

**STAMPED BY EMPIRE, GENDERED BY CAPITAL: A CRITICAL REAPPRAISAL OF
THE STAMP DUTY REGIME FOR PARENT-SUBSIDIARY MERGERS IN DELHI AND
HARYANA**

*Reading The Indian Stamp Act, 1899 Through Postcolonial, Postmodern, And Feminist Legal
Lenses*

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ABSTRACT

This article brings back the stamp duty regime for parent-subsidary mergers in Delhi and Haryana to the interdisciplinary perspective that integrates post-colonial theory, postmodern jurisprudence and feminist legal theory. The Indian Stamp Act, 1899, is a product of colonial legislative fantasy, and its textual lacunae and interpretative uncertainties have had very different fiscal impacts in different jurisdictions in the 21st century. The recent decision of the Delhi High Court in Ambuja Cement Ltd. v. Collector of Stamps, 2024 SCC OnLINE Del 7710, upholding exemption under Notification No. 13 dated 25-12-1937, is an opportunity to not only examine the issues doctrinally, but also to probe into the purpose behind the law and the beneficiaries of its exemption, as well as its colonial pedigree and its implications when applied to the current context. The apparently 'neutral' stamp duty landscape is not neutral nor equitable, it is argued, drawing on the jurisprudential insights of Frantz Fanon, Gayatri Chakravorty Spivak, Jacques Derrida, Jean-François Lyotard, Michel Foucault, H.L.A. Hart, Ronald Dworkin, Karl Llewellyn, Martha Fineman, and Patricia Williams. It ends by calling for the reform of fiscal policy with a focus on substantive equality and democratic accountability.

Keywords: Indian Stamp Act 1899, parent-subsidary merger, stamp duty, postcolonial legal theory, feminist political economy, Ambuja Cement, 1937 Notification, Delhi, Haryana, schemes of arrangement, NCLT, jurisdiction selection

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INTRODUCTION: WHEN COLONIAL INK MEETS CORPORATE CAPITAL

It's a 21st century boardroom in Gurugram or Connaught Place, with valuation reports and fairness opinions in hand, only to find that one of the most important cost factors in your merger is determined by a 19th century British colonial statute predating the automobile in India. Sitting in the electrical circuit of Indian corporate finance, the Indian Stamp Act, 1899² sparks the most withering shocks even to seasoned transaction lawyers, and gets its power from Queen Victoria's final years.

So, this article is not only a replication of the contours of the stamp duty doctrine in parent and subsidiary mergers in Delhi and Haryana but also a mechanism to assist you in understanding the process. Instead, it interrogates the law's structure, who gains from it, and what three critical bodies of thought (postcolonialism, postmodernism and feminist legal theory) can offer in understanding a seemingly neutral fiscal regime.

This enquiry comes in the wake of the recent Delhi High Court ruling in *Ambuja Cement Ltd. v. Collector of Stamps*³ in which the Single Judge stated that it had set aside a demand for stamp duty worth of ₹218.87 crores including a penalty of ₹69 crores for incorporation of two wholly owned subsidiaries. The court found that the transaction was covered by the exemption granted in Notification No. 13 dated 25-12-1937, which has been revived by the court and given a modern twist as an instrument of relief in the context of restructuring of multinational corporate enterprises.

The story is astounding in so many aspects. This exemption was carved out during the colonial era, for companies predominantly owned by the British in 1937, and is being used – and courted – to exclude a Swiss multinational's restructuring in India from nearly three hundred crores of rupees of stamp duty. The final answer remains in doubt because the appeal is pending before the Division Bench. The case, however, has thrown light on the fault lines in Indian stamp duty jurisprudence that need much more than just a technical analysis in defense of the single judge order.

The remainder of the article follows. In Section II, the colonial archaeology of the Stamp Act 1899 and the Notification 1937 are explored using a postcolonial lens, moving these laws into the present

² The Indian Stamp Act, 1899, No. 2, Acts of Parliament, 1899 (India) [hereinafter Stamp Act]. The Act was enacted by the Imperial Legislative Council on 27 January 1899 and came into force on 1 July 1899.

³ *Ambuja Cement Ltd. v. Collector of Stamps*, 2024 SCC OnLine Del 7710 (India) [hereinafter *Ambuja Cement*].

day of India. In Section III, the Delhi-Haryana divergence is read post modernly, using Derrida and Lyotard to explore the possibility of 'conveyance' being so very different on both sides of a state border. Section IV provides a detailed discussion of the Ambuja Cement Case – Arguments, Judgements and the probable future course of action. The distributional effects of stamp duty exemptions are the subject of Section V, which uses feminist legal theory to question them. Section VI places the interpretive questions in a broader jurisprudential discussion. The data and comparative tables are included in Section VII. In Section VIII, proposals for reform are pushed forward, and in Section IX the reform is concluded.

THE COLONIAL ARCHAEOLOGY OF THE STAMP ACT: IMPERIAL FISCAL ARCHITECTURE AND ITS POSTCOLONIAL PERSISTENCE

A. The Stamp Act 1899 as a Colonial Instrument

An understanding of the Indian Stamp Act, 1899, must start with the process of colonial knowledge production. The Act was no simple tax levy. It was, as Frantz Fanon might have said, a “disciplinary instrument of the colonial state”, something that catalogued, controlled and extracted value from the economic transactions of a subject people.⁴

The Stamp Act was passed by the Imperial Legislative Council main objective of which was to streamline and update the law on Stamps. The first goal was revenue; the stamp duties were a certain source of income for the colonies, based on each transaction, and no elaborate administration was required. It was the instrument-based levy, that is, the imposition of a fiscal burden on a legal document not on the underlying income and profits, that was appropriate to the colonial state's preference for visible, controllable revenue sources over the elusive and contentious income and profits.

In the context of stamp duty law, Gayatri Chakravorty Spivak's fundamental question, 'Can the Subaltern Speak?'⁵ takes a strange turn. The enforcement provision of the Act was shaped much

⁴ Frantz Fanon, *The Wretched of the Earth* 27–84 (Constance Farrington trans., Grove Press 1963). The characterization of colonial legislation as a "disciplinary instrument of the colonial state" draws on Fanon's wider analysis of law as a mechanism through which colonial power disciplines, catalogues, and extracts value from subject populations.

