

**De Jure**  
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**The Maharashtra Stamp (Amendment) Ordinance, 2024:  
Impact on Arbitral Awards**



## Introduction

The Maharashtra Stamp (Amendment) Ordinance, 2024 ("**Ordinance**") has brought in sweeping changes to the Maharashtra Stamp Act, 1958 (the "**Act**") inter alia on levy of stamp duty on arbitral award (which includes an interim award) passed under the arbitration proceedings conducted within the State.

The Ordinance, which was promulgated on October 14, 2024, has come into force at once and the amendment will be applicable to all concerned from the date of issuance of the Ordinance. The aim of the Ordinance is to bring in "simplicity and uniformity" in levy of stamp duty which is obviously a fiscal measure to boost the State's revenue.

## Background on the Ordinance

The Ordinance marks a significant increase in the rate of stamp duty on the instrument of award by the arbitrator which is the "arbitral award", thereby moving from a nominal fixed-duty regime to one based on the award's subject matter being movable and/ or immovable property and relating to its monetary value.

Under the newly introduced ad valorem system, the stamp duty applicable to an arbitral award involving an immovable property is now at par with an instrument of conveyance and therefore the same duty as is leviable on a conveyance under Article 25(b) to the Schedule-I of the Act ranging from 5% to 7% of the property's market value (which includes metro cess for selected cities in the State). For award involving movable property, the stamp duty is structured in the following manner:

- the amount granted in the award upto ₹50 lakh will attract stamp duty of 0.75%.
- the amount granted in the awards above ₹50 lakh and upto ₹5 crore will attract fixed stamp duty of Rs. 37,500+ 0.5% on the amount above Rs. 50 lakh; the amount granted in the award above ₹5 crore will attract fixed stamp duty of Rs.2,62,500+ 0.25% of the amount above Rs. 5 crores.

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Such steep duty rates place Maharashtra among the states with the highest stamp duty on arbitral awards, rivalling Karnataka. In contrast, Delhi, Tamil Nadu, and Gujarat levy only nominal rates on arbitral awards, irrespective of the award's value.

## Potential Legal Implications

### Increased Financial Burden on Award Holders

The steep duty rates place Maharashtra among the states with the highest stamp duty to be paid on arbitral awards. In contrast, Delhi, Tamil Nadu, Gujarat and other states continue to levy only nominal rates on arbitral awards, irrespective of the award's value.

This steep stamp duty may significantly affect award holders, adding a costly layer to the already expensive arbitration process. This Ordinance may dampen the spirit of arbitration proceedings to be conducted in the state of Maharashtra and specifically parties will provide or opt for a seat of arbitration to be in other states or will consciously modify their written arbitration agreement to shift or relocate the seat to such states which do not impose such heavy stamp duties on the contracting parties.

### Comparative Analysis: Maharashtra and Other Indian Jurisdictions

When compared the applicable stamp duty rates in Maharashtra to other Indian jurisdictions, Maharashtra's effective stamp duty rates on the arbitral award qualify amongst the highest duty being levied. For instance:

- Delhi imposes a nominal duty of approximately 0.1% on property-related awards.
  - Tamil Nadu and Andhra Pradesh have capped their stamp duty rates at ₹150 and ₹200 on the arbitral awards respectively.
  - The Indian Stamp Act, 1899, levies a nominal ₹5 on arbitral awards.
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The Ordinance will drive the litigants to pursue arbitral awards from other jurisdictions where the impact of stamp duty is marginal or negligible to avoid paying such hefty stamp duty.

## **Enforcement Complications**

The new duty structure will consequentially impact the enforceability of awards i.e. if an insufficiently stamped award is challenged by the aggrieved party under Section 34 of the Act in domestic arbitration, the petition may not be adjudged until the applicable stamp duty is paid, potentially leading to impoundment as per the Act.

This may look like an added hurdle to the award holders who will construe this as indirect denial for enforcing their rights adding to the litigation costs.

The Supreme Court of India has held that insufficiently stamped foreign award does not bar its enforcement in India under the New York Convention. As such, foreign awards are unaffected by applicability of the Ordinance and the Act and remain an exception to the rigours of stamp duty.

## **Judicial Trends on Stamp Duty and Arbitration**

Indian courts have repeatedly addressed the impact of stamp duty on arbitration agreements and awards. In recent rulings, the Hon'ble Supreme Court of India held that insufficient stamping on arbitration agreements is a curable defect, thereby upholding the validity of such agreements. However, state legislatures like Maharashtra must balance revenue generation with the objective of fostering a pro-arbitration climate that supports economic and business interests.

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## Conclusion

The Ordinance presents a dilemma for State of Maharashtra: On one hand it will help bolster increased revenue for the State and on other hand it may result in state of Maharashtra not being a preferred choice as a seat for arbitration.

For businesses and investors, the increased stamp duty will likely weigh into decisions regarding where to resolve disputes, potentially shifting preference toward more affordable jurisdictions. As India seeks to consolidate its reputation as an arbitration-friendly jurisdiction, Maharashtra's heavy-duty regime could prompt a re-evaluation to ensure cost-efficiency in dispute resolution.

The consequential impact of the Ordinance empowering the State to impound insufficiently stamped arbitral awards in a way makes it incumbent for the litigant to adhere with the provisions of the Act even prior to enforcement of the award which directly and/or indirectly acts as a hurdle in access to justice. The above is not in tandem with the right to access to justice as held by the Constitution Bench of the Supreme Court in a group matter of transfer petitions when the Hon'ble Supreme Court has held that access to justice is a Fundamental Right guaranteed to citizens by Article 14 and Article 21 of the Constitution of India.

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