

The Punjab Debtors' Protection Act, 1936

Act 2 of 1936

h1120

Received the assent of His Excellency the Governor on the 16th April, 1936, and that of His Excellency the Viceroy and Governor General on the 30th May, 1936, and was first published in the Punjab Gazette Extraordinary, dated the 6th June, 1936.

STORY 6

- Amended in part by Government of India (Adaptation of Indian Laws) Order, 1937.
- Amended by Punjab Act IX of 1938.
- Amended by Punjab Act X of 1939
- Amended by Indian Independence (Adaptation of Bengal and Punjab Acts) Order of 1950 (GGO 40)
- Amended by East Punjab Act III of 1948
- Amended by the Adaptation of Laws Order, 1950
- Amended by the Adaptation of Laws (Third Amendment) Order, 1951
- Amended by Punjab Act No. 8 of 1956
- Extended to the territories, which immediately before the 1st November, 1956, were comprised in the States of Patiala and East Punjab State Union, by Punjab Act No. 44 of 1960
- Amended by Haryana Adaptation of Laws Order, 1968

An Act to provide for the more effective protection of debtors in [Punjab]

Whereas it is expedient for the more effective protection of debtors to modify the existing law on certain points and to amend the law with respect to persons carrying on business as money-lenders;

And whereas the previous sanction of the Governor-General under subsection (3) of section 80-A of the Government of India Act and the previous sanction of the Governor under section 80-C of the said Act have been obtained; it is hereby enacted as follows:-

CHAPTER I

Preliminary

It is hereby enacted as follows:-

1. Short title, extent and commencement. - (1) This Act may be called the Punjab Debtors' Protection Act, 1936.

(2) It extends to [Haryana].

(3) It shall come into force at once [in the principal territories and on 30th December, 1960 in the transferred territories.].

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Statement of Objects and Reasons. - "The economic situation in the Province continues to be gloomy, and no reassuring factors of a reliable character seem to be in view. The poorer sections of the community are heavily in debt and deserve to be afforded effective protection against the tricks of an undesirable type of money-lenders now so commonly met in the profession as also against the harsh working of the existing law in certain directions. To secure this dual object some further legislation is needed. The present Bill is designed to meet this need".

Published vide Punjab Gazette, 1935, Part I p. 249.

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 enactments 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], or incorporated by the Act of Parliament [of the United Kingdom], or by Royal Charter or Letters Patent or by any Act of [Parliament].
- (2) "Company" means a company registered under any of the enactments 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], or incorporated by an Act of Parliament [of the United Kingdom], or by Royal Charter or Letters Patent, and includes Life Insurance Companies to which the Indian Life Insurance Companies Act, 1912, applies.
- (3) ["Co-operative Society" means a Society registered under the provisions of Co-operative Societies Act 1912.]
- (4) "Court" includes a court in the exercise of insolvency jurisdiction.

(5) "Interest" includes the return to be made, over the above what was actually lent, whether the same is charged or sought to be recovered, specifically by way of interest, or otherwise.

"Loan" means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance of loan, but it shall not include-

- (i) a deposit of money or other property in a Post Office Savings Bank or any other Bank, or in a company or with a co-operative society;
- (ii) a loan to or by, or a deposit with any society or association registered under the Societies Registration Act, 1860 (XXI of 1860), or under any other enactment for the time being in force;
- (iii) a loan advanced by the [State] Government; or by any local body authorised by the [State] Government.
- (iv) 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 (VII of 1913);
- (v) a loan advanced to a trader;
- (vi) an advance made on basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (XXVI of 1881), other than a promissory note;
- (vii) an transaction which is, in substance, a mortgage or a sale of immovable property.

(7) "Money-lender" means a person who, in the regular course of business, advance a loan as defined in this Act and shall include the legal representatives and the successors in interest, whether by inheritance, assignment or otherwise, of the person who advanced the loan.

(8) "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

- (i) a wholesale or a retail merchant;
- (ii) a commission agent;

- (iii) a broker;
- (iv) a manufacturer;
- (v) a contractor;
- (vi) a factory owner;

but shall not include a person who sells his own agricultural produce or cattle or buys agricultural produce or cattle for his own use.

CHAPTER II

Execution of Decrees

3. Definitions. - In this Chapter unless there is anything repugnant in the subject or context,

- (1) "Land" means any land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land;
- (2) "Collector" means the Deputy Commissioner of a district or any officer specially empowered by the [State] Government to exercise the powers of a Collector under this Chapter;
- [(3) "Commissioner" means the Commissioner of a division or any officer specially empowered by the [State] Government to exercise the powers of a Commissioner under this Chapter].

