

CHAPTER-V STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Valuation of Property) [DC (VoP)] at district level.

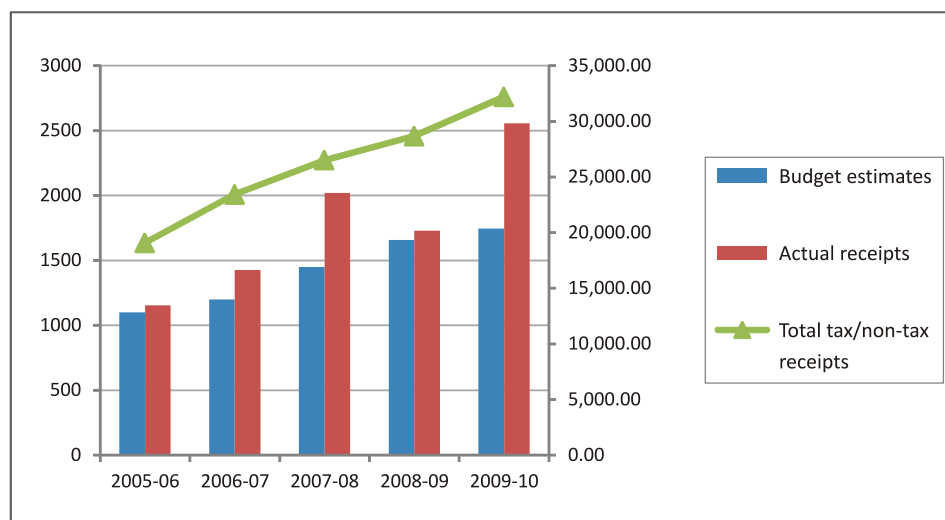
5.2 Analysis of budget preparation

The Budget Estimates are furnished by the IGR and Superintendent of Stamps, Gandhinagar in the prescribed format to the Finance Department. While preparing the budget estimates, the Department considered normal growth of the State economy, revenue of the previous year, inflation/recession factor and number of documents likely to be registered.

5.3 Trend of receipts

Actual receipts from Stamp duty and Registration fees during the last five years 2005-06 to 2009-10 along with the total tax/non-tax receipts during the same period is exhibited in the following table and graph.

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax/non-tax receipts of the State	Percentage of actual receipts <i>vis-a-vis</i> total tax/non-tax receipts
2005-06	1100.00	1153.16	(+) 53.16	(+) 4.83	19,051.48	6.05
2006-07	1200.00	1425.03	(+) 225.03	(+) 18.75	23,413.41	6.09
2007-08	1450.00	2018.44	(+) 568.44	(+) 39.20	26,494.88	7.62
2008-09	1658.00	1728.50	(+) 70.50	(+) 4.25	28,656.35	6.03
2009-10	1745.75	2556.72	(+) 890.97	(+) 46.45	32,191.94	7.94



There was wide variation of ₹ 890.97 crore between Budget Estimates of ₹ 1,745.75 crore and actual receipts of ₹ 2,556.72 crore. The variation between the budget estimates and the actual receipt is attributed to inflation and speedy rise in property value. The Department did not anticipate the heavy rush of registration of documents which ultimately resulted in increase of ₹ 890.97 crore.

5.4 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2010 amounted to ₹ 308.48 crore. The following table depicts the position of arrears of revenue during the period 2005-06 to 2009-10 :

Year	Opening balance of arrears	Amount collected during the year	Closing balance of arrears
2005-06	447.57	59.54	442.37
2006-07	442.37	54.24	405.66
2007-08	405.66	58.43	316.46
2008-09	316.46	37.35	313.49
2009-10	313.49	37.62	308.48

The above table indicates that recovery of arrears ranged between 12 to 14 per cent of pending arrears during the period of five years. Arrears of ₹ 18.33 crore and ₹ 48.36 crore remitted under the amnesty scheme during the year 2006-07 and 2007-08 respectively have been reduced from the closing balance of arrears in the respective year.

The Department needs to take strict action for reduction of arrears.

