

SIND ACT No. XIV/OF 1944.¹

[THE SIND MONEY-LENDERS ACT, 1944.]

[8th June, 1944]

An Act to regulate the transactions of money-lending in the Province of Sind.

WHEREAS it is expedient to make better provision for the regulation and control of transactions of money-lending ; It is hereby enacted as follows :—

CHAPTER I.

DEFINITIONS.

1. (1) This Act may be called the Sind Money-lenders Act, 1944. Short title, extent and commencement.

(2) It extends to the whole of the Province of Sind.

(3) It shall come into force on such date² as the Provincial Government may, by notification in the *Official Gazette*, appoint.

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

(1) "bank" means a banking company as defined in section 277 F of the ³* Companies Act, 1913, whether incorporated in or outside ⁴[Pakistan] ;

(2) "capital" means a sum of money which a money-lender invests in the business of money-lending ;

(3) "Chief Court" means the Chief Court of Sind established under the Sind Courts Act, 1926 ;

(4) "commercial loan" means a loan advanced to any person to be used by such person solely for the purposes of any business or concern relating to trade, commerce, industry, mining, insurance, transport, banking or entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor :

¹ For Statement of Objects and Reasons, see S. G. G., 1943, Pt. IV, pp. 55-59; for the Report of the Select Committee, see *ibid.*, pp. 315-318; for proceedings in Assembly, see S. L. A. Debates, 1943-44, Vol. XVIII, Book No. 9, pp. 95-75; Book No. 10, pp. 10-12; Vol. XVIII-Book No. 1, pp. 18-20, Vol. XIX-Book No. 6, pp. 17-37, Book No. 7, pp. 17-18.

² Came into force w. e. f. 1st June, 1945 *vide*, G. N. H. D. (B), No. 2301-H/40/1, dated 22nd May 1945, S. G. G., 1945, Pt. I, p. 618.

³ The word "Indian" omitted by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 4 (w. e. f. 30th May 1951).

⁴ Subs. *ibid.*, s. 3 (ii) (b) (w. e. f. 30th May 1951), for "British India".

Explanation:—Notwithstanding anything contained in any agreement relating thereto, a loan shall not be deemed to be a commercial loan unless it is in substance a loan to be used solely for any of the purposes referred to in this clause.

(5) "competent Court" means a court empowered under section 3 to entertain proceedings under this Act and to pass orders therein ;

(6) "Co-operative Society" means a society registered or deemed to have been registered under the ¹[Sind] Co-operative Societies Act, 1925, or the Co-operative Societies Act, 1912, or any Act of any other Provincial Legislature relating to such societies ;

Sind VII of
1925,
II of 1912.

(7) "debtor" means a person to whom a loan is advanced ;

(8) "interest" includes any sum by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of, or otherwise in respect of, a loan, but does not include any sum lawfully charged in accordance with the provisions of this Act or any other law for the time being in force by a money-lender for or on account of costs, charges or expenses ;

(9) "licence" means a licence granted under section 10;

(10) "licence fee" means the fee payable in respect of a licence;

(11) "loan" means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include—

(a) a deposit of money or other property including a deposit in a Post Office savings bank or any other bank ;

(b) a loan to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other enactment relating to public, religious or charitable objects ;

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1860.

(c) a loan advanced by any Government in ²[Pakistan] or by any local authority in the Province ;

(d) a loan advanced by a Co-operative Society or by a bank or by a co-operative life insurance society, insurance company, mutual insurance company, provident insurance society, or a provident society or from a provident fund ;

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 3 (i) (w. e. f. 30th May 1951), for "Bombay".

² Subs. *ibid*, s. 3 (ii) (b) (w. e. f. 30th May, 1951), for "British India".

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1881.

