REQUIREMENT OF REGISTRATION FOR PRIVATE MONEY LENDING IN INDIA

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ABSTRACT

High indebtedness to private moneylenders has always been one of the primary reasons for the distress amongst farmers and several middle class borrowers. We have already heard enough stories of moneylenders engaging recovery agent-cum-goons to recover their money. Considering the gravity of the issue, the Reserve Bank of India constituted a Technical Group under the chairmanship of Shri. S. C. Gupta. The objective of creating such group was to review the efficacy of the existing legislative framework governing the business of 'money lending', and the enforcement mechanism across several states of India.

Matters related to private money lending fall in the State List of the Constitution of India. Therefore, almost every state in India has its own money lending legislation in place to govern such activities. The present paper delves into the salient features of the money-lending legislations in different states and tries to derive common elements from them. The paper also refers to some of the landmark judgments delivered by various High Courts and the Supreme Court of India to substantiate the position of law.

For the purpose of this paper, the author will restrict the scope of his discussion mainly to the requirement of registration for private money-lending activities and maximum permissible rate of interest that can be charged in such cases. Examples of the relevant statutory provisions have mainly been taken from the money lending legislation as applicable in the state of Andhra Pradesh. To know more about the subject and specific provisions in other states, the author advises the reader to refer to RBI Report of the Technical Group available here.

MONEY LENDING AND ITS MEANING

What constitute business of money lending has been discussed in **Halsbury's Laws of England**[1] in the following terms[2]:

> *"In order to establish the he is carrying on the business it is not sufficient to prove that he has occasionally lent money at remunerative rates of interest it is necessary to prove some degree of system and continuity in his money lending transactions and something more than loans to friends or relatives. In considering whether a person is carrying on a business of money-lending all loans made by him must be taken into account."*

In ***Newton v. Pyke***[3]**,** it was held that in order to fall within the definition of '**money lender'**, it was not sufficient to prove that the man had on several occasions lent money at remunerative rates of interest. The Court held that there must be certain degree of system and continuity about the transaction to constitute 'money lending'. The views expressed by Mc. Gardie. J. In ***Edgelow v. Mac Elwee***[4] is also noteworthy in this regard. It says-

> *"A man does not become a **money lender** by reason of occasional loans to relations, friends or acquaintances whether interest be charged or not. Charity and kindliness are not the bases of usury. Nor does a man become a **money lender** merely because he may upon one or several isolated occasions lend money to a stranger. There must be more than occasional and disconnected loans. There must be a business of money-lending and the word 'business' imports the notion of system, repetition and continuity."*

The Courts in India have adopted similar views on the meaning of 'money lender'. A Division Bench of Andhra Pradesh High Court in ***Varalaxmi v. Syed Kasim Hussain***[5] held that in order to fall within the definition of '**money lender**', it was not enough merely to show that a man had on several occasions lent money at remunerative rates of interest. The High Court in this case held that there must be certain degree of system and continuity about the transactions. The definition of 'money lender' in India envisages only those classes of persons whose regular business is to advance moneys and not those who advance money casually. Similarly, '**money-lender'** under the C.P. & Berar Money Lenders Act, 1934 also means a person, who in the regular course of business advances a loan and

[1] Vol. 27, 3rd Edition at p. 18
[2] Para 15
[3] (1908) 25 TLR 127
[4] (1918) 1 KB 205 at p. 206
[5] (1962) 2 AWR 137

excludes isolated transactions of money lending.[6] Clarifying the meaning of 'regular' in this context, Vivian Bose, J. in ***Sataram Shrawan v. Bajya Parnya***[7], held that-

> *"The word 'regular' shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of money lending is shown to the Court, it is impossible to state that it constitutes a regular course of business. It is an act of business but not necessarily an act done in the regular course of business".*