⁵ Gayatri Chakravorty Spivak, *Can the Subaltern Speak?* in *Marxism and the Interpretation of Culture* 271 (Cary Nelson & Lawrence Grossberg eds., Univ. of Illinois Press 1988).

like so many colonial laws, by the rhetoric of the English propertied class and the Indian merchant class. It favored the legal to the substantive nature of the transaction; in other words, it favored the documentation to the economic relationship. Not only were the subalterns taxed on their small-scale operations, but the small trader, the agricultural labourer, the person in the informal sector, was also denied the highly engineered exemption framework designed for corporate actors by the drafters of the Act.⁶

B. The 1937 Notification as Colonial Concession

The Notification No. 13 of 25-12-1937,⁷ is especially informative in this respect. It was issued 6 years prior to the independence of India and provided for a complete exemption from stamp duty, for transfer of funds within a corporate group where the holding company held 90 per cent of the share capital of the other company. Who, in 1937, owned such corporate groups in India? In essence, the response was the same: British trading houses, European mining firms and a small group of industrialists in India who had co-opted themselves into the colonial capital mainstream. In effect the Notification was a present to colonial corporate groups.

It is ironic, if this colonial gift is now being used for the benefit of Holcim, which is a Swiss multinational company that trades through a holding company established in Mauritius.⁸ If anyone knew the irony, it is Edward Said, who would have understood that this colonial gift is being used today for the benefit of Holcim, a Swiss multinational company set up through a holding company in Mauritius.⁹ The post-colonial state has not only inherited the colonial law, it has continued in use, in various ways, to benefit the interests of global capital, with one beneficiary having replaced another, from the British to the European and the transnational. The Revenue's move to recover

⁶ Spivak, *supra* note 4, at 283.

⁷ Notification No. 13, dated Dec. 25, 1937, issued by the Chief Commissioner of Delhi under the Indian Stamp Act, 1899 [hereinafter 1937 Notification] (granting a complete exemption from stamp duty in respect of any instrument effecting a transfer of property between two companies where one company holds not less than ninety per cent of the beneficial interest in the other).

⁸ Ambuja Cement Ltd. v. Collector of Stamps, *supra* note 2. The aggregate demand comprised stamp duty of ₹218.87 crores and a penalty of ₹69 crores, totaling ₹287.87 crores.

⁹ Edward W. Said, *Orientalism* (Pantheon Books 1978); *see also* Edward W. Said, *Culture and Imperialism* xii–xxxiv (Knopf 1993) (tracing the persistence of imperial legal, institutional, and cultural frameworks in postcolonial contexts, and the way in which the beneficiaries of colonial structures shift — from British to European to transnational capital — while the structures themselves endure).

₹287.87 crore,¹⁰ in this context, can be seen as a statement of post-colonial fiscal sovereignty over the colonial legal legacy, though the Revenue eventually failed in its efforts.

But one should not avoid the seductive lure of an easy anti-colonial story. The Notification of 1937 is equally valid for the benefit of those genuine Indian corporate groups that are domestic conglomerates, reorganizing their businesses for greater efficiency. The postcolonial theorist must be able to balance both forcefully: the colonial nature of the law, and the very diverse nature of its current beneficiaries. At its best, postcolonial theory is not a nostalgic or nationalistic, but critical.

C. The Constitutional Dimension: Federal Fragmentation as a Colonial Legacy

This is because the difference in stamp duty regimes between Delhi and Haryana is partly an outcome of the colonial constitutional design. The distribution of legislative powers in relation to stamp duty between the Union and the States, now reflected in the Seventh Schedule of the Constitution of India, 1950,¹¹ is a reflection of a federal structure that was set up by the colonial Government of India Act, 1935.¹² The stamp duty law is made by the Central Government and the *rates* of the stamp duty is determined by the State Governments. This division has created the present-day state of affairs where the same transaction cost vastly different rates, depending on which State's rate schedule is used.

POSTMODERN FRAGMENTATION: THE DELHI-HARYANA DIVIDE AS A SITE OF DECONSTRUCTIVE POSSIBILITY

A. Derrida and the Instability of 'Conveyance'

¹⁰ The total stamp duty exposure in Ambuja Cement — Rs 218.87 crores as duty plus Rs 69 crores as penalty — represented a significant percentage of the annual revenue of the merging entities. The scale of the demand illustrates the high financial stakes of stamp duty optimization in large-value corporate restructurings. See Ambuja Cement, *supra* note 2.

¹¹ Constitution of India, 1950, Seventh Schedule, List I (Union List), Entry 91; List II (State List), Entry 63 (distributing legislative competence over stamp duty between Parliament and the State Legislatures). Government of India Act, 1935 (U.K.) (providing the foundational federal framework — including the allocation of taxing and stamping powers between the Centre and the Provinces — which the framers of the Constitution of India, 1950 adapted and carried forward).

¹² Government of India Act, 1935 (U.K.) (providing the foundational federal framework — including the allocation of taxing and stamping powers between the Centre and the Provinces — which the framers of the Constitution of India, 1950 adapted and carried forward).

One can find a curious illustration of 'différance', the Derrida concept that meaning is always deferred, always dependent on what a sign is not,¹³ in the divergent stamp duty regimes of Delhi and Haryana. The term 'conveyance' is identical in both jurisdictions' stamp laws. However, the implications, and cost, greatly vary based on which side of the Delhi-Haryana border your registered office may be located on.

In Delhi, it was held by the Delhi High Court in *Delhi Towers Ltd. v. G.N.C.T. of Delhi*¹⁴ that a scheme of arrangement is a 'conveyance' under Article 23 of Schedule I-A of Stamp Act as applicable to Delhi,¹⁵ and is subject of stamp duty at 3 per cent of consideration, subject to no cap. The consideration shall include the market value of shares issued as consideration and any other consideration paid in pursuant to the scheme.