(e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note, including a document commonly known as *rasid* ; and

(f) a commercial loan ;

(12) " money-lending business " or " business of money-lending " means the business of advancing loans either solely or in conjunction with any other business ;

(13) " money-lender " means a person who carries on the business of money-lending in the Province or who has a place of such business in the Province and includes a pawn-broker ;

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(14) " pawn-broker " means a pawnee as defined in section 172 of the ¹* Contract Act, 1872 ;

(15) " prescribed " means prescribed by rules made under this Act ;

(16) " principal " means in relation to a loan the amount actually lent to the debtor ;

(17) " proceedings under this Act " means proceedings under sub-section (3) of section 14 or under sub-section (2) of section 15, or under sections 16, 17, 37 or 38 ;

(18) " Province " means the Province of Sind ;

(19) " Register " means a register of money-lenders maintained under section 7 ;

(20) " Registrar " means the Registrar of money-lenders appointed under section 6 ;

(21) " rules " means rules made under this Act ;

(22) " Schedule " means the Schedule appended to this Act ;

and

(23) " suit to which this Act applies " means any suit or proceeding—

(a) for the recovery of a loan advanced 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

¹ The word " Indian " omitted by The Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 4 (w. e. f. 30th May 1951).

respect of any loan advanced 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 advanced either before or after the commencement of this Act.

CHAPTER II.

CONSTITUTION AND POWERS OF COURTS IN PROCEEDINGS UNDER THIS ACT.

Competent Courts under the Act.

¹[3. The Court, referred to herein as competent Court, having jurisdiction to entertain proceedings under this Act, and to pass orders therein is the Court of a Second Class Subordinate Judge.]

Procedure in Competent Courts.

4. Subject to the provisions of this Act, a Competent Court in regard to proceedings under this Act shall have the same powers and shall follow the same procedure as it has and follows in regard to civil suits.

Appellate Courts.

5. (1) Any person aggrieved by a decision or order of a Competent Court in proceedings under this Act may appeal—

²(a) * * * * *

(b) to the District Court from a decision or order passed by the Court of a Second Class Subordinate Judge.

(2) Any person aggrieved by a decision or order of a District Court in appeal under sub-section (1) may, subject to the provisions of section 100 of the Code of Civil Procedure, 1908, appeal to the Chief Court in its appellate jurisdiction. V of 1908.

(3) (a) The period of limitation for appeals under sub-section (1) shall be 30 days and for appeals under sub-section (2) 90 days ;

(b) The provisions of the ³* Limitation Act, 1908, IX of 1908, applicable to appeals shall, so far as may be, apply to appeals under this section.

CHAPTER III.

REGISTRATION AND LICENSING OF MONEY-LENDERS.

Appointment of Registrars.

6. The Provincial Government may appoint Registrars of money-lenders for the purpose of this Act and may define the areas within which each Registrar shall exercise his powers and perform his duties.

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, for the original section 3.

² Sub-clause (a), rep. *ibid.* s. 6, Sch. II.

³ The word " Indian " omitted *ibid.* s. 4 (w. e. f. 130th May 1951).

7. The Registrar shall maintain a Register of money-lenders in such form as may be prescribed.

Register of money-lenders.

8. (1) After such date not less than six months after the commencement of this Act as the Provincial Government shall, by notification in the *Official Gazette*, appoint in this behalf, no money-lender shall carry on or continue to carry on the business of money-lending unless he holds an effective licence.

Money-lending business not to be carried on except under licence.

(2) For the purposes of this Act, an "effective licence" means a licence which is not suspended or cancelled or which has not expired.

9. No money-lender shall carry on the business of money-lending except in accordance with the terms and conditions of such licence.

Money-lender not to carry on business of money-lending except in accordance with terms of licence.

10. (1) Every money-lender shall annually before such date as may be prescribed apply for the grant of a licence to the Registrar of the area within the limits of which he intends to carry on the business of money-lending or has his principal place of business of money-lending. Such application shall contain the following particulars, namely:—

Liability to furnish statement of account.

