

DEBT LEGISLATION IN BENGAL

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KUMAR BIMAL CHANDRA SINHA

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FOREWORD

The problem of agricultural indebtedness is at present being discussed and examined by the public as it never was before, and the autonomous provinces are gaining experience in one of the most complicated tasks that governments have to face in communities predominantly agricultural. Mr. Sinha's book on Debt Legislation in Bengal, therefore, comes at an opportune moment. I feel sure that the book will be carefully read by many of the public interested in the subject and that it will enlighten and guide their judgment.

J. P. NIYOGI.

The University of Calcutta,
The 14th January, 1938.

PREFACE

The present monograph is based on an essay which was awarded the Pramathanath Banerjea Medal by the All-Bengal Students' Economic Society. In writing this monograph the writer has availed himself of original documents, acts repealed as well unrepealed, discussions in the legislatures and several treatises and journal articles on the problem. The major sources of his informations are indicated in Appendix IV.

Special acknowledgments are due to Dr. J. C. Sinha of the Presidency College and to Dr. R. M. Chowdhury of the Department of Economics and Commerce of the University of Calcutta for help and encouragement received, and to Dr. J. P. Niyogi, Minto Professor of Economics, Calcutta University, for favouring the writer with a foreword.

B. C. S.

Paikpara Rajbati,
The 15th January, 1938.

Debt Legislation in Bengal

राजन्ययोगक्षेमवहे तु धनिकधारणियोश्चरिभ्रमपेक्षेत ।

“ *The nature of the transactions between creditors and debtors on which the welfare of the Kingdom depends, shall always be scrutinized.*”

—KAUTILYA: *Arthasastra*, Ch. XI, 174.

BACKGROUND OF THE PROBLEM

1 THE problem of the solvency of the peasant has always been one of engrossing interest to the State in India. British administrators, even during the days of the Company, had occupied themselves with the credit-worthiness of the peasant in particular. On the one hand, there had been the direct and indirect effects on the rural economy due to the modifications in the legislative and administrative structure consequent upon the economical and political transformation. On the other, was the active interest taken in the amelioration of the masses by the British administrators since the days of the Famine Commission of 1880.*

2 The history of debt legislation as well as the lines of future development cannot be studied except in relation to the problem of indebtedness—both agricultural and industrial. It is to be noted, however, that indebtedness as an inseparable feature of the social structure is not the same as the problem of indebtedness which is looming large before the public recently. The need for credit is a necessary feature of the agricultural economy of every country and such debt is regarded as a normal phenomenon. But owing to various factors, it has assumed abnormal proportions in our country. Absence of credit facilities has given the money-lender an unfair advantage over the agriculturists. Again the low credit of the borrower, shortage of capital possessed by the money-lender, absence of rival financing agencies, the failure of co-operative societies and loan offices to meet all the requirements of

Causes of
indebtedness

*S. C. ROY: *Agricultural Indebtedness in India*.

Effects of
depressionEstimates of
indebtedness

the locality and tradition and custom—all combine in forcing up the rate of interest higher and higher thus increasing the burden of debt of the peasantry.* Piled up ancestral debt is a factor of no less importance while litigation, social ceremonies and improvident expenditure are regarded as other causes. To these factors of a more or less chronic nature have been added the factors arising out of the depression—factors which have played a prominent part in recent years. As the Census authorities pointed out in 1931, the craze for marrying off girls before the Sarda Act came into operation acted unfavourably upon the indebted peasantry.† A fall in the value of agricultural commodities, chiefly of rice and jute, has led to a further increase in the total volume of indebtedness. All these factors have so far-reaching an influence that the total volume of debt has gone up rapidly. Total agricultural indebtedness of India, as estimated by the Central Banking Enquiry Committee Report, was near about 900 crores ; but the recent enquiry by the Agricultural Credit Department of the Reserve Bank has revealed that the same figure for 1936 is no less than 1800 crores. Taking roughly that the volume of indebtedness has been doubled, it may be assumed that the total agricultural indebtedness of Bengal stands at about 200 crores‡ (the figure of the Bengal Banking Enquiry Committee is 100 crores) or the debt per average agriculturist family at Rs. 320 (the previous figure being Rs. 160). The magnitude of the problem seems almost appalling when we consider the fact that the average agriculturist family at the present moment often has no surplus to pay back the debts!§ The posi-

**Bengal Banking Enquiry Committee Report*, p. 199, para 414.

†*Census Report*, Vol. V, Part I, pp. 14-15.

‡Opinions differ regarding the present volume of agricultural indebtedness in Bengal. The Census authorities admitted a 3.5 p.c. increase (*Vide* Census, Vol. V, Part I, p. 14). But the enquiry by the Reserve Bank shows that the rise has been much greater and there is some truth in the contention of Dr. Naresh Sen Gupta that the figure stands at Rs. 200/- to Rs. 300/- crores (*Vide Varatbarsha*, Pous, 1341).

§The budget of an average agriculturist family is thus estimated :—

					All districts
1928	{	Cash Income	...	...	Rs. 218 ± 4
		Cash Expenditure	...	...	Rs. 217 ± 3
		Surplus or Deficit	...	...	Rs. ± 1
		Debt	...	...	Rs. 112 ± 4
					All districts
1933	{	Cash Income	...	...	Rs. 114 ± 2
		Cash Expenditure	...	...	Rs. 136 ± 2
		Surplus or Deficit	...	...	Rs. —2
		Debt	...	...	Rs. 187 ± 4

Vide Supplement to the *Calcutta Gazette*, Jan. 24, 1935.

tion of industrial workers is no better. As the Royal Commission on Labour pointed out in 1931, the majority of industrial workers are in debt for the greater part of their lives; "many indeed are born in debt and it evokes both admiration and regret to find how commonly a son assumes responsibility for his father's debt, and obligation which rests on religious and social but seldom on legal sanctions."*

So the problem is really three-fold, *viz.*, (1) the old accumulated debts of the agriculturists, (2) the supply of credit for current agricultural operations, and (3) thirdly, betterment of the economic condition of the agriculturists so that they may have some surplus. Though we are at present concerned mainly with the first aspect of the problem, still other aspects are not of less importance. In fact, the Report of the Agricultural Credit Department of the Reserve Bank has quite appropriately stressed two important aspects of this complex problem, "namely the need for reducing debt and restricting credit and at the same time providing the peasant with suitable additional occupation to enable him to supplement his meagre income from agriculture."†

Three aspects of the problem

DEBT LEGISLATION : THE FIRST PHASE

It is an anachronism that debt-legislation in Bengal began much earlier than problem of indebtedness was manifest in its present form. Generally speaking, these regulations were not prompted by any consideration for the peasants but were actuated by the difficulties of the European traders. Two distinct trends, however, are traceable in the early stages: one being in the direction of the laws and regulations relating to the Hindu rule of *damdupat*, and the other being the western influence as evidenced in the Regulations of the late 18th and early 19th centuries, in the Usury Laws Repeal Act of 1855 and in subsequent Acts. The first trend, it must be made clear, was not embodied in any statute. Nevertheless, Bengal Regulation XV of 1793 prohibited the courts not to decree a sum for interest greater than the amount of the principal in any case—a provision which was reaffirmed by the Bengal Regulation XXXIV of 1803 and also emphasised by the Madras Regulation XXXIV of 1802. Further, the High Court of

Two trends

Hindu tradition

*Royal Commission on Labour, Report, p. 224.

†Report of the Agricultural Credit Department of the Reserve Bank of India (1936), p. 7.

Calcutta, among others, recognised that the rule of *damdupat* would apply in the town of Calcutta but not in other part of Bengal.* This rule again according to the Calcutta High Court applies only where both the original contracting parties are Hindus and it applies not only to unsecured loans but to loans secured by a pledge of moveable property and those secured by a mortgage of immovable property. As we would have occasion later on to point out, this rule of *damdupat* was all along recognised in spite of the Usury Laws Repeal Act and this forms a distinct trend in the course of debt-regulation if not debt-legislation of our country.

Western
influence

The other trend has quite an interesting history. Before the passing of the Usurious Loans Act there were quite a large number of regulations for debt-adjustment in our country. As early as 1772, the European debtors were being ruined on account of the absence of any such regulations and the rule for debt-adjustment in 1772 sought to remedy the evil by fixing the rate of interest at Rs. 3-2 per cent. per month up to Rs. 100/- and at Rs. 2 per cent. per month on sums over Rs. 100/-. The Bengal Regulation XV of 1793 again further reduced the rates and allowed interest at the rate of 12 p.c. per annum only.

