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Legislative Protection and Relief
OF
Agriculturist Debtors in India

BY

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FOREWORD

The following monograph on the legislative measures regarding the protection and relief of agriculturist debtors in India is the result of an extended period of study and observation. In addition to his early experience of rural cooperation and welfare work Mr. Sivaswamy has spent the greater part of the last two years in a detailed study of the large number of enactments, bills, reports of committees etc. dealing with this question and in touring the various provinces of India in order to observe on spot the working of the legislative measures. I have to thank the Servants of India Society for permitting Mr. Sivaswamy to devote his time and energies towards the preparation of this publication and to thank the numerous officials and non-officials who have helped him at different stages of the study.

The legislative protection of agriculturist debtors in India has, a long history. The earliest legislative measures go as far back as the sixties of the last century. The beginnings are to be found in the Encumbered Estates and the Court of Wards Acts. This is essentially class legislation; a century after the beginning of British occupation of India Government was still thinking in terms of the landed gentry. Two serious disturbances heralded the advent of the new problems created by the commercial revolution and the modern judicial system. These two disturbances were the Santal rebellion of 1855 and the Deccan riots of 1872. The Deccan Agriculturists Relief Act — to whose consideration Mr. Sivaswamy devotes a whole chapter — is the first attempt to deal comprehensively with the new set of problems. This Act represents a most important land mark in credit legislative history and for the initial period of its operation it was distinctly beneficial. It certainly prevented the grosser abuses in rural moneylending that had developed under the British judicial system. The abolition of imprisonment for debt took away a formidable weapon from the hands of the creditor and the power given to courts to go into the history of the debt and to grant instalments eased the situation considerably for the debtor. For about a score of years after it was passed and under the care of a special judge the Act did good work. After that period many of its provisions were found to work obstructively and because of its many abuses and evasive practices were generated. In time, it became a target of general criticism and its repeal was universally advocated. Looked at retrospectively the D. A. R. Act is in the main a rural Moneylenders Act. Like the modern Moneylenders Acts — which

derive a great deal from it—the D. A. R. Act seeks mainly to regulate the general structure within which the rural credit machinery shall operate. This also is what may be called the operative part of the Act. Where the Act goes beyond the general aim, its provisions have remained a dead letter. The conciliation and arbitration machinery that it tried to set up almost never functioned; its insolvency provisions were not taken advantage of by the class of debtors; and the provision empowering the Collector to manage the lands of a debtor, enacted to mitigate sales of land to creditors, was not found to be workable.

The next step was taken in another province of smallholders—the Punjab. The Punjab Land Alienation Act addressed itself to a new problem. What was sought to be remedied was not the general abuse of the moneylending system but rather one specific evil—the passing of land from the hands of peasants into the hands of moneylenders. The method used was the prohibition of alienation of lands beyond a certain class; though prevention of alienation of land had been resorted to as early as 1872 in the Santal Regulations, its adoption for a settled peasantry was at this stage entirely novel. The Punjab Act achieved its immediate object—the preservation of land ownership in the hands of a certain class. But it failed to yield the other results expected of it; it failed to stay the process of the loss of lands on the parts of the small peasantry and it failed — by reason of giving rise to a new class of moneylenders — to lighten the heavy hand of the rural moneylender.

Another measure which early sought to grant some relief to the agriculturist against the harsh operation of the moneylending system was the exemption of a minimum produce and agricultural requisites from attachment provided under the Civil Procedure Code. This exemption from attachment, undoubtedly established an important principle, but the actual working of the provisions differed widely from province to province.

The D. A. R. Act and the Punjab Land Alienation Act arose naturally in provinces of small landholders where the abuses of the system of moneylending and its consequence, the dispossession of owner-cultivators, were more apparent than elsewhere. In the landlord provinces the landlord was often also the moneylender and hence the abuses arising out of the debtor-creditor relation could not always be visualised independently of the problems of the tenant-landlord relation. In these provinces the problem of protecting the debtor-cultivator—almost invariably a tenant—never took by itself an acute form and was, when tackled, dealt with as part of tenancy

legislation. Thus while the regulation of usufructuary mortgages became necessary as a result of the Punjab Land Alienation Act, in a landlord province a similar contingency would have to be covered by a regulation of sub-leases.