5.5 Cost of collection

The gross collection in respect of receipt of Stamp duty and registration fees, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2007-08 to 2009-10 alongwith the relevant all India average percentage of expenditure on collection to gross collection of the preceding years are mentioned below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Stamp duty and registration fees	2007-08	2,018.44	36.23	1.79	2.33
	2008-09	1,728.50	42.16	2.44	2.09
	2009-10	2,556.72	53.38	2.09	2.77

The cost of collection in respect of stamp duty and registration fees was lower than all India average except in the year 2008-09. The increase in aggregate

expenditure on collection of revenue during the year 2009-10 over previous year was mainly due to implementation of recommendations of Sixth Pay Commission and increase in expenses on sale of stamps.

5.6 Impact of Audit Reports - Revenue impact

During the last five years (including the current year's report), audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc., with revenue implication of ₹ 295.02 crore in 47 cases. Of these, the Department/Government had accepted audit observations in 13 cases involving ₹ 11.55 crore and had since recovered ₹ 0.13 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2005-06	6	52.04	1	0.01	1	0.01
2006-07	6	8.66	1	1.83	--	--
2007-08	15	148.91	7	9.63	3	0.06
2008-09	12	78.77	2	0.03	2	0.02
2009-10	8	6.64	2	0.05	1	0.04
Total	47	295.02	13	11.55	6	0.13

The above table has been prepared after taking into account replies of the Department in which they accepted the audit observations. No replies were received in respect of remaining paragraphs. The above table indicates that recovery in accepted cases also was very low (1.13 per cent of the accepted money value). The administrative department had not furnished detailed explanations to any of the above paragraphs though they were required to be furnished within three months of presentation of the ARs to the Legislature (except 2009-10) as per the instructions issued by the Finance Department on 12 March 1992.

We recommend that the Government may consider issuing suitable instructions to the Department for taking effective/speedy steps in recovering the amounts, at least in those cases, which have been accepted by the Department.

5.7 Working of internal audit wing

As per information furnished, the office of the IGR and Superintendent of Stamps, Gandhinagar has separate internal audit wings for valuation of property for stamp duty and registration of documents.

The inspection wing of valuation of property for stamp duty, having a sanctioned strength of a chief inspector, one office superintendent and two inspectors, carry out inspection of offices of DC (VoP). The inspection of DC (VoP) offices is done as per the approved annual programme. The inspection party inspects

the records of the unit as per the details collected in prescribed format. The inspection report highlighting the deficiencies is prepared in two copies, one of which is handed over to the unit for compliance and another is submitted to Additional Superintendent of Stamps. During 2009-10, 12 units were inspected. The details of paragraphs issued and their follow-up was not furnished.

The Revenue Department vide circular dated 22 November 2001 has prescribed the norms for inspection of Sub-Registrar offices on monthly basis.

- The IGR has to inspect four offices.
- The Deputy IGR has to inspect 12 offices of which two shall be surprise inspections.
- The Assistant IGR has to inspect 10 offices of which one shall be surprise inspection.
- The Inspector of Registration has to inspect three offices of which one shall be surprise inspection.

As per information furnished by IGR, there are 151 Sub-Registrar offices in the State. There was a proposed inspection programme of 36, 60 and 56 offices by IGR, Dy. IGR and Asst. IGR for the period April 2009 to December 2009, out of which 1, 17 and 8 offices were inspected respectively by them. Details of inspection programme of Inspector of Registration were not furnished, who had conducted only one inspection for the above period. Also, the follow up reports and details of recovery in respect of above inspections were not furnished.

5.8 Results of audit

Test check of records of 114 offices of the Collectors of Stamp Duty (Valuation of Property) and Sub-Registrar Offices in the State during the year 2009-10 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 61.85 crore in 414 cases, which fall under the following categories:

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Misclassification of documents	74	13.47
2	Undervaluation of property	36	2.75
3	Incorrect grant of exemption	7	0.54
4	Underassessment of stamp duty on instruments of mortgage deeds	23	20.52
5	Irregular acceptance of time barred cases resulting in postponement of realization of Government dues	3	0.50
6	Other irregularities	271	24.07
	Total	414	61.85

The Department did not furnish even the first reply in 362 cases out of the above cases. In remaining cases, during the course of the year, the Department accepted underassessment and other deficiencies of ₹ 6.07 lakh in four cases, of which two cases involving ₹ 51,701 were pointed out in audit during the year 2009-10 and the rest in earlier years. An amount of ₹ 2,000 was realised in one case during the year 2009-10.

