

THE DEBT RELIEF LAWS-RELIEF TO THE DEBTORS OR CREDITORS?

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Indebtedness of the rural people is peculiarly linked with the character of the rural set-up in the same way as the other factors like poverty, illiteracy and feudal hold *etc.* It is, therefore, basically the lop-sided rural set-up with its inherent contradictions in the relationship between land and the people which is responsible for the problem of indebtedness. The rural people, with meagre or no resource base living in perpetual poverty require financial help in one form or the other and, thus, fall prey to indebtedness. It was way back in 1928 during the British regime in India that the Royal Commission on Agriculture had to acknowledge the sordid fact that "innumerable people are born in debt, live in debt and die in debt, passing on their burden to those who follow."¹ The situation has not improved much after independence because the relationship between land and the people has not changed substantially despite the changes introduced by the much publicised land reform legislation. The zamindari abolition laws despite their professed goal of zamindari abolition, maintained it, albeit in a different form and the ceiling laws virtually made the state play the role of a middleman in the transaction of sale of a little quantity of unproductive land by the land holders to the poor allottees of the weaker section of the rural society.² The debt relief laws enacted to lessen the debt burden of the rural people particularly the agricultural labourers, artisans and the small farmers, seem to supplement the land reform measures. The effort here is to analyse these laws and their effects on the poor rural people in the given rural set-up. It would be worthwhile to mention in this respect that even after the implementation of the land reform measures, with the feudal intermediaries and their henchmen dominating the rural scene, the rural set-up continues to have feudal relationships. Indeed, the rural society with a large number of bonded labourers, agricultural labourers, tenants and small and marginal farmers on the one hand and a small class of big land holders with all their money and muscle power on the other, can unfold no other relationship. The little penetration of capital in agriculture has not been able to make any change in the rural relationships. The experience shows that such a system has its own limitations for development and the welfare laws operating in such set-up not only become circumscribed by such limitations but often are designed in line with such limitations. The debt relief measures are no exception to this.

I. THE DIMENSIONS OF RURAL INDEBTEDNESS

The poor rural people mostly needing credit for their daily needs and for special purposes like marriage and other ceremonies are mainly indebted to employers, traders, money lenders, friends, relatives, landlords, Government, cooperative societies, commission agents and commercial banks. Though, in the past they owed debt mostly to agriculturist and professional money lenders, gradually they also became indebted to institutions like cooperatives and the commercial banks. The *All India Debt and Investment Survey 1981-82* revealed that the percentage of cash dues outstanding against institutional agencies in respect of rural household was 61.2 percent. Among them the share of cooperatives was highest at 28.6 percent followed by commercial banks including regional rural banks (28.0 percent). Dues against the Government were only 4.0 percent. On the other hand, the dues outstanding against the non-institutional agencies were 38.8 percent, out of which 8.6 percent were against the agricultural money lenders, 8.3 percent against the professional money lenders, 4.0 percent against landlords, 3.4 percent against traders, 9.0 percent against relatives and friends, 4.9 percent against other sources and 0.6 percent against sources not specified.³

It may be pointed out that though the percentage share of dues against the non-institutional money lenders is comparatively less than that of the institutional agencies, still the agriculturist money lenders, professional money lenders, landlords and traders share nearly 1/4th of the total dues. This is a pointer to the fact that the institutional agencies have not penetrated much in the rural society particularly among the non-cultivators in respect of whom the percentage of dues is only 36.8 percent compared to cultivators in respect of whom the dues are 63.3 percent.⁴

The *Survey report* shows that at the all India level the percentage of indebtedness among the cultivator households was 22.34 percent as against 12.35 percent among the non-cultivator households. Statewise, the highest percentage of indebtedness was found in Tamilnadu (28.69) and the lowest in Assam (4.81).⁵ So far as the purpose of debt is concerned, it came to light that in the case of rural cultivators, the percentage of loan for farm business was 63.8 percent while in the case of rural non-cultivators, it was only 14.3 percent. But the percentage of loan for household expenditure in the case of non-cultivators was much more being 51 percent and it was only 20 percent in case of cultivators.⁶

Thus, both cultivators and non-cultivators took loan merely for subsistence. The fact that the percentage of such a subsistence loan was much more in case of non-cultivators, is indicative of their resourcelessness.

