govt. account.</p>	<p>1. The Indian Stamp Act, 1899.</p> <p>2. The Indian Registration Act, 1908.</p> <p>3. The Bihar Stamp Rule, 1991.</p> <p>4. The Bihar Stamp (Prevention of under valuation of instruments) Rule, 1995.</p> <p>5. The Bihar Registration Manual.</p> <p>6. The departmental instructions, circulars and executive orders issued from time to time.</p>	<p>1. Scrutiny of records/files.</p> <p>2. Scrutiny of orders, instructions and notifications.</p> <p>3. Records of cases of different nature of executed deeds.</p> <p>4. Scrutiny of approved Minimum Value Register (MVR) .</p> <p>5. Study of cases related to misclassification of land.</p> <p>6. Remittance Register along with the copy of challans.</p> <p>7. Referred cases register, fee register, search register etc.</p> <p>8. Spot Verification Register including report/Inspection report.</p>	<p>1. MVR.</p> <p>2. Records /Files/ Orders/ Notifications etc.</p> <p>3. Records related to executed deeds.</p> <p>4. Registers/Ch allans.</p> <p>5. Inspection/Spot Verification Report.</p>
2	Action taken related to Short/Non realisation of Stamp Duty and	<p>1. Whether Spot Verification was done and report regarding such verification was made.</p> <p>2. Whether such cases were</p>	<p>1. The Indian Stamp Act, 1899.</p> <p>2. The Indian Registration Act, 1908.</p>	<p>1. Scrutiny of records/files.</p> <p>2. Scrutiny of orders, instructions and notifications.</p>	<p>1.MVR.</p> <p>2. Records/Files / Orders/</p>

	Registration Fee.	referred to higher authority as per prescribed norms. 3. Whether response taken/reply/instruction from higher authority received as per norms.	3. The Bihar Stamp Rule, 1991. 4. The Bihar Stamp (Prevention of under valuation of instruments) Rule, 1995. 5. The Bihar Registration Manual. 6. The departmental instructions, circulars and executive orders issued from time to time.	3. Records related to executed deeds. 4. Scrutiny of approved Minimum Value Register (MVR) . 5. Spot Verification Register including report/Inspection report.	Notifications etc. 3. Records related to executed deeds. 4. Inspection/Spot Verification Report.
3	Blockage of Govt. revenue due to non disposing of referred cases.	1. Whether correspondence were made from higher authority. 2. Whether such cases were referred to higher authority as per prescribed norms. 3. Whether response taken/reply/instruction from higher authority received as per norms. 4. Whether Certificate Case has been lodged against defaulters as per prescribed norms.	1. The Indian Stamp Act, 1899. 2. The Bihar Stamp Rule, 1991. 3. The departmental instructions, circulars and executive orders issued from time to time.	1. Scrutiny of referred case registers. 2. Scrutiny of records/files related to correspondence made from higher authority. 3. Scrutiny of orders, instructions and notifications.	1. Records/Files /Orders/ Notifications etc. related to such cases.
4	Monitoring/Inspect	1. Whether inspections at	1. The provisions under Bihar	1. Scrutiny of orders, instructions	1. Orders,

	ion mechanism are in function to prevent leakage of collection of revenue.	<p>various level (DSR/DR/AIG/IGR) were made as per prescribed norms.</p> <p>2. Whether reports of such were provided.</p> <p>3. Whether appropriate action was taken as per reports/norms.</p>	Registration Manual.	<p>and notifications.</p> <p>2. Inspection report.</p>	<p>instructions and notifications.</p> <p>2. Inspection report.</p>
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