A few illustrative cases involving ₹ 6.64 crore are mentioned in the following paragraphs.

5.9 Audit observations

During the scrutiny of the records of various registration offices and offices of the Collector of Stamp Duty (Valuation of Property (VoP) we observed several cases of non-compliance of the provisions of the Registration Act, 1908, the Bombay Stamp Act, 1958, the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 etc., and the Government notifications and other rules as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of the departmental officers are pointed out by us in each year; but, not only do the irregularities persist, these remain undetected till an audit is conducted in the next year. There is need for Government to improve the internal control system and internal audit so that such omissions can be detected and prevented in future.

5.10 Recommendations

- Registering authority should carefully take into consideration the recitals of the documents to classify the documents correctly and charge proper stamp duty.
- Registering authority should invariably verify the stamping and registration of the reference documents mentioned in the deeds/instruments executed by the parties particularly in those cases where records have been computerised.
- Department should co-ordinate with Land Revenue authorities to ensure that all Powers of Attorney coming before them have been registered with the stamp duty department.

5.11 Short levy of stamp duty and registration fees due to misclassification of deeds

Under Section 3 of the Bombay Stamp Act, 1958 as applicable to Gujarat, every instrument mentioned in Schedule-I shall be chargeable with duty at prescribed rates. For the purpose of levy of stamp duty, an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title. Registration fees on such documents are also to be charged *ad valorem* on the amount of the purchase money/loans.

During test check of the records of Deputy Collector (VoP), Gandhinagar and 11 Sub-Registrar offices⁶⁶, we noticed that registering authorities classified 20 documents registered between 2000 and 2008 on the basis of their titles and levied stamp duty and

registration fees accordingly. Scrutiny of recitals of these documents revealed that these documents were misclassified. This resulted in short levy of stamp duty and registration fees of ₹ 5.30 crore as mentioned in the table below:

(₹ in crore)

Sl. No	Location	No. of Documents	Consideration/amount of loan	Short levy	Nature of objection
1.	Ahmedabad II and Vadodara IV.	3	90.37	4.37	Though agreements contain recitals of Mortgage with possession, it was treated as Mortgage without possession.
2.	DC (VoP) Gandhinagar, Ahmedabad IV, Bhiloda, Chanasma, Kalol, Padra and Santrampur	14	11.08	0.64	The executors had transferred property or handed over the possession of the property by execution of documents styled as agreement to sell, partition deed or power of attorney. The Sub-Registrar failed to treat these documents as conveyance deed though the possession of the property was handed over or title to the property had been transferred.
3.	Ahmedabad III, Bhavnagar II and Surat III	3	5.82	0.29	Though the recitals of these documents indicated that these documents were executed for settlement of family property, Sub-Registrar treated it as partition deed based on the title of the documents.
	Total	20	107.27	5.30	

This was brought to the notice of the Department between July and December 2009, the Department accepted the audit observations involving ₹ 65,857 in four cases. A report on the recovery and replies in the remaining cases had not been received (December 2010).

The matter was reported to the Government in March 2010; their reply has not been received (December 2010).

⁶⁶ Ahmedabad II, III, & IV, Bhavnagar II, Bhiloda, Chanasma, Kalol, Padra, Santrampur, Surat III and Vadodara IV.

5.12 Leakage of revenue in the form of stamp duty and registration fees on Sale Deeds

As per Article 20 of the Bombay stamp Act, as applicable to Gujarat, stamp duty on conveyance is leviable on the market value of the property or consideration stated in the document, whichever is higher. Further as per the explanation to the above Article, stamp duty on an agreement to sell of an immovable property shall be the same as a conveyance, if possession of the property has been transferred at the time of execution or after the execution of the agreement.

