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PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT MONEY-LENDERS BILL, 2011.

GUJARAT BILL NO. 21 OF 2011.

A BILL

to regulate the transaction of money-lending in the State of Gujarat.

It is hereby enacted in the Sixty-second Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

1. (1) This Act may be called the Gujarat Money-Lenders Act, 2011.
- (2) It extends to the whole of the State of Gujarat.
- (3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Short title,
extent and
commencement.

Ex-V-21-1

21-1

Definitions.

2. In this Act, unless the context otherwise requires, -

(1) "appointed day" means the date on which this Act comes into force;

(2) "bank" means -

(i) a banking company or a co-operative bank to which the Banking Regulations Act, 1949 applies; 10 of 1949.

(ii) the State Bank of India constituted under the State Bank of India Act, 1955; 23 of 1955.

(iii) a Subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; 38 of 1959.

(iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; and 5 of 1970.
40 of 1980.

(v) a regional rural bank established under section 3 of the Regional Rural Banks Act, 1976; 21 of 1976.

(3) "business of money-lending" means the business of advancing loans, whether in cash or kind and whether or not in connection with or in addition to, any other business and includes the business of payment of loan by an agreement under any law for the time being in force;

(4) "capital" means a sum of money which a Money-Lender invests in the business of money-lending;

(5) "company" means a company as defined in the Companies Act, 1956; 1 of 1956.

(6) "co-operative society" means a society registered or deemed to have been registered under the Gujarat Co-operative Societies Act, 1961 or any other Act relating to co-operative societies and includes a Multi State Co-operative Society registered under the Multi State Co-operative Societies Act, 2002; Guj. 10 of 1962.
39 of 2002.

(7) "debtor" means a person to whom a loan is advanced and includes a successor-in-interest or surety;

(8) "interest" includes the sum to be made over and above principal amount lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by Money-Lender as costs, charges, expenses, towards evaluation, assessment and creation of the security;

(9) "loan" means an advance whether of money or in kind, at an interest, with or without security, and includes advance,

discount, money paid for or on account of or on behalf of or at the request of any person, or the forbearance to require payment of money owing on any account whatsoever, and every agreement under any law for the time being in force (whatever its terms or form may be) which is in substance or effect a loan of money, but does not include -

- (a) a deposit of money or other property in a Government post office, a bank, a company or a co-operative society;
- XXI of 1860. (b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public, religious or charitable object;
- (c) a loan advanced by the State Government or by any local authority authorized by the State Government;
- (d) a loan advanced to a Government employee from a fund, established for the welfare or assistance of Government employees and which is sanctioned by the State Government;
- (e) a deposit of money with or a loan advanced by a co-operative society;
- (f) an advance made to a subscriber to, or a depositor in, a provident fund from the amount standing to his credit in the fund in accordance with the rules of the fund;
- 4 of 1938. (g) a loan to or by an insurance company as defined in the Insurance Act, 1938;
- I of 1956. (h) a loan advanced by a Government company as defined in the Companies Act, 1956;
- (i) an advance made *bona fide* by any trader carrying on any business, other than money-lending, if such advance is made in the regular course of such business;
- (j) a loan advanced by the National Bank for Agriculture and Rural Development established under the National Bank for Agriculture and Rural Development Act, 1981;
- 61 of 1981. (k) a loan advanced by the Export-Import Bank of India established under the Export-Import Bank of India Act, 1981;
- 28 of 1981. (l) a loan advanced by the Small Industries Development Bank of India, established under the Small Industries Development Bank of India Act, 1989;
- 39 of 1989. (m) a loan advanced by the National Housing Bank, constituted under the National Housing Bank Act, 1987 ;
- 53 of 1987.

- (n) a loan advanced by State Financial Corporations established under the State Financial Corporations Act, 1951 ; and 63 of 1951.
- (o) a loan advanced by any institution -
- (1) established by or under an Act of Parliament or the legislature of a State, which grants any loan or advance in pursuance of the provisions of that Act, or
- (2) notified in this behalf by the State Government, in consultation with the Reserve Bank;
- (10) "Money-Lender" means-
- (i) an individual, or
- (ii) a Hindu Undivided Family, or
- (iii) a company, or
- (iv) a pawn-broker, or
- (v) an unincorporated body of individuals, including a firm, who or which -
- (a) carries on the business of money-lending in the State, or
- (b) has his or its principal or subsidiary place of such business in the State;
- (11) "pawn-broker" means a Money-Lender who in the ordinary course of his business advances a loan and takes goods in pawn as security for payment of such loan;
- (12) "prescribed" means prescribed by rules;
- (13) "principal" means, in relation to a loan, the amount actually advanced to the debtors; and if the loan is in kind, the value of the quantity of the thing or commodity advanced, calculated at the market rate of price of such thing or commodity prevailing on the date of the advance;
- (14) "provident fund" means a provident fund as defined in the Provident Funds Act, 1925 and includes a Government provident fund and a railway provident fund as defined in the said Act; 19 of 1925.
- (15) "register" means a register of Money-Lenders maintained under section 4;
- (16) "registration" means registration granted to a Money-Lender under section 7;

- (17) "Registrar" means Registrar of Money-Lenders appointed under section 3;
- (18) "Registrar General" means the Registrar General of Money-Lenders appointed under section 3; and includes the Additional Registrar General of Money-Lenders;
- (19) "rules" means rules made under this Act;
- (20) "State" means the State of Gujarat;
- (21) "Suit to which this Act applies" means any suit or proceedings -
- (a) for the recovery of a loan made after the date on which this Act comes into force;
 - (b) for the enforcement of any security taken, or any agreement, made after the date on which this Act comes into force in respect of any loan made either before or after the said date; or
 - (c) for the redemption of any security given in respect of any loan advanced by a Money-Lender;
- (22) "trader" means a person who in the regular course of business buys and sells goods or other property whether movable or immovable, and includes -
- (i) a wholesale merchant,
 - (ii) a commission agent,
 - (iii) a broker,
 - (iv) a manufacturer,
 - (v) a contractor,
 - (vi) a factory owner,

but does not include, a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use or an artisan.

Explanation.- For the purposes of this clause, "an artisan" means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

CHAPTER II AUTHORITIES

3. (1) For carrying out the purposes of this Act, the State Government shall appoint -

- (i) an officer to be called the Registrar General of Money-Lenders, and to assist him, may appoint Additional Registrar General of Money-Lenders and Joint Registrar

Authorities for
implementation
of the Act.

General of Money-Lenders for the whole of the State of Gujarat;

- (ii) such number of Registrars of Money-Lenders, Assistant Registrars of Money-Lenders and other officers and persons with such designations as the State Government thinks necessary.

(2) The State Government may, by notification in the *Official Gazette*, specify the areas of his jurisdiction within which the officer appointed under sub-section (1) shall exercise such powers and perform such duties as may be conferred or imposed upon them by or under this Act.

(3) The superintendence and control for the proper execution of the provisions of this Act and the rules made thereunder shall vest in the Registrar General.

CHAPTER III PROVISIONS RELATING TO REGISTRATION

Register of
Money-Lenders.

4. Every Registrar shall maintain a register of Money-Lenders in the prescribed form, to whom registrations have been granted for carrying on the business of money-lending in the area within his jurisdiction.

No business of
money-lending
except
registration.

5. (1) No Money-Lender shall commence or carry on the business of money-lending except in the area for which he has been granted a registration and except in accordance with the terms and conditions of such registration.