(a) the name in which such money-lender intends to carry on business ;

(b) if the application is by or on behalf of—

(i) an individual, the name and address of such individual,

(ii) a firm or an undivided Hindu family, the name and address of the manager of such firm or family,

(iii) a body corporate, the names and addresses of directors, manager or officers thereof ;

(c) the place or principal place of the business of money-lending in the Province ;

(d) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on ;

(e) whether the person signing the application has himself, or any of the adult coparceners of an undivided Hindu family, or any member of the firm or body corporate on behalf of which such application has been made has or have carried on the business of money-lending in the Province in the year ending

on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other coparcener or any other person in the same or any other name.

(2) The application shall be in writing and shall be signed by the individual, or if the application is made on behalf of a firm or an undivided Hindu family, by the manager of such firm or family, or, if the application is made by a body corporate, by the managing director or any other person having control of its principal place of business in '[Pakistan] or of its place of business in the area in which it intends to carry on the business, or by an agent authorised in this behalf by the individual money-lender himself, or the firm or the family, or the body corporate, as the case may be.

(3) The application shall also contain such other particulars as may from time to time be prescribed.

Entry in
Register,
and grant
of licence.

11. (1) On receipt of an application under section 10 and on payment in the prescribed manner of such licence fee as is specified in the Schedule, the Registrar may, after making a summary inquiry, enter the name of such applicant in the Register and grant the applicant a licence in such form and subject to such conditions as may be prescribed.

(2) If at any time during the year for which a licence has been granted, the Registrar has reason to believe that the money-lender has his place or the principal place of business within an area for which a higher licence fee than that paid is leviable under the Schedule, the Registrar may, after making such inquiry as he deems fit, determine the additional amount of licence fee which the money-lender is liable to pay and recover the same from the money-lender.

Licence to
be for one,
two or three
years.

Claim for a
loan ad-
vanced with-
out licence
barred.

12. A licence shall be granted for one, two or three years, at the option of the money-lender.

13. No Court shall allow any claim in respect of a loan advanced by a money-lender after the date notified under section 8 unless it is satisfied that at the time when the loan was advanced the money-lender held an effective licence.

Refusal of
licence.

14. (1) The grant of a licence shall not be refused except on one or more of the following grounds:—

(a) that the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business is disqualified under this Act for holding a licence;

(b) that the applicant has made wilful default in complying with, or knowingly acted in contravention of, any requirement of this Act;

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1555 (Sind 5 of 1955), s. 3 (ii) (b) (w.e.f. 30th May 1955), for "British India".

(c) that the applicant has not complied with the provisions of this Act or of the rules made thereunder in respect of an application for the grant of a licence :

(d) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business has—

(i) knowingly committed or abetted the commission of any fraud or dishonesty in the conduct of such business, or

(ii) has been found guilty of an offence punishable under Chapter XVII or of an offence punishable under sections 465, 477, or 477A of Chapter XVIII of the ¹[Pakistan] Penal Code.

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1860.

(2) The Registrar refusing a licence under sub-section (1) shall record the evidence adduced before him and his reasons in writing for such refusal.

(3) An appeal shall lie from the order of the Registrar refusing a licence to the Competent Court.

(4) Every such appeal shall be filed within 30 days of the date of the order complained against. The provisions of the ^{2*} Limitation Act, 1908, applicable to appeals, shall, so far as may be, apply to all appeals made under this section, and for the purposes of the said provisions a Registrar shall be deemed to be a Court.

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1908.

15. (1) Where the Registrar find that a money-lender to whom a licence has been granted within his jurisdiction was disqualified for holding a licence at the time when such licence was issued, he may, after giving the money-lender an opportunity of being heard, cancel the licence.

Registrar's
power to
cancel a
licence.

(2) The provisions of section 14, sub-sections (3) and (4), shall, so far as may be, apply to an order made under sub-section (1).

16. (1) Any debtor may, in respect of any money-lender from whom he had taken a loan, make an application to the Competent Court for the cancellation of the licence issued to such money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar under section 14 may refuse him the grant of a licence.

Application
by debtor
for cancella-
tion of
licence.

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 4 (w.e.f. 30th May, 1951), for "Indian".