We noticed from the recitals of a document (Document No. 2747 dated 25th May 2007 executed at Alkapuri in Vadodara registered by Sub-Registrar, Vadodara I) that owner of a property had received full consideration for sale of the properties from

the Developers on the same date on which an 'Agreement for Sale' (Document No. 5403 dated 21 December 2005 stamp for 50) had been executed between them. However there was no reference in the document No. 2747 whether the Sale Deed had been executed between the parties on completion of the sale. Based on the recitals, the concerned registering authority, before registering the Sale Deed between the Purchaser and the Developers, should have enquired about the registration of Sale Deed between the Owner and the Developer. Though we enquired about the registration of the same from the Registering Officer, the same was not clarified. As such we could not ascertain whether the Sale Deeds had been registered. In absence of a reference in the document of sale between the purchaser and the Developer, the possibility of non-registration of the Sale Deed (No. 2747) between the Owner and Developer and resultant loss of revenue in the form of stamp duty and registration cannot be ruled out. We found such deficiencies in other 57 documents valued at ₹ 38.72 crore in the offices of 17 Sub-Registrar⁶⁷. Thus, there is a possible leakage of revenue of ₹ 2.83 crore (based on the consideration mentioned in the document/market value of the property), in the form of stamp duty and registration fee, as the properties have changed hands possibly without execution of sale deeds.

We pointed this out to Department July and December 2009 and reported it to the Government in May 2010; their reply has not been received (January 2011).

We recommend the Government to issue instructions to the Department for invariably verifying the stamping and registration of the reference documents mentioned in the deeds/instruments executed by the parties particularly in those cases where records have been computerised.

⁶⁷ Ahmedabad II, III, IV, V, Anand, Bhavnagar III, Kalol, Nadiad, Padra, Pardi, Surat I, II, III, Vadodara II, III, IV, Wagra

5.13 Non-realisation of stamp duty and registration fees due to non-registration of documents

Section 17 of the Registration Act, 1908 provides that registration of every document of sale, mortgage, lease or exchange of property of the value of ₹ 100 or more is compulsory. Further, the Bombay Stamp Act empowers every person in charge of a public office to impound any instrument, produced before him in performance of his functions, if it appears that such instrument is not duly stamped.

During test check of the records of 16 Sub-Registrar offices⁶⁸ between January and July 2009 we noticed that in 75 cases, recitals of the documents indicated the execution of another document, registration of which

was compulsory. The executants of those documents did not register their documents with the registering authority. Of these, in 22 cases, development agreement was not registered, in 42 cases the power of attorney was not registered, in nine cases the recitals of the documents did not indicate that stamp duty and registration fees were levied on previous occasion, in one case the agreement to sale was not registered and in one case, the recitals of document indicated that partition of property was effected without execution of the documents. The Sub-Registrars did not detect the cases where execution of another document was mentioned and failed to initiate action to get the earlier document for scrutiny of proper stamp duty payment thereon. This resulted in non-realisation of stamp duty and registration fees of ₹ 1.25 crore.

We brought this to the notice of the Department between July and December 2009 and the Government in March and May 2010; their replies have not been received (December 2010).

⁶⁸ Ahmedabad II, III, IV & V, Bharuch, Bhavnagar I, Dhoraji, Gadhada, Jambusar, Kalol, Muli, Sanand, Sihor, Surat I & II and Vadodara II.

5.14 Short levy of stamp duty and registration fees on lease deed due to incorrect computation

Under Article 30(a)(iv) of Schedule-I of the Bombay Stamp Act, in case of lease including an under lease or sub-lease and any agreement to let or sub-let, the stamp duty is leviable as on a conveyance under Article 20 based on period of lease for the amount or value of the average annual rent reserved. Further, in case where the lease is granted for a fine or premium or for money advanced or to be advanced in addition to rent reserved, the stamp duty is leviable as on a conveyance for the amount or value of such fine or premium or advance as set forth in the lease in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered. Further, under explanation II thereon, when a lessee undertakes to pay any recurring charge such as Government revenue, landlord's share of cess, or the owner's share of municipal taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee, shall be deemed to be part of the rent.

