

DEBT LEGISLATION IN THE PUNJAB

(HISTORY AND RECENT DEVELOPMENTS.)

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(History and Recent Developments.)

In no country of the world has the small holder been able to dispense with the necessity to borrow. But the distinguishing feature of rural indebtedness in India is that for the most part it has been borrowed for unproductive purposes, while the borrowings of the peasant in other countries of the world have generally been actuated by the increase in efficiency of production which it largely brought about. The productive debt creates means for its repayment while in the case of the unproductive debt such means are conspicuous by their absence. Therefore need has been felt for the regulation of the facilities to borrow by legislation from time to time. In recent years the aggravation of the problem of indebtedness due to the depression has resulted in the enactment of various laws in different provinces of the country.

The Extent of Debt.

The amount of debt has been increasing steadily since the establishment of security under the Pax-Britannica ; particularly so during the period of the rise of prices that coincided with the beginning of this century and continued up to 1929. Uptill this date, although the peasant was more involved than in earlier years, yet the burden was not as heavy owing to the rise in the prices of agricultural produce. Since the onset of the depression, although the amount of debt has not increased, the problem has assumed formidable dimensions, because the burden has increased by about 100 per cent—owing to almost 50 per cent fall in prices and the consequent inability of the peasant to make any large repayments of the loans outstanding.

Before 1921 no serious attempt had been made to study the extent of the rural debt of the Punjab, although certain minor enquiries relating to indebtedness and family budgets had been conducted in various parts of the province. The annual reports on co-operation had also contributed some information of value. Mr. Darling estimated the total agricultural debt of the Punjab in 1921 at 90 crores of rupees ; and held that 83 per cent of proprietors were involved in debt. On the basis of the Punjab figure, Mr. Darling estimated that the total agricultural debt of India was in the same year "not less than 600 crores." The Punjab Banking Enquiry Committee's estimate for the total agricultural debt of the Province in 1929 was Rs. 135 crores ; and in 1930, the Chairman of the Committee (Mr. Darling) estimated the same to have risen to Rs. 140 crores. Sir Chhotu Ram estimated the total amount of Punjab agricultural debt at Rs. 200 crores in 1926, and held that 90 per cent of the proprietors were in debt. Mr. Darling's estimate of agricultural indebtedness in 1937 is Rs. 140 crores, but on the whole he thinks it is not very much more than the figure of 1931, *i.e.*, Rs. 135 crores. At present, Mr. C. P. K.

Fazal (Assistant Secretary, Board of Economic Inquiry) has estimated the total amount of the rural debt at Rs. 136 crores. According to this the incidence per head of the agricultural population is Rs. 78-9-3.

Legislation up to 1900.

The first of the enactments dealing with indebtedness—apart from the direct provision of agricultural finance by the Government under the Taccavi Acts of 1871 and 1876—was the *Deccan Agriculturists' Relief Act, 1879*. It was passed on the recommendations of the Deccan Riots Commission which was appointed to enquire into the riots in certain districts of the Deccan. The Act applied to four districts only, and its main aim was to better the relations between the money-lender and the ryot. Later inquiries have brought to light that it failed in its objects and was amended several times, and its provisions according to the Royal Commission on Agriculture were evaded.

The *Agriculturists' Loans Act, 1884*, and the *Land Improvement Loans Act, 1883*, were the first to render effective help to the agriculturists in the form of Government finance of agricultural credit (although earlier also several Taccavi Acts had been passed in 1871, 1876 and 1879 respectively). The *Agriculturists' Loans Act* aimed at the provision of short-term credit, but various factors contributed to the unpopularity of the advances under the Act, e.g., the delay in securing advances, the rigidity of repayments and the petty exactions of the subordinate officials. The Punjab Banking Enquiry Committee has admitted that "nearly all our evidence points to the unpopularity of taccavi as a system of finance." The *Land Improvement Loans Act* was meant to provide long-term credit, and largely owing to the ignorance of the peasantry regarding the existence of the Act, as also owing to other reasons referred to in the case of the *Agriculturists' Loans Act*, not much use was made of it.

These Acts were not very effective in securing the aims they embodied, because of the rise in prices that had begun in 1873 and continued uninterruptedly until the beginning of the Great War. The farmer could generally get as much accommodation at the hands of the money-lender (owing to his inflating credit) as he desired—consequently the Government did not feel any necessity for an effective and regular system of Government advances. Even if the circumstances were different, Government could not have made advances to the agriculturist for unproductive purposes and to fill this gap, he naturally would have been driven to the money-lender; the resultant effect being that he would have all his relations with the money-lender alone, even if at some financial disadvantage.

