

The Punjab Registration of Money-lender's Act, 1938

PUNJAB

India

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Act 3 of 1938

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The Punjab Registration of Money-lender's Act, 1938 Punjab Act No. 3 of 1938 Statement of Objects and Reasons. - The question of requiring all money-lenders to be registered as is the practice in other countries has been considered more than once, and it is thought that the time has now come for legislation. This is necessary in order to control money-lending transactions and to check malpractices on the part of certain dishonest lenders. It is also in the interest of honest money-lenders that the profession should be purged of dishonest members whose methods and exactions create feeling of suspicion and hostility against the profession as a whole. Companies, banks and insurance companies which have to deal with an enlightened public are required to submit to regulation, and there is no reason why similar principles should not be followed in the case of money-lenders who have to deal with the illiterate. The Bill gives effect to the recommendation for the regulation of money-lending and registration of money-lenders contained in paragraph 11 of the Report of the Reserve Bank of India (Agricultural Credit Department) made under section 55(1) of the Reserve Bank of India Act. It is further a step towards the fulfilment of an undertaking which the Premier gave to a recent deputation as to agriculturist money-lenders being placed for the purposes of the Land Alienation Act in the same position as non-agriculturists in the matter of the power to purchase land. The Alienation of Land Act will be amended in due course so as to place agriculturist money-lenders registered under the Bill on the same footing as non-agriculturists in this matter. (Punjab Government Gazette Extraordinary, 1938, page 87.) Received the assent of His Excellency the Governor on the 31st August, 1938, and was first published in the Punjab Gazette, Extraordinary, of the 2nd September, 1938 Preamble. - Whereas it is expedient to register money-lenders and to regulate their business in the manner hereinafter appearing, it is hereby enacted as follows :-

1. Short title, extent and commencement.

(1) This Act shall be called the Punjab Registration of Money-lenders' Act, 1938. (2) It shall extend to [Punjab] [The word 'East Punjab' which replaced the word 'Punjab' by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, were substituted by the word 'Punjab' by the

Adaptation of Laws Order, 1950.](3)It shall come into force on such [date as the [State] [It came into force on 1st July, 1939, - vide Punjab Government Notification No. 3470-J-39/20108, dated 2.6.1939.] Government may, by notification, direct.

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context-(1)"Bank" means a company carrying on the business of banking and registered under any of the enactment relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in [any Part A State or Part C State] [Substituted for the words 'British India' by the Adaptation of Laws (Third Amendment) Order, 1951.] or incorporated by an Act of Parliament [of the United Kingdom] [Inserted by the Adaptation of Laws (Third Amendment) Order, 1951.] or by Royal Charter or Letters Patent or by any Act of [Parliament] [Substituted for the words 'the Indian Legislature' by the Adaptation of Laws (Third Amendment) Order, 1951.].(2)"Collector" means a Collector of the District or such other officer not below the rank of Assistant Collector first grade as may be specially empowered by the [State] [Substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government to discharge the functions of a Collector for the purposes of this Act.(3)"Commissioner" means the Commissioner of the Division in which a money-lender is registered.(4)"Company" means a Company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in [any Part A State or Part C State] [Substituted for the words 'British India' by the Adaptation of Laws (Third Amendment) Order, 1951.] or incorporated by an Act of Parliament [of the United Kingdom] [Inserted by the Adaptation of Laws (Third Amendment) Order, 1951.] or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.(5)"Co-operative Society" means a society registered under the provisions of Co-operative Societies Act, 1912.(6)"Court" includes a court acting in the exercise of its insolvency jurisdiction.(7)"Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specially by way of interest or otherwise.(8)"Loan" means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include -(i)an advance in kind made by a landlord to his tenant for the purposes of husbandry;Provided the market value of the return does not exceed the market value of the advance as estimated at the time of advance.(ii)a deposit of money or other property in a Government Post Office Bank, or any other Bank, or with a company, or with a co-operative society or with any employer as security from his employees;(iii)a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment;(iv)a loan advanced by or to the Central or any [State] [Substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government or by or to any local body under the authority of the Central or any [State] [Substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government;(v)a loan advanced by a bank, a co-operative Society or a company whose accounts are subject to audit by a certificated auditor under the Indian Companies Act, 1913;(vi)a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage;(vii)an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note.(9)"Money-lender" means a person,

or a firm carrying on the business of advancing loans as defined in this Act, and shall include the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise, of such person or firm; provided that nothing in this definition shall apply to -(a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender together with all his rights and liabilities; provided that such person only -(i) winds up the estate of such money-lender; (ii) realises outstanding loans; (iii) does not renew any existing loan, nor advance any fresh loan; (b) a bona fide assignment by a money-lender of a single loan to any one other than the wife or husband of such assignor, as the case may be, or any person, who is descended from a common grand-father of the assignor. (10) "Prescribed" means prescribed by rules made under this Act. (11) "Trader" means a person who in the regular course of business, buys and sells goods or other property, whether movable or immovable and shall include - a wholesale or a retail merchant, a commission agent, a broker, a manufacturer, a contractor, a factory owner, but shall not include a person who sells only his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

3. Suits and applications by money-lenders barred, unless money-lender is registered and licensed.

- Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the money-lender -(a) at the time of the institution of the suit or presentation of the application for execution; or (b) at the time of decreeing the suit or deciding the application for execution -(i) is registered; and (ii) holds a valid licence, in such form and manner as may be prescribed; or (iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit instituted, or the decree in respect of which the application for execution is presented; or (iv) if he is not already a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending : provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of licence pending before the Collector is finally disposed of.

