



# ELECTRONIC LAND REGISTRATION AND PROPERTY TRANSACTIONS IN NIGERIA

by

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## ABSTRACT

*The land registration process in Nigeria brushes on all factors involved in registering land transactions from the systems involved, benefits of registration, the procedure for registration, requirement for the registration, challenges faced and so many others. This article examined electronic land registration and property transactions in Nigeria. Among others, the objectives of the article were to establish the extent to which electronic land registration and property transactions have been implemented in Nigeria; ascertain how electronic land registration and property transactions have impacted on the Nigerian economy; examine the challenges of electronic land registration and property transactions in Nigeria. In the course of writing this article, the doctrinal research methodology was employed wherein both primary and secondary sources were relied upon. The article found that there is lack of training and re-training of the staff of the relevant Ministry to keep them abreast with the latest development in Land Registration and there is no uniform Land Registration procedure for the whole country. It concluded that it is convincingly clear that land registration leads to better access to formal credit, higher land values, higher output and income from land, and increased investment in land/landed property. Hence, the registration of title to land affords the investor enforceable right over the investment, while guaranteeing unambiguous and authentic information on individual plots to enhance investment. The article recommended that there should be training and re-training of the staff members of relevant Ministries so as to keep them abreast of the latest development in land registration; land registration procedure should be uniform for the whole country and there should be an overhaul of the Stamp Duties Act as it is long overdue to align them with the provisions of the Land Use Act.*

## INTRODUCTION

Land registration and property transactions in Nigeria are based on the British system, which came into existence in 1862. The system has been in use since 1924.<sup>3</sup> This system involves defining parcels of land spatially (that is, the boundaries are defined by a survey that shows accurate measurement from one or more permanent monuments).<sup>4</sup>

Land registration and property transactions have evolved over the years from manual to electronic registration. The system has series of advantages such as: it improves the accuracy and integrity of the database; it provides a strong base for timely information

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<sup>3</sup> P O Dale, *Association of Remote Sensing of the Environment* (Lagos: University of Lagos Press, 2001) 67.

<sup>4</sup> *Ibid.*



retrieval, which will in turn aid any future land taxation; it makes record keeping easier, faster and space efficient; it affords the opportunity of tracing and auditing series of transaction activities to further strengthen the system, searches for records can be easily carried out by an applicant and so on.<sup>5</sup>

In most countries, transfer of ownership of land is only possible upon registration of such land with relevant government authority.<sup>6</sup> In Nigeria, every state has a title registry which provides a thorough check to all relevant documents before registration is allowed. The Department of the Surveyor-General is responsible for storing land records together with the plans showing legal boundaries of each land.<sup>7</sup> At the moment, this department in states in Nigeria is using manual systems for storage management of land, property records and so on.<sup>8</sup>

The manual system in use by this section of the Registry is inefficient. With the ever-growing interest in land information and the increasing use of modern technologies by most institutions affiliated to this department, it becomes necessary for the department to introduce a modern approach in handling their land data, if their performances must be adjudged 'efficient' with respect to recording, storing, retrieving and disseminating necessary land information; hence, the need for electronic land registration.

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The documents, amongst others, required in electronic land registration rely on encrypted digital signatures identifying the party submitting the document for registration. Documents are created and modified 'on-line' on behalf of the vendor and purchaser with a property's legal description and ownership information retrieved from a centrally located land titles' database automatically inserted.

The land registration process in Nigeria brushes on all factors involved in registering land transactions from the systems involved, benefits of registration, the procedure for registration, requirement for the registration, challenges faced and so many others. Property acquisition is a valuable investment that can be properly and securely concluded where the

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<sup>5</sup> F D Peter and D M John, *Land Information Management* (Clarendron Press 1989) 46.

<sup>6</sup> L Gerhard, *Land Registration and Cadastral Systems: Tools for Land Information and Management* (London: Longman, 1991) 23.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*



property transaction is registered with the Land Registry in accordance with the provisions of Land Use Act.