During test check of the records of five Sub-Registrar offices⁶⁹ between February and May 2009 we noticed in 11 documents of lease deeds that either the recurring charges payable by the lease holders had not been included or premium amount did not include the value of superstructure on lease hold land for levy of stamp duty. Of these, in 10 cases, recurring charges such as property/service tax paid by the lessee were not included in average annual rent and in one case, value of super structure was

not considered while calculating the premium for the levy of stamp duty. This resulted in short levy of stamp duty and registration fees of ₹ 46.34 lakh.

This was brought to the notice of the Department between August and November 2009 and the Government in May 2010; their replies have not been received (December 2010).

5.15 Short levy of stamp duty due to undervaluation of properties

Section 32 A of the Bombay Stamp Act, 1958 provides that if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer the same to the Collector (VoP) for determining the market value of the property. The market value of the property is to be determined in accordance with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984.

During test check of the records of two Dy. Collector (Valuation of Property)⁷⁰, and 12 Sub-Registrars⁷¹ between October 2008 and July 2009, we noticed that the market value of the property was determined incorrectly in 57 documents registered between 2004 and

⁶⁹ Ahmedabad II and IV, Surat II, Vadodara IV and Wagra.

⁷⁰ Gandhinagar and Rajkot I

⁷¹ Ahmedabad I, III and V, Anand, Ankleshwar, Bardoli, Karjan, Mehsana, Surat II, Vadodara I, III and IV

2008, which resulted in short levy of stamp duty and registration fees of ₹ 82.18 lakh of which important cases are mentioned in the table below:

(₹ in lakh)

Sl. No.	Location	No. of documents	Short levy	Nature of irregularity
1.	DC (VoP) Gandhinagar, Ahmedabad III, V, Ankleshwar, Bardoli, Karjan, Mehsana, Vadodara I, III, IV	34	48.37	Government has prescribed <i>jantri</i> ⁷² for determining market value of the land and properties respectively. Consideration set forth in these documents did not approximate the market value of the property as per <i>jantri</i> .
2.	Ahmedabad V	3	9.96	<i>Jantri</i> rates of agricultural land of certain survey numbers were not available. Hence, the Sub-Registrar referred the cases to DC (VoP), who ascertained the rates and forwarded the same to the Sub-Registrar and IGR. However, the Sub-Registrar did not take into consideration these rates. Non-consideration of the rates proposed by DC (VoP) has resulted in undervaluation.
3.	DC (VoP) I Rajkot	1	3.62	DC (VoP) determined the market value of the property gifted at ₹ 37,300 in February 2007 though Sub-Registrar had proposed the market value of the property at ₹ 28.07 lakh on the basis of prevailing <i>jantri</i> rates. Further, the receiver of gift had sold the property through four documents for consideration of ₹ 49 lakh in May 2007.
4.	Vadodara IV	4	3.33	While calculating market value of land, SR considered value of the property excluding value of common plot and internal roads.
5.	Ahmedabad III	6	11.78	Government of Gujarat has revised <i>jantri</i> rates from April 2007. While calculating the market value, the Sub-Registrar applied the market rate of the land at pre-revised <i>jantri</i> .

This was brought to the notice of the Department between July and December 2009 and the Government in March 2010; their replies have not been received (December 2010).

⁷² Statement issued by the Government showing the rates for the purpose of determination of value of land and levy of stamp duty

5.16 Short levy of stamp duty due to application of incorrect rates

The Bombay Stamp Act provides that on determination of true market value of the property, the party is liable to pay the duty at the rate specified in Schedules of the Act, calculated on the value so determined at the rate applicable on the date of registration of the document.