These provisions were reaffirmed by Regulation XXXIV of 1803 and it was further provided that for the adjustment of the accounts in the cases of mortgages specified in Section IX of the regulation where the mortgagee was to be required to deliver the accounts of his gross receipts from the property mortgaged and also of his expenditures for the management or preservation of it. These provisions were subsequently extended to Marhatta Pergunnahs by Regulation XIV of 1805 (Section 23) and to Benares by Regulation XVII of 1806. Similar arrangements were made for other provinces also; Sections II and V of Madras Regulation XXXIV of 1802 prescribed a twelve per cent. per annum rate and prohibited compound interest on intermediate adjustment of accounts; the Bombay Regulation V of 1829 laid down a rate of 9 per cent. per annum in cases where the rate is not specified. Generally speaking, all these regulations made it extremely difficult for the mortgagee to realize more than twelve per cent. on the principal money, because if he entered upon possession, he was liable to account for the rents and profits and

*MULLAH: *Principles of Hindu Law*, p. 118.

anything received in excess of the rate of interest sanctioned by law was to be applied to the reduction of the principal.*

~? This craze for debt-legislation during the latter part of the 18th century and the first part of the 19th century was followed by a natural reaction and the British ideal of *laissez faire* had not a little to do with it. The Select Committee Report on the Bengal Moneylenders Bill, 1933,† aptly pointed out that legislation intended for the prevention of usury or the levy of excessive rates of interest has been made in different countries of Europe and India. But it was found in consequence that stringency of the law of usury led to the stringency of the money-market and it very badly affected trade and commerce, as money could not be procured for the purpose at the maximum rates of interest fixed by the usury laws. To meet this situation the usury laws had to be repealed in England in 1854, while most other European countries followed the example of England during the next decade. In India, too, the usury laws were repealed in 1855. Act XXVIII of 1855 fixed the rate of interest to be paid in cases of conditional sale at 12 per cent. per annum; the Act also contained provisions for the repeal of the existing usury laws—provisions which again were repealed by the Repealing Act of 1870 (IV of 1870). The reaction

§ But this condition of *laissez faire* could not last long and there was soon felt a need for putting restrictions on moneylenders. The Report of the Deccan Riots Commission, 1875, followed by the more comprehensive Famine Commission Report of 1880 had drawn pointed attention to the extent of indebtedness of the landholding classes. The Governor-General's Council sought to meet the situation by the Land Improvement Loans Act of 1883 and the Agriculturists Loans Act of 1884. But the still more startling revelations made by the Famine Commission's Report of 1901 led to the dawn of an era of imposition of positive restrictions on moneylenders by the Imperial as well as certain provincial Governments. Contemporaneous legislation for the provision of borrowing facilities, notably the Co-operative Credit Societies' Act of 1904, was also passed.‡ Gradually, however, it became apparent that more energetic action was necessary. The provision for the establishment of non-credit co-operative societies by the Act of 1912 was a well-intentioned measure; but

*Compare Ghosh's *Law of Mortgage*, 4th Edition, p. 99.

†Select Committee Report, Minute of Dissent, *Calcutta Gazette*, 9-2-33.

‡S. C. Roy: *Agricultural Indebtedness in India*.

Usurious
Loans Act,
1918

definite restrictions on usury were found imperative and as a result the Usurious Loans Act was passed in 1918. This Act provided that notwithstanding anything in the Usury Laws Repeal Act of 1855, when the court has reason to believe that the interest is excessive and the transaction was substantially unfair, the court may exercise all or any of the following powers, namely, (1) reopen the transaction, take an account between the parties and relieve the debtor of all liability in respect of excessive interest ; (ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liabilities, order the creditor to repay any sum which it considers to be repayable in respect thereof; and (iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just.

English
model

This Act was based on the English Moneylenders Act of 1900. It, however, marked a definite improvement on the latter by substituting the word 'substantially unfair' for the phrase in the English Act, *viz.*, harsh and unconscionable.' It was pointed out by Lord Macnaghten in *Samuel vs. Newbould** " what an intolerable strain would be thrown upon inferior courts unfamiliar with the doctrines and the practice of courts of equity, if they were privileged or condemned to listen to lengthy arguments and venerable precedents before deciding a question that any man of common sense is just as capable of deciding as the most learned Judge in the land." These difficulties, however, are avoided in the Indian Act, which, instead of leaving the court to decide cases on principles of equity, has laid down certain practical tests for the guidance of the court. Clauses (a), (b), (c) of sub-section (2) of section 3 have tried to define the term 'excessive' and have pointed out that the court should judge whether the rate is excessive or not with regard to the amount charged or paid, presence or absence of securities, † the financial condition of the debtor, etc., etc. Clause (d) of sub-section (2) of section 3 again has laid down that the term 'substantially unfair' would involve the consideration by the court of all circumstances materially affecting the relations of the parties at the time of the loan, or tending

*1906 A. C. 467.

†Cp. *Din Mohammod vs. Badrinath*, 120 I. C. 417.

to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan. While the former clauses tried to prevent excessive rates of interest, this clause attempted to prevent cases of fraud, coercion, undue influence, etc., as several judgments show.* This Act, as finally modified, empowered the court to open transactions even for twelve years old.

This Usurious Loans Act had a much wider effect than any such previous law. Apparently it seems that this Act is in conflict with the Usury Laws Repeal Act of 1855 and the Indian Contract Act, (Sections 19, 19A). But really speaking, this Act does not take away any of the powers granted by the Usury Laws Repeal Act, where the provisions of that Act are not inconsistent with or 'repugnant' to the subject or context of this Act. Nor does section 3 (2) (a to d) come in conflict with sections 19 and 19A of the Indian Contract Act, because while the former only declares certain influences to be the elements constituting unfairness, the latter imposes definite penalty for them.

Scope &
effect of
the Act

This Usurious Loans Act of 1918, as amended in 1925, could not provide adequate relief to the agriculturists of Bengal. The terms 'excessive' and 'substantially unfair' are, in spite of their definitions, certainly 'relative and elastic, impossible of absolute definition' as James, L. J. said in the case of *Samuel vs. Newbould*† and there was enough scope in the Act for tyranny and oppression. For example, though the rate of 12 per cent. per annum was regarded as just and fair,‡ it could not be judged from the mere fact that the mortgagor was indebted and in urgent need of money that the rate was high and in the case of *Mt. Durgagati vs. Jagannath*§ even the rate of Rs. 2/8 per cent. per mensem was not held excessive. In fact, the survey by the Bengal Banking Enquiry Committee revealed that the limited application of the Usurious Loans Act had practically no effect whatsoever on the current rates of interest. The rates were found to vary between 12 to 300 per cent.** per annum and in two cases a principal of Rs. 15/- reached the amount of Rs. 9,450-2-10 in nearly 5 years and Rs. 22/- the amount of Rs. 26,00,070!§§ The Royal Commission on Agriculture remarked that 'the evidence we received

*Cp. 28 C. W. N., 834 P. C.: 100 I. C. 679, 1927 All. 315.

†1906 A. C. 467.

‡*Ramkrishna vs. Heramba*, 33 C. W. N. 388.

§118 I. C.; 663 A. I. R.; 1929 All. 680.

***Bengal Banking Enquiry Committee Report*, p. 198, para 413.

§§*Ibid*, p. 199, para 415.

showed conclusively that the Act is practically a dead letter in all provinces.' The Commission, however, could not come to any definite conclusion about the causes of its failure, and on its recommendation, the provincial Banking Enquiry Committees conducted enquiry in this direction. It was found by the Bengal Committee that the reason for its failure is to be found in the uncertainty of some of the provisions of the Act, difficulty of reducing the interest in the absence of any statutory rate, want of sufficient evidence to show the usual and prevailing rate in the locality, difficulty of establishing that a transaction is substantially unfair and that the consent was obtained by undue influence, etc.* Again, reluctance on the part of the court to decide cases *ex parte* in spite of the provisions to that effect, has further complicated the problem and the act has, in the words of district Judges, been 'a dead letter.'

12 Another difficulty which was realised by almost all the district Judges lies in the absence of any standard rate of interest and it is difficult for the debtor to avail of section 3 by proving that the rate of interest charged is excessive. A similar difficulty is experienced in proving that consent was obtained by undue influence or unfair means and as Mr. K. C. Nag, who was the district Judge of Hughly, pointed out in his evidence that the defendant in a suit was afraid of displeasing his village creditor to whom he would have to resort soon after the disposal of the suit for a further loan.† Again, as Dr. Radhakamal Mukherjee has remarked, it is the moneylender and not the cultivator who knows the law and can exploit its processes. Thus, in spite of the Usurious Loans Act and the best wishes of the Sub-judges and the Munsiffs, the law helps the moneylender rather than the cultivator.‡

THE SECOND PHASE : (1) THE BENGAL MONEYLENDERS ACT, 1933

13 The Bengal Moneylenders Act, it may be said, marked a new era in the history of debt-legislation in Bengal. We have already pointed out that hitherto there were two distinct trends in the debt-legislation. In the first place, the English example had a remarkably strong influence on the course of debt-legislation. Yet the Hindu influence, as evidenced in the law of *damdupat*

**Ibid.*, para 309.

†*Cp. Bengal Banking Enquiry Committee, Evidence, Vol III, Part II, p. 24.*

‡*Vide Land Problems of India, p. 280.*

was not wiped out. The Bengal Moneylenders Act is quite remarkable because of the fact that it combines, perhaps for the first time, the two influences which had hitherto been quite separate.