4. Registration of money-lenders.

- Every money-lender may apply for registration of his name at the office of the Collector of the District; and his name shall be registered on furnishing such particulars as may be prescribed and on payment of a fee of Rs. 5.

5. Licensing of money-lenders.

- Every money-lender may apply to the Collector for a licence which shall be granted for such period, in such form, and on such conditions, and on payment of such fees, as may be prescribed. Explanation. - When an application for the renewal of a licence has been received from a licensed money-lender before the expiry of his licence, the existing licence, shall be deemed to

continue in force until orders on the application have been issued.

6. Where licence may be cancelled.

- A licence may be cancelled by the Collector and shall not be renewed for such period as may be specified by him, if after the commencement of this Act, a money-lender commits an act or is guilty of an omission with reference to which he -(i)has been held by a Court to have contravened the provisions of section 3 of the Punjab Regulation of Accounts Act, in more than two suits;(ii)has had his suit dismissed, in whole or in part, under section 37 of the Punjab Relief of Indebtedness Act;(iii)has had his suit dismissed with a finding that he has made, dishonestly or fraudulently, a material alteration in any document relating to a loan;(iv)has had his suit dismissed with a finding that it is fraudulent;(v)has been found by a Court to have charged higher rates of interest than those prescribed under section 5 of the Punjab Relief of Indebtedness Act in more than one suit;(vi)has been found guilty by a Court of forgery or cheating in respect of a money transaction :Provided that the Collector shall not cancel a licence until the prescribed period of appeal, revision or review, as the case may be, has expired; or in case of appeal, revision or review, the appeal, revision or review has been finally decided.

7. When Collector may act.

(1)The Collector may take proceedings suo motu or on the application of any person interested for the cancellation of a money-lender's licence:Provided that no licence shall be cancelled without giving the money-lender a notice in such form as may be prescribed.(2)The Collector may during the period of limitation for an appeal, either of his own motion or on the application of a party interested, review his own order, provided no appeal is pending with the Commissioner.

8. Effect of cancellation of licence.

- The name of a money-lender whose licence has been cancelled under section 6, shall be struck off the register maintained at the office of the Collector for the registration of money-lenders :Provided that a licence shall not be deemed to be cancelled nor the name of the money-lender deemed to be struck off the register during the period an appeal or an application for review or an application under section 11 is pending.

9. Saving.

- Nothing in this Act shall apply to suits or applications for execution pending -(a)at the time of the commencement of this Act; or(b)on the date of the cancellation of the licence of the money-lender, if before his current licence is granted or renewed, a Court has not given any such finding as would render him liable to have his licence cancelled under the provisions of section 6 of this Act.

10. Further registration and licensing of money-lender after expiry of period for which licence was cancelled.

- A money-lender may, after the termination of the period for which his licence has been cancelled, apply for registration and for the grant of a licence, to the Collector who shall, on his furnishing such particulars as may be prescribed, register his name on payment of a fee of Rs. 5; and shall grant him a licence for such period, in such form and subject to such conditions and on payment of such fees, as may be prescribed.

11. Appeals, reviews and certificates.

(1)An appeal shall lie to the Commissioner against the order of the Collector under section 6 cancelling a licence provided that the appeal shall be instituted within 30 days of the order appealed against, not including the period requisite for obtaining copies of such order.(2)If the money-lender or the appellant is not present at the time of announcement of the original or the appellate order, the order shall be communicated to him in such manner as may be prescribed.(3)The Commissioner may, in dismissing an appeal grant to the money-lender a certificate specifying the loans in respect of which a suit may be instituted by him or the decrees in respect of which an application for execution may be presented.(4)A money-lender without appealing against an order of the Collector under section 6, may within 30 days of the Collector's order cancelling his licence, apply to the commissioner for a certificate of the nature specified in sub-clause (3).(5)The Commissioner may, either on his own motion, or on the application of a party interested, review his own order at any time within 30 days of the communication of his appellate order to the money-lender concerned.

12. Exemption.

- The [State] [Substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government may, by notification, exempt any person or class of persons from the operation of this Act or from any of the provisions thereof.

13. Rule-making power.

(1)Subject to previous publication the [State] [Substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government may make rules, for carrying into effect the provisions of this Act.(2)In particular and without prejudice to the generality of the foregoing powers, such rules may specify -(a)the place where a money-lender shall apply for registration for obtaining a licence, the district or districts in which a money-lender who operates in more than one district shall be required to register, and the area in which a licence shall be valid;(b)the scale of fees payable for the issue or renewal of a licence of a money-lender;(c)the form of a licence; and the conditions under which a licence shall be issued; and(d)the particulars which a money-lender shall supply at the time of being registered.