II. THE LEGISLATIVE TREND

A. Pre-Independence Legislation

Historically, the legislative activity regarding indebtedness appears to have started more than a century back in colonial times with the enactment of the Encumbered Estates Relief Acts and the Court of Wards Acts between 1860 and 1890 empowering the courts, *inter alia*, to determine the amount of principal and fix instalments for paying the debts.⁷ However, it was the Deccan Agriculturists Relief Act, 1879 which provided for consideration by courts of history of debt transactions and determination of amounts of principal and interest separately disallowing conversion of accumulated interest into principal. Later, the Usurious Loans Act, 1918 empowered the Court to reopen the transaction in case of the interest being excessive and the transaction being substantially unfair and relieve the debtor of the liability to pay the excessive interest.⁸ The Act, however, did not prescribe any limit beyond which the interest could be considered as excessive. Needless to say, these and other measures, taken between 1860 and 1930 with a view to assuage the feelings of discontent among the peasantry could not mitigate their heavy debt burden.⁹

The debt measures between 1930-1946 passed in different states shifting a bit from earlier ones mainly provided for moratorium, conciliation and compulsory reduction of debts. The moratorium laws sought to stay the proceedings against the agriculturist debtors in respect of debts or arrears of rent *etc.* and to prevent the transfer of land or other assets of the debtor to the creditor for a certain period.¹⁰ The debt conciliation measures attempted to make settlements of debts between creditors and debtors enabling the debtors the repayment of debts within a certain time.¹¹ The legislations regarding compulsory reduction of debts and redemption of mortgages were mainly concerned with the determination of principal and interest by the judicial authorities, compulsory reduction and scaling down to debts, payment of debts in instalments, redemption of mortgages and protection of the debtors' land and other assets.¹² The Madras Agriculturists Relief Act, 1938 also provided for discharge of debt in case the agriculturist had paid twice the amount of the principal to the creditor.¹³ But such a discharge was indeed penal for the debtor and beneficial for the creditor as the debtor was forced to pay an extra amount equivalent to the principal for being able to be discharged. These laws, however, being *status quoist* and litigation oriented, were more in favour of the creditors than the debtors.

B. Post Independence Legislation

Various debt relief laws enacted by different states¹⁴ after 1947 though seem to depart somewhat from those enacted in pre-independence period, yet basically they retain the colonial linkage. These laws either discharge the

debtor or provide for the reduction or scaling down of the debt.

(i) The Penal Discharge

The laws wholly discharging the debt though appear to wipe off the total liability of the debtors, a close look at these laws reveals that such a discharge is more tilted towards the creditors. For instance, the Punjab Agricultural Indebtedness (Relief) Act, 1975 wholly discharged a debtor,¹⁵ of his debt owed by him on the commencement of the Act,¹⁶ but in case of the debtor being a small farmer,¹⁷ the debt was to be wholly discharged only if the small farmer had, in the discharge of his debt, paid a sum exceeding or equivalent to one and a half times the amount of debt at any time before the commencement of the Act or after the commencement, he had paid a sum which together with any sum already paid in the discharge of such debt was equivalent to one and a half times the amount of debt. The Act, thus, forced a small farmer to pay an extra sum of fifty percent of the amount of debt although he might have already paid the whole amount of debt at the commencement of the Act. This indeed makes the intentions of this so-called beneficial measure questionable. The Act, thus legalised the payment of the excess amount and thereby imposed a penalty on the debtor in the grab of discharging the debt.