(2) Non-banking finance companies registered under the provisions of the Reserve Bank of India Act, 1934, with the Reserve Bank of India shall be deemed to have been registered for the purposes of this Act and they shall intimate to the concerned Registrar about their such registration with the Reserve Bank of India in the prescribed proforma.

2 of 1934.

Application
for
Registration.

6. (1) A person who intends to commence or to carry on the business of money-lending in any area may make an application in writing in the prescribed form for the grant of registration to the Registrar having jurisdiction.

(2) An application under sub-section (1) shall contain the following particulars, namely :-

- (a) if the application is by or on behalf of -
- (i) an individual, the name and address of such individual;
 - (ii) a Hindu Undivided Family, the name and addresses of the manager and the adult coparceners of such family;
 - (iii) a company, the name and addresses of the directors, manager or principal officer managing it;

- (iv) an unincorporated body of individuals, the names and addresses of such individuals; and if such body is a firm, the names and addresses of all its partners;
 - (b) the name in which the applicant intends to carry on the business of money-lending and the name of the person who shall be responsible for the management of the business;
 - (c) the area in which he intends to carry on the business and the name of the place at which he intends to carry on the business in that area; and if he intends to carry on the business at more than one place in such area, the names of the principal place and other places at which he intends to carry on the business;
 - (d) the name of any other place outside such area, if any, at which he intends to carry on the business;
 - (e) whether the person signing the application himself, or any of the adult co-parceners of a Hindu Undivided Family or any director, manager or the principal officer of the company or any member of the unincorporated body or any partner of the firm on behalf of which such application has been made, as the case may be, has carried on the business of money-lending in the State in the year ending on the 31st day of March immediately preceding the date of the application either individually or in partnership, or jointly with any other coparcener or any other person and whether in the same name or in any other name;
 - (f) the total amount of the capital along with its source which such person intends to invest in the business of money-lending in the year for which the application has been made;
 - (g) if the places at which the business of money-lending is to be carried on are more than one, the names of persons who shall be in the management of the business at each such place;
 - (h) such other particulars as may be prescribed.
- (3) The application made under sub-section (1) shall be signed, -
- (a) (i) by the individual, if the application is made by an individual;
 - (ii) by the manager of a Hindu Undivided Family, if the application is made on behalf of such family;

(iii) by the managing director or any other person duly authorized and having control of its principal place of business in the area in which it intends to carry on the business, if the application is made by a company or an unincorporated body of individuals;

(iv) by any partner of the partnership firm, if the application is made by a firm; or

(b) by an agent authorized in this behalf by a power of attorney, by the person authorized to sign such application referred to in clause (a).

(4) No application for grant of registration shall be entertained by the Registrar unless it is accompanied by an application fee at the rates, as may be notified by the Registrar General from time to time. The fees payable under this sub-section shall be non-refundable.

**Grant of
Registration.**

7. (1) On receipt of an application made under section 6, the Registrar shall after making such inquiry as may be necessary and on payment of registration fees as may be prescribed by the State Government, grant the certificate of registration in such form and subject to such conditions as may be imposed, and enter the name of such applicant in the register maintained under section 4, or may refuse to grant registration after recording the reasons for the same.

(2) The registration granted under sub-section (1) shall specify the area for which such registration is granted and the place at which the Money-Lender intends to carry on his business in such area.

(3) If the Money-Lender is granted registration in respect of more than one place of business in the area within the jurisdiction of the Registrar, the registration shall specify the principal place as well as all other places of his business and also the names of persons responsible for the management of the business at each such place.

(4) If a Money-Lender who holds a registration for carrying on the business of money-lending in any area within the jurisdiction of the Registrar is desirous of carrying on such business in some other area in the State within the jurisdiction of some other Registrar, he may make an application for grant of a registration under section 6 to such other Registrar, accompanied by the requisite registration fee and true copies of certificate of registration held by him and the fees paid therefore. On receipt of the application as aforesaid, the Registrar may grant to the applicant the registration under sub-section (1) for such other area without making any inquiry referred to in sub-section (1) unless there are reasonable grounds for making an inquiry.

(5) The application fees paid under sub-section (1) or (4) shall not be refunded, notwithstanding the fact that the registration is refused or the application is withdrawn.

**Term of
Registration.**

8. Subject to the provisions of this Act, -

- (a) a registration granted under section 7 shall be valid for a period of five years from the date on which it is granted;
- (b) a registration validly in force on the appointed day shall be valid till the next 31st day of March of the year in which this Act comes into force.

9. (1) On the expiry of the period of validity of a registration under section 8, the registration shall be liable to be renewed on an application for renewal made, in such form and with such fees and within such period as may be prescribed, before the expiry of the validity of the registration :

**Renewal of
Registration.**

Provided that the Registrar may, in any case in which he is satisfied that the applicant could not make an application for renewal of a registration within the prescribed period for reasons beyond his control, he may, for reasons to be recorded in writing, condone such delay; and may renew the registration on payment of such penalty as may be prescribed by the State Government, in addition to the renewal fee.

(2) The provisions of section 6 shall, so far as may be, apply to an application for renewal of a registration as if it were an application for grant of a registration.

(3) Where an application for renewal of registration has been made to the Registrar within the period prescribed under sub-section (1) but has not been disposed of before the expiry of the period of validity of the registration under section 8, the registration shall, notwithstanding the expiry of such period, be deemed to be valid until such application is disposed of.

10. (1) The grant or renewal of registration shall not be refused except on any of the following grounds :-

**Refusal for
grant or
renewal of
registration.**

- (a) that the applicant or any person responsible or proposed to be responsible for the management of his business as a Money-Lender is disqualified under this Act;
- (b) that the applicant has not complied with the provisions of this Act or the rules made thereunder in respect of an application for the grant or renewal of registration;
- (c) that the applicant has made wilful default in complying with, or knowingly acted in contravention of any provision of this Act;
- (d) that satisfactory evidence has been produced that the applicant or any person responsible for the management of his business of money-lending has-
 - (i) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in

connection with, the business of money-lending,
or

- (ii) been found guilty of an offence under Chapter XVII or section 465, 477 or 477-A of Chapter XVIII of the Indian Penal Code;

XLV of 1860.

- (e) that the applicant has made an application for grant or renewal of registration, during the period for which his registration has been suspended or during the period for which he has been disqualified under this Act for holding registration;
- (f) that the applicant or the person responsible or proposed to be responsible for the management of the business of money-lending, being a member of a family of a Hindu Undivided Family or a member of a board of directors of a company or a member of an unincorporated body of individuals or a partner of a firm who has been refused the grant or renewal of registration under any of the clauses (a) to (e); and
- (g) such other grounds as may be prescribed.

(2) The Registrar shall, before refusing to grant or renew registration under sub-section (1), give to the applicant a reasonable opportunity of producing evidence, if any, in support of the application and of showing cause as to why the grant or renewal of registration should not be refused; and record the evidence adduced before him and the reasons for such refusal.

(3) An appeal shall lie to the Registrar General against the order of the Registrar refusing the grant or renewal of registration under sub-section (1) and the decision of the Registrar General, thereon shall be final.

**Grant of
duplicate
certificate of
Registration.**

11. When a certificate of registration is lost, mutilated, destroyed, torn or otherwise defaced, a duplicate certificate of registration may be granted to the Money-Lender on an application made to the Registrar along with such fees as may be prescribed by the State Government.

**Power of
Registrar to
inspect.**

12. The Registrar shall, by an order, provide for the periodical inspection by such officers appointed under this Act for the purposes of sections 18 and 19.