From 1900 to 1930.

The increasing transfers of land that were being effected in the last quarter of the last century from the agriculturists to the money-lenders and other non-agriculturists, due to the financial

domination of the latter over the former, created a special problem in the Punjab—the land of martial classes. It was felt that the creation of landless proletariat might shake the foundations of the society. *The Punjab Land Alienation Act*, 1901, therefore, provided for the restriction of the transfers of land from the agriculturist to the non-agriculturist tribes—to which the money-lender had hitherto generally belonged—except with the sanction of the Deputy Commissioner. The maximum period for which the mortgages could be effected was fixed at twenty years. The Act has been effective in preventing the sale of land by the agriculturist to the non-agriculturist tribes as such; but it helped the growth of the agriculturist money-lender who has been a greater menace to the peasant proprietor than the non-agriculturist money-lender; and, as the Punjab Banking Enquiry Committee pointed out, he “is more of an obstacle to the spread of co-operation than the ordinary money-lender.” Neither could the Act save the small holder from being bought off by the big landlord. The restrictions placed on the transfer of land under the Act have also been an impediment to the development of agriculture on a commercial basis, as the town classes have not found it possible to invest capital in the most important, though very backward, industry of the Province.

The next important legislative measure was the *Co-operative Credit Societies Act*, 1904 (amended in 1912). The objective of the Act was the cheap provision of agricultural credit and the education of the peasant with the ultimate purpose of supplanting the money-lenders' system, that had held the country in its grip, by the infusion of co-operation in all aspects of the peasant's life. The formation of Co-operative Credit Societies that followed the passing of the Act was taken in hand with vigour under the auspices of the Departments of Agriculture in the Provinces. Later on separate Co-operative Departments were established. Since then, until the beginning of the depression, the quantitative expansion seemed to figure out as a conspicuous achievement of the co-operative principle. The impact of depression on the Co-operative movement revealed the fact that the movement was imposed from above and did not grow from within; hence its inherent weakness as it developed in this country. It flourished in the fair weather, but was unable to withstand the strain of a precipitous fall in agricultural prices, which shook the foundations of the agricultural economy.

Admittedly the Punjab and Bombay have led the whole of India in the progress of co-operation. But even in these Provinces the movement was not as strong as it should have been after 25 years if conducted on proper lines.

The Punjab Banking Enquiry Committee estimated the agricultural financial needs of the Province at between 52 and 65 crores of rupees, and found that the Co-operative Societies provided “only a small fraction of it.” In Bombay, according to the Banking Enquiry Committee, the Co-operative Societies

provide but 7 per cent of the total finance required by the agriculturist. The cultivator, where he is a member, still obtains a part of his finance from the society and the rest from the money-lender. The essence of a co-operative society is that members should learn to manage their own affairs—it is here that the movement has failed.

Statistics relating to the year 1932-3 reveal that ignoring Coorg, the Punjab leads, whether one considers the number of societies, or the number of members, or working capital per head of the population. But even in the Punjab in 1932-3, the proportion of the population affected by the co-operative movement was inappreciable, i.e., about 3 per cent.

The Usurious Loans Act, 1918, was the first to delegate powers to the courts to regulate the rate of interest. The Agricultural Commission held that the Act was practically a dead letter; but the Central Banking Enquiry Committee held that the Act was capable of being worked to the advantage of the debtors in many Provinces and should be retained.

As a result of the Constitutional Reforms of 1919, Agriculture became a transferred subject. Thereafter, the enactments have generally been undertaken to suit the peculiar conditions of each Province. Before 1919, it is significant to note that except for the *Deccan Agriculturists' Relief Act*, which applied only to four districts, and the *Punjab Land Alienation Act* enacted for the special need of the Province, legislation regarding indebtedness in any form had been undertaken on an all-India basis.

The Punjab Regulation of Accounts Act, 1930, seeks to regulate the money-lenders' business. It requires all money-lenders to use regular account-books and to furnish each debtor biannually with a legible statement of accounts, showing not only the amount outstanding but also all loan transactions entered into during the past six months. It also provided for the keeping of separate accounts of the money-lender from that of his accounts as a shop-keeper, where he combined the two vocations.

As a result of the enactment of the *Money-lenders' Registration Act, 1938* (referred to below at p. 6), the provisions of the Act of 1930 will be strictly observed (owing to severe penalties for non-observance laid therein), while formerly they had been mostly ignored and evaded.

During the Depression.

