

Punjab Relief of Indebtedness Act, 1934

DELHI

India

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Act 7 of 1934

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Punjab Relief of Indebtedness Act, 1934 Punjab Act No. 7 of 1934 As applicable to Union Territory of Delhi An Act to provide for the Relief of Indebtedness in the Punjab Whereas it is expedient to amend the law governing the relation between debtors and creditors. And whereas the previous sanction of the Governor-General required under Section 80-A(3) of the Government of India Act and the previous sanction of the Governor required under Section 80-C of the said Act have been obtained; It is hereby enacted as follows:-

Part I – Preliminary

1. Short title, extend and commencement.

(1) This Act may be called the Punjab Relief of Indebtedness Act, 1934. (2) This Part and Parts III, IV, V, VI, VII and VIII shall extend to the whole of the Union Territory of Delhi and Part II to such areas as the Chief Commissioner may from time to time, by notification, direct. (3) This Act shall come into force on such [date] [20-11-1937, vide Notification No. B76-37 LSG R & A.] as the Chief Commissioner may, by notification, appoint in this behalf.

2. Interpretation clause (definitions).

- In this Act, unless there is anything repugnant in the subject or context- (1) "Court" or "Civil Court" includes a Court of insolvency, a receiver appointed under the Provincial Insolvency Act, 1920, and an arbitrator appointed with the consent of the parties or by an order of a Court; (2) "Interest" means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise; (3) "Loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan.

Part II – Insolvency Procedure

3. Amendment of Section 10 of the Provincial Insolvency Act, 1920.

- In Section 10(1) of the Provincial Insolvency Act, 1920, after the existing clause (a) the following clause shall be inserted-"(aa) his debts amount to two hundred and fifty rupees, and he satisfies the court that he is entitled to summary administration of his estate under Section 74 of this Act; or"

4. Amendment of Section 74 of the Provincial Insolvency Act, 1920.

- In Section 74 of the Provincial Insolvency Act, 1920, for the words "five hundred rupees" the words "two thousand rupees" shall be substituted.

Part III – Usurious Loan

5. Amendment of the Usurious Loans Act, 1918.

- In Section 3 of the Usurious Loans Act, 1918-(i)for the word "and" in clause (a) of sub-section (1) the words "or" shall be substituted';(ii)for the word "may" where it appears for the first time in sub-section (1) of the words "shall" shall be substituted ;(iii)for the word "may" after the word "namely" in sub-section (1) the word "shall" be substituted ;(iv)to sub-section (2) the following clause shall be added namely:-(e)The Court shall deem interest to be excessive if it exceeds seven and-a-half per centum per annum simple interest or is more than two per centum over the bank rate, whichever is higher at the time of taking the loan, in the case of secured loans, or twelve and-a-half per centum per annum simple interest in the case of unsecured loans :Provided that the Court shall not deem interest in excess of the above rates to be excessive if the loan has been advanced by the State Bank of India or any bank included in the Second Schedule to the Reserve Bank of India Act, 1934, or any banking Company registered under the Indian Companies Act, 1913, prior to the first day of April, 1937, or any co-operative society registered under the Bombay Co-operative societies Act, 1925, as extended to the Union Territory of Delhi.

6. Retrospective effect.

- The provisions of this part of the Act shall apply to all suits pending on or instituted after the commencement of this Act.

Part IV – Debt Conciliation Boards

7. Interpretation clause (definitions).

(1)"Debt" includes all liabilities of a debtor in cash or in kind, secured or unsecured, payable under a decree or order of a civil Court or other wise, whether mature or not, but shall not include debts

incurred for the purposes of trade, arrear of wages, land revenue or anything recoverable as an arrears of land revenue, or any debt which is barred by the law of limitation, or debts due to co-operative banks or to co-operative societies or to the State Bank of India or to any banking company registered under the Indian Companies Act, 1913, prior to the first day of April, 1937, or any bank included in the Second Schedule to the Reserve Bank of India Act, 1934, other than debts transferred to such societies, banks or banking companies during the pendency of an application under Section 9 in which such debts could be taken into consideration for the purposes of this Act, or debts transferred to such societies, banks or banking companies on or after the 2nd day of September, 1938, if in the opinion of the board such transfer was effected with a view to avoid the operation of this Act. (2) "Debtor" means a person who owes a debt and—(i) who both earns his livelihood mainly by agriculture, and is either a landowner, or tenant of agricultural land, or a servant of a landowner, or of a tenant of agricultural land, or (ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agricultural; or (iii) whose total assets do not exceed five thousand rupees : Provided that a member of a tribe, notified as agricultural under the Punjab Alienation of Land Act, 1900 (XIII of 1900), shall be presumed to be a debtor as defined in this section until it is proved that his income from other sources is greater than his income from agriculture. Explanation. — (i) A debtor shall not lose his status as such through involuntary unemployment or on account of incapacity, temporary or permanent, by bodily infirmity, or if he is or has been in service of Military, Naval or Air Forces, of the Union only on account of his pay and allowances or pension exceeding his income from agricultural sources. (ii) A debtor shall not lose his status as such by reason of the fact that he makes income by using his plough cattle for purposes of transport. (iii) A debtor shall not lose his status as such only because he does not cultivate with his own hands. (3) "Agriculture" shall include horticulture and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables and the like. (4) "Prescribed" means prescribed by rules made under this part of the Act.