**Suspension
of
Registration.**

13. (1) Where a complaint has been filed in a court against a Money-Lender for contravention of any of the provisions of this Act or the rules made thereunder or any inquiry is pending under sub-section (2) of section 14 or under sub-section (1) of section 15 against such Money-Lender, the Registrar may suspend the registration of such Money-Lender until the case is decided by the court or, as the case may be, final order in such inquiry is passed.

(2) An appeal shall lie from the order of the Registrar suspending registration under sub-section (1) to the Registrar General, whose decision shall be final.

14. (1) Any person may file an application to the Registrar General for the cancellation of registration issued to a Money-Lender on the ground that such Money-Lender has been guilty of any act or conduct for which the Registrar may under section 10 refuse the grant of registration. At the time of filing such application, the person shall deposit such amount not exceeding rupees five hundred as the Registrar General may direct.

Application to Registrar General for cancellation of Registration.

(2) On receipt of such application alongwith deposit, the Registrar General shall hold such inquiry as he deems fit and if he is satisfied that the Money-Lender has been guilty of such act or conduct, he may direct the Registrar to cancel the registration of such Money-Lender and thereupon the Registrar shall, by an order in writing, cancel such registration :

Provided that no such direction shall be issued without giving to such Money-Lender a reasonable opportunity of being heard.

(3) If in the opinion of the Registrar General, an application made under sub-section (1) is frivolous or vexatious, he may, out of the deposit made under sub-section (1), direct to be paid to the Money-Lender such amount as he deems fit as compensation and balance amount of deposit to be forfeited to the State Government and where no amount is directed to be paid to the Money-Lender direct the whole amount to be forfeited to the State Government, and in any other case the Registrar General may on completion of the proceedings under this section, direct the whole amount of the deposit to be returned to the depositor.

(4) A Money-Lender whose registration has been cancelled under this section shall be disqualified for holding registration in the State for such period, not exceeding three years, as the Registrar may direct.

(5) Any Money-Lender who is aggrieved by the order of the Registrar under this section may file an appeal to the State Government within a period of sixty days from the date of receipt of such order, and the order of the State Government on such appeal shall be final and shall not be called in question in any court.

15. (1) Notwithstanding anything contained in section 14, if the Registrar has reason to believe with respect to any Money-Lender holding registration for the area within his jurisdiction that such Money-Lender has been guilty of any act or conduct for which the Registrar might under section 10 have refused the grant or renewal of the registration and which act or conduct was not brought to the notice at the time of grant or renewal of such registration, or that such Money-Lender has contravened any of the provisions of this Act after the grant or renewal of such registration and if in the opinion of the Registrar such

Power of Registrar to cancel registration in certain circumstances.

contravention makes such Money-Lender unfit for carrying on the business of money-lending, the Registrar may, after holding such inquiry as he deems fit and after giving to such Money-Lender a reasonable opportunity of being heard, by an order in writing, cancel such registration.

(2) A Money-Lender whose registration has been cancelled under sub-section (1) shall be disqualified for holding registration in the State for such period, not exceeding three years as the Registrar may specify in the order of cancellation of his registration.

(3) A Money-Lender who is aggrieved by the order of the Registrar under this section may file an appeal within a period of sixty days from the date of receipt of such order to the Registrar General, whose decision shall be final.

No compensation or refund of fees for suspension or cancellation of registration.

16. Where any registration is suspended or cancelled under this Act, no person shall be entitled to any compensation or refund of any fees paid under this Act.

Money-Lender debarred from carrying on business during suspension or cancellation of registration.

17. (1) A Money-Lender whose registration has been suspended or cancelled in accordance with the provisions of this Act or any corresponding law in force in any other State shall, during the period of such suspension or cancellation, as the case may be, be disqualified from holding any registration in the State of Gujarat and shall forthwith cease to carry on business of money-lending in the State of Gujarat.

(2) No Money-Lender shall lend any money to a member of the Scheduled Tribes residing in Scheduled Areas of the State as referred to in clause (1) of article 244 of the Constitution of India, without previous sanction of the village panchayat of that village.

CHAPTER IV SEARCH AND SEIZURES

Registrar General and other officers to have powers of civil courts for certain purposes.

18. The Registrar General, Registrar, Assistant Registrar and any officer authorized under section 19 shall have and exercise the same powers for the purpose of making inquiries under this Act as are vested in Courts under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

V of 1908.

- (a) enforcing the attendance of any person as a witness and examining him on an oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses; and
- (d) proof of facts by affidavits.

19. (1) For the purpose of verification whether the business of money-lending is carried on in accordance with the provisions of this Act or not, the Registrar General, Registrar or any other officer authorized by the Registrar General in this behalf may require any Money-Lender or any person in respect of whom the Registrar General, Registrar, or the officer so authorized has reason to believe that he is carrying on the business of money-lending in the State, to produce any record or document in his possession which in his opinion is relevant for the purpose and thereupon such Money-Lender or person shall produce such record or document.

Powers of certain officers to require production of record on documents, search and seizure, etc.

(2) The Registrar General, Registrar or any officer authorized under sub-section (1) may enter and search without warrant any premises where he has reason to believe that an offence under this Act has been or is being or is about to be committed and may seize any record or document found therein or from any person therein which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act and he may, so far as may be necessary for the purpose of such search or seizure, detain any person whom he has reason to believe to have committed an offence punishable under this Act.

2 of 9174.

(3) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

20. (1) If, upon the inspection of records and documents made under section 19, the inspecting officer is satisfied that the Money-Lender is in possession of property pledged to him by a debtor as security for the loan advanced by the Money-Lender without a valid registration, the inspecting officer shall require the Money-Lender to deliver forthwith the possession of such property to him.

Disposal of property pledged or mortgaged with Money-Lender carrying on business of money-lending without valid registration.

(2) Upon the property being delivered to him, the inspecting officer, if he is not the Registrar, shall entrust it to the Registrar and the Registrar (when he is also the inspecting officer) shall keep it in his custody for being disposed of as hereinafter provided.

(3) On delivery of the property under sub-section (1) or sub-section (2), the Registrar shall, after due verification and identity thereof, return it to the debtor who has pledged it or, where the debtor is dead, to his legal heir.

(4) If the debtor or his legal heir cannot be traced, the Registrar shall, within ninety days from the date of taking possession of the property, publish notice in the prescribed manner inviting claims thereto. If a claim is received, whether in answer to the notice or otherwise, he shall adjudicate upon and decide such claim. If the Registrar is satisfied that any claim is valid, he shall deliver the possession of the property to

the person claiming it on his giving a receipt thereof; and such delivery of the property to the person claiming it shall discharge the Registrar of his liability in respect of such property against any other person. If the claim is refused, the property shall stand forfeited to the State Government.

(5) Where the possession of the property pledged by a debtor can not for any reason (including identity thereof) be delivered to him, then the Money-Lender to whom it was pledged shall be required to pay to the debtor or if he is dead, to his legal heir, the value of such property if such debtor or, as the case may be, the heir claims the property. If the Money-Lender fails to pay the value, it may be recoverable from him as an arrears of land revenue and on recovery of the value, it shall be delivered to the debtor by whom such property was pledged or, as the case may be, to the legal heir and if the debtor or his legal heir can not be traced, the provisions of sub-section (4) apply.

(6) If there is any difference of opinion between the Money-Lender and the debtor, or as the case may be, his legal heir, on the question of value of the property or its identity, the question shall be referred to the Registrar General for decision and his decision shall be final.

(7) The value of the property may be determined with the assistance of the services of an expert appointed by the Registrar General in that behalf. The expert may be paid such honoraria as the Registrar General may, by an order in writing from time to time in relation to any area or areas, determine.