Land Registration is simply the system by which all matters concerning possession, ownership, or rights conveyed in land can be registered and recorded with the government to provide evidence of title, facilitate transactions and prevent the unlawful transfer of ownership. Registration of land at the relevant Land Registry is one of the three stages of perfecting title to land to enhance the property rights enjoyed by the assignee.

## **LAND TITLING AND REGISTRATION**

Land Registration or title registration is carried out in order to make claims to land enforceable and contract on land stick.<sup>9</sup> Land registration generally describes systems by which matters concerning ownership, possession or other rights in land can be recorded (usually with a government agency or department) to provide evidence of title, facilitate transaction and to prevent unlawful disposal which vary according to jurisdiction. The basic idea behind title registration is to confer on every owner or purchaser a title guaranteed by the state.<sup>10</sup> It is believed to make conveyance simple, cheap, speedy and reliable by obviating most of the difficulties and hazards to which a purchaser of land is exposed under the system of registered conveyance. The law regulating registration of land instrument in Nigeria is the Land Registration Act.<sup>11</sup> This is the parent Act enacted for the whole country, which is adopted and re-enacted in some states under different names.

A common feature of land registration in Nigeria is the registration of any instrument executed before or after the commencement of the Act. In order to facilitate registration, the law establishes a land registry in every state under a land registrar charged with the responsibilities of registering instruments affecting land in the state and to keep registered books and files relating to each plot. Real property, also referred to as property investment, has a variety of concepts, and includes land and buildings.<sup>12</sup> Therefore, property investment is considered as the parting of capital at present on the development, or purchase of land and/or buildings which provides interest of certain duration either for future income generation/capital appreciation or self-occupation. Site so acquired must be ensured to have good title; and one way of assuring good title is evidence of registration. The registration of

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<sup>9</sup> N Rosenberg and L E Birdzell, *How the West grew rich: The economic transformation of the industrial world*, (New York: Basic Books, 1986).

<sup>10</sup> C E Udechukwu, *Introduction to Estate Management* (Lagos: Treem Nigeria Limited, 2006) 56.

<sup>11</sup> Land Registration Act 1924, No. 36.

<sup>12</sup> I U Kalu, *Property valuation and appraisal*, (Owerri: Nigeria, Bon Publications, 2001) 78.



land has several effects on property, thus this research sought to x-ray the effect of land titles registration on property investment in Nigeria.

### **Challenges of Electronic Land Registration and Property Transactions in Nigeria**

A number of issues are expected for appropriate title registration. These are:

- a) legislation,
- b) cadastral survey and
- c) adjudication.

In respect of legislation, a comparative analysis of land titles legislation in other jurisdictions can assist a state in enacting its own laws for that purpose and the object should be solutions that are based entirely on local needs and circumstances. The uncritical adoption of legislation that appears to apply satisfactory under different conditions elsewhere may lead to a forced conformity that proves unworkable in the state of its reception. Following the initial registration of the title to a parcel, the registration of all future transactions affecting that parcel should be compulsory by legislation. If this is not done, the register will no longer represent the true condition of the title. This is because it can be readily appreciated that unless there is a legal obligation to register all such transactions, the registry itself will lose its integrity. In the course of time, the recorded information will become incomplete and unreliable, thus destroying the very purpose for which the registry was originally created.<sup>13</sup> In terms of cadastral survey, a legal cadastre provides the geographic underpinning of a land title registration system.

Cadastral index maps show all the parcels in a registration district in their correct relationship to each other.<sup>14</sup> Parcel boundary, dimension area can be shown numerically on the map or derived from scaling. The map will not normally portray contours or other topographic information, except where a natural feature, such as a stream forms a parcel boundary. Each individual parcel is represented on a large-scale cadastral plan; which in addition to numerical boundary and area data usually shows building, fences and other enclosure and boundary markers. The composition of a cadastre may rely on a number of surveying and mapping techniques that can be employed independently of, or in conjunction with each other. The choice of air photography will depend upon such factors as conditions,

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<sup>13</sup> N Iroaganachi and J U Kalu and A F Jatau, "Effect of Land Title Registration on Land Sales and Professionals' Satisfaction" [2021] (22)(4), *African Scholar Journal of Env. Design & Construction Mgt.*, 33-46.