The area of the application of the D. A. R. Act was widened after the date of its passing, but its provisions were not incorporated in the legislation of any other province. The Punjab Land Alienation Act was adopted in the N. W. F. Province but in other provinces its principle was accepted only in connection with the protection of special classes, such as the aboriginal tribes. For the rest, apart from the enactment of the ineffective Usurious Loans Act (1918), the situation remained unchanged till 1930. Thus while the history of legislative protection covers a long period, and while, for most of the provisions contained in the Acts of the last decade, precedent may be found in enactments or regulations of an earlier period, the problem as we face it today is essentially a product of the last depression. The action taken by the various provincial governments to meet the depression was widely divergent. While in a province like the Central Provinces a series of enactments dealing comprehensively with the problem were passed between 1933 and 1938, in the neighbouring province of Bombay nothing whatever was even attempted till the latter year. For dealing with the situation created by the depression, the logical steps were, the declaration of a moratorium, the scaling down or adjustment of outstanding obligations and the provision of new credit and the regulation of the rate of interest and of the general business of moneylending. You do not find all these steps taken in the various provinces, nor is it always clear what principles were followed in shaping the new laws. The least divergence and difference of opinion is to be found regarding the provisions of the general Moneylenders Acts. In this respect the most serious universal defect is the non-provision of a supervisory or inspecting machinery. Without such a machinery the many regulatory provisions of these Acts are bound to remain largely inoperative. As regards the adjustment of debt and the form of the future credit machinery there is much divergence of opinion and some confusion of thought. In times of an acute depression like the one subsequent to 1929 the main argument in support of a scaling down of debts is the price fall, and the extent of the scaling down may well be measured by the extent of the price fall. But this argument and this measure is available only for a limited period after the onset of the depression. Except in the case of the U. P. Agriculturist Relief Act (1934) scaling down of debts was not attempted in any province as a measure directly arising out of the price fall. In all the other cases an attempt has been made to scale down debts, not as

a measure made specifically necessary by the depression, but rather as a preliminary of a reconstruction measure. The general device adopted for scaling down debts has been the Conciliation Board. The attempt has been to bring the debtor and creditor together and to get the debt scaled down largely as a result of voluntary agreement. There has no doubt been a varying measure of compulsion; obstinate creditors may be penalised in some ways and further, ease of recovery of instalments has been held out as an inducement. In the main, however, the scaling down is voluntary and does not presuppose any violent disturbance of the credit structure or the working of the credit machinery. It is obvious that in such a process no general rules regarding the measure of scaling down can be prescribed and that each case must be dealt with on its individual merits. It is, however, curious to find general measures of scaling down adopted even in some of the recent Acts, e. g. the Madras Act of 1938. The problem of debt adjustment is one of bringing about the largest measure of relief consistent with the continued working of the credit machinery. This gives rise to a number of problems of the structure of the conciliation machinery, the nature of awards and their enforcement which have all been discussed in great detail by Mr. Sivaswamy.

The adjustment of past debts is an immediate operation which takes place once for all within a short time and which cannot be visualised as being periodic. Whether in actuality it has to be repeated or not depends on the success achieved in dealing with the problem of future credit. Here the general frame-work is provided by the Moneylenders Acts, but a variety of additional specific measures have to be adopted to deal with the agricultural credit situation. A consideration of the positive measures for increasing the income of the agriculturists lies outside the scope of Mr. Sivaswamy's thesis. He is concerned with what can be achieved by legislative restrictions. The problem in this instance is how to induce the agriculturist to keep down his credit requirements within a given minimum even at a much lowered cost of credit. Limitations on voluntary or forced alienations of property and rights, limitations on the number of creditors, or limitations on the total amount of credit are the types of measures advocated or used. But in this all-important matter much more careful thinking and much more experience is required before we can be said to be near a satisfactory solution.

An outstanding impression that is bound to be created by a reading of Mr. Sivaswamy's careful record and discussion of the variety of provisions of the different enactments and their developments is of

how one thing leads to another. One aspect of this may be described in Mr. Sivaswamy's words as a race in legal safeguards and their evasion. This is well exemplified in such a case as the attempt in the Punjab to put down benami transactions. But there is another aspect also which owing to the limitations of his subject matter is not equally prominent in Mr. Sivaswamy's thesis. This aspect concerns the positive steps that governments are impelled to take as a corollary of their efforts at negative control; and this aspect has come to be more and more strongly emphasised during the last decade. Even here, as we have pointed above, there is nothing that is in principle novel. The administration of the Court of Wards Act not only contemplated the entire process of adjustment of debts, but also entailed the direct management of private estates by officers of government. The area of operation of State activity that comes under contemplation today is, however, enormously wider.

We are today, it seems safe to assume, standing on the eve of a period of a very extensive regulation of the agricultural industry by the State in India. At such a juncture it is necessary to emphasise the need for a very clear definition of their land policy on the part of our governments. It is a commonplace of thought that all problems in an economic or social sphere are closely interrelated. Policy regarding problems of agricultural credit or tenancy can only be decided in relation to our conception of the future of agriculture and of the peasantry. It will make a substantial difference to our decisions whether we contemplate an India of small individual holders or of large centralised farms. Every decision, of course, implies a policy in the background. Thus the Court of Wards Acts gave measure of the importance attached by Government to the landed gentry; and the Punjab Land Alienation Act reflected a land policy, as do even some detailed regulations such as the instructions to revenue officers under Sec. 40 of the C. P. Tenancy Act. What, however, is required today is to define land policy more clearly, explicitly, and comprehensively than was done on these previous occasions. What we mean may be made clear by a consideration of a specific question to which little attention seems to be yet paid. This is the question of how far and in what manner the idea of the economic holding shall be allowed to influence these legislative measures. When, for example, ownership of tenant rights are made inalienable shall the prohibition of alienation apply equally rigidly to both economic or uneconomic holders and shall such transfers as make for the creation economic holdings be encouraged or not? Or consider the provisions regarding the exemption of a minimum holding from attachment. Will this minimum