Thus, it is clear that stray or casual act cannot be called an act done in the ordinary course of business. The High Court of Andhra Pradesh in ***Somanath Baraman and Ors. v. S.V. Jagannatha Rao,*** held that the elements of habit, system and continuity is required to satisfy the test of regular or ordinary course of business. Disconnected stray act cannot be taken as a link in the chain to call it a normal course of business. The Court in this case further observed that a '**money lender'** in the normal course would have many transaction of money lending each year and therefore a continuity of such transactions over these years must be present to constitute 'money-lending'. Therefore, an isolated transaction of lending money will not constitute 'money-lending' unless the element of system, continuity and regularity are present.[8]

APPLICABLE LAWS

Matters pertaining to private money lending and moneylenders fall in the State List, i.e. List II, in Part XI of the Constitution of India. Therefore, state specific laws would apply on the subject accordingly. Almost every state in India has its own money lending legislations by which such activities are governed in the state. Some of the notable money lending legislations are- Karnataka Money Lenders Act, 1961, Bombay Money Lenders Act, 1946, Andhra Pradesh(Telengana Area) Money Lenders Act, The Punjab Registration of Money-Lenders Act, 1938, Tamil Nadu Money Lenders Act, 1957, Bengal Money-Lenders Act, 1940, etc. An examination of the money lending legislations in different states of India shows that the provisions are generally similar. The common features of these state legislations are as follows -

A. Requirement of registration/license for carrying on the business of money lending within a State/a portion of the State and penalties for carrying on business without licence;
B. Maximum rates of interest that can be charged;

[6] Gajanan v. Brindaban, [1971]1SCR657
[7] AIR 1941 Nag 177
[8] Para 26

C. Duties of the moneylenders with respect to maintaining and providing statement of accounts to the debtors;
D. Penalties for intimidating the debtors or interfering with their day-to-day activities, including the cognizability of such offences;

A. REQUIREMENT OF REGISTRATION/LICENSING

Section 3(2) of the A.P. (Telengana Area) Money Lenders Act, makes it mandatory for a money lender to register their name and obtain a license for carrying out such activities. Sub-section 5 of Section 3 puts a strict bar against the business of money lending without such license and prescribes punishment in the form of rigorous imprisonment. Most notably, if a money lender, within the meaning of this Act does not hold license, any suit for recovery of the money will not be maintainable before the court of law as per Section 9(2) of this Act. Similarly, Section 3 of the A.P. Money Lenders Act, 2000, puts a strict bar against carrying out of such business without obtaining license under Section 4. To understand and appreciate the importance of registration for private money-lending, it is necessary that we look into some of the important judgments of Supreme Court and various High Courts in India.

In ***Kaloji Talusappa Gangavathi vs. Khyanagouda and Ors.***[9]***,*** there was no dispute that the amount advanced under the transactions of the mortgage and the promissory note constituted loans. However, the plaintiff had not obtained a licence when he advanced money to the defendants on the transactions of mortgage and promissory note. By virtue of Sub-section (5)(a) of Section 3 of the Hyderabad Money Lenders Act, the plaintiff was prohibited from carrying on the business of money-lending without obtaining a licence. The Apex Court took note of Section 9(2) of the Act to observe that a suit filed by a money-lender **for recovery of the amounts** advanced in the course of his business as a money-lender who did not hold a licence must be dismissed.[10] The Supreme Court also observed that in order to curb malpractices of the money lender and protect unwary debtors, it is necessary for the Legislature to impose such stringent restrictions by requiring such person to obtain a licence, maintain and furnish accounts and carry out other obligations.[11]

In ***Govind Singh, v. Vali Mohammad***[12]***,*** since the contract was made in contravention of the provisions of Money Lenders Act by a money lender, who had failed to register on the date of the suit transaction, it was held that the same was illegal and void and as such he cannot recover the amount due on the basis of such a contract. Similarly, in ***Shamamma and Anr.***

[9] AIR1970SC1420
[10] Para 5
[11] Para 6
[12] AIR 1951 Hyd 44

vs. Ramachander Rao and Ors.[13]***,*** the **High Court of Andhra Pradesh held that** a contract entered into by a money lender without having a licence in his hands would not be enforceable. Similar was the finding in ***Bijja Kotaiah v. Parcha Lakshminarasimha Rao***[14] in which it was held that a contract entered into by a moneylender, who has infringed section 3(5)(a) of the Hyderabad Money Lenders Act, is an **illegal** one and cannot be enforced."[15] In a very recent judgment, ***Smt. Ramasalamma vs. Potturi Venkata Srinivasa Raju***[16], the Andhra Pradesh High court held that the Court will be obliged to dismiss the suit for money recovery by a money-lender without valid license