14 The provisions of the Bengal Moneylenders Act thus fall into two distinct categories. In the first place, it follows the English Moneylenders Act as recommended by the Bengal Banking Enquiry Committee, but in the second place it also takes into account certain local usages and age-long tradition. Thus while sections 7, 8 and 9 may be said to be based on English model, local influence is definitely traceable in sections 3, 4 and 6. Section 7 makes provision for the supply of information by the creditor when such information is demanded in a certain form by the debtor, the mode of supply being through registered post. Penalty in the shape of no interest would be given for not supplying the required information. (Sec. 8) Again when the moneylender refuses to accept money sent by the debtor by postal money order, the latter may deposit the sum in the court, provided that the court is satisfied that the money order has been refused. But the principle enunciated in sec. 26f (3) of the Bengal Tenancy Act is repeated here and the acceptance of any money order or withdrawal of any deposit would in no way bind the creditor to any statement made by the debtor in remitting or depositing the money, because such a statement may not be wholly true.

Provisions
of the Act

15 Much more important are the sections relating to the fixing of maximum rate and amount. The Usurious Loans Act did not lay down any hard and fast rule regarding the interpretation of the term 'excessive.' Section 3 of this Act, however, definitely lays down that in cases of moneylending transacted after the commencement of the Usurious Loans Act, a rate exceeding 15 per cent. per annum in the case of secured loans and 25 per cent. per annum in the case of unsecured loans and stipulation for rests at intervals of less than six months would, unless the contrary is proved, be deemed excessive and the transaction harsh and substantially unfair, though a still lesser rate may be deemed excessive. Several factors, however, combine to prove that in some cases the rates of 15 per cent. and 25 per cent. may not be excessive and the transaction may be quite fair, as the findings of several courts show.* Section 4 also has, like section 3, a retros-

*Cp. 33 C. W. N. 388: 119 I. C. 207: A. I. R. 1930 Cal. 207.

Application
of *damdupat*

pective effect and it has been provided that notwithstanding anything in any other Act, where in any suit in respect of any money lent by a moneylender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the principal of the loan, the court, unless it is satisfied that the moneylender had reasons for not enforcing his claims earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan. Again, while section 4 applies the principle of *damdupat* in cases of old transactions, section 6 extends the same principle to all new transactions by providing that no court shall, in respect of any loan made after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan. Finally, section 5 deals, following the recommendation of the Bengal Banking Enquiry Committee, with compound interest. The maximum rate of interest recoverable under a contract which provides for the payment of compound interest has been fixed by the Act at a rate not exceeding 10 per cent. per annum.

Some glaring
defects

16 As already mentioned, the Act combines in itself two elements hitherto left separate: several of its sections follow the English model, while sections 3, 4 and 6 not only fix the maximum rate at 15% and 25% but also apply the principle of *damdupat* both retrospectively and prospectively to all communities. This fixing of the maximum rate and amount is a new feature in the course of debt legislation in Bengal. This Act, it should also be observed, has got a more limited scope than the Usurious Loans Act because while the latter is wide enough to cover all sorts of loan transaction, the former deals with loans of money only. It should be remembered that this Act too, like the Usurious Loans Act, has not been able to render any substantial help to the debtors. The working of the Deccan Agriculturist's Relief Act shows that more the restraints placed on the moneylender the worse becomes the position of the borrower. In fact, such negative measures, unless accompanied by positive measures such as the growth of co-operative societies, would not only ruin the credit-structure of our country but the agriculturists as well. Then again not only the Act is economically unsound but also its definitions are not comprehensive. The term 'moneylender' has been defined in the Act as a person who grants a loan of money. This definition, it would be observed, leaves ample scope for misinterpretation. The English Moneylenders Act of 1900, for example, has defined the term as a 'person whose business is that of moneylending or who

advertises or announces himself or holds himself out in any way as carrying on that business but shall not include the transactions of pawnbrokers, registered societies, statutory lending corporations and corporation exempted by Board of Trade.' This definition is definitely superior to the definition in the Bengal Act in two respects. First, this definition excludes occasional loans and loans granted to friends by the clause 'as carrying on that business.*' The Bengal Act does not make any distinction between professional moneylending and occasional transactions, nor does it leave out money lent to friends or relations. Secondly, the definition in the Bengal Act does not exclude commercial, banking, insurance and similar business institutions categorically. Section 2 of the English Moneylenders Act of 1911 definitely lays down that no person shall be registered as a moneylender under any name including the word 'bank' or under any name implying that he carries on banking business. It was rightly pointed out in the Bengal Legislative Council and the Select Committee that this Act would considerably affect loan companies, credit societies and joint-stock banks. As a matter of fact, there is often no difference between indigenous bankers and money-lenders and it is not also rare for the small scale banking institutions to perform money-lending transactions. As we would have occasion later to discuss, we should not restrict credit by putting restrictions on rural banking institutions. The Bengal Moneylenders Act, it cannot be denied, has acted unfavourably on our rural credit facilities.

17 The third criticism that can be directed against the Moneylenders Act relates to the fixation of the maximum rate of interest for secured and unsecured loans. The Bengal Banking Enquiry Committee found that the principal reasons of the high rate may

Maximum
rate of
interest

*In *Litchfield vs. Dreyfus* (1906) 1.K.B.584, the question of what amounts to carrying on a moneylending business was considered. It was decided by Farwell, J. that 'speaking generally a man who carried on a moneylending business is one who is ready and willing to lend to all and sundry provided they are from his point of view, eligible.' In *Newman vs. Oughton* (1911) 27T. L. R. 254, it was held that an isolated transaction could not constitute a carrying on of business. In *Newton vs. Pyke* (1908) 25 T. L. R. 127, it was decided that lending money to friends or relations will not come within the provision of the Act.

Vide *Proceedings of the Bengal Legislative Council*, 1933, Vol. XLII, No. II, pp. 58-61. Khan Bahadur Azizul Haque tried to defend his position by quoting from the evidence volume of the *Bengal Banking Enquiry Committee Report*. Also compare *Select Committee Report (Calcutta Gazette, Feb. 9, 1933, p. 5)*. "All joint stock banks would be hard hit . . . this law will make the capital fly shy of agriculture and it will flow to Calcutta where the Bill will not be operative."

be traced to the low credit of the borrower, absence of financing agencies in the locality and shortness of capital possessed by the moneylender. Thus, so long as these conditions exist, interest rates are bound to be high even if the moneylender plays no foul game. Moreover, the maximum rates fixed by the Act for secured or unsecured loans are definitely insufficient. Experience in England has shown that with the present system of money-lending, the rate of interest must be high. The Liverpool Loan Fund Committee, which does not seek to make any profits, began by charging 5 per cent. per annum when there was security and 9 per cent. per annum when there was none, in addition to a charge of six pence in the pound to cover expenses. After seven months' experience it was clear that the rate of interest was too low to cover costs and losses and it was estimated that in order to allow to the lender a fair but not exorbitant profit the rate must be 15 per cent. per annum in cases of secured loans and 60 per cent. per annum where there was no security.* The legal position in England at present in regard to the maximum rate of interest is defined by the Moneylenders Act 1927 (section 10); 48 per cent. is the legal maximum. The Bengal Banking Enquiry Committee recommended 48 per cent. in the case of unsecured loans.† To fix still lower rates on the face of all these recommendations has certainly not been judicious.‡

18 The second difficulty lies in the provision for retrospective effect. The section lays down that transactions after the commencement of the Usurious Loans Act (1918) may be reopened, if the rate of interest charged exceeds 15 per cent. in the case of secured loans and 25 per cent. in the case of unsecured loans, that rate would be deemed, *unless the contrary is proved*, by the court to be excessive. Now as experience shows it is very difficult to prove that the rate was not excessive and hence the negative clause is practically of no effect.

19 A further difficulty lies in cases of usufructuary mortgages. In the case of an usufructuary mortgage, the mortgagee enjoys

*N. BAROU: *Co-operative Banking*, p. 13.

†Cp. *Bengal Banking Enquiry Committee Report*, pp. 171-2, para. 325.