<sup>14</sup> UNCHS, "Guidelines for the improvement of land registration and information systems in developing countries" [1990] Nairobi: United Nation Centre for Human settlements (Habitat).



cloud coverage, the existence of boundaries that are marked by physical features, and the presence of vegetation that may obscure the visibility of those boundaries from the air. The object of a legal cadastre should be to ensure that parcels are shown in their correct topological relationship and that their boundaries and areas can be determined to a degree of accuracy that is sufficient for land title registration purpose.<sup>15</sup> Land adjudication (or land settlement) enables the state to determine the ownership of, and the legal interest in individual parcels of land. It also provides for the physical demarcation of parcels' boundaries. The need for adjudication may arise from dispute or simply from uncertainty. Even where land is unoccupied, and is apparently owned by the state, adjudication provides a method of cleansing the title by making sure that no adverse claims exist or if they do exist, they are properly dealt with. Adjudication is concerned with existing rights to land but it can also be the prelude to subsequent distribution to private persons.

Adjudication can be carried out systematically, area by area, or sporadically for isolated parcels. Systematic adjudication is more efficient and less costly than sporadic adjudication, but the political, social or economic pressures of local circumstances may compel the simultaneous adoption of both methods. It is often advisable to undertake adjudication in a pilot area of manageable size that contains different types of property in order to allow some experimentation with process and to gain valuable experience for the extension of adjudication to other regions. The process requires special legislation under which a team led by an adjudication officer is empowered to visit a designated site to hear and settle claims, and to demarcate and survey parcel boundaries. The date and time of the visit must be well publicized in advance by a written or other appropriate notice. The notice should state that every claimant to ownership of, or interest in, any of the land referred to in the notice must appear in person or by an authorized agent before the adjudication officer. It should also require every such claimant to present all documentary and other evidence to support the claim, including the oral testimony of witnesses. If the claimant and the owners of adjoining land accept in writing the adjudication, the parcel boundaries are demarcated and surveyed.

Demarcation and survey should be carried out simultaneously and as soon as possible after the decision.<sup>16</sup> If the time interval between demarcation and survey is too long, there is a risk that unscrupulous persons might surreptitiously remove boundary marks. The methods of

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<sup>15</sup> L Gerhard, *Land registration and cadastral system: Tools for land information and Management*, (London: Longman, 1991) 89.

<sup>16</sup> A G Awolaja, *Land registration in Nigeria: Issues and challenges* (Lagos: State Valuation Office, 2012).



surveying and demarcation may vary according to local needs and practices, but each adjudicated parcel should be given a unique number that can then form the legal description of the parcel for land title registration purposes. Decisions of the adjudication officer that are disputed by any party can be appealed to a statutory body such as land tribunal, subject to a further right of appeal to a High Court for ruling.

## **RIGHTS OF OWNERSHIP OF LAND IN NIGERIA**

Prior to the Colonial era, lands were mostly owned, controlled and managed by Families and communities. The control was vested in the community and family heads, who allocate these lands to their members based on their needs. The Ownership of Land was regulated by the colonial masters before independence. The legislations used for regulation included Treaty of cession (1861), Land Proclamation Ordinance (1900), Land and Native Right Act (1916), Public Lands Acquisition (1917), State Land Acts (1918) and Town and Country Planning Act (1947).

The Legislations were created to remove property rights from community and family heads. The Land Proclamation Ordinance created by Lord Fredrick Lugard in 1900 disregarded the principles of native law and customs and made it mandatory that title to land could only be acquired through the High Commissioner.

The Constitution<sup>17</sup> which is the *grund* norm of every law provides as follows: ‘ Every person is entitled to own property in any part of Nigeria and that no such property shall be compulsorily acquired without the due payment of compensation.’

Under the Customary Land Tenure System, land is communally owned while control and management is vested in the communal head. Any member of the community who desired a portion of land is granted by the communal head. The Land allotted to him is to the exclusion of all other members of the community, in other words the person enjoys quiet enjoyment and peaceful possession of the land. The only exemption is that he cannot transfer to another or claim ownership because the ownership belongs to the community.