One of the peculiar features of the depression was a greater fall in the prices of agricultural produce relatively to the fall in the prices of the manufactured goods. Although the fall in the prices of agricultural produce was very steep, yet the items of expenditure of a cultivator were rigid—as is exclusively borne out by the Farm Accounts published every year by the Board of Economic Inquiry, Punjab. This increased the farmer's difficulties and there was no way of escape

for him from the debt that he had improvidently incurred during the years of prosperity, except that of payment out of the sale of his capital assets—which consisted in his land, his house and his implements.

Measures of relief have been initiated in various countries for the distress that had followed in the wake of economic depression. Relief took the form of bounties, advance of loans on very low rates of interest, reduction of accumulated interest, reduction of capital debts, prohibition of forced sales of land in execution of decrees, and the exemption from attachment of various items of property according as circumstances in each country seemed to permit, justify or demand.

Legislation has also been undertaken in the Punjab—up till now more exhaustively than in any other province in India—with a view to relieving the grinding burden of large accumulations of debt.

The Punjab Relief of Indebtedness Act, 1934, was the first of these measures. The important provisions of the Act are as under :—

(i) The rate of interest for secured loans is not to exceed 9 per cent per annum compound interest, and 12 per cent per annum simple interest ; in the case of unsecured loans, the corresponding rates are 14 per cent and 18 $\frac{3}{4}$ per cent.

(ii) Debt Conciliation Boards may be established for effecting amicable settlement between the creditors and the debtor on application by any of the parties provided the amount of the debtor's debt does not exceed Rs. 10,000. In case a creditor fails to submit the statement of his debts (when an application for settlement has been filed by a debtor or any of the other creditors) by a fixed date, the debt will be deemed to have been discharged. Provision has been made for the granting of a certificate to the debtor in those cases where a fair offer is not accepted by the creditors. The Board can grant such a certificate only when creditors to the extent of 40 per cent of the debtor's debt have come to an amicable settlement with the debtor. If, after the grant of such a certificate, any creditor goes to the law court, the court shall not allow him any costs or interest exceeding 6 per cent (simple) per annum on the debt outstanding, when the certificate was granted. In case the creditor secures a decree, it would not be executed until six months after the expiry of the period fixed in the "agreement" arrived at under the auspices of the Conciliation Board. The decisions of the Board shall be final.

(iii) The Act incorporates the principle of *Damduput* by which no court shall grant a decree for a larger sum than twice the amount of the sum taken as principal—in the case of a loan borrowed after the Act came in force.

Consequent upon the passage of this Act, Conciliation Boards were appointed in four Districts—Jhang, Hissar, Hoshiarpur and Rohtak. Debt settlements have been effected in many cases—but, it has been asserted, rarely to the benefit of the creditor. The criticisms that have been levelled against the working of the Boards

have evoked no reply from the Government so far, and it may not be unfairly inferred that they are not altogether lacking in veracity. It has been maintained, and plausibly too, that means were provided by this Act to the debtor to create fictitious debts and fictitious creditors and thereby entirely escape the burden of the debt that would have otherwise fallen upon him. In short, the Act in its working has generally been wholly beneficial to the debtor, and only in some cases to the creditor. Another line of criticism against the Act is that, although restrictions have been placed against the creditor for the recovery of debts through the courts, yet the Act has provided no facility for the payment of the particular amounts at the agreed time to the creditor. As in Bhavnagar, the State should have assumed responsibility for the payment of the settled amounts of debts, and it should have made such payment either through the court or through the Co-operative Societies. In any case, it could realize the instalments falling due along with the demands for land revenue or even otherwise. So the effect on the creditor has been very baneful, and consequently he has restricted his activities to as limited a field as he could reasonably do.

The Punjab Debtors' Protection Act of 1936 aims at the more effective protection of the debtor. It exempts from attachment or sale standing trees, apart from the land on which they stand ; and standing crops other than cotton and sugarcane. It also provides for such partial exemption of debtor's land from temporary alienation, as may in the opinion of the Deputy Commissioner provide for the maintenance of the debtor and the members of his family, taking into account all his financial circumstances. It exempts ancestral property from liability, except in case the debt has been expressly incurred against mortgage of such property. It reduces the period of execution of a decree from 12 to 6 years.

This Act again provides an effective armour for the protection of the debtor and although giving him a position of vantage over the creditor it does not help the latter in any way except that it will have a sombre effect on his business, and his relations with the debtors will be more guarded in future. Undoubtedly the Act places restrictions in the way of the creditor in the realization of debts in certain cases, but here it will help the poor and the needy.