‡Three amending Bills have recently been introduced in the Bengal Legislative Assembly with a view to lowering the rates of interest laid down in the Act and also to include within the definition of 'arrear of interest' sums already realised as interest before the institution of the suits. (Vide *Calcutta Gazette*, Dec. 2, 1937). None of these objects can have any justification in view of what has been said above.

the whole of rent and profit in lieu of interest and it is quite possible that the total of rent and profit exceeds 15 per cent. The Bengal Moneylenders Act has left loophole inasmuch as it has made no provision to the effect that if a moneylender enters upon possession, he would be liable to account for the rents and profits and anything received in excess of the sanctioned rate would go to reduce the principal. A parallel criticism applies to the fixing of the maximum amount. Though the measure was recommended by the Bengal Banking Committee, yet the section in its present form admits of several difficulties. The difficulty lies in the meaning of the term '*damdupat*.' It does not imply that the amount of interest would never exceed the principal. It only lays down that interest in amount greater than the principal cannot be recovered at one time.* For this reason if the principal remains unpaid and the interest is paid in smaller sums than the amount of the principal, there is no limit to the interest that can be realised.†

Thus we see that the Bengal Moneylenders Act contains several flaws. But even if the evils mentioned above be remedied, it would not go a long way in solving the problem. In fact, only regulations of a negative character cannot suffice to tackle the complicated situation. Mere prevention of high rates, as has been done in earlier cases, would not completely eradicate the evil. So long as the moneylender continues to be a 'dangerous necessity' and his influence remains strong, it is almost impossible to provide some such legislation against him that would be able to redress the wrongs done to the raiyats. For this reason, unless there are laws granting special privileges to the agriculturists and scaling down old debts, the evil of agricultural indebtedness can hardly be checked.

(2) THE BENGAL AGRICULTURAL DEBTORS ACT

The Bengal Moneylenders Act has been dubbed 'a still-born child,' because it has brought little relief, and even cases which could have come under this Act have been decided by the courts on the relevant sections of the Usurious Loans and Indian Contract Acts. We have pointed out at the very beginning that the problem is really three-fold: not only should the problem of old debts be tackled but fresh debts prevented and new

**Nobin Chunder vs. Romesh Chunder* 14 Cal. 781 (F. B.).

†*Dhondou vs. Narayan* 1 B. H. C. R. (Act) 47.

surpluses created. While the Bengal Moneylenders Act was a feeble attempt to reduce the burden of debts incurred in the immediate past, and to be incurred in future, no considerable effort was made to scale down the huge amount of debt that has been kept piling on, specially since the depression. The Bengal Board of Economic Enquiry found in 1935 that 23 per cent. of the total agriculturists' families were not in debt at all, 43 per cent. were in debt less than two years' income (class A) and 16 per cent. were in debt less than four years' income (class B). The Board, however, realised that "the problem was immense and that it did not matter for practical purposes whether 40 per cent. or 70 per cent. of the agricultural families were in debts or whether their average debt was Rs. 50 or Rs. 150." The Board further opined, while considering the question of proposing ways and means for creating a surplus, that if "excessive interest is ruthlessly cut down, even they (families in class B) would be able to pay off their debts in equated payments spread over 15—25 years."* It was for this reason that the Board drafted a bill for giving relief to the agriculturists of Bengal,—a bill mainly based on the Central Provinces Debt Conciliation Act of 1933 and the Punjab Act for debt adjustment. The idea of the bill was that an Adjustment Board should take up every case and deal with it as whole. 'All the debts of each family must be reported and examined and instalments for payment would be fixed. The civil courts would have no jurisdiction as regards the debtors who have come under the operation of the Act except as regards debts incurred after the award, and decrees for such debts cannot be executed until the awarded debts have all been paid. If the debtor fails to exercise economy and to pay off his instalments, the certificate officer would issue certificates and in case of repeated defaults he would sell all the land and treat the debtor as an insolvent. In fixing the instalments the Board will have regard to surplus in doing so and they will also be guided by amicable arrangements agreed to by a proportion of the creditors or by reasonable offers made by the debtor or the creditor.'†

Board of
Economic
Enquiry's
Survey

Select
Committee
Report

2 The bill introduced in the Council was almost identical with the bill drafted by the Board; but the Select Committee made several important changes. The first important modification lies in the change of title. The Select Committee changed the title

*Supplement to the *Calcutta Gazette*, Jan. 24, 1935, p. 108.

†*Ibid.*, p. 109, para 9.

and narrowed down the scope of the Act by renaming it as the Agricultural Debtors Bill. The next important change made by the Select Committee is to be found in clause 2(a), where the definition of the debtor was so altered as to include a raiyat, under-raiyat or person who cultivates land by himself or by members of his own family or by hired labourers or by *adhiaras*, *bargadars* or *bhagdars*. The Select Committee again provided that the Local Government and not the Commissioner should be the authority to invest Boards with special powers. Another important modification lies in the provision made in section 9A for settling joint debts. One of the most important changes relates to the special provisions for rent in section 21 (1) (a), para. 2 and section 23 (a). The former proviso maintains that the arrears of rent should be paid before any other debts and the latter section includes arrears of rent in a suit instituted by the landlord for the recovery of the arrears of rent accruing during the continuance of the award. Further changes were made in the direction of compulsory debt-settlement, cases of insolvency and co-operative societies.

This Act, it may be noted, is the first attempt to look at the problem of agricultural indebtedness in its full magnitude, though we shall have to notice subsequently some of its inherent drawbacks. Debt in this Act includes all liabilities of a debtor in cash or kind. The Moneylenders Act of 1933 referred to money transaction only, while the Usurious Loans Act of 1918 referred to both.

The Agricultural Debtors Act provides that for the purpose of settling the debt of agricultural debtors the local Government may establish one or more Debt Settlement Boards for any local area specified in the notification. These boards again fall into three categories according to the number of persons invested with power. Generally speaking, each board will consist of a chairman and of not more than four other members, to be appointed by the Local Government for a term of 3 years. But if a board is dissolved by the Local Government for some reason and no new board is appointed, the Government can authorise any officer who has had judicial experience to exercise the powers of award, as specified, and the Collector to exercise all or any of the other powers of the board. Thirdly, in some cases the Local Government may, by notification, also delegate its powers under sections 3 and 4 to the Commissioner. Further, some boards may be invested with all the powers, while others may not.

Debt Settlement Boards: their constitution

Functions

Such being their constitution, the boards are empowered by sections 8 and 9 to receive application from the debtor either individually or jointly or from the creditor. A debtor who ordinarily resides within five years after the first board is established under 3(1) for that local area may make an application for the settlement of his debts. If, however, the debt is an ancestral debt or any such debt for which two or more persons are jointly liable and the application is made jointly, the case may be treated jointly, though the creditor would in no case be entitled to realise from one of such debtors more than his dues.* If, however, the debtor or debtors make no application, the creditor may apply to the board. The board has been given power under 8(5) to entertain a further application incurred before the date of the first application if the applicant can satisfy the board with good and sufficient reason for so entertaining it. But where the previous application is dismissed, the board would obviously have no power to entertain any further application in respect of that debt. Similarly, the board shall not entertain any further application in respect of any debt contained after making the first application. †

The next stage begins with the dealing of those applications by the board. The board in certain cases may summarily dismiss the applications. Thus an application may be dismissed at any stage of its proceedings if the board does not consider it desirable or practical to effect a settlement of debts, or if in the opinion of the board, the applicant fails to pursue his application with due diligence or the debtor is trying to defraud its creditor, or lastly there has been a transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor. But, if the application is entertained, the debtors would present themselves and particular notices and a general notice would be issued asking the debtor and all creditors to submit a statement of debt in the prescribed form ‡ within one month of the date of service or publication of the general notice whichever is later. Failure to comply with such notice without any sufficient reason may result in dismissal of the application. The board shall next inspect relevant documents and determine the amount of debt by considering decrees of civil courts and

*A Bill recently introduced in the Bengal Legislative Assembly for amending this Act seeks to substitute the words 'an ancestral debt' by the word 'predecessor's debt' making the term more general. Vide *Calcutta Gazette*, Dec. 2, 1933.

†For the details of the application, see Appendix I.

‡For the form see Appendix II.

other factors and next try to settle the debts. There are two types of boards aiming at different types of settlement. Clause 19 (a) of the Act provides for amicable settlement—a method which has been found to be successful in the experiments made at Chandpur. When such a board finds that it has not been able to settle all the debts, it will make over the case or cases to the other types of boards after recording the amicable settlements. A board empowered under clause 19 (1) (b) will settle all other debts, in case 40 per cent. of the debts have been settled amicably under sub-clause (a) on the basis of fair offers made by the debtor on terms not less favourable than those agreed upon in the amicable settlements and not reducing the debts below the original principal of the debt.* In this case the remaining creditor or creditors may be forced to accept the offer under the order of the board and if any creditor does not accept any such offer, the board may, instead of passing such order, grant a certificate to the debtor—a certificate which will debar the civil courts from allowing any cost or interest in any suit for the recovery of such debts in excess of simple interest at the rate of six per cent. per annum.†

1.7 Apart from the procedure of normal debt-settlement, provision is made for the adjustment of an insolvent debtor's debts (Section 22). When the debt is so high as cannot be reduced to a sum repayable within twenty years, the board by specific order may reduce his debts to such amounts as is repayable within twenty

Insolvent
debtors

*The term 'fair offer' has been thus defined in Sec. 19 (1) (b) Proviso and Rule 51:—"An offer shall not be considered by the Board to be a fair offer—

- (i) if its terms are less favourable than the terms of amicable settlement relating to a debt of the same description, or
- (ii) if it contemplates the reduction of any debt to an amount which is less than the original principal of the debt as determined under sub-section (3) of section 18, unless creditors to whom there is owing not less than sixty per cent. of the total debt agree to the proposed reduction."