In ***Smt. Nanda W/O Dharam Nandanwar vs Nandkishor S/O Talakram Thaokar***[17], the Bombay High Court held that Courts are bound to dismiss the suit by money lender for recovery of loans when such money lender is found to be carrying on the business of money lending on the dates of the transaction without having a valid money lending license in view of Sec. 10(1) of the Bombay Money Lenders Act, 1946. In this case it was held that since explanation to Sec. 138 of the N.I. Act clearly stipulated that the debt or liability means legally enforceable debt or other liability the claim by money lender against the borrower without production of valid and operative money lending license covering period of transaction was unenforceable claim under section 138 of the N.I. Act and therefore the same was bound to be dismissed. Similarly in ***Ramprasad Bhagirath Agrawal*** *v.* ***Uttamchand Danmal Pande***[18]***,*** the evidence on record showed that appellant (plaintiff) was dealing in money lending transactions on several instances without having a valid license for the same under Bombay Money Lenders Act, 1946. The Court accordingly observed that since the money lender did not hold a valid license to deal in **money lending** business, the suit must be dismissed.

In ***Kathirvelu*** *v.* ***Anbazhagan***[19], the appellant was running business of money-lending without license. The Madras High Court, in this case categorically held that according to Section 3(1) of Tamil Nadu Money-Lenders Act, 1957, no person can carry on business of money-lender without holding license._Similarly, in ***Sri. U.P. Venkatesh and Ors.*** *v.* ***The State of Karnataka and Ors.***[20] the Karnataka High Court referring to Section 5 of the Karnataka Money Lenders Act, 1961 held that no person shall carry on the business of money lending in the State except in accordance with the terms and conditions of a license and except on payment of security deposit as provided in Section 7A. In ***Prasanna &***

[13] AIR1974AP150
[14] 1961 (2) AWR 122
[15] The decision was also relied on in Ratakonda Raghu Naidu vs. Kolla Sivaram Prasad and Anr., 2003(2)ALD(Cri)956
[16] 2012(2)ALT218
[17] 2010(1)Crimes708, 2010(3)MhLj268
[18] 2009 (3) Bom CR 865
[19] (2008)5MLJ39
[20] 2001 (2) KCCR 882

Company, Bangalore v. Prasanna Kumar and Anr.[21] it was held that the condition precedent for passing a decree is, unless the court is satisfied that the money lender held a valid money lending license, court cannot pass a decree in favour of the money lender.

Thus it is very clear from the dicta of various High Courts and the Apex Court that a moneylender must have a valid license to carry out such activities. Furthermore, most of the legislations also provide for penalties if any person carries on business without registration/licence. Some states, viz. Bombay, Bengal and Karnataka even provide for enhanced punishments for second and subsequent offences.

B. MAXIMUM PERMISSIBLE INTEREST RATES

Maximum interest rates that can be charged on a loan by a private lender in a specific state are either fixed by state legislation through a specific statute or the statutes empower the respective Governments to fix the interest rate by issue of notification from time to time. Most of these state legislations on money lending also provide a maximum limit as to the interest rate which may be charged for such lending. For instance, section 10 (1-B) of the A. P. (Telengana Area) Money Lenders Act, provides punishment for charging an interest rate more than as fixed under section 10(1) of this Act. Similarly, under the A.P. Money Lenders Act, 2000, rate of interest charged by a money-lender must be in compliance with what is prescribed by RBI under NBFC (Reserve Bank) Directions, 1977. Section 7 of this Act mandates that a money lender cannot charge an interest on the money advanced at a rate exceeding 2% of the rate charged by the commercial banks on similar loans. A table prescribing the maximum interest rate that may be charged in some of the states is provided below-