CHAPTER V ACCOUNTS AND STATEMENTS

Duty of Money-Lender to keep accounts and furnish statements.

21. (1) Every Money-Lender shall keep and maintain proper accounts and a cash book, ledger, register of securities, register of debtors and such other books of accounts in such form and in such manner as may be prescribed. The cash book, the ledger and the register of securities shall contain an up-to-date and true accounts of all transactions, particulars of a pawn, pledge of security and where it is kept.

(2) Every Money-Lender shall,-

(a) deliver or cause to be delivered to the debtor on the same day on which a loan is advanced -

(i) a statement in the prescribed form containing an up-to-date and true account of the transaction with the debtor, the amount (both in words and figures) and the date of the loan, the date of its maturity, the nature of security, if any, for the loan, the rate of interest charged and the names and full addresses of the debtor and the Money-Lender and such other particulars as may be prescribed; and if the loan advanced is in kind, the statement shall show, in place of the amount of the loan and the rate of interest, the correct value of the thing or commodity on the date on which it is advanced and the quantity of the

thing or commodity in excess of the loan recoverable in lieu of interest;

- (ii) a pass book in the prescribed form containing an up to date and true account of all transactions relating to the loan;
 - (b) submit to the Registrar such returns of the loans advanced by him, in such form and at such time, as may be prescribed;
 - (c) keep and maintain with himself a copy of the statement referred to in sub-clause (i) of clause (a);
 - (d) upon repayment of a loan in full, mark indelible entry in every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or reassign every assignment given by the debtor as a security for the loan.
- (3) All the particulars required to be entered in the statement and the pass book referred to in clause (a) of sub-section (2) shall be entered therein in clear, distinct and legible terms in local language, or, if so required by debtor, then, in Hindi or English.
- (4) No Money-Lender shall receive any payment from a debtor on account of any loan without giving him a plain and complete receipt for such payment and without obtaining the signature or thumb impression of the debtor or his agent on the copy of such receipt to be kept with the Money-Lender where the payment is made in person.
- (5) No Money-Lender shall accept from a debtor any article as a pawn, pledge or security for a loan without giving him a plain receipt for such article, signed by the Money-Lender and showing therein the description and the estimated value of the article, the amount of loan advanced against it and such other particulars as may be prescribed.
- (6) A Money-Lender shall keep and maintain articles received as a pawn, pledge or security in safe custody and produce the same to the authority referred to in sub-section (1) of section 19 on demand.
- (7) Where any dispute arises as to the correctness of the market value of the commodity advanced as a loan, the matter shall be referred to the Registrar having jurisdiction in the area in which such loan is, or is to be, advanced and the decision of the Registrar shall be final.
- (8) A Money-Lender who has not maintained the record of any transaction relating to a loan advanced by him in the books of accounts as required under this Act shall be deemed to have advanced such loan in contravention of the provisions of this Act.
- (9) A Money-Lender shall keep and maintain relevant books of accounts as referred to in this section for five years except in the cases where the Registrar or Court requires or has required such books of

accounts or statements or pass books for any longer period, as the case may be.

Delivery of
statement of
yearly accounts
and documents to
debtors by
Money- Lender.

22. (1) Every Money-Lender shall deliver or cause to be delivered every year to each of his debtors within thirty days after the expiry of the year, a legible statement in the prescribed form of such debtor's accounts and of any amount that may be outstanding against such debtor. The statement shall contain the following particulars, namely:-

- (i) the principal amount, the interest and the expenses due to the Money-Lender at the beginning of the year;
- (ii) the total amount of loans advanced during the year;
- (iii) the total amount of repayment received during the year;
- (iv) the principal amount and interest due at the end of the year; and
- (v) particulars of location of article as a pawn, pledge or security where it is kept.

(2) The statement to be delivered under sub-section (1) shall be signed by the Money-Lender or his agent, and shall be in local language, or, if so required by debtor, then, in Hindi or English.

(3) In respect of any particular loan, whether advanced before or after the appointed day, the Money-Lender shall, on a demand in writing being made by the debtor at any time during the period when the loan or any part thereof is outstanding, supply to the debtor, or, if the debtor so requires, to any person specified in that behalf in the demand, -

- (a) a statement written in the language referred to in sub-section (2), signed by the Money-Lender or his agent, and containing the relevant particulars specified in sub-section (1);
- (b) a copy of any document relating to a loan made by him or of any security thereof.

Explanation.- For the purposes of this section "year" in relation to any Money-Lender, means the financial year.

Audit of
accounts of
Money-Lender.

23. (1) The accounts of every Money-Lender shall be audited at least once in every year by a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, and the audit report shall be submitted to the Registrar within such period as may be prescribed.

(2) If the audit report under sub-section (1) discloses any irregularity or any contravention or non-compliance of the provisions of this Act or the rules made thereunder, or of any of the conditions of the registration, the Registrar to whom such audit report is submitted, may without

prejudice to any other action that may be taken under any other provision of this Act, by order in writing direct the Money-Lender to take such action as may be specified in the order within the time mentioned therein to remedy the irregularity, or to take such steps necessary to comply with the provisions of this Act or the rules made thereunder or of the conditions of the registration.

24. A debtor to whom any statement or pass book has been furnished under section 21 or 22 shall not be bound to acknowledge the correctness of the particulars mentioned therein and his failure to do so shall not by itself, be deemed to be an admission of the correctness of any of such particulars.

Debtor not bound to admit correctness of particulars in statements or pass book.

CHAPTER VI

CERTAIN OTHER DUTIES OF MONEY-LENDERS

9 of 1872. 25. Subject to the provisions of sections 176 to 179 of Chapter IX of the Contract Act, 1872 or anything contained in any law for the time being in force, no Money-Lender shall dispose off any article taken from a debtor as a pawn, pledge or security for the loan advanced to him, before a period of two years from the date stipulated for final repayment of the loan.

Money-Lender not to dispose off pawned articles before certain period.

26. (1) In every suit to which this Act applies filed by a Money-Lender after the appointed day or in every such suit pending before any court on the appointed day, the court shall consider and decide the point whether such Money-Lender held a valid registration or not at the time when the loan to which the suit relates was advanced and if the Court finds that such Money-Lender did not hold valid registration at that time, it shall dismiss the suit forthwith.

Stay of suits by Money-Lender not holding valid registration.

III of 1909.

V of 1920.

I of 1956.

(2) Nothing contained in sub-section (1) shall affect the powers of a Court of Wards, or an official assignee, a receiver, or an administrator or a Court under the provisions of the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920 or any other law in force corresponding to that Act, or of a liquidator under the Companies Act, 1956, to realise the property of a Money-Lender.

CHAPTER VII

SUITS AND POWERS OF COURT

27. (1) In any suit to which this Act applies-
 (a) a Court shall, before deciding the claim on merits, frame and decide the issue whether the Money-Lender has complied with the provisions of sections 21 and 22;
 (b) if the Court finds that the provisions of section 21 or section 22 have not been complied with by the Money-Lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow cost to the Money-Lender.

Procedure of Court in suits regarding loans.

Explanation.- A Money-Lender who has given the receipt or furnished a statement of accounts or a pass book in the prescribed form and manner, shall be deemed to have complied

with the provisions of section 21 or section 22, as the case may be, in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

(2) A Court trying a suit to which this Act applies shall, in a case in which it finds that the provisions of section 21 or section 22 have not been complied with by the Money-Lender, cause a copy of its judgment or order containing such finding duly authenticated by it and bearing the seal of the Court to be sent to the Registrar by whom the registration was issued to such Money-Lender and on receipt of such copy of the judgments or order, the Registrar may, without holding any further inquiry or giving an opportunity of being heard to the Money-Lender, cancel his registration, or suspend it for such period as the Registrar thinks fit.