holding be defined as equivalent to an economic holding? And if so, will the sale of lands of uneconomic holders be permitted? This is no doubt a complex problem, but unless we courageously think it out, it may become more complex in the future because of today's legislation. It is also a part of policy to decide how far the state shall directly intervene in the affairs of the agriculturist, how far, for example, it shall take on itself to provide the credit requirements of the agriculturist. It is clear that most of today's measures contemplate no revolutionary change in the character of the credit machinery, and the nature of today's legislation is profoundly influenced by considerations of the continued working of the credit machinery. A radical method of adjusting debts seems, to have been adopted by the framers of the new Bombay Bill because they contemplate that in future every peasant whose debt is adjusted will be financed not by the old moneylenders but by the new agency of a resource society. Lack of information as to how this huge experiment is to be worked makes it impossible to judge of its merits, but it is a logical—though entirely novel—measure only if its premise regarding future finance is taken for granted.

All these questions which I have touched in passing and a host of others are treated with a commendable thoroughness by Mr. Sivaswamy in his monograph. He has also gone beyond the limits of the usual type of academic thesis and put forward detailed proposals of his own. Differences of opinion there may be regarding one or the other of Mr. Sivaswamy's proposals. To take one example, the case in favour of allowing freely alienation of ownership rights while creating permanent occupancy tenant rights in favour of expropriators, a policy not favoured by Mr. Sivaswamy may be supported by strong arguments. But whether one agrees with Mr. Sivaswamy or not, it will be admitted on all hands that his proposals have been carefully and consistently thought out and that they merit the most serious consideration on the part of all students of this subject.

D. R. GADGIL

PREFACE

My experience of rural work in the Tamil districts, as a result of my active association with the Co-operative and Panchayet movements in villages, and as the Secretary of the Rural Centre of the Servants of India Society at Mayanoor since 1928 has showed me that there are limits to the work of voluntary agencies. The latter cannot go beyond a certain measure. Civic and sanitary services may be undertaken, or some remunerative employment may be started, or better living ideas may be propagated to the extent to which one has funds, but many fundamental problems on whose solution depend the life and death of millions of agriculturist workers can hardly be solved by voluntary workers. What can a voluntary worker, for instance, do to prevent the exploitation of the agricultural worker by those who own lands, to provide an economic holding, to organise the leisure of the whole village in remunerative industries, to redeem the agriculturist from his load of irredeemable debts, to provide the necessary requisites of the agriculturist for his home and occupation, and to facilitate the sale of goods produced in the village? Legislation and State aid are simultaneously necessary, if rural work is to show any tangible success. The building of sound public opinion on rural questions and the organisation of peasants to press for their solution by the State should, therefore, receive as much attention, if not more, in any scheme of rural development, as acts of social service by voluntary workers, or projects for the joint effort of villagers do.

With this end in view, I was studying the debt problem of the agriculturists. The Director of the Gokhale Institute of Politics and Economics, Poona, Mr. D. R. Gadgil, M. A., M. Litt. (Cantab.), was kind enough to offer the help of his Institute in writing a thesis on the existing legislation for the protection and relief of agriculturist debtors. Mr. Gadgil also wanted that my studies of the existing law should be supplemented by a visit to different provinces to get a knowledge of its working. I visited C. P., U. P., Bihar, Bengal, and Orissa during November and December, 1937, and January 1938. Since then, owing to my preoccupations with my rural work, I could not give undivided attention to the completion of the thesis, and this explains the reason for the delay in publication.

My only justification for adding to the voluminous literature on the subject is the hope that this thesis will assist the workers in the field to put forth a definite scheme to Governments to undertake a complete legislation on the subject.

The time is opportune for pressing such a scheme, as all the governments, whether Congress or non-Congress, have pledged themselves to the electorates in unmistakable terms to relieve rural indebtedness. Governments, formed by the Congress particularly, have bound themselves to control usury (Karachi Fundamental Rights resolution), to declare a moratorium (Election Manifesto), to appoint special tribunals to inquire into the crushing burden of rural debt, and to liquidate debts which are unconscionable or beyond the capacity of the peasants to pay, (Resolution of the Faizpur Congress), to provide cheap credit facilities through the agency of the State (Election Manifesto), and to grant fixity of tenure and substantial reduction in rents to the tenants (Resolution of the Faizpur Congress).

I am thankful to Mr. D. R. Gadgil for not only discussing the various problems with me, but also assisting me in the arrangement of the ideas and their presentation. I am also thankful to the Governments of C. P., U. P., Bihar, and Bengal for giving me every facility to understand the working of debt legislation, and to the several friends of the Servants of India Society in different provinces who enabled me to study this question in all its aspects. To Mr. S. G. Vaze, B. A., Editor of the *Servant of India* and Mr. N. V. Phadke, M.A., LL.B., my colleagues in the Servants of India Society, my thanks are specially due for going through most of the proofs.

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