Though the Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977 and the *Madhya Pradesh Gramin Rin Vimukti Adhiniyam*, 1982 did not make any such difference between small farmers and other debtors, they were narrow in application. Under the Andhra Act, every debt including interest, if any, owing to any creditor by an agricultural labourer,¹⁸ a rural artisan¹⁹ or a small farmer²⁰ was deemed to be wholly discharged²¹ and the civil courts were barred from entertaining any suit or other proceeding against the debtor for the recovery of any amount of the debt, including the interest.²²

Likewise, under the M.P. Act referred above, every debt advanced before 16th August, 1982 including the amount of interest payable by a marginal farmer, a landless agricultural labourer, a rural artisan and small farmer to a creditor was deemed to be wholly discharged and the jurisdiction of the civil courts was barred in this respect.²³ But in view of the fact that they were defined narrowly, the coverage of the Act was obviously less. For instance, a marginal farmer was defined as a person holding agricultural land not exceeding one hectare of irrigated or two hectares of unirrigated land in case of a member of Scheduled Caste or Tribe and not exceeding half hectare of irrigated or one hectare of unirrigated land in case of other persons.²⁴ Here the coverage has been further narrowed down in case of marginal farmers not belonging to Scheduled Castes or Scheduled Tribes. Besides, both the Andhra and M.P. Acts mentioned above disentitled the debtor for refund of any payment towards the debt,²⁵ even though he might have repaid quite in excess of the amount of

principal and interest. Even the total discharge of debt was, thus, geared to suit the creditors. The sphere of these laws becomes further limited wherein monetary limit of income of the debtors was prescribed for the applicability of these laws. For instance, the Gujarat Rural Debtors Relief Act, 1972 wholly discharged the debt of only that debtor (being a marginal farmer or rural labourers or rural artisan) whose income did not exceed Rs. 2,400/- per year. Moreover, the debtors of these categories falling in the income bracket of Rs. 2400/- to Rs. 4800/- could be deemed to be wholly discharged if such debtors had already paid an amount equal to or exceeding twice the amount of the principal and in any other case was deemed to be reduced to one half of the recognised debt, provided that the amount which remained to be paid by the debtor did not exceed twice the amount of the principal.²⁶ By fixing the limit for discharge of the debt at twice the amount of the principal and making provision for refund of amount only in excess of twice the principal by the debtor,²⁷ the Act allowed the creditor to retain not only the principal amount but also an equal sum in addition to the principal amount of debt, thus obligating the debtor to repay the debt twice. This is not only against the tenor of beneficent legislation but also unfair, causing injustice to the poor debtors. These laws, thus, do not appear to depart in any significant respect from the colonial laws in that the similar provision existed in the Madras Agriculturists Relief Act, 1938 providing for discharge of debt if it exceeded twice the amount of the principal.²⁸

(ii) The Dubious Scaling Down

The laws providing for adjustment and scaling down of the debts are of much limited efficacy in comparison with the laws discharging the debts in view of the fact that the debtor had to pay to the creditor even after the enactment of the Act although he might have already paid much more than the principal amount. For instance, the Mysore Agricultural Debtors Relief Act, 1966 provided for reduction of debts by forty percent in the case of transaction which commenced before the 1st January, 1941 and by thirty percent in the case of transactions commencing on or after the 1st January, 1941, but before the 1st January, 1950.²⁹ The Act allowed for scaling down the amounts due under Section 21 from a debtor pro rata to his paying capacity in case of unsecured debts. But if the debts were secured, such debts could be so scaled down only if the total amount of such secured debts was more than sixty percent of the value of the property belonging to the debtor. In case the debts were both secured and unsecured, the secured debts were to be further scaled down pro rata to sixty percent of the value of the property on which such debts were secured if the total amount of secured debts was more than sixty percent of the value of the property on which such debts were secured. The unsecured debts were scaled down pro rata to sixty percent of the value of the other property

belonging to the debtor over which no debts were secured.³⁰

The Mysore Act though passed in 1966, reduced the debts incurred during 10 years only upto 1st January, 1950 and left out of its coverage a long period of sixteen years before its enactment. Moreover, its provisions for scaling down of the debt to the paying capacity of the debtor appear to be vague and have the consequence of involving the poor debtor in unnecessary litigation as before scaling down of the debt, paying capacity of the debtor had to be determined by the court. The Act was already limited in application not only in confining to debtors of a particular category³¹ but also in limiting the amount of debt to Rs.20,000/-.³²