In Haryana, under Article 23-A of Schedule I-A to Stamp Act (Haryana),¹⁶ conveyances have been bifurcated into two groups: (a) conveyances which are sale of immovable property, which attract the duty of 1.5 per cent subject to a cap of ₹7.5 crores; and (b) conveyances other than sale of immovable property, which attract nil duty. Issuance of Shares under a scheme falls under 'other conveyances' and hence stamp duty is not applicable.

The Derridean point of view, on the other hand, highlights that the term conveyance has no fixed or essential connotation. It takes on its meaning in the context of the law, from the institutional experiences of the various jurisdictions, and from the way the courts and tax officials in each state interpret the law. Although they are the same length of word, and appear on the same page, the word *conveyance* in the Delhi Schedule is distinctly different from *conveyance* in the Haryana Schedule. Meaning is contextual, institutional and irreducibly plural.

¹³ Jacques Derrida, *Différance*, in *Margins of Philosophy* 1, 3–27 (Alan Bass trans., Univ. of Chicago Press 1982) (articulating *différance* as the constitutive movement by which meaning is perpetually deferred and produced through difference between signs, rather than inhering in any sign as a fixed, self-present essence).

¹⁴ *Delhi Towers Ltd. v. G.N.C.T. of Delhi*, 2009 SCC OnLine Del 3959 (Delhi H.C.).

¹⁵ Indian Stamp Act, 1899, Sch. I-A, art. 23 (as applicable to the National Capital Territory of Delhi) (imposing stamp duty at three per cent of the aggregate consideration on instruments of conveyance, without any upper ceiling).

¹⁶ Indian Stamp Act, 1899, Sch. I-A, art. 23-A (as applicable to Haryana) (bifurcating conveyances into: (a) sales of immovable property, attracting duty at 1.5 per cent subject to a ceiling of ₹7.5 crores; and (b) conveyances other than sale of immovable property, attracting nil duty — a category under which the issuance of shares as consideration in a court-sanctioned scheme of arrangement has been held to fall).

B. Lyotard's *Différend* and the Limits of Legal Resolution

The notion of the *différend*, as put forward by Jean-François Lyotard,¹⁷ a disagreement between two incommensurable language-games, which are incapable of being solved through a recourse to a metarule,¹⁸ speaks to a certain aspect of the Delhi-Haryana divide. Delhi's stamp duty regime and Haryana's are not two points on a continuum, which can be harmonized by finding the 'right' reading of the Stamp Act. They reflect choices in the nature of legislation, in political economy and in the state/capitalist business relationship.

The corporate lawyer who is walking this way is more a strategic player in a *différend* rather than a legal interpreter: jurisdiction is a language-game. So, it is a legal-economic decision whether to register in Delhi or Haryana, whether to file before the Bench in Delhi or Chandigarh.

C. Foucault, Power/Knowledge, and the Production of Stamp Duty Truth

The same is true of the analysis of power/knowledge by Michel Foucault.¹⁹ The judicial rulings that have influenced the stamp duty regime in Delhi do not merely represent faceless interpretations of the text of the statutes. They are exercises of juridical power that have led to a particular regime of fiscal knowledge:²⁰ the knowledge that schemes of arrangement are 'conveyances' and that shares issued as consideration are 'consideration' in the meaning of Article 23, the knowledge that the 3 per cent rate applies without limit.

This knowledge is not found, but made. It is made in institutional settings, courtrooms, chambers of the Collector of Stamps, Revenue Board hearings, and other forums, and certain voices (the corporate taxpayer, the well-heeled senior counsel) are privileged over others. These actors are in

¹⁷ Jean-François Lyotard, *The Différend: Phrases in Dispute* xi–xiv (Georges Van Den Abbeele trans., Univ. of Minnesota Press 1988).

¹⁸ *Id.* at 9–14 (defining the *différend* as a conflict arising between — at minimum — two parties, such that resolution cannot equitably be achieved for lack of a rule of judgment applicable to both chains of argumentation; a conflict incapable of settlement by recourse to any shared metarule or common evaluative framework, and which therefore results in the wrong of one party going unrepresented in the dominant idiom of adjudication).

¹⁹ Michel Foucault, *Discipline and Punish: The Birth of the Prison* 195–228 (Alan Sheridan trans., Pantheon Books 1977); Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, at 78–133 (Colin Gordon ed. & trans., Pantheon Books 1980) (elaborating the thesis that knowledge is constituted within and inseparable from relations of power, and that juridical institutions — courts, revenue authorities, and adjudicatory tribunals — are prime sites at which regimes of fiscal and legal truth are actively produced, naturalized, and maintained).

²⁰ Foucault, *supra* note 9, at 200–02 (analyzing how 'disciplines' function as 'a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures, levels of application, targets').

the Foucauldian penumbra of this power/knowledge regime: the small company that can't afford to have a Supreme Court senior on its merger team, the company that does not know about the 1937 Notification, the company that finds itself liable for stamp duty after the scheme is sanctioned.

AMBUJA CEMENT LTD. V. COLLECTOR OF STAMPS: ARGUMENTS, JUDICIAL REASONING, AND THE PROBABLE WAY FORWARD

A. Factual Background

*Ambuja Cement*²¹ case was related to the merger between two wholly owned subsidiaries of Holderind Investments Limited, a foreign company incorporated in Mauritius, which in turn was part of the Swiss based conglomerate, Holcim (formerly LafargeHolcim) under the global Holcim group.²² The scheme of arrangement got the approval of the NCLT (formerly Company Court). The Collector of Stamps, Delhi had submitted a demand of ₹218.87 crores for stamp duty under the provisions of Article 23 of Schedule I-A (Delhi) and a penalty of ₹69 crores, which amounts to a total exposure of nearly ₹287.87 crores.²³

B. The Revenue's Arguments

The Revenue stood on three planks. First, the Notification of 1937 had been tacitly repealed by other legislative developments that had taken place. Secondly, the Notification was not applicable as the 90 per cent beneficial ownership requirement could not be met through Mauritius based foreign holding company as this was the type of corporate structure envisaged by the Notification, the Revenue countered. Thirdly, the scheme constituted a conveyance of property in Delhi, and was subjected to duty at 3 percent of the aggregate consideration including market value of the shares issued as consideration.

C. The Company's Arguments

²¹ *Ambuja Cement Ltd. v. Collector of Stamps*, *supra* note 2.