Ownership in the true sense of it is synonymous to title. Title is basically the legal way of saying a person owns a right to something. An owner is not subjected to control by any other person. Any person claiming a genuine and sincere right to possession and use of land must have a good and valid title to such land without which an action for declaration of title shall fail.

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<sup>17</sup> The Constitution of the Federal Republic of Nigeria, 1999 (as amended), s.44.



However, the fact that a person owns a property does not confer on such person the possessory right and that is where possession comes in. Possession means the physical custody and use of a property. The possessory right is not one to be undermined. However, a person claiming possession must not only prove his relationship with the land but must prove physical acts displaying exclusive possession. To be protected by law, the possession must be one that is exclusive and the one in exclusive possession of the property has the right to keep away intruders and trespassers who may likely interfere with his possession.

Title is generally used to describe the manner in which right to property is acquired or even the right itself. Over the years and with the evolution of the Nigerian Land system, the means of acquiring title to land can be by any of the following means and they are:

1. First Settlement.
2. Gift (which must be absolute)
3. Pledge
4. Transfer of Interest in Land/Sales
5. Statutory Enactment.

Traditionally, settlement is a means of acquiring title to land under the native law and custom. This is basically done through deforestation of Land by the first settlers. The first person or persons to settle on a particular land free from any other adverse claim are regarded as owners. It could be an individual, a family or even a community. The first settlers obtain an ownership right over the land by being the first to settle on such land. In the case of *Owonyin v Omotosho*<sup>18</sup>, the Court held:

But ownership or title must go to the first settler in the absence of any evidence that they jointly settled on the land or that a grant of joint ownership was made to the later arrival by the first. The question therefore, resolves itself to this – who was the first settler on the land.

Now, for the first settler(s) to prove that they are entitled to the land, they must prove that there were no other settlers on the land upon his arrival. Also, it must be stated that a first settler cannot claim ownership of land after abandoning such land and not laying claim whatsoever to any portion of such land, in other words, the first settler must prove that he had

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<sup>18</sup> (1961) WNLR 1.





exclusive possession of the Land. In cases where the first settler allows others to inhabit a part of the land, he must exert rent over it and this is solely done to assert his ownership which is in line with the general rule that long-term possessory right of a tenant does not confer ownership on them.

Most Family lands that we see in our cities were derived through this means. However, in this age and time, this is hardly obtainable. In order for a claim of title to land to be successful under Customary Law today, the claimant must trace the title to the first settler and inability to prove this may frustrate his claim

This is one of the oldest ways by which land was acquired. This takes place where the conqueror of a tribe or town in wars takes over the lands of the conquered tribes or towns. It is a traditional means of acquiring title to land and it is only applicable under the native laws and customs where the conqueror is regarded as the owner of the land.

The Privy Council in *Nwuba Mora v H.E Nwalusi*,<sup>19</sup> per Lord Evershed, held that, ‘ There is in Nigeria no law corresponding to the English rule of prescription for conferring title to land. It is however not in doubt that proof of possession following conquest will suffice to establish ownership.’

The principle of law laid down above by the Privy Council was adopted by the Supreme Court of Nigeria per the Law Lord of great profundity, Karibi-Whyte, JSC, in *Echi v Nnamani*,<sup>20</sup> where he held as follows: ‘ In plain terms, proof of conquest by a community followed by effective occupation or possession of the land in dispute is sufficient to confer title to land under customary law.’

This mode of acquiring title to land is no longer practicable in Nigeria and as a matter of fact highly prohibited by law especially by the provisions<sup>21</sup> of the Criminal code which states that:

Any person who without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by or against, any traditional chief, or with, for, by or against any band of citizens is guilty of felony and is liable to imprisonment for life.

Simply put, it is a criminal offence to forcefully or violently acquire land. The constitution<sup>22</sup> also frowns against the idea of compulsory land acquisition without the payment of compensation thereof.

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<sup>19</sup> (1962) 1 ANLR 681.

<sup>20</sup> (2000) 8NWLR.