² The word "Indian" omitted, *ibid.*

(2) On receipt of such application, the Court shall hold an inquiry and shall ascertain whether the money-lender has been guilty of such act or conduct.

(3) Any person making an application under this section, which is frivolous or vexatious, shall be liable to pay to the money-lender against whom such application has been made, compensation of such amount as shall, in the opinion of the Court, be sufficient.

Suspension
and cancel-
lation of
licence.

17. (1) (i) The Court passing an order of conviction against a money-lender for an offence under this Act, or

(ii) the Court trying a suit to which this Act applies, or

(iii) a Competent Court in a proceeding under this Act,

if such Court is satisfied that such money-lender has committed such contravention of the provisions of this Act or the rules made thereunder as, in its opinion, makes him unfit to carry on the business of money-lending—

(a) may order that the licence held by such money-lender be suspended for such time as the Court may think fit, or cancelled ;

(b) may also, if the Court thinks fit, declare any such money-lender, or if any such money-lender is a firm or an undivided Hindu family, the manager or if such money-lender is a body corporate, any person responsible for the management of the business of money-lending carried on by such money-lender, to be disqualified for holding a licence for such time as the Court may think fit ;

(c) shall cause the particulars of the conviction and of any order made by the Court under this section to be endorsed on the licence held by the money-lender convicted or by any other person affected by the order and shall cause copies of its order to be sent to the Registrar by whom the licence was granted for the purpose of entering such particulars in the Register.

(2) Save as provided in section 5, any person aggrieved by an order of a Court under this section may appeal against such order to the Court to which an appeal ordinarily lies from an appealable decree or sentence of the Court passing the order, or where the civil court passing the order is one from whose decrees no appeal ordinarily lies, to the principal Court having original civil jurisdiction within the local limits of whose jurisdiction such civil court is situate.

(3) Every such appeal shall be filed within 30 days of the order complained against and the provisions of the ^{1*} Limitation

¹ The word "Indian" omitted by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s.4 (w.e.f. 30th May, 1957).

IX of 1908. Act, 1908, applicable to appeals, shall, so far as may be, apply to appeals made under this section.

(4) The Court which passes an order under this section or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order.

(5) Any licence required by a Court for endorsement in accordance with sub-section (1) shall be produced in such manner and within such time as the Court may direct by the person by whom it is held and any person who, without reasonable cause, makes default in producing the licence so required shall, in respect of each offence be liable, on conviction, to a fine not exceeding twenty-five rupees for each day for the period during which the default continues.

(6) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

(7) Where the Court of appeal or revision sets aside or varies an order passed under this section, it shall order that any endorsement made in pursuance thereof upon a licence held by a money-lender shall be erased or modified, as the case may be.

18. Any person whose licence has been cancelled or suspended in accordance with the provisions of this Act shall, during the period for which such order of cancellation has effect or during the period of suspension, as the case may be, be deemed to be disqualified for holding a licence.

Person whose licence is cancelled or suspended debarred from doing business of money-lending.

19. Any person to whom a licence has been granted shall not be entitled to any compensation for the suspension or cancellation of a licence under this Act, nor to refund of any licence fee paid or deposit made in respect thereof.

No compensation for suspension or cancellation of licence.

20. No person whose licence has been endorsed under section 17 or who has been disqualified for holding a licence shall apply for, or hold a licence, without giving particulars of such endorsement or disqualification.

Person whose licence is cancelled or suspended not to apply without giving particulars of endorsement or disqualification.

Gul Hayat Institute

21. (1) Whoever being disqualified for holding a licence, applies for or obtains a licence during the pendency of such disqualification,

Offences in respect of licences.

without disclosing the fact thereof, shall be punished with fine which may extend to five hundred rupees, and any licence so obtained shall not be deemed to be an effective licence.

(2) Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Act or abets such obliteration or attempt shall be punished with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.

Licence fee recoverable as an arrear of land revenue.

22. All licence fee including the balance of such fee due on the suspension or cancellation of a licence shall be recoverable as an arrear of land revenue.

CHAPTER IV.