8. Setting up of Debt Conciliation Board.

(1)(a) The Chief Commissioner may for the purpose of amicable settlement between debtors and their creditors establish debt conciliation boards. (b) The Chief Commissioner shall define the local limits of the area in which a board shall have jurisdiction. (c) The Chief Commissioner shall determine the pecuniary limits of the jurisdiction of the board, provided that no board shall have jurisdiction to make a settlement between a debtor and his creditor if the total debts of the debtor exceed Rs. 10,000 or such large amount as the Chief Commissioner may prescribe for any area. (d) Such board shall consist of a Chairman and one or more members to be appointed by the Chief Commissioner: Provided that no act done or proceeding taken by a board under this Act shall be called into question on the ground merely of the existence of any vacancy in any board. (e) The Chairman and every member of a board so established shall be appointed for a term not exceeding three years, but shall be eligible for reappointment on the expiry of his term. (f) The quorum of a board shall be prescribed by the Chief Commissioner. (g) Where the Chairman and Members of a board are not unanimous, the opinion of the majority shall prevail, and, if the board is equally divided, the Chairman shall exercise a casting vote. (2) The Chief Commissioner may cancel the appointment of any member of a board or dissolve any board. (3) The Chief Commissioner shall notify in the Official Gazette—(a) the establishment of a board and the appointment of its members ;

and the board shall be deemed to have been established and its members appointed from the date specified in such notification or notifications(b)the cancellation of the appointment of any member of a board ; and from the date specified in such notification the member shall cease to be a member of the board ;(c)the dissolution of a board ; and from the date specified in such notification the board shall cease to exist.(4)When a board is dissolved or ceases to exist otherwise, the Chief Commissioner may at any time establish another board within the same local limits in which the former board had jurisdiction and may declare this board to be the successor in office of the first board and may confer on it power to dispose of such applications under Section 13(2) and Section 23 as the Chief Commissioner may direct.

9. Application for settlement between a debtor and his creditors.

- A debtor or any of his creditors may apply to the board appointed for the area in which a debtor resides or holds any land, to effect a settlement between the debtor and his creditors :Provided that no application shall be made if the debtor's debts exceed ten thousand rupees of such larger sum as the Chief Commissioner may prescribe for any particular area.

10. Verification of application.

(1)Every application to a board shall be in writing and to be signed by applicant and verified in such manner as may be prescribed.

11. Particulars to be stated in application.

(1)Every application presented by a debtor to a board shall contain the following particulars, namely:-(a)the place where he resides or holds lands ;(b)the particulars of all claims against him together with names and residences of his creditors ;(c)the particulars of all his property, together with a specification of the value of such property and the place or places at which any such property is to be found ;(d)a statements that he is unable to pay his debts, and that they do not exceed the prescribed amount;(e)A statement whether he has previously filed an application in respect of the same debt before the same or another board, and if so, with what result.(2)Every application presented by a creditor shall contain the following particulars, namely:-(a)the place where the debtor resides or holds land;(b)the amount and particulars of his claim against such debtor;(c)a statement that the debtor is unable to pay his debts,

12. Procedure on receipt of application.

(1)On receipt of an application under Section 9 the board shall pass an order fixing a date and place for hearing the application :Provided that the board may at any time dismiss the application if, for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and the creditors.(2)Notice of the order under sub-section (1) shall be sent to the creditors by registered post, acknowledgement due, and where the debtor is not the applicant, notice of the order under sub-section (1) shall be sent to him in a similar manner.