Power of Court to limit interest recoverable in certain cases.

28. Notwithstanding anything contained in any agreement or any law for the time being in force, no court shall, in respect of any loan whether advanced before or after the appointed day, decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree.

Power of Court to direct payment of decretal amount by installments.

29. The court may, at any time on the application of the judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the appointed day, in respect of a loan, shall be paid in such number of installments and subject to such conditions, and payable on such dates, as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Reopening of transactions.

30. (1) Notwithstanding anything contained in any law for the time being in force, the court shall, in any suit to which this Act applies, whether heard ex-prate or otherwise, -

- (a) reopen any transaction, or any account already taken between the parties;
- (b) take an account between the parties;
- (c) reduce the amount charged to the debtor in respect of any excessive interest;
- (d) if on taking accounts, it is found that the Money-Lender has received more than what is due to him, pass a decree in favour of the debtor in respect of such amount :

Provided that in the exercise of these powers, the court shall not -

- (i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entrusted into by the parties or any

person through whom they claim at a date more than six years from the date of the suit,

(ii) do anything which affects any decree of a court.

Explanation.- For the purpose of this section, "excessive interest" means interest at a rate which contravenes any of the provisions of section 33.

(2) (i) Notwithstanding anything to the contrary contained in any law, custom or contract, where in any such suit, it is alleged by the debtor -

(a) that the loan was advanced to him by the Money-Lender either before or after the appointed day, not in fact on the security of any property held by him but that the loan was actually advanced to him on his transferring by way of sale of such property to the Money-Lender or to a relative of the Money-Lender, or

(b) that the transaction was in fact in the nature of a mortgage,

the court shall declare the transaction to be a sale or, as the case may be, a mortgage, if the court is satisfied that the circumstances connected with the transaction showed the transfer to be in the nature of a sale or a mortgage and thereupon the court shall proceed accordingly.

(ii) In any such suit, if such relative has not been impeded as a party, the court shall declare such relative to be a party to such suit.

Explanation.- For the purpose of this sub-section, the expression "relative" shall mean any ascendant to the second degree and his descendant to the third degree and spouse of any such ascendant or descendant.

31. (1) Any debtor may make an application in prescribed form at any time to the Court, whether the loan has or has not become payable, for taking accounts and for declaring the amount due to the Money-Lender.

**Inquiry for
taking accounts
and declaring
the amount due.**

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the Money-Lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall, after taking an account of the transactions between the parties, pass an order declaring the amount, if any, still payable by the debtor to the Money-Lender in respect of the principal and interest, if any. In taking accounts under this section, the

Court shall, so far as may be, have regard to the provisions of sections 21 to 30 and sections 33 to 37.

Deposit in
Court of
money due to
Money-
Lender.

32. (1) At any time, the debtor may tender to a Money-Lender any sum of money due from him in respect of a loan by way of principal or interest or both.

(2) If a Money-Lender refuses to accept any sum so tendered, the debtor may deposit the said sum in the Court which has jurisdiction to try the suit for the recovery of such sum, to the account of the Money-Lender.

(3) The Court shall thereupon cause written notice of the deposit to be served on the Money-Lender, and the Money-Lender may, on presenting a petition stating the sum then due in respect of the loan, and his willingness to accept the said sum, receive and appropriate it first towards the interest and the residue, if any, towards the principal.

(4) When the Money-Lender does not accept the sum, the Court shall appropriate the said sum first towards the interest and the residue, if any, towards the principal.

CHAPTER VIII RATES OF INTEREST, ASSIGNEES, ETC.

Limitation
on rate of
interest.

33. (1) The State Government may, from time to time by notification in the *Official Gazette*, fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

(2) No agreement between a Money-Lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the State Government under sub-section (1) shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

(3) No Money-Lender or a person advancing a loan shall make an oral or written demand or charge or receive from a debtor interest at a rate exceeding the maximum rate fixed by the State Government under sub-section (1).

(4) Any loan in respect of which the Money-Lender or any person has realized from the debtor an interest at rates exceeding the maximum rates fixed by the State Government under sub-section (1), shall stand discharged and the amount of excessive interest, if any, so realized shall be refunded by the Money-Lender or any person, as the case may be, to the debtor. If the Money-Lender or any person fails to pay such amount of excessive interest to the debtor, it shall be recoverable from him as an arrears of land revenue, and on recovery thereof, it shall be paid to the debtor.

Prohibition of
charge for
expenses on
loans by
Money-Lender.

34. (1) No Money-Lender shall receive from a debtor or intending debtor any sum, by whatsoever name called, as costs, charges or expenses on the loans other than reasonable costs of investigating title to the property, cost of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between parties

4 of 1882.

includes a stipulation of that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and expenses and to reimbursement thereof, or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

(2) Any sum received by a Money-Lender in contravention of sub-section (1) from a debtor or intending debtor on account of costs, charges or expenses referred to in that sub-section, shall be recoverable from the Money-Lender as debt from him to the debtor or, as the case may be, intending debtor, or shall be liable to be set off against the loan actually lent to the debtor or intending debtor.

35. (1) Where a loan advanced, whether before or after the appointed day, or any interest of such loan or the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any assignee, the assignor, whether he is the Money-Lender by whom the money was lent or any person to whom the debt has been previously assigned shall, before the assignment is made, -

Notice and information to be given on assignment of loan.

- (a) give the assignee a notice in writing that the loan, interest, agreement or security is affected by the operation of this Act;
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act; and
- (c) give to the debtor a notice in writing of the assignment, supplying the name and address of the assignee and send or cause to be sent a copy thereof to the Registrar.

(2) Any person acting in contravention of the provisions of sub-section (1) shall be liable to indemnify any other person who is prejudiced by such contravention.

36. (1) Save as hereinafter provided, where any debt due to a Money-Lender in respect of money lent by him, whether before or after the appointed day or of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, has been assigned, the assignee shall be deemed to be the Money-Lender and the provisions of this Act shall apply to such assignee as if he were a Money-Lender.

Application of Act as respects assignees.

(2) Where for any reason, any such assignment is invalid and the debtor has made any payment of money or transfer of property on account of any loan which has been so assigned, the assignee shall in respect of such payment or transfer, be deemed to be the agent of the Money-Lender for all the purposes of this Act.

37. Notwithstanding anything contained in any agreement between the parties or any law for the time being in force, when a statement is delivered and pass book is supplied to a debtor under section 21 or accounts are taken under section 31 or a tender is made by a debtor to a

Manner of calculating interest.

Money-Lender in respect of a loan under section 32 before the sixteenth day of a month, the interest due shall be calculated as payable for fifteen days of the said month, and if the statement is delivered and pass book is supplied or accounts are taken or tender is made on any subsequent day, then interest shall be calculated for the entire month, irrespective of the fact that such statement is delivered and pass book is supplied or such accounts are taken or such tender is made on any such day.

Explanation.- For the purpose of this section, 'month', in relation to any loan, means a month of the year for which the accounts of the Money-Lender relating to such loan are ordinarily maintained in the books of account of the Money-Lender.

CHAPTER IX OFFENCES AND PENALTIES

Entry of wrong
sum in
documents, etc.
to be offence.

38. No Money-Lender shall accept any promissory note, acknowledgment, bond or other writing from the debtor which does not state the actual amount of the loan, or which states such amount wrongly or which contains erasures or over-writings not duly authenticated by the debtor or accept from the debtor any documents signed by such debtor in which blanks are left, or execute any instrument affecting a debtor in which blanks are left for being filled in after execution.