STATE	ACT	PROVISION	MAXIMUM INTEREST RATE CHARGEABLE
Kerala	THE KERALA MONEY-LENDERS ACT, 1958	Section 7	Not exceeding two percent above the maximum rate of interest charged by commercial banks on loans granted by them.
Karnataka	THE KARNATAKA MONEY-LENDERS ACT, 1961	Section 28	The State Government may from time to time by notification fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

[21] 2000(5)KarLJ 166

Uttar Pradesh	UTTAR PRADESH REGULATION OF MONEY LENDING ACT, 1976	Section 12	Not exceeding such rates as may be notified under sub-section 2; The state government, after considering the rate of interest normally charged by a scheduled bank for commercial loans, may from time to time notify the maximum rates of interest that may be charged by the money lenders (rates may be different for secured and unsecured loans).
Tamil Nadu	TAMIL NADU MONEY LENDERS ACT, 1957	Section 7	Not exceeding such rate as the Government may, by notification, fix from time to time. Such rate shall be correlated to the current bank rates of lending as may be fixed by the RBI.
Maharashtra	BOMBAY MONEY LENDERS ACT, 1946	Section 25	The State Government may from time to time by a notification in the Official Gazette fix the maximum rates of interest for any local area or class of business of money-lending in respects of secured and unsecured loans.
West Bengal	BENGAL MONEY-LENDERS ACT, 1940	Section 30, 30A, 31 and 32	No borrower other than a borrower of commercial loan shall be liable to pay any interest other than simple interest at a rate per annum not exceeding in the case of— (i) Unsecured loans— 12.5% (ii) Secured loans— 10%
Orissa	ORISSA MONEY LENDERS ACT, 1939	Section 7A	Not exceeding 9% per annum simple interest, where the loan is secured and 12% per annum simple interest, where the loan is not secured.
Bihar	BIHAR MONEY LENDERS ACT, 1938		**Secured Loans** 1) Simple Interest- 9% per annum 2) Compound Interest – Prohibited **Unsecured Loans** 1) Simple Interest -12% Per annum 2) Compound Interest- Prohibited.

Rajasthan	RAJASTHAN MONEY LENDERS ACT, 1963	Section 29	The State Government may, from time to time, by notification in the Official Gazette, fix the maximum rates of simple interest for any class of business of money-lending in respect of secured and unsecured loans.
Andhra Pradesh	ANDHRA PRADESH MONEY LENDERS ACT, 2000	Section 7	Not exceeding 2% of the rate charged by the commercial banks on similar loans
	ANDHRA PRADESH (TELANGANA AREA) MONEY LENDERS ACT, 1349 F	Section 10	The Government may, from time to time, by notification in the Andhra Pradesh Gazette, fix the maximum rate of interest for any local area of class of business of money-lending in respect of secured loans and unsecured loans.

C. MAINTAINING AND PROVIDING STATEMENT OF ACCOUNTS

Section 5 of the A. P. (Telengana Area) Money Lenders Act requires a money-lender to maintain regular account of loan of each debtor and deliver statement of accounts to the debtor every year. Like Telengana Money Lenders Act, Section 9 of the A.P. Money Lenders Act, 200 also mandates maintaining of books and accounts for individual debtors and give receipt and statement of accounts to the debtor. Furthermore, account of the money lender must be audited at least once every year by a CA as per this Act.

D. PENALTIES FOR INTIMIDATING THE DEBTORS

There is no dearth of stories where a money-lender uses all his means, including hiring goons and recovery agents to recover the bad debt. Thankfully, all such acts of harassing a borrower for recovery of the debt have been made an offence under all the money lending legislations in India. Acts like use of violence/intimidation against the debtor or family members/loitering near the house or work place/doing of any act calculated to annoy the debtor, etc. have collectively been defined as 'molestation' in all of these legislations. Section 13 of the A.P. (Telengana Area) Money Lenders Act provides punishment for molestation in the form of rigorous imprisonment up to 2 years or fine or both. Similarly,

the A.P. Money Lenders Act, 2000 also provides a punishment of at least one year and up to 3 years and fine up to Rs. 50,000 for molestation.

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