REGULATION OF ACCOUNTS.

Duty of money-lender to keep accounts.

23. (1) Every money-lender shall keep and maintain at least a cash book, a ledger and a receipt book in such form or forms as may be prescribed and the same shall be written in the regular course of business.

(2) Every such book shall be sealed, numbered and paged by the Registrar.

(3) Every money-lender shall—

(a) deliver to the debtor, at the time a loan is advanced, a statement in the language in which he keeps his accounts or where the debtor is a Sindhi Mussalman, in Arabic Sindhi language, showing in clear and distinct terms the amount and date of the loan, the date of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and the rate of interest charged ;

(b) give to the debtor a plain and complete receipt for every payment made on account of any loan at the time of such payment and permit him or his agent to endorse such payment on the document, if any, evidencing the loan ;

(c) upon repayment of a loan in full, mark indelibly with words indicating payment or cancellation every paper signed by the debtor and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the debtor as security.

Furnishing of statement of accounts by money-lender.

24. (1) Every money-lender shall furnish in the manner laid down in sub-section (3) each of his debtors every year with a legible statement of accounts signed by the money-lender or his

agent showing the amount outstanding against the debtor and such statement shall also show—

(a) the amounts of principal and interest due to the money-lender at the commencement of the year ;

(b) the amounts of any sums advanced to the debtor from time to time since the commencement of the year and the dates on which they were advanced ;

(c) the amounts of any sums received from the debtor since the commencement of the year in respect of the loan and the dates on which they were received ;

(d) the amount of every sum due to the money-lender remaining unpaid, and the date upon which each such sum became due and the amount of interest accrued due and unpaid in respect of every such sum ;

(e) the amount of every sum not yet due which remains outstanding and the date upon which such sum will become due ; and

(f) such other particulars as may be prescribed.

(2) Every such statement shall be in the language in which the accounts of the money-lender are ordinarily kept and shall be in such form as may be prescribed.

(3) The statement referred to in the preceding sub-sections shall be given to the debtor on demand at any time within one month of such date as may be prescribed. If no such demand is made within such period the money-lender shall forthwith send the statement to the Registrar and thereupon the money-lender shall be deemed to have furnished the statement to the debtor.

(4) In respect of any particular loan, whether advanced before or after the commencement of this Act, the money-lender shall, on demand being made in writing by the debtor at any time while the loan or any part thereof remains outstanding and on payment of the prescribed fee, supply to the debtor, or to any person specified in that behalf in the demand, within such time as may be prescribed, a statement in the language in which the accounts of the money-lender are ordinarily kept, signed by the money-lender or his agent and showing all or any of the particulars specified in sub-section (1). Such statement shall be supplied in English or in any other recognised language of the Province if the debtor pays a fee of two rupees.

For the purpose of this sub-section, the words "recognised language of the Province" mean any of the following languages, namely :—

Sindhi, Gujrati, Marathi, Urdu and Hindi.

(5) A money-lender shall on demand in writing by the debtor, supply to the debtor or to any person specified in that behalf in the demand a copy of any document relating to a loan advanced to the debtor or any security therefor.

(6) For the purpose of this section, "year" shall mean the year for which the accounts of the money-lender are ordinarily maintained in his own books.

Debtor not bound to admit correctness of accounts.

25. A debtor to whom a statement of accounts has been furnished under section 24 shall not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

Procedure of Courts in suits regarding loans.

26. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(a) a Court shall, before deciding the claim on its merits, frame and decide the issue whether the money-lender has complied with the provisions of section 23 or 24 ;

(b) if the court finds that the provisions of either of the said sections have not been complied with, it may, if the plaintiff's claim is established, either wholly or in part, disallow the whole or such portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may also disallow costs ; or in computing the amount of interest due upon the loan may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections :

Provided that if the money-lender has, after the time specified in the said sections, given the receipt or furnished the statement, as the case may be, and if he satisfies the Court that he had sufficient cause for not doing so earlier, the Court may, notwithstanding such omission, include any such period in computing the interest.