It has also been laid down in Rule 51 that in deciding what is a fair offer the Board 'may take into account the amount which it finds to have been actually received as a loan even though it be less than the amount shown in a bond to have been received by the debtor and shall have regard to the provisions of the Bengal Moneylenders Act.

A recent proposal for amending the Act includes a clause which seeks to reduce the necessary percentage from 40 to 20 only. (Vide *Calcutta Gazette*, Dec. 2, 1937, Part IV, p. 97).

†This provision relating to payment of interest is sought to be deleted by an amending bill on the ground that 'creditors owing to the fact that they are entitled to interest do not generally come to an agreement.' Vide *Calcutta Gazette*, Dec. 2, 1937.

years ; and finally even if this is also not possible, all his properties with certain exemptions would be sold out and the proceeds shall be utilised for the repayment of debt.*

Two special cases

Two important provisions relate to the realisation of rent and the settlement of debts of a member of a co-operative society. Section 23 distinctly lays down that the principal of any debt due in respect of arrears of rent will not be reduced and if any rent due for any land mentioned in the award falls into arrears, the landlord is empowered by Section 26 (a) to include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award. Finally, no settlement of the debts of a member of a co-operative society who owes any amount to such society, shall be valid without the previous approval in writing of the prescribed authority.†

These in a short are the main provisions and it now remains to scrutinize the effects of the Act both on the moneylender and the raiyat. The best way of approach appears to be to divide the criticism into two divisions. First, the principles laid down in the Act need scrutiny; and secondly, the details should be criticised.

Principles of debt-settlement

It may be observed here that the principles laid down in the Act are not peculiar to this province or country. Experiments in debt-settlements have recently been made in some of the European countries such as Roumania, Jugoslavia, Hungary, etc. Such attempts are not rare in Australia. In India, the most remarkable effort in this direction has been made in the Bhavanagar State. The C. P. Debt Conciliation Act and Agriculturists' Relief Acts are experiments in the same direction and there is a talk of introducing a bill on the same line in the Bihar Assembly.

The problems to which all these measures refer, are, broadly speaking, two in number. The first of them is concerned with the issue of principal vs. interest reduction, while the second question is whether such settlement should be voluntary or compulsory. In almost all the European countries, principal reduc-

*Sec. 22(4) exempts one-third of the land held by the insolvent debtor in his direct possession exclusive of the land occupied by his dwelling house. But if he holds less than three acres of land in his direct possession, the Board will exempt at least one acre exclusive of the land occupied by his dwelling house. Again Sec. 24 excludes the dwelling house from sale. But the debtor would not be able to mortgage, change lease or alienate the same in any way until he is granted a certificate of discharge.

†Rule 72 lays down that the authority may either be the Registrar himself or a Deputy Registrar or Assistant Registrar if directed by the Registrar by a general or special order.

tion has been scrupulously avoided and it is only the total amount of interest that has been subject to reduction. Thus the Agrarian Relief Bill introduced in the Hungarian Parliament on October 24, 1933, started from the premises that the capital sums of farmers' debts must not be reduced, nor must inflation be restored to. This Agrarian Relief Bill also adopted the principle of voluntary settlement, while the State undertook to render financial help to owners of small interest holdings. The farmers were divided into three categories according to the burden of indebtedness: farmers of the first category enjoyed certain privileges; while the second category of landowners had the right to demand that their estates would be 'safeguarded' on a payment of a fee at the rate of 4 per cent. per annum and 1 per cent. amortization fee. The landowners of the third category could choose between two methods; they could either pay 4 per cent. and a modicum of amortization or pay 4 per cent. on indebtedness up to forty times their assessed yield and beyond that an infinitesimal annual payment. Those who had small holdings up to ten acres were to have the amounts of their indebtedness to banks and finance companies above 30 times the assessed annual yield paid by the State, and it was estimated that this would amount to 50 million pengo.* In Yugoslavia the general problem of debt came into prominence a few years ago and the Government had to step in and revise the exorbitant interest rate, the principal remaining untouched.† In Roumania, the agricultural conversion scheme became law on May 1st, 1932, and the banks in Transylvania reduced the deposit rates and where the depositors wished to withdraw their fund, arranged by common consent the payment in small instalments stretching over long periods.§ In Australia too, many of the states have adopted the principle of voluntary settlement, provision being made for three meetings between farmers and creditors for coming to an agreement. Generally a voluntary and amicable settlement is arrived at. Failing such an agreement, boards in some States have been given powers of compulsion (e.g., boards in Victoria, Queensland and Western Australia are vested with such powers). In Victoria, any secured creditor who have not agreed to the plan may have his rights suspended by the board for a period not exceeding five years, during which the board may guarantee interest payments on the

European
examples

*Vide *Economist*, Nov. 11, 1933, p. 907.

†Vide *Economist*, Sept. 23, 1933, p. 571.

§Vide *Economist*, June 4, 1932, p. 1241.

debts affected at a rate not exceeding 4%. The Australian Act of 1935 has also adopted the principle of compensation and has sanctioned £ 12,000,000 for distribution amongst the States for the purpose of facilitating the adjustment of farmer's debts by means of direct cash payments to creditors, if necessary.* In India, credit ought to be given to the Bhavanagar State of making a remarkable experiment in this direction. It was a scheme depending for its success upon the voluntary co-operation of the *Sowcars* and the *Kheduts*. Again, as the redemption loan was to be advanced by the Darbar on behalf of the indebted *Khedut*, (the total figure of such advances has been so high as Rs. 2,059,000) and then recovered from him through easy instalments, the amount of such loan had necessarily to be limited according to the capacity and solvency of the *Khedut* concerned.†

Thus we see that, broadly speaking, all these schemes are based on the principle of interest-reduction, voluntary settlement with occasional compulsion, and compensation paid out of State funds. Unfortunately, however, the experience in British India is quite otherwise. The C. P. Debt Conciliation Act of 1932 and the U. P. Agriculturists' Relief Act of 1934 not only contain compulsion clauses used much too frequently but also provides for no compensation. The Bengal Agricultural Debtors Act too is based on similar lines. It has, firstly, provided for principal reduction and has thus deviated from the principle generally accepted in South European and other agricultural countries. That reduction again is based not mainly on voluntary agreement, for the provisions relating to amicable settlement occupy a minor part. The case is not like that in Australia where, as Mr. Ward remarks in the *Economic Record*, an amicable settlement is almost invariably arrived at in the second meeting if not in the first.‡ This compulsory reduction again is not accompanied by provision for compensation or advances by the State. When questioned by S. J. Narendra Kumar Basu in the Select Committee the member-in-charge frankly declared that Government would not advance any money and was not prepared to give any financial help. 'That,' said Mr. Basu, 'is enough for the Council to throw the Bill out altogether.' To provide for compulsion and not to provide any funds would be tantamount to wrecking the whole

Indian
experience

Some
fundamental
flaws

*Vide *Economic Record*, December, 1936.

†Vide *Redemption of Agricultural Indebtedness in Bhavanagar State*, published by the Bhavanagar State.

‡*Economic Record*, December, 1936, pp. 273-276.

system of agrarian and rural credit and to head straight for an economic revolution.* This utter lack of courage on the part of the Bengal Government, as evidenced in its failure to take steps taken by a comparatively small state like Bhavanagar, has certainly acted unfavourably on rural credit and it cannot be denied that the apprehensions of Mr. Basu have partially come true. The folly of putting checks on moneylenders without developing other credit agencies has fallen heavily on the peasants, who now naturally do not find a ready supply of money from the village mahajans as they used to do in times of need.† Finally, the most objectionable feature of this Act lies in the communal turn it has been taking. The conflict between the creditors generally belonging to the Hindu community and the debtors, often belonging to the Mahomedan community, would frustrate the object of the Act by reacting unfavourably on our rural economy.