Prohibition
against
recovery of loan
or interest
except in cash.

39. Notwithstanding anything contained in this Act or in any other law for the time being in force, no Money-Lender shall recover the principal of the loan advanced by him or the interest thereon either in part or in whole except in cash.

Penalty for
molestation.

40. Whoever molests or abets the molestation of a debtor for the recovery of a loan due by him to a Money-Lender shall, on conviction, be punished with imprisonment for a term which may extend to two years and with fine which may extend to twenty-five thousand rupees :

Provided that in absence of the special and adequate reasons to the contrary to be mentioned in the judgments of the Court -

- (i) for the first offence, such imprisonment shall not be less than six months and such fine shall not be less than ten thousand rupees;
- (ii) for the second and subsequent offences, such imprisonment shall not be less than one year and such fine shall not be less than twenty-five thousand rupees.

Explanation.- For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing-

- (a) obstructs or uses violence to or intimidates such other person, or
- (b) persistently follows such other person from place to place or interferes with any property owned or

used by him or deprives him of, or hinders him in the use thereof, or

- (c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person,

shall be deemed to molest such other person :

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.

41. If any Money-Lender or a person takes from a debtor at the time of advancing a loan or deduct out of the principal of such loan any *salami, batta, dharmada* or other extraction of similar nature by whatever name called, he shall be punishable with fine which may extend to twenty thousand rupees.

Penalty for
salami, batta,
dharmada, etc.

42. Whoever-

Penalty for
contravention
of section
5,19,33 or 38.

- (a) carries on the business of money-lending in any area without registration in contravention of section 5; or
- (b) fails to produce any record or document in compliance with any requirement made under sub-section (1) of section 19 or knowingly produces any false record or document; or
- (c) obstructs any officer making an entry, inquiry, search, seizure or entrance under sub-section (2) of section 19; or
- (d) demands, charges or receives from a debtor the interest at higher rate in contravention of sub-section (3) of section 33; or
- (e) accepts any promissory note, acknowledgement bond or other writing or document or any instrument in contravention of section 38; or
- (f) tempers with debtors' record or transaction or makes a wrongful or false entry therein or tempers or mutilates or destroys pawn or property -

shall on conviction, be punished with imprisonment for a term which may extend to two years and with fine which may extend to twenty-five thousand rupees :

Provided that in absence of the special and adequate reason to the contrary to be mentioned in the judgments of the Court -

- (i) for the first offence, such imprisonment shall not be less than three months and such fine shall not be less than five thousand rupees,
- (ii) for the second and subsequent offences, such imprisonment shall not be less than six months and such fine shall not be less than ten thousand rupees.

Penalty for contravention of section 21 or section 22.

43. Whoever contravenes the provisions of section 21 or section 22 shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to ten thousand rupees :

Provided that in absence of the special and adequate reason to the contrary to be mentioned in the judgments of the Court -

- (i) for the first offence, such imprisonment shall not be less than one month and such fine shall not be less than five thousand rupees;
- (ii) for the second and subsequent offences, such imprisonment shall not be less than six months and such fine shall not be less than ten thousand rupees.

General provision for penalty.

44. Whoever fails to comply with, or acts in contravention of, any of the provisions of this Act shall, on conviction, if no specific penalty is provided for such offence in this Act, be punished with imprisonment for a term which may extend to one year and with fine which may extend to ten thousand rupees :

Provided that in absence of the special and an adequate reason to the contrary to be mentioned in the judgments of the court -

- (i) for the first offence, such imprisonment shall not be less than one month and such fine shall not be less than two thousand rupees;
- (ii) for the second and subsequent offences, such imprisonment shall not be less than two months and such fine shall not be less than five thousand rupees.

Power of Court to suspend or cancel registration in certain cases.

45. (1) A Court passing an order of conviction against a Money-Lender for an offence under this Act, if it is satisfied that such Money-Lender has committed such contravention of the provisions of this Act or rules made thereunder as would make him unfit to carry on the business of money-lending, may, by order, direct, in addition to any penalty which it may impose on him for such offence, that such Money-Lender shall be disqualified from holding any registration in the State for carrying on such business for such period, not being less than six months, as the Court may think fit.

(2) Where a Court convicts a Money-Lender of an offence under this Act, or makes an order under sub-section (1), it shall cause the particulars of the conviction and the order passed by it to be endorsed on all the authorized registrations held by the Money-Lender convicted or by any other person affected by the order and shall cause a copy of its judgment and order duly authenticated by it to be sent to the Registrars by whom the registrations were granted, for the purpose of entering such particulars in the registers :

Provided that where any Money-Lender is disqualified from holding any registration under this section, he may appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order of conviction; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(3) Any registration required by a Court for endorsement in accordance with sub-section (2) shall be produced by the person by whom it is held in such manner and within such time as may be directed by the Court and any person who, without reasonable cause, makes default in producing the registration so required shall be liable, on conviction, to a fine not exceeding five hundred rupees for each day for the period during which the default continues.

(4) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

46. (1) If the person committing an offence under this Act is a Hindu Undivided Family, the person responsible for the management of business of such family shall be deemed to be guilty of such contravention.

Offences by corporations.

(2) Where an offence under this Act or rules made thereunder has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence.

(3) Notwithstanding anything contained in sub-section (2), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager or other officer, such director, manager or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section -

- (a) "company" means a body corporate and includes any firm or other association of individuals, and
- (b) "director", in relation to a firm, means a partner in the firm.

2 of 1974.

Certain offences to be cognizable.

47. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences punishable-

- (a) under section 40,
- (b) under section 42 for contravening the provision of section 5 - shall be cognizable.

Cognizance of certain offences with sanction of Registrar.

48. No court shall take cognizance of any offence other than offences referred to in section 47 except with the previous sanction of the Registrar.

Compounding of certain offences.

49. (1) The Registrar General or any other officer authorized by him in this behalf, may accept, from the person who has committed or is reasonably suspected of having committed any offence under this Act, by way of compounding of such offence -

- (a) a sum of money equal to the maximum amount prescribed as fine under this Act, if the offence is committed for the first time; and
- (b) in other cases, twice the amount of such fine prescribed under the respective sections :

Provided that an offence with respect to which a proceeding is pending before the Court shall not be compoundable :

Provided further that the offences punishable under sections 42 and 43 of this Act shall not be compoundable.

Prohibition of arrest and imprisonment of agricultural debtors in execution of decrees of money.

50. Notwithstanding anything contained in any law for the time being in force, no debtor who cultivates land personally and whose debts does not exceed rupees fifty thousand shall be arrested or imprisoned in execution of a decree for money passed in favour of a Money-Lender, whether before or after the appointed day.

Explanation.- For the purpose of this section, the expression "to cultivate personally" will have the meaning assigned to that expression in the relevant tenancy law.

CHAPTER X MISCELLANEOUS

Officers and employees to be public servants.

51. Every officer of the Government when acting or purporting to act in pursuance of the provisions of this Act or the rules made thereunder shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

52. No suit, prosecution or other legal proceedings shall lie against the Registrar General, Registrar, Assistant Registrar or any officer or employee subordinate to him appointed under section 3 or any person acting on his authority, in respect of anything which is in good faith done or purported to be done by him in pursuance of the provisions of this Act, or rules made thereunder or any instructions, for carrying out the purposes of this Act.

Indemnity.

53. Nothing in this Act shall affect any of the provisions of any law which may be in force in any part of the State relating to relief of agricultural indebtedness and no Court shall entertain, or proceed under this Act with any suit or proceeding relating to any loan in respect of which debt adjustment proceedings can be taken under the said Act, or as the case may be, the said law.

