

**THE BOMBAY AGRICULTURAL
DEBTORS RELIEF ACT, 1939**

[As Amended by Bom. VI of 1941]

BY

Rao Bahadur PRAHLAD C. DIVANJI, M.A., LL.M.

THE BOMBAY AGRICULTURAL DEBTORS RELIEF ACT, 1939

[As Amended by Bom. VI of 1941]

AND

THE BOMBAY AGRICULTURAL DEBTORS RELIEF RULES, 1941

WITH

AN INTRODUCTION TO THE ACT

AN

EXPLANATORY & CRITICAL COMMENTARY

AND

RULES OF INTERPRETATION

BY

Rao Bahadur PRAHLAD C. DIVANJI, M. A., LL. M.

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Endowments Act, 1920 with a Commentary.*

FOREWORD BY

The Hon'ble Mr. Justice K. B. WASSODEW, B.A., LL.B.

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Dedicated

TO

The Honourable

Sir John William Fisher Beaumont,

Kt., K. C., M. A. (Cantab.)

Chief Justice,

His Majesty's High Court of Judicature at Bombay

With His Lordship's Kind Permission

AS AN HUMBLE TRIBUTE

TO

The Numerous Qualities of Head and Heart

BY WHICH

His Lordship has won the Esteem and Affection

OF

The Entire Judicial Service

AND

The People of the Province.

P R E F A C E .

I AM glad to be able at last to place before the public this result of my anxiety to direct my energy since my retirement into a useful channel. The Act commented upon herein has been intended to enable the agricultural debtors in this province to be free from their liabilities within a certain amount of time so that they can commence a new career without molestation or anxiety. How far this object can be achieved experience alone can say. However the Deccan Agriculturists' Relief Act, 1879 having been found after a long trial to have failed to achieve it, a fresh experiment towards the same end was necessary. This Act based upon the findings of the Bombay Provincial Banking Inquiry Committee upheld by the Indian Central Banking Inquiry Committee which had proceeded with the inquiry entrusted to it on the lines suggested by the Royal Commission on Agriculture, so far as it related to the finance of agriculture, embodies a scheme for the trial of such an experiment.

Its scope is limited to the extinction of the existing liabilities and the prevention of the creation of any such fresh ones as cannot be met from the current income until the object in view is achieved. In a word it is a remedial measure only. As such the prevention of a recurrence of the same mischief after some years is outside its province. The remedies therefor, as the learned Finance Minister stated when he moved the first reading of Bill No. XIII of 1939, consist of extensive economic, educational and social reforms aided by some preventive legislation. The fate of the Money-lenders Bill (VII of 1938) and the amount of opposition that this Act met with even after it was passed and the draft rules made under it were published show that this province is not yet prepared for preventive legislation of the above type. The necessary favourable atmosphere for it is, I believe, being created by the present Government with the co-operation of some benevolent institutions, co-operative societies and some enlightened individuals. The operation for two to three years of Rules 38 to 40 of the Rules made under this Act, which are based on some of the principles underlying Chapters III and IV of Bill No. VII of 1938, will also supply an object-lesson for that purpose. It is only after that is

accomplished, that the line of future legislation on this subject can be chalked out.

For the reason already stated this Act has certain novel features not found in the Act of 1879 and only dimly foreshadowed in the legislation on the same subject made in some of the provinces of India. It has also become somewhat complicated owing to many amendments having been engrafted on the original clauses of the Bill which seemed to have otherwise no chance of being passed by a majority of votes in the Assembly. It is not therefore unlikely that opinions may differ on the question of interpretation of some of the sections capable of a double construction. This book, containing the first commentary on the Act in English represents one set of views on such doubtful points. I found a somewhat different set expressed on some of them in a book in Marathi written from quite a different stand-point by Mr. Vinayak Ganesh Tikhe of Poona and published before this Act was amended in March 1941. It is possible that its revised edition and some new commentaries setting forth other views may appear in course of time. With a view therefore to enable the readers to form their own independent judgment on such points I have given rules of interpretation at several places in this work and the decisions from which they were deduced and the original clauses of the Bill, the Report of the Select Committee, the Speech of the Finance Minister, and the Cognate Legislation in the other provinces in Appendices II to V.