Explanation.—A money-lender who has given a receipt or furnished a statement in the prescribed form, shall be held to have complied with the provisions of section 23 or section 24, as the case may be, in spite of any errors and omissions in such receipt or statement if the Court finds that such errors and omissions are neither material nor made fraudulently.

CHAPTER V.

MISCELLANEOUS.

27. Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan advanced, whether before or after this Act comes into force, decree, on account of arrears of interest, a sum greater than the principal of the loan.

Power of the Court to limit interest recoverable in certain cases.

28. Notwithstanding anything contained in any law for the time being in force or in any contract, no money-lender shall be entitled to claim, in respect of any loan advanced after the commencement of this Act, interest at a rate exceeding 8 per cent. per annum in the case of a secured loan and 10 per cent. per annum in the case of an unsecured loan and no Court shall in any suit to which this Act applies pass a decree for interest at a rate exceeding such rates.

Limitation of interest.

29. Any contract made after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract :

Prohibition of compound interest and provision as to defaulting.

Provided that provision may be made in any such contract that if default is made in the payment, within six months of the due date, of any sum payable to the money-lender under the contract, whether in respect of principal or interest, or both, the money-lender shall, subject to the provisions of section 28, be entitled to charge simple interest on that sum from the date on which such period of six months expired until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purpose of this Act as part of the interest charged in respect of the loan.

30. Any agreement between a money-lender and a debtor or intending debtor for the payment by the debtor or intending debtor to the money-lender of any sum on account of costs, charges, or expenses incidental or relating to the negotiations for, or the granting of, the loan shall be illegal and if any sum is paid to a money-lender by the debtor or intending debtor as for, or on account of, any such costs, charges or expenses, that sum shall be recoverable as a debt due to the debtor or intending debtor, or, in the event of the loan being completed shall, if not so recovered, be set off against the amount actually lent and the amount shall be deemed to be reduced accordingly :

Prohibition of charge for expenses of loan by money-lender.

Provided that nothing in this section shall debar a money-lender from recovering costs of investigating title, of stamp duty and registration of documents and other necessary and incidental expenses in cases where the contract includes a stipulation that property is to be given as security or by way of mortgage, or the costs of stamp duty and registration of documents in the case of unsecured loans, if both parties have agreed to such expenditure and reimbursement thereof, or where such costs, charges or expenses are leviable under the provision of the Transfer of Property Act, 1882, or any other law for the time being in force.

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Computation of interest on loans in kind.

31. In the case of loans in kind, the money value of the commodity at the time when, and in the locality where, the loan was advanced shall, for the purposes of this Act, be deemed to be the principal of the loan, and in determining the amount which may, subject to the provisions of this Act, be decreed in respect of a loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

Court may order payment of amount due on mortgage by instalments.

32. Notwithstanding anything contained in any law for the time being in force or in any contract, the Court may, at the time of passing a decree in any suit relating to a mortgage by which any loan is secured, order that payment of any amount decreed in such suit shall be made in such number of instalments and on such dates and subject to such conditions as, having regard to the circumstances of the debtor and the amount of the decree, it considers fit.

Power to direct payment of amount decreed by instalments.

33. Notwithstanding anything contained in any law for the time being in force or in any contract, the Court may, at any time, on the application of a judgment-debtor, after notice to the decree holder, direct that the amount of any decree, whether passed before or after the commencement of this Act, in respect of a loan, including any decree in a suit relating to a mortgage by which any loan is secured, shall be paid in such number of instalments and on such dates and subject to such conditions as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Notice and information to be given on assignment of loans.

34. (1) Where a debt in respect of a loan advanced by a money-lender, whether before or after the commencement of this Act, or any interest on such loan or the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any person, other than a bank, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

(a) give to the assignee notice in writing that the loan, interest thereon, agreement or security is affected by the operation of this Act ; and

(b) supply to the assignee in such form as may be prescribed all information as to the state of the loan together with copies of documents relating thereto.

(2) Any person who acts in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention.