Provisions of any other Act in force saved.

54. Whenever a copy of any document from the record of any application, inquiry or appeal under this Act is required by any party to such application, inquiry or appeal, it may be granted on payment of such fees as may be prescribed by the State Government.

Grant of copies of documents on payment of fees.

55. (1) The State Government may, by notification in the *Official Gazette*, make rules generally for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters :-

- (a) the form of the register of Money-Lenders to be maintained by the Registrar under section 4;
- (b) the form of application for registration under sub-section (1) of section 6; the other particulars of such application, under sub-section (2);
- (c) the form of certificate of registration, the conditions of registration and fees for registration and the manner of payment thereof under sub-section (1) of section 7;
- (d) the form of application for renewal of registration, the period for making such application; and the fee for renewal of registration; to fix amount of penalty and the manner of payment thereof under sub-section (1) of section 9;
- (e) the fee for the issuance of a duplicate certificate of registration under section 11;
- (f) the manner of publishing a notice under sub-section (4) of section 20 for inviting claims to property pledged with a Money-Lender;
- (g) the form of cash book, register of securities, register of debtors, ledger and such other books of accounts; and the

manner in which they shall be maintained under sub-section (1) of section 21; the form of statement of accounts, pass books and returns to be submitted to the Registrar and the period for submission under sub-section (2) of section 21; and the other particulars to be prescribed under sub-section (5) of the section 21;

- (h) the form of the statement under sub-section (1) of section 22;
- (i) the period for submission of audit report to the Registrar under sub-section (1) of section 23;
- (j) the form of application to be made to the Court under sub-section (1) of section 31;
- (k) the payment of fees for copies of documents under section 54;
- (l) such other matters which are to be or may be, prescribed under this Act.

(3) The rules made under this section shall, subject to the condition of previous publication, be published in the *Official Gazette*.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification made by the State Legislature shall be published in the *Official Gazette* and shall thereupon take effect.

Power of State
Government
to exempt.

56. The State Government may, by general or special order to be published in the *Official Gazette*, exempt any Money-Lender or class of Money-Lenders from all or any of the provisions of this Act subject to such conditions and for such period as may be specified in such order.

Provisions
of Guj. 35
of 1976 not
to affect.

57. Nothing in this Act shall affect the operation of the Gujarat Rural Debtors Relief Act, 1976.

Guj. 35 of
1976.

Repeal and
savings.

58. (1) The Bombay Money-Lenders Act, 1946 is hereby repealed.

XXXI of 1947.

(2) Notwithstanding such repeal of the Act refer to in sub-section (1) (hereinafter in this section refer to as the "said Act") -

- (a) any license issued under the said Act and validly in force immediately before the appointed day shall be deemed to be the registration issued under this Act, and

- (b) any appointment, notification, order, rule, form, notice or register made, issued or maintained under the said Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been made, issued or maintained under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, rule, form, notice or register made, issued or maintained under the provisions of this Act.

- (3) Any other thing done or action taken under the said Act, so far as it is not inconsistent with the provisions of this Act, shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly, unless and until superseded by any thing done or any action taken under this Act.

STATEMENT OF OBJECTS AND REASONS

At present, the Bombay Money-Lenders Act, 1946 is in force in the State of Gujarat in order to control the business of money-lending and for the regulation of transaction of money-lending in the State. However, it has been found necessary to expand the extent and ambit of the said Act so as to encompass various aspects of money-lending. At the same time, it has been found necessary to make certain changes in the procedural part in force at present. It also seems necessary for making provisions for arming the concerned officers with powers of search and seizure for detecting and curbing illicit money-lending and for preventing exploitation by money-lenders of people of weaker sections of the society as also for deterrent punishments for violations of the provisions of the Act. It is also considered necessary to impose a ban on charging compound interest. To achieve the aforesaid objects, it is considered necessary to have a new Act in place of the existing Bombay Money-Lenders Act, 1946.

The following notes on clauses explain, in brief, some of the important provisions of the Bill.

Clause 1.- This clause provides for the short title, extent and commencement of the Act.

Clause 2.- This clause provides for certain terms used in the Bill.

Clause 3.- This clause provides for certain authorities and other officers to be appointed by the State Government for implementation of the Act.

Clause 4.- This clause provides for the register of money-lenders maintained by the Registrar.

Clause 5.- This clause provides that no money-lender shall commence or carry on the business of money-lending except in the area for which he has been granted a registration subject to the terms and conditions of such registration.

Clauses 6 to 8.- These clauses provide for the procedure to be followed for grant of registration of money-lending and also for grant and validity of registration thereof. It also provides that the Registrar General shall notify the rates for application fees.

Clause 9.- This clause provides for the procedure to be followed for renewal of the registration of money-lending.

Clause 10.- This clause provides for the grounds under which the grant or renewal of registration shall be refused.

Clause 11.- This clause provides for the grant of a duplicate certificate of registration granted to the money-lender.

Clause 12.- This clause provides for the periodical inspection by such officers appointed by the Registrar.

Clause 13.- This clause provides for the suspension of the registration of money-lender where any complaints filed against him in any court or any inquiry is pending in any court for the contravention of the provisions of sub-clause (2) of clause 14 or sub-clause (1) of clause 15.

Clauses 14 to 17.- These clauses provide for the procedure to be followed for the cancellation of the registration issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct; circumstances under which the registration shall be cancelled, disqualified the money-lender for carrying on the business of money-lending.

Clause 18.- This clause provides that the Registrar General, Registrar and other officers shall have the powers of the civil court in certain matters as specified therein.

Clause 19.- This clause provides for the powers of the Registrar General, Registrar or any other authorised officer to require any money-lender to produce any record or document in his possession; it also provides to enter without warrant any premises and also for search and seizure of the same.

Clause 20.- This clause provides for the disposal of property pledged or mortgaged with a money-lender carrying on business of money-lending without valid registration.

Clauses 21 to 23.- These clauses provide for the duty of money-lender to keep accounts, to deliver statement of yearly accounts and documents to debtors and also to provide for audit of accounts thereof.

Clause 26.- This clause provides for the procedure to be followed by the court in cases where the money-lender does not hold the valid registration of money-lending; It also provides that the powers of a Court of Wards, or an official assignee, a receiver, or an administrator or a Court or a liquidator under the provisions of the certain Acts shall not be affected, to realize the property of a money-lender.

Clause 27.- This clause provides for the procedure to be followed by the court in cases where the money-lender does not comply with the provisions of clauses 21 and 22.

Clauses 28 and 29.- These clauses provide for the power of Court to limit interest recoverable on loan in certain cases and also to direct payment of decretal amount by installments.

Clause 30.- This clause provides for the reopening of transactions or any accounts already taken between the parties. It also provides for reducing the amount charged to the debtor in respect of any excessive interest.

Clause 31.- This clause provides for the inquiry held by the Court for taking accounts and declaring the amount due to the money-lender.

Clause 32.- This clause provides for deposit of money in the Court which is due to the money-lender.

Clause 33.- This clause provides for the maximum rate of interest to be fixed by the State Government for any local area or class of business of money-lending in respect of secured and unsecured loans.

Clause 34.- This clause provides for the prohibition of charge as costs, charges or expenses on loans by money-lender other than reasonable costs of investigating title to the property, cost of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between parties includes a stipulation that property is to be given as security or by way of mortgage.

Clause 35.- This clause provides for the notice and information to be given to the assignee and the debtor on assignment of a loan, interest or the benefit of agreement by the money-lender or any person to whom the debt has been previously assigned.