During test check of the records of three Dy. Collector (Valuation of Property)⁷³ and three Sub-Registrar offices⁷⁴, it was noticed between August 2006 and April 2009 in nine

documents that the Departmental officials had applied rates incorrectly. Out of this in one case concessional rate of stamp duty applicable to public trust was incorrectly applied, in two cases rate of future and option trading and commodity was not applied correctly and in six cases, lower rate of stamp duty was applied. This resulted in short levy of stamp duty of ₹ 5.55 lakh.

This was brought to the notice of the Department between October 2006 and December 2009, the Department accepted the audit observations involving ₹ 3.79 lakh in four cases and recovered ₹ 3.70 lakh in three cases. A report on the recovery of the balance amount and replies in the remaining cases had not been received (December 2010).

The matter was reported to the Government in May 2010; their reply has not been received (December 2010).

⁷³ Gandhinagar, Surat and Vadodara I.

⁷⁴ Nandod (Narmada), Palsana (Surat) and Valsad.

5.17 Non-initiation of recovery proceeding for collection of arrears of revenue

Section 46 of the Bombay Stamp Act, provides for levy of interest at prescribed rate for the period of delay in payment of the amount of tax, penalty or other dues. Further, such amount can be recovered by the Collector by distress and sale of movable or immovable properties of the person from whom such amount is due, as arrears of land revenue. Further, any person who is aggrieved by the valuation fixed by the Dy. Collector can appeal⁷⁵ to Chief Controlling Revenue Authority (CCRA).

During test check of the records of four Deputy Collectors (VoP)⁷⁶ in October 2008 for the period 2007-08, we noticed in 155 cases that CCRA had returned all the cases for recovery as the applications were received late. On receipt of such cases, the Dy. Collector was

required to initiate recovery proceeding under Bombay Land Revenue Code (BLRC). It was observed that no recovery proceedings had been initiated. This resulted in delay in realisation of Government dues of ₹ 36.53 lakh. In other two cases, on receipt of time barred appeals, CCRA entertained the time barred appeals in contravention of the provisions of the Act and remanded the cases. The Dy. Collector reduced the amount of deficit duty and recovered that reduced amount. This resulted in loss of revenue of ₹ 2.31 lakh.

This was brought to the notice of the Department between July 2008 and December 2009; the Department accepted the audit observations involving ₹ 18.64 lakh in 24 cases and recovered ₹ 9.86 lakh in seven cases. A report on the recovery of the balance amount and replies in the remaining cases had not been received (December 2010).

The matter was reported to the Government in March and May 2010; their replies have not been received (December 2010).

⁷⁵ Appeal can be made to CCRA after payment of 25 per cent of the amount due within 60/90 days from the date of order.

⁷⁶ Anand, Bhuj, Junagadh and Rajkot I.

5.18 Non-observance of Government instructions on PoAs

The Government instructed in September 2005 to invariably send copies of irrevocable powers of attorney (PoA), presented as evidence in support of ownership of land for obtaining NA permission and authorising the attorney to act for sale of land, receiving consideration, signing the sale deed, etc., to the concerned Dy. Collector (Valuation) for valuation and recovery of stamp duty in view of Article 45(f) and (g) of Schedule-I of the Bombay Stamp Act, 1958.

Test check of the records of the seven Collectors⁷⁷ and 10 DDOs⁷⁸ for the year 2008-09 revealed that in 70 cases, the revenue authorities had not forwarded the copies of PoAs presented as evidence in support of ownership of land for obtaining permission

of conversion of land and authorising the power of attorney holders to act in respect of sale of such land, to the concerned Dy. Collector for valuation and levy of proper stamp duty. These PoAs were required to be registered and stamp duty and registration fees were leviable as per conveyance deed. However, the same were not registered with the concerned registering authorities. Stamp duty and registration fees involved in these cases worked out to the extent of ₹ 1.38 crore.

The Government stated (October 2010) that the Collectors and DDOs were directed to examine the cases and send the report. Further report has not been received (December 2010).

⁷⁷ Ahmedabad, Anand, Godhra, Navsari, Patan, Surat, Vadodara.

⁷⁸ Ahmedabad, Anand, Bharuch, Bhavnagar, Gandhinagar, Junagadh, Mehsana, Navsari, Rajkot, Vadodara.