In order to make reference to any portion of it easy I have also appended an Index of Cases and a detailed Index of Subjects alphabetically arranged. I have also gratefully adopted the suggestion of Mr. G. N. Thakore, an Advocate of a very wide experience in the Bombay Bar, to mark the numbers and headings of the chapters and the sections dealt with on each folio-page.

I sincerely acknowledge my indebtedness to the Hon'ble the Chief Justice for having kindly permitted me to dedicate this book to him, to the Hon'ble Mr. Justice K. B. Wassoodew for having kindly taken the trouble to go through an advance copy of this work and contribute an enlightening and appreciative "Foreword" to it, to the other high Government officials entrusted with the highly responsible task of deciding whether and if so, when and how this somewhat revolutionary piece of legislation should be put into operation and to the Editor "Times of India" for having directly or indirectly encouraged me to believe that

sooner or later there was a possibility of the arrival of the day of publication of this work.

Lastly, I warmly thank the proprietor and manager of the Karnatak Printing Press for having given me such facilities as the uncertainty of the commencement of the operation of a substantial portion of the Act rendered it necessary for me to demand of them and for having made use of such types and materials as the nature of the work and the class of possible readers of the book required. Some mistakes were unfortunately left unnoticed in the last proofs as they were required to be examined expeditiously and some corrections have been necessitated by the work of printing having been commenced before the final rules were published. I have therefore added a list of corrections and hope that the readers will kindly make them before commencing to make use of or to review the book.

*Prerana, Ghodbunder Road,
Santa Cruz, December 16th, 1941.*

P. C. DIWANJI.

FOREWORD

It has been rightly remarked that the science of legislation is like that of medicine at least in one respect, in that it is far more easy to point out what is doing harm than what will do good, and, there is a good deal of experimenting with supposed remedies to the detriment of the sufferers. As in the case of the doctor so of the legislator, excess of sentiment to do good is sometimes misleading in philanthropy and grows acutely dangerous when it ignores the rules of physiological process or the ordinary canons of social economy. As an instance in point rural indebtedness, it is agreed, is a cancerous growth in the body politic and retards its development particularly in an agricultural country like India ; but when devising remedies to cure the malady the legislator has experimented a good deal in the past without much success. The remedies suggested by economists are not unfamiliar to the student of political economy and the most commonplace one, the one which has been regarded as a complete solution of agricultural dependence is the compulsory settlement of debt by legislation. The basis of that recommendation is the assumption that the causes of indebtedness are rooted in unrestricted money-lending and the prevailing system of usury. * One has to peruse the history of the working of the Deccan Agriculturists' Relief Act of 1879, which was enacted principally to free the agriculturist in the Bombay Presidency, who was inextricably in debt, from the clutches of the money-lender, to be able to denounce the supposition that legislative action alone is a satisfactory cure. Even the warmest supporter of that measure will find it difficult to point to any tangible achievement to the credit of the Act. Far from reducing agricultural indebtedness, it has created a class of money-lenders who have devised counter-measures to frustrate legislative action. The universal condemnation of the Deccan Act has been based partly on the reduction of agricultural credit as a consequence of legislative interference with rural economy and partly on the defective provisions of the Act itself affording scope for evasion and

frustration. The failure was certainly in some measure due to the very, clever and sometimes dishonest devices resorted to by the money-lender to circumvent the provisions of the Act, and, to the easy exploitation of the needy and improvident agriculturist. Perhaps it has not been thoroughly realised, and even if it has been, little or no thought is paid by the advocates of legislative action to the fact that the evil is deep-rooted in social customs and is a symptom of economic depression which cannot be radically cured by ameliorative legislation or executive pronouncement. Mere legislative action, however perfect the forms of procedure may be, must end in failure unless an attempt to deal with the evil at its source in the individual is seriously made.