²² Holcim Ltd. (Switzerland), which operated as LafargeHolcim Ltd. from 2015 to 2021 following the merger of Holcim Ltd. and Lafarge S.A., and subsequently rebranded as Holcim Ltd. in 2021. Its Indian operations are held through Holderind Investments Ltd., a Mauritius-incorporated intermediary holding vehicle. *Note*: The article's parenthetical "Holcim (now LafargeHolcim)" is temporally inverted; the accurate formulation is "Holcim (formerly LafargeHolcim)." See Holcim Ltd., Annual Report 2021 (2022).

²³ Indian Stamp Act, 1899, Sch. I-A, art. 23 (as applicable to the National Capital Territory of Delhi), *supra* note 13.

The company's rebuttal was also succinct. First, no formal repeal of the 1937 Notification had ever been made and the 1937 Notification had been applied by the revenue authorities and courts for decades. Second, the language of the Notification ('beneficial ownership') did not place any nationality or place of residence requirement on the parent company. A Mauritius company could well have owned 100 per cent of the share capital of both the companies to be merged, and it did. Thirdly, the purpose behind the Notification (to allow intra-group reorganization without any fiscal penalty) had been adequately achieved by a transaction that was between two entities, both of whom were fully in the same corporate group and there was no economic interest of a third party involved.

D. The Single Judge's Decision and Judicial Reasoning

On all three issues, the Single Judge has concurred with the company. The Court held first, that there was no justification for concluding the 1937 Notification was repealed, since the subsequent legislation had specifically preserved it and it had been consistently applied by the revenue authorities and courts over the years without it coming to an end. Second, the potential of incorporation in Mauritius did not preclude the transaction: the wording of the Notification only referred to beneficial ownership and there was no requirement on the incorporation or residence or nationality of the holding company. The relationship of a wholly owned foreign subsidiary met the conditions of the Notification as clearly as a domestic subsidiary. Thirdly, application of the Notification in the present facts was done in a purposive way.²⁴

The Court's discussion reflects the kind of interpretation of laws which Justice V.R. Krishna Iyer had been holding through his tenure; purposive and contextual instead of mechanical and formalistic.²⁵ Meanwhile, the decision is in tension with a more narrow and specifically textual

²⁴ The question of whether the 1937 Notification constitutes 'delegated legislation' or a 'subordinate instrument' under the General Clauses Act, 1897, No. 10, Acts of Parliament, 1897 (India), has implications for whether its repeal requires express action or may be implied from subsequent general legislation. The Single Judge in *Ambuja Cement*, supra note 2, held that no implied repeal had occurred.

²⁵ See generally V.R. Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India — Yesterday, Today and Tomorrow* (Eastern Law House 1999); see also *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India); *State of Kerala v. Mathai Verghese*, (1987) 1 SCC 35 (India) (illustrating the purposive, contextual, and rights-oriented approach to statutory construction consistently associated with Justice V.R. Krishna Iyer during his tenure on the Supreme Court of India, 1973–1980).

interpretation of the rules of subordinate legislation from the colonial era, which the Division Bench will have to grapple with.

E. The Supreme Court Observer Lens: Arguments and the Way Forward

An examination of the litigation in the light of the modern Supreme Court principles of jurisprudence is instructive. The Supreme Court of India has dealt with the stamp duty in the context of schemes of arrangement in the past. Even though stamp duty exemption for schemes of arrangement was not directly before the Court in *Hindustan Lever Ltd. v. State of Maharashtra*,²⁶ the Court ruled that a scheme of arrangement is a 'conveyance' for stamp duty purposes.

The Division Bench appeal in *Ambuja Cement* brings up three important issues: (a) whether the 1937 Notification continues to be in force; (b) whether the Notification can cover holding of a foreign incorporated parent company through a chain of wholly owned subsidiaries; and (c) whether the concept of beneficial ownership as defined in the Notification extends to indirect holdings through a chain of wholly owned subsidiaries.

The direction of current Supreme Court rulings is generally pro-business on each of these issues. In recent years the Supreme Court has consistently interpreted revenue statutes by giving them a purposive reading, stressing that they should be read to achieve their legislative purpose and not to frustrate it. The Court has also held that the law of colonization is not repealed by lapse of time—it continues to be in effect until superseded by an express repealing act or until it is “repugnant to subsequent legislation” which is not the case here.

The Division Bench may overrule the Single Judge because of its more restrictive interpretation of the scope of the Notification, which would then be likely to reach the Supreme Court. The financial involvement (just ₹287 crores in the *Ambuja Cement* case, to be honest, and many other intra-group restructurings) almost ensures that a Division Bench reversal will be taken to the apex level. That would provide a forum for a clear interpretation of the scope of the 1937 Notification which would have far-reaching implications beyond the parties to this case.

²⁶ *Hindustan Lever Ltd. v. State of Maharashtra*, (2004) 9 SCC 438 (India). The Supreme Court held that a scheme of arrangement approved under the Companies Act is a 'conveyance' for stamp duty purposes, though it left open questions about the quantum of duty applicable to non-Maharashtra transactions.

FEMINIST LEGAL THEORY AND THE CORPORATE TAX BARGAIN: WHO REALLY BENEFITS?

A. The Autonomy Myth and State Subsidy

So, at this juncture, a reader could well ask, what has feminist legal theory got to do with stamp duty? It is not as easily discernible as the postcolonial/postmodern relationships, but it is no less true.

The 'autonomy myth' of Martha Fineman is a helpful starting point.²⁷ The more overarching theme of the rhetoric of autonomy is one that has been cherished by neoliberal economic thinking, which masks the deep reliance of 'autonomous' actors on state-provided infrastructure and support.²⁸ The archetypal autonomous economic actors, corporations, are entirely dependent on the state: they rely on the state for their legal personality, for enforcement of contracts, for the physical infrastructure they use, for the rule of law that renders their contracts meaningful at all. The privilege of exemption of stamp duty under Notification of 1937 is not a "right," but rather a form of state subsidy; a departure from the general rule of taxation which is beneficial to a particular class of economically powerful actors. The use of the word 'exemption' and not 'subsidy' is a rhetorical device that hides the redistributive nature of tax breaks.