These, it may be observed, are the criticisms that can be directed against the principles of the Act. The details of the Act, again, need further scrutiny. The constitution of the Debt Settlement Boards has, in the first place, evoked severe criticism. Sj. N. K. Basu rightly objected in his minute dissent to the qualifications of the chairman of boards having compulsory powers and of the appellate officers and Sj. S. M. Bose appropriately demanded that in the case of boards exercising such powers, it is very necessary that the chairman at any rate should be an experienced judicial officer of at least ten years' standing. Absence of judicial qualification on the part of the chairman could in this case have been counter-balanced if lawyers were allowed to appear before the boards. But greater scope has been given for arbitrariness by prohibiting the employment of lawyers (Section 37) and the case of the creditor being repaid only in instal-

A critique of
the Boards

**Calcutta Gazette*, Nov. 21, 1935, Part IV, p. 206.

†This has been the actual case in the mofussil. One of the numerous letters published in different newspapers in this connection may not be quite irrelevant—

গত ২১।১।৩৬ তারিখে বর্ধমান জেলা রায়ত সমিতির এক সাধারণ সভায় সর্বসম্মতিক্রমে নিম্নলিখিত প্রস্তাবগুলি গৃহীত হইয়াছে— ... (৩) বর্তমানবর্ষে 'কৃষিকণ লাঘব' আইন পাশ হওয়ার স্থানীয় মহাজনদিগের নিকট কোন কর্ক্স না পাওয়ার দরুন এ দেশের দরিদ্র কৃষিজীবীদের যে দারিদ্র্য দুরবস্থা হইয়াছে, তাহা বিবেচনা করিয়া সরকার বাহাদুর অবিলম্বেই বাহাতে কৃষিজীবীগণ কম হ্রদে ও সুবিধাজনক সর্বো বর্তমান বর্ষের কৃষিকার্য্য চালাইবার আবশ্যিকমত উপযুক্ত পরিমাণ কৃষিকণ পাইতে পারেন তৎসম্বন্ধে বিহিত ব্যবস্থা করুন। আনন্দবাজার পত্রিকা, ২১শে মে. ১৯৩৬।

ments distributed over a period of fifteen to twenty years is absolutely hopeless. As Costello, A. C. J. has remarked in *Manindra Mohun vs. Bepin Behari** “ it is possible even under the general law for a dishonest debtor even if he be a judgment-debtor, to evade his just obligations and to avoid discharging the debt which he undoubtedly owes. But now a further weapon has been placed in the hands of dishonest debtors in the shape of the intervention of Debt Settlement Boards.”

Section 13 (3) again, as pointed out in the Select Committee, needs drastic alteration, for this is against all principles of justice and equity. This clause lays down that if on the application of a creditor, notice is issued on the debtor calling upon him to submit a statement of his debts within one month and if he fails to do so, the creditor's application is to be dismissed. Now entertaining the application of the debtor and accepting his statement of debts as correct, even if the creditor fails to make a statement, and dismissing the application of the creditor on the failure on the part of the debtor to comply with the notice is nothing short of a mockery of justice and it is not unnatural that this differential treatment, which has got no justification whatsoever from the standpoint of justice and equity, would rouse suspicion in the mind of the public as to some ulterior motive hidden behind the Act. Section 21 lastly is another sore point which embittered the discussions in the legislature and which demands radical alteration. The principle of mutual agreement and gentle compulsion laid down in Section 19 is completely negated by this section which in effect compels the creditors to accept whatever terms are considered fair to the board (even though not a single creditor accepts them) for otherwise their claims cannot be enforced for many years (the period of postponement may go up to 10 years) which means practically that their claims cannot be enforced at all. We have repeatedly emphasised on the bad effects of compulsion without compensation and this weak attitude of the Government coupled with various political considerations and communal implications, is apprehended to dislocate our whole rural economic system.

SUBSIDIARY ACTS

We have hitherto dealt mainly with three acts, *viz.*, the Usurious Loans Act, the Bengal Moneylenders Act and the Agri-

**Manindra Mohun Roy vs. Bepin Behari Talukdar* 41 C. W. N. 1370.

cultural Debtors Act. Though these three may be said to complete the list of debt legislation in Bengal, yet there are certain other Acts incidentally regulating the rate of interest and other related things. The first Act belonging to this category may be said to be the Bengal Tenancy Act, Section 67 of which lays down that an arrear of rent shall bear simple interest at the rate of twelve and a half per cent. per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit whichever is earlier. It may be further noted that this section is applicable only to money-rent and not to produce-rent.* Again the Bengal Public Demands Recovery Act has made provision for interest upon the public demand to which the certificate relates at a rate of six and a quarter per cent. per annum from the date of the signing of the certificate up to the date of realisation. Section 22 (1) of the said Act again lays down that a certificate debtor whose immovable property has been sold in execution of a certificate may within 30 days from the date of sale apply to the court for setting aside the sale after depositing for payment to the certificate-holder the amount specified in the sale proclamation as that the recovery of which was ordered with interest thereon at the rate of twelve and a half per cent. calculated from the date of the certificate to the date when the deposit is made. The Indian Contract Act again lays down some definite principles upon which the right to interest may be regulated proper regard being paid to the principles of free consent, not vitiated by undue influence, fraud, coercion and misrepresentation. Besides, at times the said right to the interest may be regulated by way of award of compensation or damages for breach of contract and thus guiding the position and relation *ex contractu* (Section 73). The Negotiable Instruments Act again enforces the rate of interest specified in a transaction in promissory notes or bills of exchange; and when there is no such specified rate, interest would be calculated at the rate of six per cent. per annum (Sections 79 and 80). Further, there is the Interest Act of 1839, which relates to certain general principles regulating the rate of interest and the calculation of the same by law-courts. Finally, the Civil Procedure Code, 1908, though not directly related to debt legislation as such had important effect on the credit-structure of our country. This Code by laying down detailed and elaborate provisions for the attachment and sale of property on the non-

Bengal
Tenancy Act

Public
Demands
Recovery
Act

Indian
Contract
Act

Negotiable
Instruments
Act

*Vide *Parameshwar vs. Lekh Narayan* 120 I. C. 46.

payment of dues, destroyed the basis of credit in this country. It must be noted that credit-transactions in this country have not merely depended on the material security furnished by the debtor ; rather credit in this country has been dependent upon faith and mutual understanding between the debtor and the creditor—a feature which not only did not generally lead to legal actions but was an active deterrent to fraud and dishonesty. The Civil Procedure Code, it must be admitted, struck at the very root and tried to change completely the nature of credit transactions of our country, though the debtors did not in all cases have the credit-worthiness which this type of legislation presupposes.

SOME ECONOMIC CONSIDERATIONS

We now come to a final point relating to the problem. We have discussed in the first section, the background of the problem: we have in the next place traced two trends visible in the course of debt legislation in the 19th century. We have further noticed how these two trends are combined in the Bengal Moneylenders Act of 1933 and we have also discussed the details of the Agricultural Debtors Act and other regulations relating to debts. We have incidentally dwelt on the points of criticism of the principles and details of these Acts. It now remains to point out the lines on which new improvements can take place and new regulations can be made.

It was pointed out by Major Jack in his enquiry in the Faridpur district that our landlords are often more indebted than higher tenantry and the higher tenantry more indebted than the lower. "It is an interesting feature of our agricultural economics" remarks also a recent writer, "that parties with more rights are more heavily indebted ; therefore the problem of agricultural indebtedness in our country is a problem of the higher tenantry, and by cancellation or liquidation of agricultural debts we do very little service to the peasantry of Bengal, actual tillers of the soil."* Thus the first difficulty that is to be tackled for attacking the real problem of debt lies in the direction of tenancy reform. The chief defect of the present tenancy legislation seems to lie in the fact that nobody is held responsible for the improvement of land. Rights without duties have only facilitated the opportu-

*SACHIN SEN: *The Tenure of Agricultural Land*, p. 81.

nities for debt but have not increased any income from land and have thus deterred the creation of a surplus. Whatever be the other problems of the tenantry of Bengal, it is essential that some provision should be made so that duties may accompany rights in land, so that capital improvement of land and consequently a surplus may go hand in hand with rights over land.

This problem of tenancy reform has a bearing on the problem of debt from another point of view. The Bengal Tenancy Act has created a number of intermediaries who have interposed between the tenant and the landlord and have rendered the latter mere sinecurists. Thus, the under-raiyats and the actual tillers of the soil often pay a heavy amount ; but the profit is reaped mainly by these middlemen. The result has been that parties with superior rights have less profits and those with inferior rights enjoy more profits. This has, as already remarked, not only complicated the problem of debt by giving the raiyats and other superior tenure-holders ample opportunities for involving themselves in debt, leaving the actual tillers of the soil out of the scope of the law, but also has rendered potentialities of credit facilities through land-mortgage banks difficult by making the laws relating to the transfer of land detrimental to the successful operation of those laws. Thus it is not only necessary from the point of view of debt-conciliation but also from the stand point of future credit facilities that raiyats of all grades should be placed on a uniform legal basis.