The legislature has had an ambitious programme chalked out for itself when enacting the Bombay Agricultural Debtors' Relief Act, 1939. As the provisions will show it is a distinct improvement on its predecessor and every attempt is made to remove the defects in the old Act which were judicially noticed. The definition of the word "Agriculturist" has been wisely improved upon to limit the scope of the Act to the really needy and to exclude such pseudo-agriculturists like large land-holding classes who had been benefited by the Deccan Act. The old Act failed on that account because it unwittingly gratified the rich land-holder to the detriment of the creditor. How far the new enactment will bring that relief which was aimed at by the statesmen responsible for the measure it is difficult to say. But the Act will have been introduced in some areas at a time when relief from debt is urgently needed. It is to be hoped that the legislator when devising new formulæ has not experimented too much in a department of law which has been framed in the interests of the less prosperous part of the community. One is attracted by the provisions designed to exclude the lawyer from certain proceedings before the tribunal. Whether the intention of the legislature was to obtain personal representation in a Court of law, or to avoid burdening the poor agriculturist with the cost of obtaining the advantage which the law offered, it is difficult to say. The help which a lawyer renders to the Court in ascertaining the true position cannot be over-estimated and it is to be hoped that in his absence the debtor will not be outwitted by the creditor in spite of the vigilance of the Court. Those who are disposed to criticise the presence of the lawyer in a litigation might perhaps pause to reflect that they are dealing with no simple problem, for however able a Judge may be and whatever his sympathy for the poor, that mood of benevolence is not in itself a sufficient equipment justifying the displacement of the lawyer. There are

other problems equally important which have been tackled by the Act in its numerous provisions. It is difficult to pronounce definitely upon their value or probable success, for nobody can survey the tremendous problem without being deeply conscious of its gravity. The Act however has the benediction from every well-wisher of the community at the time of its introduction.

It is fortunate that the new Act has found an expositor in a person who combines judicial experience of the working of the old Act and a great insight into the economic condition of the cultivator. Those who have to deal with the new provisions will find help from the Commentary which lucidly explains the scope of each section and the clauses which are difficult of interpretation, and contains wherever possible a criticism of the new enactment based on analogous provisions in other and similar enactments which have been judicially interpreted. The Introduction is informative and will be of considerable assistance to those who are uninitiated into the new measure. A Commentary without a complete Index loses much of its value. The special feature of Rao Bahadur Divanji's Book is its exhaustive Index. That is sure to be of valuable assistance to the practitioner and the Court. There is also a collection of cases apparently intended by the author to help the evolution of leading principles which may be worthy of attention.

5th Dec. 1941.

K. B. WASSODEW.

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- Page 7, line 22 : *for* Rules 37 to 39 *read* Rules 38 to 40.
- Page 10, line 10 (from below) : *for* Rule 15 *read* Rule 16.
- Page 12, line 6 (from below) : *for* Rule 26 *read* Rule 27.
- Page 13, line 16 : *for* Rule 27 *read* Rule 28.
- Page 13, line 3 (from below) : *for* Rule 28(1) *read* Rule 29(1).
- Page 14, line 17 : *for* whose special jurisdiction *read* whose jurisdiction.
- Page 15, line 17 : *for* of standing crops *read* of standing crops or produce of their land.
- Page 19, line 11 (from below) : *for* he may have been evicted *read* he or it may have been evicted.
- Page 19, line 12 (from below) : *for* he is cultivating *read* he or it is cultivating.
- Page 21, line 16 : *for* 2(20) *read* 20.
- Page 24, line 7 : *for* S. 37 *read* S. 73.
- Page 28, line 7 (from below) : *for* who were *read* who are.
- Page 30, line 5 (from below) : *for* Rule at Damdupat *read* Rule of Damdupat.
- Page 38, line 11 (from below) : *for* Rules Nos. 37 to 39 *read* Rules 38 to 40 and *for* Forms nos. 21 and 22 *read* Forms Nos. 22 to 24.
- Page 38, line 9 (from below) : *for* on S. 78 *read* on the said Rules.
- Page 40, line 9 : *for* Rule 34 *read* Rule 35.
- Page 58, line 10 : *for* Rules 37-39 *read* Rules 38-40.

The Act and Appendices.