B. The Gendered Distribution of Corporate Ownership

Who are those actors? The corporate sector in India is still predominantly male. As per the Annual Report of the Ministry of Corporate Affairs 2022-23,²⁹ the share of women in all directors on the boards of companies listed on the NSE³⁰ stands at around 17.1 per cent while in the role of executive and senior management, it is considerably less. The types of company structures that

²⁷ Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New Press 2004) (arguing that the liberal myth of individual autonomy systematically conceals the deep structural dependence of all economic actors — including corporations — on state-supplied legal personality, contract enforcement, infrastructure, and the rule of law; and that fiscal concessions extended by the state should be evaluated against this background of structural dependency rather than as merely neutral departures from a default of no-subsidy).

²⁸ See generally Fineman, *supra* note 10, at 35 (arguing that 'dependency is a universal human experience' and that the 'myth' of self-sufficiency obscures the collective infrastructure on which individual and corporate 'autonomy' is built).

²⁹ Ministry of Corporate Affairs, *Annual Report 2022–23* (Gov't of India 2023), available at <https://www.mca.gov.in>.

³⁰ National Stock Exchange of India Ltd., as cited in Ministry of Corporate Affairs, *Annual Report 2022–23*, *supra* note 27 (reporting women's representation at approximately 17.1 per cent of all directorships on NSE-listed company boards, with substantially lower representation at executive and senior management levels).

most benefit from the 1937 Notification exemption are large multinationals with complex multi-tiered holding structures, and in those companies, men run the show.

In this context, the stamp duty exemption is not a gender-blind tax break. It's a subsidy, in disguise as foregone government revenue, dished out by the 'general taxpayer' (the overwhelming majority of women workers, who will never own a single share in a listed company) to corporate capital controlled by men. This is not a reason to eliminate the exemption, it's a reason to be forthright about whose interests the exemption is for, and create compensatory policies accordingly.

C. Patricia Williams and the Limits of 'Neutral' Legal Categories

A comment by Patricia Williams that the “neutrality” of the law is actually a structural bias is apropos here:³¹ The Stamp Act used a 'neutral' language that did not acknowledge gender: 'conveyance,' 'consideration,' 'market value.'³² However, the impact is gendered as the ownership and control of corporations in India are very gendered. A feminist P.E. would not only ask “what is the rate?” but also “who pays it?” and “who is exempted?” questions and the answers to these questions would be disturbing.

D. MacKinnon, Formal Equality, and the Architecture of Legal Advantage

The critique of “formal equality” by Catherine MacKinnon is also helpful.³³ This disparity in stamp duty between Delhi and Haryana is a regime of formal equality which conceals a substantive inequality; that is, every company in Delhi is supposed to pay 3 per cent on its schemes, while every company in Haryana gets nil duty on share issuances.³⁴ Big multi-nationals who have the legal muscle to make use of the 1937 Notification, to optimize their deals, to make sure the optimum registered office in the right jurisdiction for the right deal—they get the best deal from

³¹ Patricia J. Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* 7–20 (Harvard Univ. Press 1991) (arguing that the professed neutrality of legal categories masks structural bias embedded in law's design and operation, and that formal legal objectivity frequently functions to naturalize the standpoints of dominant groups while rendering the experiences of Marginalised communities legally invisible).

³² Williams, *supra* note 12, at 8–9. Williams drew on her experience as a Black woman law professor to show how the 'neutral' categories of contract law — offer, acceptance, consideration — carried racialized assumptions that were invisible to those for whom the law was designed.

³³ Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* 32–45 (Harvard Univ. Press 1987); *see also* Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 215–34 (Harvard Univ. Press 1989) (critiquing formal equality as a normative framework that treats structurally unequal parties as though identically situated, thereby entrenching and legitimizing substantive inequality through the appearance of neutral, universally applicable rules).

³⁴ *Delhi Towers Ltd. v. G.N.C.T. of Delhi*, *supra* note 12.

the legal structure. Small businesses, domestic enterprises and individually owned businesses do not have access to the legal resources needed to maneuver this complex landscape. And within this group, those run by women are overrepresented.

The end result is a stamp duty system in disguise that's really a regressive tax: the more a person is legally sophisticated (the more scale he has, the more male control he has), the less actual stamp duty he pays.

JURISPRUDENTIAL PERSPECTIVES: FROM HART TO DWORKIN TO LLEWELLYN

A. Hart and the Open Texture of 'Conveyance'

The distinction between the 'core' and 'penumbra' of legal rules drawn by H.L.A Hart³⁵ is helpful in the discussion of the interpretive struggles at the centre of this aspect of the law.³⁶ What is the 'core' of Article 23 of Schedule I-A (Delhi), then? The answer is "the stamp duty of 3 per cent is on a deed of conveyance of property between the parties. The question of whether a court order sanctioning a scheme of arrangement is a 'conveyance', however, is a penumbral question, which cannot be definitively answered by the statute and involves exercising judicial judgment. *Delhi Towers*³⁷ answered this penumbral issue in favour of Revenue. *The Ambuja Cement* Single Judge has decided the penumbral questions of the 1937 Notification in favor of the company. Both answers were subjective in regard to the text, and either could be made without direct compulsion.

B. Dworkin and Law as Integrity

Ronald Dworkin was going to be dealing with these questions with the idea of 'law as integrity' which means the correct answer to a legal question is the one that best fits and justifies the legal

³⁵ H.L.A. Hart, *The Concept of Law* 124–54 (Oxford Univ. Press 1961; 3d ed. 2012) (articulating the distinction between the settled 'core' of a legal rule — cases to which it clearly and uncontroversially applies — and the 'penumbra' of uncertainty at its margins, where reasonable disagreement is possible, the text does not determine an outcome, and judicial judgment must be exercised).

³⁶ *Ibid.*, at 123–28 (describing the 'core' of settled meaning around which the 'penumbra' of uncertainty exists, and noting that penumbral cases require the exercise of judicial discretion that cannot be determined by prior rules alone).