Recent Developments.

With the advent of Provincial Autonomy, every Provincial Government has legislated to deal with one aspect or the other of this all important problem of rural debt. In the Punjab four Bills have been passed. Two of them have received the assent of the Governor, while the other two have been referred to the Governor-General.

The Punjab Registration of Money-lenders' Act, 1938 aims at regulating the business of the money-lender on the lines of the *British*

Money-lenders' Act, 1927. According to this Act, every money-lender is to apply for the registration of his name at the office of the Collector of the District ; and the registration fee is Rs. 5. He is also to apply for a licence which will be granted to him for such period, in such form, on such conditions and on payment of such fees as may be prescribed. The licence shall be renewed after the expiry of a prescribed period. But his licence is liable to be cancelled, if after the coming into force of this Act, he is found guilty of any dishonest and fraudulent practice in his business or is found by a court to have charged higher rates of interest than those prescribed under the *Punjab Relief of Indebtedness Act* in more than one suit, or has been held by a court to have contravened the provisions of section 3 of the *Punjab Regulation of Accounts Act* in more than two suits. If a money-lender is not registered and does not hold a valid licence, any suit instituted by him for the recovery of a loan or the execution of a decree relating to a loan shall be dismissed after this Act comes into force.

Power has also been given to the Commissioner of granting to the money-lender (whose licence has been cancelled) a certificate specifying the loan in respect of which a suit may be instituted by him or the decrees in respect of which an application for execution may be presented.

The Provincial Government has been given the power to exempt any person or class of persons from the operation of the Act. This Act does not affect the loans granted by a landlord to his tenant for the purposes of husbandry and also those granted by Banks, Co-operative Credit Societies or the Central and Provincial Governments.

The Act is well-intentioned in that it seeks to regulate the much-decried business of the money-lender on a sound footing upon which insistence was laid by the Royal Commission on Agriculture and more so by the Central Banking Enquiry Committee. The Statutory Report* issued by the Reserve Bank of India also stressed the desirability of the regulation of the money-lenders' business. But the provision for the cancellation of the licence involving the consequent inability of a money-lender to recover any loans may be too harsh, unless used occasionally. So, although there is all the economic justification for the aims of the Act, much will depend upon how it is worked in the future.

The *Punjab Restitution of Mortgaged Lands Act, 1938*, applies to any subsisting mortgages of land which were effected prior to 8th June, 1901. According to it a mortgagor can at any time present a petition to the Collector praying for restitution of possession of the land mortgaged.

If the Collector finds that the value of the benefits enjoyed by the mortgagee, while in possession, equals or exceeds twice the amount of the principal sum originally advanced under the mortgage, he can order that the mortgage be extinguished and the land be restored to the mortgagor. But, if he finds that it

is less than twice the amount of the principal sum and some payment is still due to the mortgagee, he can order for the payment of compensation by the mortgagor to the mortgagee at the following scale :—

1. 30 times the land revenue assessed on the land at the time when it was mortgaged, if the mortgagee has been in possession for a period exceeding 30 but not exceeding 40 years.
2. 15 times if he has been in possession for a period exceeding 40 but not exceeding 50 years.
3. 5 times if he has been in possession for a period exceeding 50 years.

This measure is highly discriminatory, being based on the Land Alienation Act of 1901, which itself is of a discriminatory nature. In so far as the restoration of lands is effected from the clever and the unscrupulous into the hands of the honest, industrious and the needy, the Act will give a real relief. But the Act does not stop at this. It will restore any subsisting mortgage even to a big landlord, where he happens to be the mortgagor, even though the person who is deprived of the possession of the mortgage may himself be involved in distress thereby. This brings out the fact that relief will be afforded not merely to those who stood in need thereof, but to any agriculturist who was in the position of a mortgagor. Another discriminating feature of the Act is that it applies only to the mortgages effected before 1901. It has been estimated that by this measure 729,012 acres would be redeemed; but if the scope of the Act had been widened to cover the mortgages effected after 1901, another 4,377,000 acres would have been redeemed. If this were done, it would have benefited the mortgagors in the same way and even more (as the number of acres involved is far too large) those who at some occasion of need did not desist from mortgaging the only few acres they possessed. The mortgagees since 1901 have been mostly the agriculturist money-lenders and the big landlords who possessed the resources to arrange for the possession of a mortgage.