13. Notice calling upon creditors to submit statements of debts.

(1) On the date fixed and board shall publish, in such manner as may be prescribed, a notice, calling upon every creditor of the debtor to submit statement of debts owed to such creditor by the debtor. Such statement shall be submitted to the board in writing within two months from the date of publication of the notice : Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such direction or to produce the documents required under sub-section (1) of Section 14 within the time fixed, it may extend the period for the submission, of his statement of the debts owed to him or for the production of such documents. (2) Every debt owed to a single creditor of which no such statement has been submitted to the board in compliance with the provisions of sub-section (1) shall be deemed to be duly discharged for all purposes and all occasions against such creditor ; and every debt owed to two or more creditors jointly, of which such a statement or statements signed by all such creditors or their recognized agents has or have not been so submitted, shall be deemed to be so discharge against such creditors as have failed to submit the said statement or statements, but only to the extent of their respective shares in the said debt: Provided that no such debts shall be deemed to be discharged against any creditors whose names have not been included in the application made under Section 9. (3) If the creditor or any of the joint creditors fails without sufficient cause to be present in person or by his recognized agent or legal practitioner in accordance with the provisions of Section 24 at any of the hearings fixed by the board, or fails to produce full particulars and documents as required under sub-section (1) of Section 14, the debt due to him or to the joint creditors, as the case may be, shall be deemed for all purposes and all occasions to have been fully discharged. (4) If any creditor proves to the satisfaction of the board, or if no board is vested with jurisdiction by the Chief Commissioner, to the satisfaction of a civil Court, that the notice was not served on him and that he had no knowledge of its publication or that he was unavoidable absent at any of the hearings fixed by the board, the board of the court as the case may be, may receive that debt.

14. Procedure on submission of statement of debts.

(1) Every creditor submitting in compliance with a notice issued under sub-section (1) of Section 13 a statement of the debts owed to him shall furnish, along with such statement, full particulars of all such debts, and shall at the same time produce all documents (including entries in books of account) on which he relies to support his claims, together with a true copy of every such document: Provided that a decree or order of a civil Court shall be conclusive evidence as to the amount of the debt to which the decree-relates, but the amount may be reduced as the result of an agreement arrived at in accordance with Section 17. (2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

15. Board to attempt amicable settlement.

- The board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to include them to arrive at an amicable settlement.

15A. Power of Board to adjudicate on genuineness or enforceability of debts.

(1) If a creditor or debtor, as the case may be, challenges the genuineness or enforceability of any debt included in an application, the board shall adjudicate upon the issue. (2) Any person aggrieved by a decision of the board under sub-section (1) may appeal therefrom to the Collector or such other officer, not below the rank of an Assistant Collector of the first grade, as the Chief Commissioner may appoint in this behalf. (3) The period of limitation for an appeal under this section shall run from the date of the order appealed against and shall be thirty days. (4) An appeal shall not lie from an order refusing to review or confirming on review a previous order. (5) Notwithstanding anything hereinbefore contained, no appeal or application for revision shall lie against a decision of the board under sub-section (1) unless the aggregate value of the items in regard to which the appeal is preferred exceeds two thousand rupees. (6) No order passed under this section shall be open to question in a civil Court.

16. Power of Board to require attendance of persons and production of documents and to receive evidence.

- Any board empowered under this Act may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on civil Courts by the Code of Civil Procedure, and every proceeding before the board shall be deemed a judicial proceeding.

17. Registration and effect of agreement.

(1) If the debtor and all or any of the creditors come to an amicable settlement, the board shall forthwith reduce such settlement to writ; or in the form of an agreement setting forth the amounts payable to each creditor and the manner in which and the times at which they are to be paid. Such agreement shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties; provided that if the board is of the opinion that the period fixed for payment is excessive, the board may refuse to authenticate the agreement. The board shall also pass an order dismissing the application so far as it relates to the creditors who have not come to an amicable settlement. (2) An agreement thus made shall take effect as if it were a decree of a civil Court having jurisdiction in the area of the jurisdiction of the board. (3) Notwithstanding anything contained in the Indian Registration Act, 1908, or in the rules made thereunder an agreement made under sub-section (1) shall not be liable to registration.

18. Dismissal of application in default.

- If in the opinion of the board an applicant fails to conduct his application with due diligence, the board may dismiss the application at any stage.

19. Bar to successive applications.

- If once an application has been made by a debtor and disposed of, no board shall entertain a second application within two years of the date of disposal of the first application.

20. Grant of certificate by board in respect of debts.

(1) Where, during the hearing of any application made under Section 9, any creditor refuses to agree to an amicable settlement, the board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed, in respect of the debts owed by him to such creditor. (2) Power of Court to disallow costs or interest. - Where any creditor sues or takes out execution proceedings in a civil Court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the Court notwithstanding the provisions of any law for the time being in force, shall not allow the plaintiff any costs in such suit or proceedings, or any interest on the debt after the date of certificate under sub-section (1). (3) Where after the date of an agreement made in accordance with Section 17 or of certification any unsecured creditor sues for the recovery of debt in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), shall, not be executed until six months after the expiry of the period fixed in the agreement authenticated under sub-section (1) of Section 17. (4) Where after the date of an agreement made in accordance with Section 17 or of certification any unsecured creditor applies for the execution of a decree in respect of which a certificate has been granted under sub-section (1), the said decree notwithstanding anything contained in the Code of Civil Procedure, 1908, shall not be executed until six months after the expiry of the period fixed in the agreement authenticated under sub-section (1) of Section 17.