Another problem that deserves notice in this connection is that related to the alienation of land. In many countries agricultural land is not allowed to pass over to non-agriculturists. For example, the Five-Feddan Law was enacted in Egypt in 1912, prohibiting "the seizure in judicial proceedings of the land, dwelling house or necessary agricultural stock and implements of a cultivator owning not more than 5 acres."* In India, the process began much earlier. The Punjab Land Alienation Act of 1900 prohibited the permanent alienation of land (*i.e.*, sales, exchanges, gifts, will and grants of occupancy rights) with certain exceptions, without the permission of the Deputy Commissioner. It was further laid down that if the alienor was a member of an agricultural tribe but the alienee not a member of the same tribe or of a tribe in the same group, there can be no permanent alienation unless sanctioned by the Deputy Commissioner and ordinarily the

Alienation
of land

*STRICKLAND: *Studies in European Co-operation*, Vol. II, p. 11.

mortgage of such land would take the form of a usufructuary mortgage or the form of a mortgage without possession subject to the condition that if the mortgagor fails to pay the principal and interest according to his contract the mortgagee may apply to the Deputy Commissioner to place him in possession for such term not exceeding 20 years as the Deputy Commissioner may consider equitable, the mortgage being treated as a usufructuary mortgage for the term of the mortgagee's possession. In Bengal, attempts have been made to restrict the free transfer of land, though there has been no Land Alienation Act as such. For example, as the Bengal Banking Enquiry Committee has pointed out, chapter VII (A) of the Bengal Tenancy Act has restricted the voluntary transfer of any tenure or holding by a Santhal and has forbidden the sale of any such tenure or holding in execution of any decree except a rent decree or for the collection of dues recoverable as Public Demands. In the case of a permanent tenure also, free transferability of holdings has been restricted in the sense that every such transfer may be set at naught by the landlord through his right of pre-emption. There is a certain school of opinion in favour of extending these restrictions further so that every raiyat may have a minimum amount of land—preferably an economic holding. But a saner attitude, as the Bengal Banking Enquiry Committee remarked, would be to have no legislation at present on the lines of the Deccan Agriculturists' Relief Act, the Punjab Land Alienation Act and Chapter VII (A) of the Bengal Tenancy Act. "We consider," wrote the Committee, "that restrictions on the free transfer of land by an agricultural tenant, where they exist, should be removed. In the absence of sufficient movable property, land is the only security which any agricultural tenant can offer for his credit. If the free transferability of his rights to the land he holds is curtailed, he suffers much in credit."*

**Rural
Insolvency
Procedure**

Another problem that has been engaging public attention for some time in the connection of debt-legislation is that of providing a suitable rural insolvency procedure. The Royal Commission on Agriculture admitted that existing enactments in this direction are insufficient. 'Relief from debt, whether inherited or incurred by the individual himself, can be sought in the provisions of the Provincial Insolvency Act, but those provisions are of little benefit to agriculturists, partly because they cannot be utilised

**Bengal Banking Enquiry Committee, Report*, para. 306, p. 464.

except in cases of indebtedness amounting to Rs. 500, and partly because the courts are disinclined to allow the benefits of the Act to the landholders whose rights are protected from sale in execution on the ground that such persons are not insolvent within the meaning of the Act.' This act thus lacks the element of special adaptation to land tenures. A Rural Insolvency Act, enacted with a view to provide relief to those agriculturists whose debts exceed greatly the value of their assets, is expected to be of great relief to the indebted raiyats. Care, however, should be taken in administering this act, and as has been pointed out, it is not desirable that the cattle, tools and implements and dwelling places should be sold out to meet the claims of their creditors; but at the same time no injustice should be done to bonafide moneylenders. Finally it should be observed that "legal technicalities" as the Royal Commission on Agriculture observed, "must be subordinated to economic interest and in view of the evidence . . . of the unsuitability to agricultural conditions of the existing insolvency law . . . the use of a simple Rural Insolvency Act should be carefully considered. The main object of such a measure would be to relieve the debtor of what he cannot pay whilst insisting on his paying the utmost he can within a reasonable time."*

CONCLUSION

We now come to the end of our discussion. We have pointed out the background of the problem ; we have sketched the different phases of the history of debt-legislation and we have considered related economic problems. But it must be pointed out in conclusion—and on this point the writer gives particular emphasis—that all these acts relate more or less to one aspect of the problem. It should be always borne in mind that the problem of debt is more a problem of a surplus and of better credit facilities than a problem of debt-legislation only. We have pointed out in the first section that the surplus of the raiyats has recently been greatly reduced leaving no margin for them to draw upon in times of emergency. Hence the creation of a surplus implies a fully organised programme for economic development. Before going into the details of the programme, we should first of all point out the nature of the programme itself. It is a tragedy that debt-legislation in our country, particularly in the

**Royal Commission on Agriculture, Report, para. 367.*

Basis of
credit

early period, has never been on traditional lines. In fact, the debt laws and particularly the Civil Procedure Code destroyed the faith and mutual understanding that the debtor and creditor had for each other in our country and thus destroyed the very basis of credit itself. But though the old basis of credit was thus shattered, yet no new basis in the shape of the credit-worthiness of the raiyats in the western sense of the term was developed, and the net result was that the peasants were left to their own fate. What is much more regrettable is the fact that the mistake committed in the early years is not being corrected even now and the same unpardonable folly of enacting every year debt-laws is creating a sharp cleavage between the debtor and the creditor without giving the debtors any facility for improving their credit-worthiness. That folly is being repeated again and again. Nothing can be more deplorable than the failure to adopt a programme, should, in the first place, include better financing agencies and try to develop co-operative credit societies, and other suitable institutions supplying credit for a comparatively long term such as land-mortgage banks. In fact, it is in this direction that immediate relief may be found possible, for as the Royal Commission on Agriculture remarked—"The greatest hope for the salvation of rural masses from their crushing burden rested in the growth and spread of a healthy and well-organised co-operative movement based on the careful education and systematic training of the villagers themselves."* Nevertheless, the dangers of easy credit should in this connection be carefully avoided, for that might easily frustrate the object of better credit facilities and lead to further debt. †

Comprehensive
outlook

Besides these provisions for better credit facilities, attention should also be directed towards developing multi-purpose co-operative societies. As a recent brochure of the Agricultural Credit Department of the Reserve Bank of India on the Banking Union at Kodinar points out—"If the problem of agricultural indebtedness is to be solved through co-operation—and co-operation affords the best means for solving it—the co-operative movement must give up dealing with its members piecemeal and cater for their wants. Their objects must be comprehensive. There must be multi-purpose societies and for whatever apparent purpose a society is started it must serve as a point of contact and gradu-

**Royal Commission on Agriculture, Report*, p. 436.

†M. L. DARLING: *Cp. Wisdom and Waste in the Punjab Village*, pp. 122-24.

ally other purposes must be developed so that ultimately the whole man is dealt with. Thus starting with the supply of credit for current needs, a society may, as suggested in the brochure get the old debts of its good members liquidated through a land-mortgage bank ; introduce better business method and secure more profits by inducing its members to sell their produce jointly and at profitable rates on indent system without incurring any risk or liability ; save litigation expenses by effecting arbitration ; improve the outturn of the crop by consolidation of holdings, supply of pure seeds and improved implements ; introduce better living measures by adopting bye-laws by common consent which will curtail ceremonial expenditure and remove insanitary habits ; provide for medical relief, and so on. In fact, such multi-purpose societies are expected to go a long way in creating a surplus and thus eradicate the evil of indebtedness.

Finally, no step towards rural reconstruction can have any chance of substantial success unless backed by a systematic **Education** **campaign** educative campaign. As the Royal Commission on Agriculture observed, " We desire to emphasise our considered opinion that illiteracy presents the most formidable single obstacle to rural development in the widest sense We are persuaded that the only hope of substantial progress lies in the mobilisation of all the available forces—both public and private, in a determined attack on illiteracy." It is remarkable that all the enterprising schemes of rural betterment,—for instance, those under the Y. M. C. A. in the different parts of India, or those initiated by the Viswa-Bharati, or by Mr. Brayne—have taken up the problem of adult education and primary education with the greatest earnestness. Debt-legislation, unless supplemented by the introduction of compulsory primary education, it may be safely asserted, can only be a palliative and not a cure of the diseased body economic.

Needless to say that the present writer does not deprecate the value of any honest attempt to solve the economic problem of the agriculturist. But in Bengal the problems of the countryside are diverse. They are not only diverse but move in a vicious circle. The urgency of a system of civic education, of a popular and graded system of adult education, a wastage-proof primary education ; the creation of sources of subsidiary income and a planning of the business of agriculture to secure the necessary surplus are problems of no less importance than the problem of debt-legislation itself. It is in no fault-finding sense,

therefore, that one feels dissatisfied with any tinkering attempts to solve the problems of the countryside. The future prosperity of Bengal, the demands for belated justice to the agricultural industry and the suffering agriculturist, a solvent system of Government finance—all combine in claiming the most serious attention of the economists, administrators and, above all, of the legislators of the country.

APPENDIX I

(vide p. 16)

FORM I

(See Rules 14, 31 and 32)

A court-fee stamp of As. 12 is to be affixed here unless this Form is used merely for submitting a statement of debt under rule 31 or 32 of the Bengal Agricultural Debtors Rules, 1936.

Application and statement of debt by a debtor under the Bengal Agricultural Debtors Act, 1936.