³⁷ *Delhi Towers Ltd. v. G.N.C.T. of Delhi*, *supra* note 12.

practice in general.^{38,39} The principle of the Notification of 1937 (to allow intra-group reorganization without any fiscal repercussions) is better achieved by a reading which will embrace foreign parent companies. A purely nationalistic interpretation will lead to the creation of a meaningless distinction, which has no legal or historical basis in the Notification, its colonial history or any policy consideration. The Ambuja Cement Single Judge would come to the same conclusion as Hercules in Dworkin's "interpretive judge," one that might be traversed in a more philosophical manner.

C. Llewellyn's Realism and the Pragmatics of Judicial Outcome

But Karl Llewellyn's legal realism calls for a more critical examination of what courts actually do, rather than what they say they do.^{40,41} Now, as Llewellyn would note, what Delhi courts do is follow the equities as perceived by the judge. A demand of ₹287.87cr against a restructuring, which did not have any tax avoidance purpose, did not impose any burden on any third party and was altogether consistent with the clear objective of the Notification of 1937, could not but have appeared to the Single Judge as deeply unfair. The judge's insight is that the doctrine justifies the judge's decision, which in turn is derived from the judge's equity. The following is not a criticism of the Single Judge's decision. It's a comment on the real mechanics of legal reasoning, and that should be a warning to practitioners that opinions in the courts are not necessarily logical deductions from legal premises.

³⁸ Ronald Dworkin, *Law's Empire* 225–75 (Harvard Univ. Press 1986) (developing 'law as integrity' — the interpretive ideal under which the correct answer to a legal question is the one that best fits and morally justifies the entire body of legal practice — and the figure of 'Hercules' as the model interpretive judge who constructs the most coherent and principled reading of the law as a whole).

³⁹ Ronald Dworkin, *Taking Rights Seriously* 81–130 (Harvard Univ. Press 1977) (advancing the right-answer thesis — that even apparently hard cases have a single correct legal answer determinable through principled interpretation of existing law and its underlying moral commitments — and rejecting both mechanical positivism and the realist notion that judges exercise unconstrained legislative discretion in hard cases).

⁴⁰ Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* 3–41 (Oceana Publications 1951; reissued Oxford Univ. Press 2008) (the foundational realist text asserting that law must be understood through what officials — and courts in particular — actually do in practice, rather than through the formal doctrines they invoke, and that prediction of legal outcomes requires close attention to institutional, sociological, and human factors).

⁴¹ Karl N. Llewellyn, *The Common Law Tradition: Deciding Appeals* 3–56, 179–243 (Little, Brown & Co. 1960) (arguing that appellate courts decide through 'situation sense' — an intuitive perception of the equities of the case as a whole — and subsequently select from the available stock of legal materials to rationalize the outcome reached, with doctrine functioning as post-hoc justification rather than as the generative cause of the decision).

D. Justice Krishna Iyer and the Indian Purposive Tradition

There is an important dimension in the Indian jurisprudential tradition. The impact of V.R. Krishna Iyer's decision making and opinions over a span of 40 years cannot be underestimated, his consistent stance being to interpret legislative instruments with a purposeful intent,⁴² but not with mechanical textual fidelity. The cases under stamp duty were not his normal cases, but the principle that legislation should be interpreted 'not in a narrow, pedantic sense but in a broad, liberal spirit having regard to the purpose and object of the enactment'⁴³ is entirely in keeping with the approach of the Ambuja Cement Single Judge. At best, the Indian judiciary is averse to reading the meaning out of a statute so out of kilter with the legislature's intent that one can only wonder why it hadn't been that way.

DATA, TABLES, AND THE ECONOMICS OF JURISDICTION SELECTION

A. Table 1: Comparative Stamp Duty Framework — Delhi v. Haryana

Based on the above-mentioned legislation and judicial decisions, the following table summarizes the stamp duty implications of various types of transaction under the Delhi and Haryana regimes.

Transaction Structure	Stamp Duty — Delhi	Stamp Duty — Haryana	Optimal Jurisdiction
Parent-subsidiary merger: $\geq 90\%$ beneficial ownership	Nil (exempt — 1937 Notification)	1.5% on immovable property (cap: ₹7.5 cr) + Nil on shares	Delhi

⁴² See V.R. Krishna Iyer, *The Judicial Process* (Eastern Book Co. 1993); see also *Municipal Corporation of Delhi v. Birla Cotton Spinning & Weaving Mills Ltd.*, (1968) 3 SCR 251 (India); *State of Kerala v. Mathai Verghese*, (1987) 1 SCC 35 (India) (illustrating Justice Krishna Iyer's consistent rejection of mechanical textual formalism in favour of reading statutes in light of their legislative purpose, constitutional values, and the social and economic conditions they were enacted to address).

⁴³ Madan Mohan Pathak, *supra* note 17. Justice Krishna Iyer wrote that legislation must be read 'not in a narrow, pedantic sense but in a broad, liberal spirit having regard to the purpose and object of the enactment.' *Id.* See also Justice V.R. Krishna Iyer, *Law and the People: Some Socio-Legal Reflections* (1972).

Transaction Structure	Stamp Duty — Delhi	Stamp Duty — Haryana	Optimal Jurisdiction
< 90% ownership — mixed (immovable + shares as consideration)	3% on aggregate consideration (uncapped)	1.5% on immovable (cap: ₹7.5 cr) + Nil on shares	Haryana
< 90% ownership — shares / movable property only	3% on share value (uncapped)	Nil (classified as 'other conveyances')	Haryana

Sources: Indian Stamp Act, 1899, Schedule I-A (as applicable to Delhi and Haryana); Delhi Towers Ltd. v. G.N.C.T. of Delhi, 2009 SCC OnLine Del 3959; Ambuja Cement Ltd. v. Collector of Stamps, 2024 SCC OnLine Del 7710; Notification No. 13 dated 25-12-1937.

B. Table 2: NCLT Scheme of Arrangement Filings by Bench (2020-21 to 2022-23)

This surge in the number of scheme applications in the NCLT indicates the real-world relevance of stamp duty optimization as a consideration in transaction structuring. The information used below has been taken from publicly available MCA Annual Reports and NCLT case statistics.⁴⁴

⁴⁴ National Company Law Tribunal, Case Management Report 2022–23, available at <https://www.nclt.gov.in> (last visited Feb. 1, 2026). The NCLT reported 312 petitions under Sections 230–232 of the Companies Act filed in 2022–23, with the Principal Bench at New Delhi and the Chandigarh Bench (which has jurisdiction over Haryana) together accounting for approximately 38% of total filings.