Clause 36.- (i) Sub-clause (1) of this clause provides that the assignee shall be deemed to be the money-lender and the provisions of this Act shall apply to such assignee in cases where any debt or interest due to a money-lender or the benefit of any agreement made or security taken in respect of any such debt or interest, is assigned to the assignee;

(ii) sub-clause (2) of this clause provides that the assignee shall be deemed to be the agent of the money-lender in respect of such payment or transfer of property on account of any loan made by the debtor.

Clause 38.- This clause provides for the entry of wrong sum in the documents like promissory note, acknowledgment, bond or other writing from the debtor.

Clause 39.- This clause provides that the money-lender shall not recover the principal of the loan advanced by him or the interest thereon either in part or in whole except in cash.

Clause 40.- This clause provides for the penalty for molestation of a debtor for the recovery of a loan due by him to a money-lender.

Clause 41.- This clause provides for the penalty for *salami, batta, dharmada* or other extraction of similar nature taken from a debtor at the time of advancing a loan or deducted out of the principal of such loan by a money-lender.

Clauses 42 to 44.- These clauses provide for the penalty for contravention of certain provisions of the Act and also for the general provision for the penalty.

Clause 45.- This clause provides for the power of the Court to suspend or cancel the registration of money-lender in certain cases.

Clause 46.- This clause provides for the offences by the corporations.

Clause 47.- This clause provides for cognizance of offences under sections 40 and 42 for contravening the provision of section 5 of the Act.

Clause 48.- This clause provides for cognizance of certain offences with the previous sanction of the Registrar.

Clause 49.- This clause provides for compounding of certain offences.

Clause 50.- This clause provides for prohibition of arrest and imprisonment of agricultural debtors in execution of a decree for money passed in favour of a money-lender.

Clause 51.- This clause provides that every officer of the Government acting or purporting to act in pursuance of the provisions of this Act or the rules made there under shall be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 52.- This clause provides for usual indemnity for action taken in good faith.

Clause 53.- This clause provides that the provisions of any law which may be in force in any part of the State relating to relief of agricultural indebtedness shall not be affected by the provisions of this Act.

Clause 54.- This clause provides for the grant of copies of any document from the record of any application, inquiry or appeal under this Act, on payment of fees.

Clause 55.- This clause empowers the State Government to make rules generally for carrying out the purposes of the Act and particularly in respect of matters specified therein.

Clause 56.- This clause empowers the State Government to exempt, by general or special order, any Money-Lender or class of Money-Lenders from the provisions of the Act subject to such conditions and for such period as may be specified in the order.

Clause 57.- This clause provides that the operation of the Gujarat Rural Debtors Relief Act, 1976 shall not be affected under the provisions of the Act.

Clause 58.- This clause provides for the repeal the Bombay Money-Lenders Act, 1946 and also provides for the savings thereof.

DILEEP SANGHANI,

FINANCIAL MEMORANDUM

The Gujarat Money-Lenders Bill, 2011 seeks to replace and repeal the Bombay Money-Lenders Act, 1946. The administrative set-up already exists for carrying into effect the provisions of the existing Act and the same set up shall continue for the implementation of the provisions of the present Bill, if enacted. As such, the Bill, if enacted and brought into force, would not involve any additional expenditure from the Consolidated Fund of the State.

DILEEP SANGHANI,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects: -

Clause 1.— Sub-clause (3) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.

Clause 3.- Sub-clause (2) of this clause empowers the State Government to specify, by notification in the *Official Gazette*,

the areas of jurisdiction within which the officers shall exercise the powers and perform duties conferred or imposed upon them.

Clause 4.- This clause empowers the State Government to prescribe by rules the form in which a register of money-lenders shall be maintained by every Registrar.

Clause 5.- Para (b) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, the form in which the non-banking finance companies shall intimate to the concerned registering authority of having registered with Reserve Bank of India.

Clause 6.- (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form of an application in which the person who intends to commence or to carry on the business of money-lending in any area, may make an application for the grant of registration;

(ii) Para (h) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, the other particulars to be contained in the application to be made under sub-clause (1);

(iii) Sub-clause (4) of this clause empowers the State Registrar General to notify the rates of application fees.

Clause 7.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form and the manner in which and the conditions subject to which the certificate of registration shall be granted and the registration fee to be paid by the applicant for registration.

Clause 9.- (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the fees to be paid for renewal and the form and the manner in which and the period within which the application for renewal of registration shall be made before the expiry of the period of validity of a registration;

(ii) proviso to sub-clause (1) of this clause empowers the State Government to prescribe by rules, the penalty to be paid for renewal of registration in any case in which the applicant could not make an application for renewal of a registration within the prescribed period for reasons beyond his control.

Clause 10.- Para (g) of sub-clause (1) of this clause empowers the State Government to prescribe by rules, the other grounds to which the grant or renewal of the registration shall not be refused.

Clause 11.- This clause empowers the State Government to prescribe by rules, the fees to be paid for issue of duplicate certificate of registration.

Clause 20. Sub-clause (4) of this clause empowers the State Government to prescribe by rules, the manner in which the notice shall be published, within ninety days from the date of taking possession of property, inviting claims in case debtor or his heir cannot be traced.

Clause 21.- (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the manner in which the money-lender shall keep and maintain accounts and a cash book ledger, register of securities, register of debtors and such other books of accounts;

(ii) item (i) of para (a) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, the form of a statement to be deliver to the debtor by a money-lender containing an up-to-date and true account of the transaction with the debtor; it also empowers the State Government to prescribe by rules, the other particulars to be contained in such statement;

(iii) item (ii) of para (a) of sub-clause (2) of this sub-clause empowers the State Government to prescribe by rules, the form of a pass-book to be deliver to the debtor containing an up to date and true account of all transactions relating to the loan advanced to the debtor;

(iv) para (b) of sub-clause (2) of this sub-clause empowers the State Government to prescribe by rules, the form in which and the time at which the money-lender shall submit to the Registrar the returns to the loans advanced by him;

(v) sub-clause (5) of this clause empowers the State Government to prescribe by rules, the other particulars to be shown in a plain receipt to be given by the money-lender to a debtor while accepting any article as a pawn, pledge or security for a loan to be advanced to a debtor.

Clause 22.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form of a legible statement to be delivered by the money-lender every year to each of his debtors within 30 days after the expiry of the year containing the particulars as specified therein.

Clause 23.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the period within which the audit report of the accounts of the money-lender audited by a Chartered Accountant shall be submitted to the Registrar.

Clause 31.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form of application to be

made by the debtor to the Court for taking accounts and for declaring the amount due to the money-lender.

Clause 33.- (i) Sub-clause (1) of this clause empowers the State Government to fix from time to time, by notification in the *Official Gazette*, the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

Clause 54.- This clause empowers the State Government to prescribe by rules, the fees to be paid for granting a copy of any document required by any party from the record.

Clause 55.- This clause empowers the State Government to make, by notification in the *Official Gazette*, rules generally for carrying out the purposes of this Act and particularly for all or any of the matters specified in sub-clause (2) of this clause.

Clause 56.- This clause empowers the State Government to exempt, by general or special order to be published in the *Official Gazette*, any Money-Lender or class of Money-Lenders for any of the provisions of the Act subject to such conditions and for such period as may be specified in the order.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Gandhinagar,
Dated the 17th March, 2011.

DILEEP SANGHANI.

By order and in the name of the Governor of Gujarat,

Gandhinagar
Dated the 18th March, 2011.

C. J. GOTH,
Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.