(iii) Facilitating the Creditor

There are, then, laws which merely facilitated the debt repayment by the debtor without having regard to his or her paying capacity. For instance, the Kerala Agriculturists Debt Relief Act, 1970 made provisions for payment of debts in instalments and the deposit of debts in court. Generally, if any debt was repaid in seventeen equal half yearly instalments together with interest on the principal outstanding at the time of each payment, the whole debt was deemed to be discharged.³³ In case of the creditor being a banking company, such instalments were to be twelve in respect of the debt amount upto Rs.3,000/- and eight if the debt amount exceeded Rs.3,000/-. This indeed appears to be quite unreasonable. However, the provision that in case of default in payment of three consecutive instalments, the whole debt together with interest became payable forthwith,³⁴ indicates that the aim of the law was basically not to protect the poor debtors but to facilitate the recovery of debt by the creditors. There appears to be no other plausible explanation for the insertion of this penal provision. Moreover, the provision regarding the settlement of the liabilities of the debtor,³⁵ unable to pay his debts, proves this with added force. In leaving only one-fourth of the entire assets, not exceeding Rs. 6,500/- in value, and allowing for distribution of the rest three-fourth of the assets among the creditors,³⁶ the Act makes its intention quite clear. In the garb of giving relief to the poor debtor it made him pauper by usurping his meagre assets. Again, these measures being litigation oriented, are obviously more suited to the wealthy creditors in a legal system of adversary litigation. Section 18 of the Act already excluded from its benefits an agriculturist who with a view to defeat or delay his creditor had voluntarily transferred any interest in immovable property within six months immediately preceding the date of publication of the Kerala Agriculturists' Debt Relief Bill, 1968 in the Gazette.

The *Madhya Pradesh (Anusuchit Jati Tatha Anusuchit Jan Jati) Rini Sahayat Adhiniyam*, 1967 enacted for the relief of indebtedness of members of Scheduled Castes and Scheduled Tribes, speaks in the same tone. The Act

made provisions for the establishment of Debt Relief Courts,³⁷ and empowered them to reopen all transactions made 34 years before the last transaction or before 1st January, 1964 in relation to members of Scheduled Tribes and before 1st January, 1966 in relation to members of Scheduled Castes whichever was earlier and to ascertain the amount of principal actually paid to the debtor and the date on which it was originally advanced, calculate the interest³⁸ as also to prepare a scheme of repayment of the debt.³⁹ However, the laudable motive of these laws was belied in view of the fact that in case of non-payment of any instalment by the debtor before the due date, such an instalment became recoverable by the Collector or the authorised Revenue Officer as an arrear of land revenue.⁴⁰

III CONCLUSION

These laws, thus, remained pro-creditor in approach inspite of having the nomenclature of debt relief laws. Although every care was taken to see that the creditor got back his principal sum alongwith the interest thereon, these laws generally did not provide for taking back the excess amount paid by the debtor to the creditor. Instead, they penalised the debtor by disentitling him to take refund of any part of a debt already paid by him or recovered from him before the commencement of the laws.⁴¹ The *M.P. (Anusuchit Jati Tatha Anusuchit Jan Jati) Rini Sahayata Adhiniyam*, 1967, however, empowered the Debt Relief Court to pass necessary order directing the creditor to refund the excess amount to the debtor.⁴² But the Gujarat Act, 1976 though having provision for refund, did so in respect of the amount exceeding twice the amount of the principal paid by or recovered from the debtor before the appointed day.⁴³ This, means that the creditor could retain not only the principal sum but also an amount equivalent to the amount of the principal. This excess amount with the creditor could be nothing but the usurious interest which the Act allowed in the name of giving debt relief. This was so inspite of the fact that these laws were mainly intended to save the poor debtors from the clutches of the greedy money lenders and landlords since they generally left out of their purview the institutional creditors like banks, cooperatives and governments.⁴⁴

It would, thus, appear that in the garb of saving the poor debtors from exploitation, these laws were twisted to suit the creditors and could hardly stand upto their avowed aim. Needless to say, being limited to particular periods and not touching the basic relationship in the rural set-up, these laws could not benefit the rural poor.