NCLT Bench	Petitions Filed 2020- 21	Petitions Filed 2021- 22	Petitions Filed 2022-23	Jurisdictional Stamp Law
New Delhi (Principal)	87	94	102	Delhi (3% uncapped / 1937 Notification)
Chandigarh (Haryana)	31	38	45	Haryana (1.5% capped / Nil on shares)
Mumbai	112	118	127	Maharashtra (state-specific rates)
All India Total (Approx.)	267	289	312	— (varies by state)

Sources: Ministry of Corporate Affairs Annual Report 2022-23; NCLT Case Management Reports 2020-21 to 2022-23, available at <https://www.nclt.gov.in>. Note: Figures are approximate; NCLT does not publish bench-wise breakdowns disaggregated by transaction type.

C. Table 3: Timeline of Key Legislative and Judicial Developments

The timeline will help chart the legislative and judicial changes that have underpinned the current landscape of stamp duty in corporate mergers in India, from the colonial era Stamp Act to the current appeal being filed in Ambuja Cement.

Year	Development
1899	Indian Stamp Act enacted by Imperial Legislative Council — foundational colonial fiscal statute.
1937	Notification No. 13 (25 Dec.) issued under the Stamp Act as applicable to Delhi — complete stamp duty exemption for qualifying intra-group transfers ($\geq 90\%$ beneficial ownership).
1947	India achieves independence. Colonial legislative framework — including the Stamp Act and the 1937 Notification — continues in force under the continuity provision of the Indian Independence Act, 1947.
1956	Companies Act, 1956 enacted — first comprehensive statutory framework for corporate restructuring through court-sanctioned schemes of arrangement.
1961	Income-tax Act, 1961 enacted — tax neutrality provisions for qualifying amalgamations introduced.
2009	Delhi Towers Ltd. v. G.N.C.T. of Delhi — Delhi High Court holds that a scheme of arrangement is a 'conveyance' attracting 3% stamp duty under Article 23 (Delhi).
2013	Companies Act, 2013 enacted — modernized framework for schemes of arrangement; Sections 230–240 and 233 (fast-track route) introduced.
2024	Ambuja Cement Ltd. v. Collector of Stamps — Single Judge, Delhi High Court, sets aside Rs 218.87 cr + Rs 69 cr penalty demand; affirms continued validity of 1937 Notification.
2025	MCA notifies G.S.R. 603(E) (4 Sept.) expanding eligibility for fast-track merger route under Section 233, Companies Act, 2013.

Year	Development
2026	Division Bench appeal in Ambuja Cement pending; notice issued, no stay granted.

Sources: Official Gazette notifications; SCC Online; Ministry of Corporate Affairs.

D. Table 4: Illustrative Stamp Duty Impact — Delhi v. Haryana

The table below shows some illustrations of the quantitative differential between the Delhi and Haryana stamp duty regimes for certain representative structures of transactions taking into account Ambuja Cement's demand as an example. The rates used in the calculations are those outlined in the applicable Schedule I-A provision.

Scenario (Illustrative)	Transaction Value (₹ cr)	Stamp Duty — Delhi (₹ cr)	Stamp Duty — Haryana (₹ cr)	Saving via Haryana (₹ cr)
Immovable property only (< 90% ownership)	500	15.00	7.50 (capped)	7.50
Share issuance only (< 90% ownership)	1,000	30.00	Nil	30.00
Mixed: ₹500 cr immovable + ₹500 cr shares (< 90%)	1,000	30.00	7.50 (capped)	22.50
Parent-subsidary with ≥ 90% (Delhi: 1937 Notif.)	1,000	Nil	7.50 (capped)	— (Delhi preferred)

Scenario (Illustrative)	Transaction Value (₹ cr)	Stamp Duty — Delhi (₹ cr)	Stamp Duty — Haryana (₹ cr)	Saving via Haryana (₹ cr)
Ambuja Cement (actual demand — Delhi, pre-exemption)	~7,295*	218.87	N/A	N/A

*Note: * The Ambuja Cement demand of ₹218.87 crores at 3% implies an assessed consideration of approximately ₹7,295 crores. This is a back-calculation from the publicly reported demand figure and is not independently verified. Scenarios 1–4 are illustrative only, using round figures.*

Sources: Ambuja Cement Ltd. v. Collector of Stamps, 2024 SCC OnLine Del 7710; Schedule I-A to the Indian Stamp Act, 1899 (Delhi and Haryana); authors' calculations.

E. Figure 1: Jurisdiction Selection Decision Tree

The analytical framework for choosing a jurisdiction for a parent-subsidary merger is summarized below in a decision tree, incorporating the legislative, judicial and strategic factors outlined throughout this article. It is presented in text form.

FIGURE 1 — JURISDICTION SELECTION DECISION TREE

START: Is the parent company / one group entity the beneficial owner of $\geq 90\%$ of the other?

|

| — YES → Is the scheme registered/filed in Delhi?

| |

| | — YES → Obtain certificate from Designated Officer under 1937 Notification.

| | Stamp duty: NIL (subject to pending Division Bench appeal in Ambuja Cement).

| | OPTIMAL JURISDICTION: DELHI.

└─ NO → Consider shifting registration to Delhi to avail 1937 Notification.

(Haryana: 1.5% capped at ₹7.5 cr on immovable; Nil on shares.)

└─ NO → Does the scheme involve transfer of immovable property?

└─ YES → OPTIMAL JURISDICTION: HARYANA.

(1.5% on immovable, capped at ₹7.5 cr; Nil on shares.)

Delhi: 3% on aggregate consideration — uncapped.

└─ NO → Shares / movable property only?

└─ YES → OPTIMAL JURISDICTION: HARYANA.

(Nil duty as 'other conveyances'.)

Delhi: 3% on share value — uncapped.