20A. Decision of board to be final.

- If any question arises in any proceedings under this part of the Act whether a loan or liability is a debt or not or whether a person is a debtor or not, the decision of the Delhi Conciliation Board shall be final, and shall not be called into question in any Court.

21. Bar of civil suits.

- Save as otherwise provided in this Act, no civil court shall entertain- (a) any suit appeal or application for revision- (i) to question the validity of any procedure or the legality of any order or agreement made or certificate issued under this Act, or (ii) to recover any debt recorded as wholly or partly payable under an agreement made in accordance with Section 17 from any person who, as a debtor, was partly to such agreement, or (iii) to recover any debt which has been deemed to have been duly discharged under the provisions of this Act. (b) any application to execute a decree the execution of which is suspended under sub-section (3) or (4) of Section 20. (c) any suit for a declaration or any suit or application for injunction, affecting any proceedings under this Act before

a board.

22. Bar of appeal or revision.

- Save as otherwise expressly provided in this Act no appeal or application for revision shall lie against any order passed by a board.

23. Power of Board to review its order.

- A board may, on the application from any person interest, review any order passed by it and pass such order as it thinks fit: Provided that it shall not under this section pass an order reversing or modifying any order affecting any person interested without giving such person an opportunity of being heard : Provided, further, that no application for review shall be entertained if presented more than twelve months after the date of the order which the person interested seeks to have reviewed.

24. Appearance of party before board by agent or by legal practitioner.

- In any proceedings under this part of the Act, any party may be represented by an agent authorised in writing or with the permission of the board by a legal practitioner.

25. Bar to new suits and application and suspension of pending suits and applications.

(1) When an application has been made to a board under Section 9 or Section 23, no civil Court shall entertain any new suit or other proceeding brought for the recovery of any debt covered by such application and any suit or other proceeding pending before a civil court in respect of any such debt shall be suspended until the board has dismissed the application or an agreement has been made under Section 17. (2) When any execution proceeding pending before a civil Court is suspended under sub-section (1), and any animal has been attached and made over to suparddar in connection with such proceeding, the judgement-debtor shall not be entitled to the return of such animal out shall not be competent to sell or in any way part with the ownership of any animal so attached during the suspension of such proceeding ; and if the judgement-debtor has been committed to a civil prison in connection with such proceedings he shall be released forthwith.

26. Extension of limitation.

- The time spent in proceedings before a conciliation board and time during which a person is debarred from suing or executing has decree under the provisions of this Part of this Act shall be excluded when counting the period of limitation for any application, suit or appeal.

27. Members of boards deemed to be public servants.

- The members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code.

28. Power to make rules.

(1)The Chief Commissioner may make any rules consistent with this Part of this Act to carry out the purposes thereof, and in particular and without prejudice to the generality of the foregoing power may make rules-(a)prescribing the amount of debt for the purposes of Section 8(1)(c);(b)prescribing the quorum for and regulating the procedure before a board;(c)prescribing the charges to be made by a board for anything done under this Act and the persons by whom, and the manner in which such charges shall be paid ;(d)prescribing the records to be kept and the returns to be made by a board ;(e)prescribing the allowances to be paid to members of a board ;(ee)prescribing the particulars of debts under sub-section (1) of Section 14;(f)prescribing the place at which and the manner in which an agreement shall be registered ;(g)prescribing the form of certificate to be granted under sub-section (1) of Section 20 ; and(h)generally, for the purpose of carrying into effect, the provisions of this part of this Act.(2)The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication.

