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THE USURIOUS LOANS ACT, 1918

'ACT No. X OF 1918

[22nd March, 1918]

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind ;

It is hereby enacted as follows :-

1. Short title and extent.— (1) This Act may be called the Usurious Loans Act, 1918.

*[(2) It extends to the whole of Pakistan.]

(3) The >[Provincial Government] may, by notification in the “[official Gazette], direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest, or otherwise.

(2) "Loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "Suit to which this Act applies" means any suit-

(a) for the recovery of a loan made after the commencement of this Act ; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act ; °[or

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.]

¹For Statement of Objects and Reasons, see Gazette of India, 1917, Pt. V, p. 86 ; for Report of Select Committee on the Bill, see ibid., 1917, Pt. VI, pp. 714, 815 and ibid., 1918, Pt. VI, pp. 94 and 707.

This Act has been applied to Phulera in the excluded Area of Upper Tanawal to the extent the Act is applicable without any modifications ; and also extended to the Excluded Area of Upper Tanawal (N.-W F. P.) other than Phulera, subject to such modifications as may be notified. see N.-W. F. P. (Upper Tanawal) (Excluded Area) Laws Regulation.

It has been amended in the Punjab by the Punjab Act 7 of 1934 and in the N.-W.F.P. by the N.W.F.P. Act

It has also been extended to the Leased Areas of Balochistan, see the Leased Areas (Laws) Order, 1950. Federated Areas of Baluchistan see Gazette of India, 1937, Pt. I, p. 1499.

3Subs. By A. O., 1937, for "L.G".

4Subs by A. O., 1937, for "local official Gazette".

¹Ins. by the Usurious Loans (Amdt.) Act, 1926 (28 of 1926), s. 2.

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3. Re-opening of transactions.— (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855 (XXVIII of 1855), where, in any suit to which this Act applies, whether heard ex- parte or otherwise, the Court has reason to believe,—

(a)
(b)

that the interest is excessive ; and

that the transaction was, as between the parties thereto, substantially unfair,

the Court may exercise all or any of the following powers, namely, may —

- (i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest ;
- (ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof ;
- (iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that, in the exercise of these powers, the Court shall not-

(i)
(ai)

re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than {twelve} years from the date of the transaction ;

do anything which affects any decree of a Court.

Explanation.— In the case of a suit brought on a series of transactions the expression “the transaction” means, for the purposes of proviso (1), the first of such transactions.

(2) (a) In this section “excessive” means in excess of that which the Court deems to

(b)

be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated and

the total advantage which may reasonably be taken to have been expected from the transaction.

'Subs. by the Usurious Loans (Amdt.) Act, 1926 (28 of 1926), s. 3, for "six".

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(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.—Interest may of itself be sufficient evidence that the transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan [or for the redemption of any such security].

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word “notice” shall have the same meaning as is ascribed to it in Section 4 of the Transfer of Property Act, 1882 (IV of 1882).

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

4. Insolvency proceedings. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies.

¹Ins. by the Usurious Loans (Amdt.) Act, 1926 (28 of 1926), s. 3.