<sup>21</sup> Criminal Code Act, s. 42.





For a gift of land to confer title, it must be an absolute one. An absolute gift can be likened to a sale; the only difference being the absence of monetary consideration. Like sales, an absolute gift diverts all the interests of an owner to the beneficiary. A party relying on Gift as a mode of acquiring title to land must prove that the gift was absolute and not conditional. In the case of *Jegede v Eyinogun*,<sup>23</sup> it was held that: ‘ A family which had made an absolute transfer of its land by way of gift could not recall the land upon misconduct.’ This shows how binding a transfer of title by absolute gift is.

On the other hand, a conditional gift only confers occupational right and cannot confer ownership. For instance, a customary tenant is only entitled to the occupational use of the land granted to him while the ownership remains in the overlord also called the Landlord. Although the customary tenant may enjoy occupational use for an indefinite period subject to good behaviour and payment of rent, in *Isiba v Hanson & anor*<sup>24</sup> the court held that ‘ the gift was a conditional one for farming purposes only, under the Yoruba Native law and such gift is defeated by the misconduct of the customary tenant.’

A pledge is created where the owner of a land known as the pledgor transfers the possession of his land to his creditor known as the pledgee as security for a loan with the intention that the creditor (the pledgee) should exploit the land in order for him to obtain the money the owner of the land (pledgor) borrowed. The popular maxim is that ‘ once a pledge, always a pledge’ which connotes that a pledge is always redeemable and time does not run against redemption. The pledgee cannot however, sell or part with possession. He only enjoys occupational rights but the ownership didn’ t transfer. He is not expected to erect permanent structures but if he does upon the redemption of the debt, the pledgor takes all. However, where there are still unharvested crops on the land, the pledgee is expected and allowed to take them all even after the debt has been paid.<sup>25</sup> A pledge is an equivalent of a mortgage under the common law.

A sale is the permanent transfer of Land for monetary consideration. It is an action that permanently deprives the original owner of all interests, rights, claims and benefits on his property. Valid and good title to land can be acquired by two consenting parties through a simple contract with or without financial consideration. It should be noted that the mere exchange of money is not conclusive proof of sale.

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<sup>22</sup> CFRN 1999 (as amended), s. 44.

<sup>23</sup> (1959) 4 FSC P. 270.

<sup>24</sup> (1967) 1 All N.L.R. 8.

<sup>25</sup> *Amoo v Adigun* (1957) WRNLR 55.



A sale is a conclusive proof of ownership and there must be the intention of the parties to enter into legal relations as regards the transfer of the land title. For a sale to be a conclusive mode of acquiring title, the person selling must have the capacity to sell. For instance, a family property can only be sold by a principal member of the family with the consent of the family head. Any other member of the family who sells the family land without being a principal member and without the consent of the family head only engages in a void contract and the person who purchases from such member acquires no title. Thus, in the case of *Cole v Folami*,<sup>26</sup> the court held that for a person to put up a property for sale, he must have the legal or customary capacity to do so.

This brings us to the factors that must be in place before a person can make a valid transfer of title either under customary law or under the English Common law. For a sale to be valid under customary law, the following conditions must be fulfilled:

1. The person selling the property must have the title under native laws and custom to sell and dispose of the property.
2. The purchase must be graced by witnesses who also witnessed the actual handing over or delivery of the land bought by the purchaser.

On the other hand, for a transfer of title to be valid under the Common law, the following must exist:

1. Payment of money as well as the acknowledgement of the receipt of the money.
2. Execution of the deed of conveyance in the favour of the purchaser.

This is supported by the Supreme Court in the case of *Idundun v Okumagba*,<sup>27</sup> where per Fatai-Williams, JSC held:

Secondly, ownership of land may be proved by the production of documents of title which must of course be duly authenticated in the sense that their due execution must be proved unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution...

In the olden days, Individual ownership of land was not in practice but what was in vogue was land being owned by a community as a corporate unit. Under the customary law, the communal land is owned by the community while the management and control is vested in

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<sup>26</sup> (1956) SCNLR 180.