29. Penalty for breach of the rules.

- In making any rule the Chief Commissioner may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

Part V – Damdupat

30. Damdupat.

(1)In any suit brought after the commencement of this Act in respect of a debt defined in Section 7, advanced before the commencement of this Act no court shall pass or execute a decree or give effect to an award in respect of such debt for a larger sum than twice the amount of the sum found by the Court to have been actually advanced, less any amount already received by a creditor in excess of the amount due to him under Clause (e) of sub-section (2) of Section 3, of the Usurious Loans Act, 1918.(2)In any suit in respect of a debt as defined in Section 7, advanced after the commencement of this Act, no Court shall pass or execute a decree or give effect to an award in respect of such debt for a larger sum than twice the amount of sum found by the Court to have been actually advanced less any amount already received by a creditor.(3)Where in any proceeding concluded on or after the 15th day of October, 1939, any decree has been passed or on award has been given by an arbitrator against a debtor in respect of a debt as defined in Section 7, which is not in conformity with sub-sections (1) and (2), such decree or award shall be voidable at the opinion of the debtor on whose application, made within six months from the date of the extension of the Punjab Relief of

Indebtedness (Amendment) Act, 1940, to the Union Territory of Delhi, the Court shall set aside the decree or award, reopen the transaction and pass such order as may be in conformity with the provisions of this section.(4)Nothing in this section shall be deemed to entitle any person to claim a refund of any sum already paid except by adjustment under sub-section (1).

Part VI – Deposit in Court

31. Deposit in Court.

(1)Any person who owes money may at any time deposit in court a sum of money in full or part payment to his creditor.(2)The Court receipt of such deposit shall give notice thereof to the creditor and shall, on his application, pay the sum to him.(3)From the date of such deposit interest shall cease to run on the sum so deposited.

32. Power of Chief Commissioner to make rules.

(1)The Chief Commissioner may make rules for carrying into effect the provisions of this Part of this Act.(2)In particular and without prejudice to the generality of the foregoing powers such rules may provide.(a)for determining the court into which the sum shall be deposited ;(b)the procedure for keeping accounts of such deposits and the manner in which notices are to be served on creditors and payments made to them ;(3)The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication.

Part VII – Redemption of Mortgages

33. Amendment of Section 1(3)(a) of the Redemption of Mortgages (Punjab) Act, 1913.

- In Section 1, sub-section (3)(a) of the Redemption of Mortgages (Punjab) Act, 1913, for the figures and word "30 acres the figures and word "50 acres", shall be substituted, and in sub-section (3)(b) of the same section for the figures "1,000" the figures "5,000" shall be substituted.

Part VIII – Miscellaneous Amendments of the Civil Law

34. Immunity from arrest.

- No debtor as defined in Section 7 of this Act shall be arrested or imprisoned in execution of a decree for money, whether passed before or after the commencement of this Act.

35. Amendment of Section 60 of the Code of Civil Procedure, 1908.

- In Section 60 of the Code of Civil Procedure, 1908-(a)in sub-section (1) in the proviso-(i)in clause (c), for the words "occupied by him", the following words shall be deemed to be substituted, namely-"not proved by the decree-holder to have been let out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependents or left, vacant for a period of a year or more,"(ii)under clause (c), the following clauses shall be deemed to be inserted, namely:-(cc)Milch animals, whether in milk or in calf, kids, animals used for the purposes of transport or drought cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for trying cattle, parking carts, or stacking fodder or manure;(ccc)one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgement-debtor other than an agriculturist and occupied by him :Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.(b)after sub-section (2), the following sub-sections shall be deemed to be inserted, namely.(3)Notwithstanding any other law for the time being in force an agreement by which a debtor agrees to waive any benefit of any exemption under this section shall be void.(4)For the purposes of this section the word "agriculturist" shall include every person whether as owner, tenant, partner or agricultural labourer who depends for his livelihood mainly on income from agricultural land.(5)Every member of a scheduled caste shall be presumed to be an agricultural until the contrary is proved.(6)No order for attachment shall be made unless the court is satisfied that the property sought to be attached is not exempt from attachment or sale."

36. Amendment of Order XXI, Rule 2 of the Code of Civil Procedure, 1908.

- In Order XXI, Rule 2, of the Code of Civil Procedure, 1908, sub-rule (3) shall be omitted.

37. Penalty for false claim of a principal sum.

- Where, in a suit for the recovery of a loan the court is satisfied that an entry relating to the loan has been made by the creditor or at his instance, in any document showing the amount of the sum advanced to be in excess of that actually advanced plus legitimate expenses incurred, the Court shall disallow the whole claim with costs unless the creditor satisfies the Court that the wrong entry was accidental or was the result of bona fide mistakes.

38. Penalty for use of documents, containing false entries.

(1)If any party to suit for the recovery of a loan dishonestly use in such suit any document in which he is aware that there is any statement or entry relating to such loan which is false in any material particulars, he shall on conviction be punished with imprisonment of either description which may extend to three months or with a fine not exceeding one thousand rupees or with both.(2)If the court is satisfied, after such preliminary enquiry, if any as it thinks necessary that there is ground for enquiring into an offence, under sub-section (1) the Court may record a finding to that effect and

prefer a complaint of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898.