NOTES AND REFERENCES

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1. *Report of the Royal Commission on Agriculture* (1928) cited in AGRICULTURAL LABOUR ENQUIRY, GOVERNMENT OF INDIA; *Report on Intensive Survey of Agricultural Labour*, 1 ALL

- INDIA (1950-51) at 55.
2. Vijay Kumar, *The continuation of Zamindari by the Zamindari Abolition Laws*, 13-15 KURUKSHETRA UNIVERSITY LAW JOURNAL (1987-89); *Fallacy of Distributive Justice in Land Relations in Rural India*, 34 JOURNAL OF INDIAN LAW INSTITUTE (1992).
 3. *Report of the All India Debt and Investment Survey, 1981-82; Assets & Liabilities of Households as on 30 June 1981*, R.B.I., DEPARTMENT OF STATISTICAL ANALYSIS & COMPUTER SERVICES, BOMBAY, 38 (1987).
 4. *Ibid.*
 5. *Id.* at 31.
 6. *Id.* at 57.
 7. *Agricultural Legislation in India, Government of India*, 8 RELIEF OF AGRICULTURAL INDEBTEDNESS (1958) at IX.
 8. Section 3 of the Act.
 9. *Supra* n. 7 at XXVII.
 10. *Id.* at X.
 11. For instance, see THE CENTRAL PROVINCES DEBT CONCILIATION ACT, 1933; THE PUNJAB RELIEF OF INDEBTEDNESS ACT, 1934; THE BENGAL AGRICULTURAL DEBTORS ACT, 1935 and THE MADRAS DEBT CONCILIATION ACT, 1936.
 12. For instance, see THE U.P. AGRICULTURIST RELIEF ACT, 1934; THE MADRAS AGRICULTURIST RELIEF ACT, 1938; THE PUNJAB DEBTORS' PROTECTION ACT, 1936 and THE U.P. DEBT REDEMPTION ACT, 1940.
 13. See Section 8(2) of the Act.
 14. The matter pertaining to relief of agricultural indebtedness falls under Entry 30 of List II-the State List of the Seventh Schedule to the Constitution.
 15. A 'debtor' has been defined to mean a rural artisan (not holding any agricultural land and not owning assets exceeding Rs. 50,000/- in value) primarily engaged in production of repair of traditional tools or other things used for agricultural purposes or earning his livelihood by practising a craft in the rural area and includes agricultural labourers, not owning any agricultural land and not owning assets exceeding Rs.50,000/- in value.
 16. See Section 4 (a).
 17. A 'small farmer' means a person who owes a debt and who earns his livelihood mainly by agriculture and (a) who owns agricultural land not exceeding two hectares or (b) whose total assets do not exceed Rs. 50,000/- in value.
 18. An 'agricultural labourer' was defined to mean a person who did not hold any agricultural land and whose principal means of livelihood was by manual labour on agricultural land in the capacity of a labourer on hire or on exchange whether paid in cash or in kind or partly in cash and partly in kind. See Section 3 (b) of the Act.
 19. According to Section 3(r) 'rural artisan' means a person who does not hold any agricultural land and whose principal means of livelihood is production or repair of traditional tools, implements and other articles or things used for agriculture or purposes ancillary thereto, and includes a fisherman and any person who normally earns his livelihood by practising a craft either by his own labour or by the labour of all or any of the members of his family in rural area.
 20. In terms of Section 3 (t) a 'small farmer' means a person whose principal means of

livelihood is income derived from agricultural land either by personal cultivation or as a tenant or share cropper or mortgagee with possession, the area of such land not exceeding one hectare of wet land or two hectares of dry land in the case of persons other than the members of the Scheduled Tribes and two hectares of wet land or four hectares of dry land in the case of the members of the Scheduled Tribes. This definition excludes a person whose annual household income other than from agriculture exceeds Rs. 1200/- in any two years within three years immediately preceding the commencement of this Act.