Further, it is unlikely that any compensation will be paid, because during the period of the rise of prices that continued till 1929, rarely was there any piece of land which did not provide its owner (or the mortgagee in possession) with at least double its price in 1901. If this is so, it is clear that only those people who happened to invest their savings in land bear the brunt for no fault of their own; while those who invested in other directions escape unhurt although in numerous cases they have earned more than ten times the amounts invested. This is penalising only a particular class of investors for which there is no economic justification.

The other two Bills are amendments to the *Punjab Alienation of Land Act*, but neither of them has become an Act so far.

The *Punjab Alienation of Land Act (Second Amendment)* Bill contains provisions that declare the "Benami" transactions null and void. A "Benami" transaction means a transaction of a member

of an agricultural tribe with a member of the same agricultural tribe or of a tribe in the same group, and the effect of the transaction is to pass the beneficial interest to a person who is not a member of the same tribe or of a tribe in the same group. The alienor consequently shall be entitled to the possession of the land so alienated, even if he himself was a party to evade the provisions of the *Punjab Alienation of Land Act*.

The legality of the "Benami" transactions has been the subject of a controversy carried on in the press; but we may leave that for the lawyers to decide. What we are concerned with is the fact that the conclusion of "Benami" transactions involved the investment of certain amounts of capital by at least some of the honest investors who sought to prop up the invalidated industry of agriculture. These persons will be deprived of their possessions without any kind of compensation. The incidence of the nullification of "Benami" transactions will be the greater the more recently they have been concluded. The effect of this measure in the restriction of credit of the agriculturist will be much more than any of the other Bills, because it will involve the disappearance of contracts entered into as recently as a year back. Thus the dispossession of those who happened to invest in land is wholly unjustifiable, and the restriction of credit will injure the agricultural economy of the Province, unless some ready-made system is there to supplant the present system against which these measures have been aimed, in some cases to regulate it, and in others to pave the way for its final abolition—as appears from the writings and utterances of those in power in the press and on the platform.

The last of these Bills is the *Punjab Alienation of Land (Third Amendment) Bill, 1938*, which aims at the inclusion of the agriculturist money-lender to a certain extent in the same category as the non-agriculturist money-lenders. It is provided that, except with the sanction of the Deputy Commissioner, no permanent alienation of land can be made by a member of an agricultural tribe to a member of the same tribe or of a tribe in the same group who being a creditor has advanced to such person any loan, until such loan has been repaid or settled in full by the debtor and a period of three years has elapsed since repayment or settlement.

This Bill has to a certain extent removed the long-standing grievance that the agriculturist money-lender was taking possession of lands of his debtors in lieu of the debts owed to him. This is beneficial so far as it goes; but it does not go far enough in that there is no bar against temporary alienation for unlimited number of years which may practically come to permanent alienation. Again the non-agriculturist money-lender may forthwith purchase the land of a person who stands in need of a loan, and thus may exploit his necessity as much as was availed of by the non-agriculturist prior to 1901.

The general tendency of the recent legislation relating to indebtedness seems to be to strike at the "facilities to borrow,"

and it is expected that this will go a long way in alleviating the distress of the debtors. Nothing has been done to undermine the root cause of indebtedness—the necessity to borrow. The Government demands for land revenue and water rates have not been materially reduced, nor has education been imparted to the peasant to make him realize the baneful effects of extravagant and improvident expenditure incurred by him through resort to loans. So far it seems that if the root cause, that is, the necessity to borrow, remains unaltered, the restriction of credit to the agriculturist is likely to have a disastrous effect on the agriculturist. This has been realized and it is entertained that some new system may be devised to take the place of the existing one, in case it disappears. Sir Sikander Hyat Khan stated in a public speech in October that the agriculturists “need not fear the proposed boycott in future” (reference is to the agitation started by the non-agriculturists); and that “the peasant Government which regarded the welfare of the rural masses as its first concern would not take long in providing other means of credit in order to satisfy all genuine needs of the peasantry.” It is not yet known what these “other means of credit” are going to be and how “the genuine needs of the peasantry” are going to be defined.

The Co-operative Movement which was envisaged to supplant the money-lenders’ system of credit, has, as already noticed, fallen far short of the expectations and in some provinces it has signally failed.

The necessity of the money-lender in the system of rural credit was realized by the Royal Commission on Agriculture and again stressed by the Central Banking Enquiry Committee. The only way seems to be in the reform of the present system. Although the main purpose of recent legislation is the eradication of the dishonest money-lenders and the putting of the honest money-lenders’ business on a sound footing, the provisions of the new law in some cases (as noted above) are so harsh, that in an attempt to reform the system it may not be killed without providing “other means of credit.”