- Page 5, f. n. 17 : *for* 3 Ad. 213 *read* 3 Ad. 210, 216.
- Page 6, f. n. 21, lines 3-4 : *for* (2 Q. B. D. 242) *read* (1897) 2 Q. B. 242.
- Page 12, f. n. 5, line 2 : *for* (I. L. R. 49 Mad. 749) *read* (A. I. R. 1926 Mad. 749).
- Page 12, f. n. 5, line 3 : *for* Baburao *read* Bapurao.
- Page 14, f. n. 10, line 1 : *for* Baburao *read* Bapurao.
- Page 21, f. n. 4, line 2 : *for* River Commissioners *read* River Wear Commissioners.
- Page 21, f. n. 4, line 3 : *for* Easter Co. v. Comptroller of Patents (1898) A. C. 576 *reqd* Eastman Photographic Materials Co. v. Comptroller of Patents, Designs and Trade-marks (1898) A. C. 571.
- Page 23, f. n. 16 : *for* Fatima.Bibi *read* Fatma Bibi.
- Page 24, f. n. 24, line 3 : *for* (1882) *read* (1880).
- Page 39, f. n. 60, line 4 : *for* Debate *read* Debates.
- Page 44, Heading (a) : *for* (a) *Technical* :— *Technical and non-technical words* :— *read* (a) *Technical and non-technical words*.—*Technical* :—
- Page 72, line 4 : *for* these *read* there.
- Page 72, f. n. 4, line 2 : *for* (10 C. B. M. S. 179) *read* (10 C. B. N. S. 179).
- Page 72, f. n. 4, line 3 : *for* Sillam *read* Sillem.
- Page 73, f. n. 10, line 7 : *for* Lah. 428 *read* Lah. 418.
- Page 76, f. n. 10, line 2 : *for* Co. *read* Society.
- Page 77, f. n. 3, line 3 : *for* Sing *read* Singh.
- Page 78, f. n. 6, line 3 : *for* of *read* at.
- Page 81, line 3 : *for* Thammanimraju *read* Thammiraju.
- Page 90, f. n. 2, line 3 : *for* De'Souza *read* De Souza.
- Page 91, line 2 (from below) : *for* of it ; to know *read* of it, to know.
- Page 92, line 8 : *for* he resides *read* he ordinarily resides.
- Page 116, f. n. 2, line 3 : *for* A. C. 576 *read* A. C. 571, 576.
- Page 125, line 17 : *for* debt-due *read* debt due.
- Page 125, last line : *for* provisional *read* provision.

- Page 141, f. n. 4, line 2 : *for* (10 C. B. M. S. 179) and Sillam *read* (10 C. B. N. S. 179) and Sillem.
- Page 141, f. n. 5, line 7 : *for* 705 *read* 706.
- Page 141, f. n. 7 : *for* Girdhar Lal *read* Girdhari Lal.
- Page 146, line 11 : *for* general popularity *read* rural population.
- Page 168, line 1 : *for* 2 I. R. 619 *read* 2 I. R. 615, 619.
- Page 171, line 16 : *for* preserving *read* reserving.
- Page 171, line 18 : *for* or *read* on.
- Page 185, line 21 : *for* the such debts *read* such debts.
- Page 199, line 18 (com.) : *for* By this section *read* By this sub-section.
- Page 206, last line : *for* wide power or to decide *read* wide power to decide.
- Page 230, line 9 : *for* in S. 50(1) *read* on S. 50(1).
- Page 230, para 2, last line : *for* in S. 54(2) (g) *read* in the provisoes to S. 54(2) (g).
- Page 232, note below r. 9, line 5 : *for* the latter *read* any of them.
- Page 252, f. n. 5, line 3 : *for* Godwin *read* Goodwin.
- Page 252, f. n. 6, line 1 : *for* Tofajaddi *read* Tufazuddi.
- Page 252, f. n. 7, line 1 : *for* Tufajaddi *read* Tofajaddi.
- Page 253, S. 85, margin line 4 : *for* XDV of 1860 *read* XVII of 1879.
- Page 253, S. 85, f. n. 8, line 3 : *for* Chingayya *read* Chengayya.
- Page 272, lines 11-12 : *Delete the words* deciding in which language the records of his Board shall be kept.
- Page 278, heading R. 27 : *for* section 41 *read* section 47.
- Page 283, line 2 : *for* Rule 28(1) *read* Rule 29(1).
- Page 326, lines 13-14 : *for* are not also available *read* are not available.
- Page 339, line 1 : *for* amount to Court-fee *read* amount of court-fee.
-

TABLE OF CROSS-REFERENCES IN THE ACT

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1 (2) and (3)	1, 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33 (2), 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82, 83.	33 (1) 35 (1) (3) (4)	17, 23. 17. 35 (2). 35 (2) pro., 24, 54. 17 (2), 35.
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(4) pro.	17 (3).	50	51.
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Abbreviations.—P. G. = Provincial Government ; R. C. A. = Royal Commission on Agriculture ; I. C. B. I. C. = Indian Central Banking Inquiry Committee ; B. P. B. I. C. = Bombay Provincial Banking Inquiry Committee ; P. L. M. Bank = Provincial Land Mortgage Bank.

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