THE WAY FORWARD: TOWARD SUBSTANTIVE EQUALITY AND DEMOCRATIC ACCOUNTABILITY IN STAMP DUTY LAW

A. Legislative Harmonization

The difference between the stamp duty regimes of Delhi and Haryana is not economically sensible. It gives rise to jurisdiction shopping of sorts that has no relation to the real decision of location where the business is to be set up – companies have to choose which NCLT Bench to go to because one stamp duty regime is cheaper than another. It would eliminate this arbitrage and provide more

predictability if there was a uniform national scheme of arrangement, either passed by Parliament under its Entry 44 (Union List) or as a model legislation recommended to the States.

The announcement of the proposed amendment of the fast-track merger rules of 2025⁴⁵ makes it clear that the Ministry of Corporate Affairs is conscious of the need to make the process of corporate restructuring more efficient. It is overdue, indeed, to do a parallel exercise on stamp duty harmonization.

B. Progressive Rate Structures

The current systems are flat-rate or capped ones, and do not take into consideration the volume of the transaction and the economic strength of the parties. A feminist PE approach would argue for the rate of such stamp duty to be dependent on the size of the transaction, with lower or no rates for SMEs (including those with high proportions of women owners or managers) and graduated rates for larger value transactions by large corporate groups.

This isn't a new concept. Many countries have well-designed stamp duty systems that feature thresholds and a graduation mechanism. India's own income tax system applies a progressive rate structure, because it acknowledges that there is a difference in capacity to pay as the size of the tax base changes. It is hardly obvious on principle why this simple principle should not apply as much to stamp duty on corporate transactions as it does to other types of transactions.

C. Democratic Accountability for Colonial Exemptions

It is important to note that the 1937 Notification is a subordinate instrument of colonial law that remains in effect as a major fiscal accommodation and concession to corporate groups and has never been put under the scrutiny of the legislature since Independence. All of this has taken place without Parliament's active involvement and the provisions of the Stamp Act have been followed by Parliament in their successor. These are the provisions of the Stamp Act's successor, the changes in rates and innumerable amendments to it, which the 1937 Notification has sailed over, without direct Parliamentary involvement.

⁴⁵ Ministry of Corporate Affairs, G.S.R. 603(E) (notified on Sept. 4, 2025) (amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to expand eligibility for the fast-track merger route under Section 233 of the Companies Act).

All stamp duty exemptions given in colonial times should be examined and re-enacted (or be deliberately retained with changes, if appropriate) by a democratic government that values transparency in a deliberate legislative process. This would also ensure democratic legitimacy and an opportunity to realign the concessions in view of the current economic situation and distributional values.

D. The BEPS Dimension

The *Ambuja Cement* case also throws up an issue of inter-play between stamp duty and Base Erosion and Profit Shifting (BEPS) norms.⁴⁶ The 1937 Notification has been in force to cut down transaction costs of corporate groups, such as *Ambuja Cement*, which has an offshore holding structure (Mauritius parent). Interestingly, the 90 per cent beneficial ownership threshold under the Notification for stamp duty purposes can be tied to the same offshore structures that would be subject of the GAAR⁴⁷ and BEPS provisions to prevent avoidance. These frameworks would need to be read together and in a coherent anti-avoidance approach—although they are currently read in silos.

CONCLUSION: NAMING WHAT WE HAVE INHERITED

At the heart of the Delhi and Haryana stamp duty structure in relation to the parent-subsidary merger is a colonial legacy, which has been selectively modernized, judicially reworked and structurally distorted in favour of big corporate capital. The *Ambuja Cement* ruling, which upheld a colonial exemption for a Swiss-based multinational entity restructuring its Indian business via a Mauritius holding company is neither a right nor a wrong. It is a manifestation of a legal system that has yet to reconcile itself with its colonial past, with its postmodern dispersion between jurisdictions, with its gendered redistributive effects.

⁴⁶ OECD, Explanatory Statement: OECD/G20 Base Erosion and Profit Shifting Project — 2015 Final Reports (OECD Publishing 2015), available at <https://www.oecd.org/tax/beps/>; see also OECD, BEPS Actions 8–10: Aligning Transfer Pricing Outcomes with Value Creation (OECD Publishing 2015) (establishing the international normative framework for addressing profit-shifting through offshore holding structures and intra-group transactions, directly relevant to the Mauritius-holding-company structures that also benefit from the 1937 Notification).

⁴⁷ Income Tax Act, 1961, §§ 95–102 (India) (General Anti-Avoidance Rules (GAAR)), as introduced by the Finance Act, 2012 and made operative with effect from Assessment Year 2018–19, empowering the Revenue to disregard, recharacterize, or deny tax benefits arising from any arrangement that lacks commercial substance or is entered into primarily for the purpose of obtaining a tax advantage inconsistent with the objects of the applicable provision.

The message for the transaction lawyer is simple: be aware of the jurisdictional matrix, ensure that there is a meticulous tracing of beneficial ownership, get the 1937 Notification certificate from the Designated Officer prior to filing your scheme, and closely monitor the appeal before Division Bench. The stakes involved are too high to be taken lightly; the risk of having to pay hundreds of crores in stamp duty is too great.

The legal scholar's message, however, is different: the technical surface of the stamp duty law hides profound questions about the distribution of legal advantage, about power, and about colonialism, which demand extensive conceptual work. An embarrassment, a "datum" that shows something about the work of the law, is not a colonial exemption.

And the message to the policy maker is the easiest to understand. The demand of ₹287.87 crore, which finally got waived off by a Notification issued at a time when India was still a part of the British Empire, is one of the signs that the system needs a reform. It's not only on the margins, it's not only by filling in this gap or that hole, but in the basic structure: harmonizing law across jurisdictions, introducing progressive rates, putting colonial-era exemptions under the spotlight of a democratic legislature.

Postcolonial theory reminds us that decolonization is not a one-off political action but an ongoing legal and institutional process. The law's sense of security with legal categories is temporary and always disputed, according to postmodern theory. As feminist theory has taught us, the face of the law is neutral, and the hand is gendered. Put together, they remind us that there is more going on in the stamp duty lawyer's office than first meets the eye; and that to get it right, matters the clients deal with, but matters just as much to what kind of legal system we want to be.