4. Omitted by Punjab Act 44 of 1960, Section 3(2) and Schedule

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6A. Omitted by Punjab Act 44 of 1960, Section 3(2) and Schedule

7. Omitted by Punjab Act 44 of 1960, Section 3(2) and Schedule

8. Rules to be made after previous publication. - The [State], Government may, subject to the condition of previous publication, make rules for carrying into effect the provisions of sections 4, 5, 6 and 7 of this Chapter.

Note. - Omitted by Punjab Act 44 of 1960, Section 3(2) and Schedule

9. Exemption of ancestral property from liability. - When custom is the rule of decision in regard to succession to immovable property then, notwithstanding any custom to the contrary, ancestral immovable property in the hands of a subsequent holder [whether male or female and if female whether she holds as a limited owner or full owner] shall not be liable in the execution of a decree or order of a court relating to a debt incurred by any of his predecessors in interests:

Provided that, when the debt has been expressly charged by way of mortgage on ancestral immovable property by predecessor in interest, the court shall determine the liability of such land as if this section had not been passed:

Provided further, and subject to the foregoing proviso, that in respect of a debt incurred before the commencement of this Act, ancestral property in the hands of a subsequent holder may be liable, only if all the following conditions are satisfied:

First. - That, before such liability is determined, the judgment debtor shall be given sufficient opportunity to show cause against such liability.

Second. - That such liability was permitted by the rule of custom applicable to the judgment debtor immediately before the commencement of this Act, and nothing in this section shall prevent the judgment debtor from proving the contrary.

Third. - That the decree holder is able to show to the satisfaction of the Court, that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court, not in *ex parte* proceedings, holding that such a custom was applicable to the sub-tribe in the tehsil to which the judgment-debtor belongs.

Fourth. - That the judgment-debtor is not able to show to the satisfaction of the court, that, at the time the debt was originally incurred there was a subsisting judgment or order of a competent court not in *ex parte* proceedings, holding to the contrary and subsequent to the judgment relied upon by the decree holder.

10. Exemption of standing crops and tress from attachment or sale. - Notwithstanding anything to the contrary contained in any other enactment for the time being in force

(1) standing crops, other than cotton and sugarcane, shall not be liable to attachment or sale in the execution of a decree.

(2) standing trees apart from the land on which they stand shall not be liable to sale in execution of a decree or an order of a court.

[(3) such portion of the judgment-debtor's land not exceeding fifty per centum thereof, shall not be liable to attachment or sale in the execution of a decree for the payment of money as in the opinion of the court, having regard to the judgment-debtor's income from all sources except such income as is dependent on the will of another person is sufficient to provide for the maintenance of the judgment-debtor and the members of his family who are dependent on him.]

11. Execution barred in certain cases. - (1) Notwithstanding anything to the contrary contained in any other enactment for the time being in force, where an application has been made to execute a decree passed after the commencement of this Act against a debtor as defined in sub-section (2) of section 7 of the Punjab Relief of Indebtedness Act, 1934 (VII of 1934), and not being a decree granting an injunction, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of six years from

(a) the date of the decree sought to be executed; or

(b) Where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of six years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within six years immediately before the date of the application; or

(b) to limit or otherwise affect operation of article 183 of the first Schedule to the Indian Limitation Act, 1908 (IX of 1908).

[11A. Notwithstanding anything contained in the Code of Civil Procedure, 1908, no decree for the payment of money shall be executed by the sale

without attachment, or by the appointment of a receiver of land or the produce of land or an interest in land, which under any law for the time being in force, is exempt from attachment or sale].

[11B. Power to direct payment of decretal amount by instalment. -

The Court may, at any time on the application of a judgment-debtor after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the commencement of the Punjab Money Lending and Debtor's Protection Laws (Extension and Amendment) Act, 1960, in respect of a loan shall be paid in such number of instalments and subject to such conditions, on the dates fixed by it, having regard to the circumstances of the judgment-debtor and the amount of the decree, as it considers fit. During the pendency of an enquiry under this section, the court may, subject to such conditions, as it may impose, order the stay of execution of the decree. Such order shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908.]

[11C. Prohibition of charge for expenses on loans. - No money-lender shall receive from a debtor or intending debtor any sum other than reasonable costs of investigating title to the property, costs of stamp, registration of documents and other usual out of pocket expenses, in cases where an agreement between the parties includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof or where such costs, charges or expenses are leviable under any law for the time being in force.]

CHAPTER III

Burden of Proof

12. Burden of proof of consideration. - Notwithstanding anything to the contrary contained in any other enactment for the time being in force, the burden of proving that any consideration alleged to have been paid by a money-lender actually passed shall be on him; unless the consideration is acknowledged by a debtor in his own handwriting or has been endorsed by the registering officer acting under clause (c) of sub-section (1) of section 58 of the Indian Registration Act, 1908 (XVI of 1908) as having been paid in his presence.