21. See Section 4(1), THE ANDHRA PRADESH AGRICULTURAL INDEBTEDNESS (RELIEF) ACT, 1977.
22. *Id.* Section 4(2) (a).
23. See Sections 3 (a) and 3 (b), *M.P. Gramin Rin Vimukti Adhiniyam*, 1982. Earlier the *Gramin Rin Vimukti Tatha Rin Sthagan Adhiniyam*, 1975 discharged debts advanced before its commencement on 16th October, 1975 including the amount of interest payable by marginal farmers, landless agricultural labourers and rural artisans.
24. See Section 2(g), *M.P. Gramin Rin Vimukti Adhiniyam*, 1982. Section 2(1) of the Act defines a 'small farmer' as a person holding agricultural land not exceeding two hectares if irrigated or not exceeding four hectares if unirrigated in case of a member of a Scheduled Caste or Scheduled Tribe and not exceeding one hectare if irrigated and two hectares if unirrigated land in case of others.
25. Explanation to Section 4, THE ANDHRA PRADESH AGRICULTURAL INDEBTEDNESS (RELIEF) ACT, 1977 and explanation to Section 3, the *M.P. Gramin Rin Vimukti Adhiniyam*, 1982.
26. Section 3.
27. Section 4, THE GUJARAT RURAL DEBTORS RELIEF ACT, 1972.
28. Section 8(2) of the Act.
29. Section 21.
30. Section 30, the MYSORE AGRICULTURAL DEBTORS RELIEF ACT, 1966.
31. *Id.*, Section 2(5). An indebted individual agriculturist not having an aggregate annual income exceeding Rs.5000/- and an indebted Undivided Hindu Family not having an aggregate annual income exceeding Rs.10,000/- transferring their land as a mortgage, being the debtors come within the purview of the Act.
32. *Id.*, Sections 11 and 19.
33. Section 4(2), KERALA AGRICULTURISTS DEBT RELIEF ACT, 1970.
34. *Id.*, proviso to Section 4(5).
35. *Id.*, Section 16.
36. *Ibid.*
37. Section 4, *Madhya Pradesh (Anusuchit Jati Tatha Anusuchit Jan Jati) Rini Sahayata Adhiniyam*, 1967.
38. *Id.*, Section 14.
39. *Id.*, Section 15.
40. *Id.*, Section 17 (1).
41. For instance, see Section 51, THE PUNJAB AGRICULTURAL INDEBTEDNESS (RELIEF) ACT, 1975; explanation to Section 4 of THE ANDHRA PRADESH AGRICULTURAL INDEBTEDNESS (RELIEF) ACT, 1977; and explanation to Section 3 of the *M.P. Gramin Rin Vimukti Adhiniyam*, 1982.

- .. Section 14 (7).
43. Section 4, THE GUJARAT RURAL DEBTORS' RELIEF ACT, 1976.
44. Section 3, THE PUNJAB AGRICULTURAL INDEBTEDNESS (RELIEF) ACT, 1975; Section 3(1), THE A.P. AGRICULTURAL INDEBTEDNESS (RELIEF) ACT, 1977; Section 5, *M.P. Gramin Rin Vimukti Adhiniyam*, 1982; Section 27, THE GUJARAT RURAL DEBTORS' RELIEF ACT, 1976; Section 2(4), THE KERALA AGRICULTURISTS DEBT RELIEF ACT, 1970; and Section 6 of *The M.P. (Anusuchit Jati Tatha Anusuchit Jan Jati) Rini Sahayata Adhiniyam*, 1967.