<sup>27</sup> (1976) 9 - 10 SC 227.



the community head to manage for the community members. The community head does not own the land legally, he only manages the land for the use and common benefit of the members this makes him accountable to the community and as such he cannot handle the property like he would a personal property.

However, he exercises ownership rights over all the community land on behalf of the entire community. Members of the community could only be allotted one portion of the land solely for occupational use. Once a member of the community is allotted a portion of land, he enjoys exclusive possession to the exclusion of all other members of the community. We can safely say that a portion of land cannot be allotted to two members of the community by the community head. At the end of the occupational use of the land, the land reverts back to the community. It follows therefore that it is impossible for the community land to be annihilated either by sales or pledge/mortgage without the approval and participation of the community head. The sole power and responsibility of allotting land to members and non-members of the community is vested in the community head and by implication, any other allotment by a person who is not the community head is void *ab initio*.

As regards grants to outsiders, it is only the community head (chief) that is entitled to collect, rents, tributes or proceeds from sales and even compensation for acquiring community land for overriding public purposes on behalf of the entire community. The rents, tributes, proceeds of sale and compensation collected by the community head is not for the personal enjoyment of the chief but for the use and common benefit of the community members. In the same vein, the community chief is the only recognized party in any action for and on behalf of the community and no other individual is allowed to maintain an action for and on behalf of the community. The chief derives his power from the customary law and he exercises the power as an inherent attribute of his position as the community head.

In addition, where there is no duly appointed chief or head, the community can appoint a member to act in that position and exercise the duty of management and control of the land for the members of the community. People cannot have two community heads at the same time. Under the native law and custom, the management and control of the communal land by the Chief is majorly done in consultation with the elders in council and that is to say the community head does not take decisions solely and must consult with the chiefs or elders in council before making decisions that will affect or have impact on the communal land.

## CONCLUSION

It is convincingly clear that land registration leads to better access to formal credit, higher land values, higher output and income from land, and increased investment in land/landed property. Hence, the registration of title to land affords the investor enforceable right over the investment, while guaranteeing unambiguous and authentic information on individual plots to enhance investment.

The e-land document has open up the nature of processing land documents. The process has been found to be time-saving and cost-effective to low-income groups. The study understood that time and cost saving benefits in e-land document has promoted easiness in digital land certification, and reduced the activities of grabbers and fraudulent transactions in land. The study has understood that e-land document is a tool for settling land disputes. In other words, it has become an inevitable tool for settling land disputes.

Despite the benefits associated with e-land documents, it has also been understood that challenges in the process are inevitable. Inadequate public education and enlightenment on digital certification process has challenged the application of e-land document, in that, majority of the land owners have no knowledge of new method land digitization. Lack of technological advancement has also challenged the smooth process of digital documentation and certification. Every technology is required to be updated regularly, otherwise ineffectiveness becomes inevitable. Lack of cadastral infrastructure has also challenged e-land document digitization processes. The information about a parcel of land is required for proper capturing and regular update. Without this e-land document application may not be able to achieve the objectives of the process. Conclusively, e-land document has been challenged on the ground of inadequate cadastral infrastructure and information capable of developing an effective database e-document for addressing land – human related problems.

## RECOMMENDATIONS

It is therefore recommended as follows:

- (i) Cadastral models should be dynamic and adaptive rather than static. Collecting, recording and retrieval of land and related transaction information in the course of implementing land policies cannot be achieved without a proper data management system.



- (ii) All intending investors on real estate should consider it expedient to obtain a legal title to their land in order to secure their property investments.
- (iii) The relevant authority concerned should equip the ministries that are dealing with land registration, with modern digital survey equipment like GPS, Total Station. EDM, Digital levels, Plotters and Scanners.
- (iv) Training and re-training of staff of relevant ministries so as to keep them abreast with the latest development in Land Registration.
- (v) Passing of necessary registration that would broaden the scope of cadastre system in Nigeria to include taking an inventory of land resources. This will mandate all land owners to register their properties.
- (vi) Land Registration procedure should be uniform for the whole country.
- (vii) An overhaul of the Stamp Duties Act is long overdue to align them with the provisions of the Act.

