



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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E-STAMPING AND ITS EVOLUTION

“Law is not static. It is dynamic in nature in character and in spirit. It has to keep changing with passage of time. Law has to be evolved in pace with the changing times, advancement of technology, by making it more secure, transparent and user-friendly specially in fiscal matters. The above concept is to be applied even more liberally. The world is now heading towards paperless transactions, using technology to its best by online transactions. Physical movement has to be avoided as far as possible and so many other reasons which ultimately benefit the public at large.”¹

Introduction:

In July 2013, the Indian Government started the e- stamping service.² The Central Record Keeping Agency (CRA), the Stock- Holding Corporation of India Limited (SHCIL) along with the middlemen Authorised Collection Centres (ACCs) such as bank or a post office, are in charge of issuing e- stamp paper. Stamp duty is defined as a tax imposed by the state government on the sale of property. It is levied under Section 3 of the Indian Stamp Act. The stamp duty is an additional cost incurred by the purchaser when he/she has decided to purchase a property. This process was traditionally made physically but now purchasers are given an option to do it online³. This is called E- Stamping. It is also recognised under Section 2 (14) of the Indian Stamp Act which under the definition of ‘instrument’ includes electronic record. A lot of state acts also recognised the same. The Ministry of Finance Department of Revenue via its notification dated 30th June 2020 mandated the National E- Governance Service Ltd (NeSL) Information Utility (IU) to “serve as a repository

¹ Manish Jitendrakumar Shah vs State of Gujarat, Writ Petition (PIL) No 170 of 2019

² <https://timesproperty.com/news/post/guide-to-e-stamp-certificate-online-blid4765#2>

³ <https://cleartax.in/glossary/e-stamp-e-stamping/>

of legal evidence for financial credit contracts".⁴ The NeSL set up a Digital Document of Execution (DDE) which will operate on a remote basis and assist the banking sectors by pushing many loan documents to MSMEs digitally. This digital integration is implemented in Stamping via SHCIL. It made stamp duty a very convenient process. It is necessary to obtain a e- stamp paper/certificate which is generated after filing an application form. It is generated by the SHCIL, and can be downloaded from their official website. The authenticity of the e-stamp is assured and safe as it leaves less window for duplication because every e- stamp certificate has a Unique Identification Number (UIN). E- Stamping holds the same legal validity as physical stamping and is an acceptable evidence in courts. But it must allow for defacement of the stamp paper. In *Citrus Real Estate Pvt Ltd vs Union of India*⁵ the court observed that the stamp duties collected by the sale of stamp papers, e-stamp certificates is a revenue generating exercise. We need to keep in mind that this system relies too much on digital platform which might seem as a challenge at times.

Process to E- Stamp a Document:

- The first step is to register on the official e- stamping portal of the state.
- Next, fill necessary details. Based on these details, the stamp duty will be calculated.
- Further, payment should be made after which the certificate will be generated.
- Lastly, the certificate must be affixed to the respective document.

Legal Precedents:

In the case *All U.P. Stamp Vendors Association vs Union of India (2020)* the court observed that as per E- STAMPING AND THE 2013 RULES, E- Stamping is a system that evolved and was created post the "Telgi Stamp Scam" which the country witnessed and led to the Union Government formulating a "Computerised Stamp Duty Administration System" [C-SDAS] which essentially envisaged the stamp duty payment system progressing and transforming into one which would essentially run on an electronic and computerised software platform thus minimizing the chances of

⁴ Notification of the Ministry of Finance Department of Revenue dated 30th June 2020

⁵ *Citrus Real Estate Pvt Ltd vs UOI W.P.(C) No. 6904/2020*

forgery and fabrication of physical stamp paper. For the purposes of designing and implementing C-SDAS, SHCIL was chosen as the CRA.⁶

E- Stamping of property is an advance method of putting stamps on the documents and is different from conventional stamping.⁷ In *All U.P. Stamp Vendors Association vs Union Of India (2021)*⁸ the court held that the vendors (petitioners) have a fundamental right to trade in e-stamps. The right to trade e- stamps is embraced by the Constitution of India under Article 19(6) (freedom to trade). In *Srinagar Stamp Vendors Association vs State of J & K And Others*⁹ the court held that E- Stamping project works under coordination of Commissioner, Commercial Taxes Department and efforts are being made to ensure livelihood of people in the association. This project is being implemented in J&K in a pilot basis and it will come into effect once the staffs are trained. Therefore, there is no deprivation of livelihood under Article 14, 16 and 19 and 21 of the Constitution of India.

Conclusion:

In conclusion, the evolution of law, particularly in fiscal matters such as stamp duty, reflects the dynamic nature of legal systems worldwide. As highlighted in the case of *Manish Jitendrakumar Shah vs State of Gujarat*, the adaptability of legal frameworks to changing times and technological advancements is imperative. The transition from physical stamping to e-stamping, as exemplified by initiatives like the e-stamping service introduced by the Indian Government, signifies a progressive shift towards efficiency, transparency, and user-friendliness. In essence, the transition towards e-stamping epitomizes the progressive evolution of legal systems, wherein laws are not only responsive to societal changes but also embrace technological innovations to enhance accessibility, efficiency, and security. As we continue to navigate the digital era, the evolution of legal frameworks will remain essential in fostering a more inclusive, transparent, and resilient society.

⁶ All U.P. Stamp Vendors Association vs UOI, Writ- C No- 11738 of 2020

⁷ Dharmender Sharma vs UOI, Letter Patent Appeal No. 1308 of 2012

⁸ All U.P. Stamp Vendors Association vs UOI, Writ- C No 11738 of 2020

⁹ Srinagar Stamp Vendors Association vs State of J&K and Others, CM No. 2501/ 2020