Proceedings No.....Year.....

To the.....Debt Settlement Board,

.....

.....

I/we the undermentioned applicant/applicants *hereby apply under section 8 of the Bengal Agricultural Debtors Act, 1936, for the settlement of my/our debts, of which a list is given in Schedule A.

*have made an application in Form....., dated....., under sections 8 and 9 of the Bengal Agricultural Debtors Act, 1936, for the settlement of a joint debt of which a statement is given in that application and therefore submit this statement of debt.

Serial No.	Name of each applicant.	Father's or husband's name.	Caste of each applicant.	Residence (mouza, union, thana).
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*Note—Strike out the words which do not apply.

SCHEDULE A

(1) Amounts claimed by creditors to be due (including arrears of rent).

Serial No. of the debt.	Names and ad- dresses of credi- tors.	Names of the debt (with description of any bond or other document.	Khatian and plot Nos. of any land mortgaged.	Date when the debt was incurred.
1	2	3	4	5

Amount of principal.	Rate of interest.	Total amount claimed by the creditor.	Amount (if any) admitted by debtor.
6	7	8	9

(2) Particulars of any joint debtors or sureties.

Reference to serial numbers in column 1.	Names and addresses of sureties or joint debtors.
10	11

(3) Particulars of any suit or proceeding instituted regarding any debt.

Reference to serial numbers in column 1.	Name of the court, etc.	Nature of the suit or proceeding with its number and date and a note as to the stage reached.	Amount (if any) decreed, with details.
12	13	14	15

DIRECTIONS:

1. Each debt is to be shown separately and given a separate serial number in column 1.

2. If there is more than one debt claimed by a creditor, his name should be entered once only against all such debts.

3. Column 4 is to be filled up only if there is a mortgage.

4. If there is a bond, "date when incurred" in column 5 and "principal" in column 6 mean the date and the principal shown in the current bond. If the bond has been renewed, details of the previous bonds should be shown in Schedule B.

5. "Total" in column 8 includes principal and interest and also any costs decreed by a court. If there is a *kistibandi* the sum total payable (and not merely the annual *kist*) should be shown here.

6. Column 14 should show whether it is a "rent suit," "money suit," "mortgage suit," "certificate proceeding," "proceeding for the execution of a decree," etc.

7. In column 14 "stage reached" means "pending for sale," "property attached" and the like.

8. In column 15 "details" means "principal, interest and cost."

Any information for which there is no room in the columns provided should be given in Schedule B with references to the serial and column numbers of this Schedule.

SCHEDULE B

History of the Debts.

<p>Reference to serial numbers in column 1 of Schedule A.</p>	<p>Give below any particulars additional to those given in Schedule A, such as the amounts paid from time to time.</p> <p>If the principal of any of the debts shown in Schedule A includes any arrears of interest which have been added when a bond has been renewed or an additional loan has been taken, the following information (so far as it is known to the debtor) should be given below references in the margin to the serial numbers of the debts in column 1 of Schedule A:—the date when the debt was first incurred, the amount of the original principal, the approximate dates and the conditions on which the bond was renewed or the additional loan taken, the rate of interest stipulated in each bond, the amounts paid from time to time and any other relevant facts.</p>
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SCHEDULE C

Particulars of the immovable property of the debtor and of property transferred during the last two years.

(1) Description of Holding.

Mauza Thana		Jurisdiction List No. District.		Khatian No.	
No. of landlord's Khatian	Name of landlord in brief	Payable to landlord		Description of the in- terest and names and residences of the co- sharers of the debtor.	Class to which tenant belongs, etc., special conditions and incid- ents.
		Rent	Cess.		
1	2	3	4	5	6

(2) Land let to tenants.

Serial No.	No. of khatian of each subordinate interest.	Total area in each khatian in preceding column.		Payable to this interest		Extent of debtor's share or interest.	Estimated value.	Remarks. (Note particularly if any land is mortgaged and if there has been any land transferred in the last two years).
		Acres	Decimals.	Rent	Cess			
1	2	3	4	5	6	7	8	9

(3) Land in direct possession of the debtor and his co-sharers.

Khatian number (as in heading of part 1 of this Schedule).....

Plot No.	Description of boundaries of the plot if it has no settlement number.	Class of land	Remarks. (Note particularly if the plot is mortgaged and if there has been any land transferred in the last two years).	Total area of plot.		Extent of debtor's share or interest.	Estimated value.
				Acres	Decimals.		
1	2	3	4	5	6	7	8

SCHEDULE D

Particulars of any transfer of Land.

(1) If the holding or any land included in it has been transferred within the last two years, give below the following details:—The plot numbers, nature of the transfer, value for which transferred, date of the transfer, and name and address of the transferee.

(2) Also enter in parts 2 and 3 of Schedule C particulars of any land included in the holding and transferred within the last two years.

SCHEDULE E

Particulars of the movable property of the debtor.

Serial No. 1	Description. 2	Estimated value. 3	Place where it may be found. 4

SCHEDULE F

Details of the supplementary income of the debtor.

Nature of the income (investments, service, etc.) 1	Annual amount earned or received. 2

SCHEDULE G

Particulars of any mortgage, lien or charge on movable property.

SCHEDULE H
Debts due to the debtor.

Serial No. 1	Amount claimed.		Names and residences of persons from whom claimed. 4	Nature of the debt with description of any bond and with khatian and plot Nos. of any land. 5
	Principal. 2	Interest. 3		

I/we declare that all the debts which are due, or which to my/our knowledge any person claims to be due from me/us and all my/our properties have been included in this statement* and that I/we am/are unable to pay the said debts as claimed in full.*

*I/we also declare that my/our primary means of livelihood is agriculture and that I am a *raiya*/under-*raiya*/we are *raiya*s/under *raiya*s and I/we cultivate land myself/ourselves by members of my/our family/by hired labourers/by *adhiars*, *bargadars* or *bhagdars*.*

Signatures of the persons submitting
the application or statement of debt or
of their authorised agents.

Date.....

† VERIFICATION.

I also declare that the information given on the first page and in†of this application and statement is true to my knowledge and that the information given in the other parts thereof is inserted upon information received and believed by me to be true.

Declared at.....in my presence.

Signature or thumb impression of an
applicant or authorised agent.

.....

Signature of Chairman/Member of the Board.....

Date.....

Note.—*Strike out portions which do not apply.

Note.—†This verification is not necessary if the Form is used merely for a statement of debt.

Note.—‡Here state the Schedules and the numbers of the columns.

APPENDIX II

(Vide p. 16)

FORM VI

(See Rule 27)

Notice under section 13 (1) of the Bengal Agricultural Debtors Act, 1935.

Proceedings No.....year.....

To....., son of/wife of....., resident
in mauza.....union.....thana.....
district.....

Whereas an application has been submitted for the settlement of the debts of the undermentioned debtor, and whereas the Board is of opinion that is is desirable to attempt to effect a settlement between the said debtor and his creditors, you/all the said creditors are hereby required to submit to this Board a written statement in the prescribed form giving full particulars of all debts owed to you/them by the said debtor within one month of the service of this notice upon you/publication of this notice at the Board's office.

The Board will scrutinise such statement at their meeting on the.....
day of.....at.....o'clock, when you/the creditors
should be present.

Signed.....

Seal of the Board.

Chairman.

Dated.....

Note.—Under section 13 (2) of the Act a Board so empowered may declare that the amount of any debt of which a statement is not submitted in compliance with this notice shall be deemed to be the amount given in the statement of the debtor or not to be payable if it is not in the debtor's statement.

Name and description of the debtor.

Name.	Name of father or husband.	Name of mauza, union, thana where resident.

APPENDIX III

List of relevant Acts and Regulations.

Rule for debt Adjustment—1772.
Bengal Regulation of 1793.
Bengal Regulation VII of 1803.
Bengal Regulation VIII of 1805.
Bengal Regulation XVII of 1806.
Madras Regulation XXXIV of 1802.
Bombay Regulation V of 1802.
Interest Act of 1839.
Act XXVIII of 1855 (Usury Laws Repeal Act).
Indian Contract (Amendment) Act of 1879.
Agriculturists' Loan Act (Act XXII) of 1884.
Usurious Loans Act of 1918.
Usurious Loans (Amendment) Act of 1926.
Punjab Regulation of Accounts Act of 1930.
Punjab Land Alienation Act of 1900.
U. P. Agriculturists' Relief Act of 1934.
Debt Conciliation Act of Central Provinces.
Bengal Moneylender's Act of 1933.
Bengal Agricultural Debtors Act 1936.
Bengal Tenancy Act.
Public Demands Recovery Act.
Negotiable Instruments Act.
The English Money Lenders Acts of 1900, 1911, 1927.
The English Agriculturists' Relief Act, 1928.

APPENDIX IV

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Report of the Banking Union at Kodinar by the Reserve Bank of India (Bulletin No. 1 of the Agricultural Credit Department).
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