(3) In this section the expression "assigned" means assigned by an assignment *inter vivos* other than an assignment by operation of law ; and the expressions "assignor" and "assignee" have corresponding meanings.

35. (1) Save as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt due to a money-lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and, except, where the context otherwise requires, references in this Act to a money-lender shall accordingly be construed as including any such assignee as aforesaid :

Application
of Act as
respects
assignees.

Provided that notwithstanding anything in this Act—

(a) any agreement with, or security taken by, a money-lender in respect of money lent by him after the commencement of this Act shall be valid in favour of any bank or any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him ; and

(b) any payment or transfer of money or property made *bona fide* by any person whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid ;

but in every such case the money-lender shall be liable to indemnify the debtor or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid any agreement or security in favour of, or apply to proceedings instituted by, an assignee or holder for value who is himself a money-lender.

(2) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

Re-opening
of transac-
tions.

36. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard *ex parte* or otherwise—

(a) re-open any transaction and take an account between the parties ;

(b) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, re-open any account already taken between the parties ;

(c) release the debtor of all liability in respect of interest in excess of the limits specified in sections 27 and 28 ;

(d) appropriate excess interest referred to in clause (c), whether realized through court or otherwise, towards the satisfaction of the loan ;

(e) 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 money-lender 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 nothing contained in this section shall be deemed to require the money-lender to refund any sum which has been paid to him :

Provided further that in the exercise of powers conferred by this section the Court shall not—

(i) re-open any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than three years prior to the date of the suit ;

(ii) do anything which affects any decree of a court or a debt scaled down under the Sind Agriculturists Relief Act, 1940, or an agreement or award recorded under the Sind Debt Conciliation Act, 1941.

Sind VIII.
1940.
Sind IX.
1941.

Explanation.—For the purpose of this section, in the case of a suit brought on a series of transactions, the expression "transaction" shall mean the first of such transactions.

Inquiry for
taking ac-
counts and
declaring
the amount
due.

37. (1) Any debtor may make an application at any time to the Competent Court, whether the loan to which the suit relates has or has not become payable, for taking accounts and for declaring the amount due to the money-lender. Such application shall be

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in the prescribed form and shall be accompanied by the prescribed fee.

(2) On receipt of such application the Court shall cause a notice of the application to be served on the money-lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of Chapter IV and this Chapter.

(4) A proceeding under this section shall be deemed to be a suit for the purposes of section 11 of the Code of Civil Procedure, 1908, and a declaration under this section shall be subject to appeal to the Chief Court in the same manner as a decree passed in appeal.

38. (1) When a debtor has sent to a money-lender by postal money order any sum of money due from him to the money-lender in respect of a loan by way of principal or interest or both, and the money-lender has refused to accept the sum, the debtor may deposit the said sum in the Competent Court to the account of the money-lender.

Deposit in Court of money due to money-lender.

(2) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and the money-lender may, on presenting a petition (verified in the manner prescribed by law for the verification of petitions) stating the sum then due in respect of the loan, and his willingness to accept the money so deposited, receive the sum.

(3) If the Court is satisfied that the lender has, without reasonable excuse, refused to accept any sum sent to him by postal money order by the debtor in respect of the loan, it may direct payment to the debtor from the money so deposited or otherwise, of such sum as damages and costs as it thinks fit.

(4) If the money-lender withdraws the sum deposited by a debtor under sub-section (1) he shall not be bound by any statement made by the debtor in depositing the same.

(5) When the debtor has deposited in the Court under this section the sum due in respect of the loan, if such money is in payment of the principal or any part thereof, the interest on such

principal or part shall, notwithstanding any agreement between the parties, cease from the date of the service of notice on the money-lender under sub-section (2).

(6) Nothing in this section shall affect the operation of the provisions of sections 83 and 84 of the Transfer of Property Act, IV of 1882 1882, in regard to loans to which the said provisions apply.

Entry of sum in a bond, etc. greater than the loan advanced to be an offence.

39. (1) No money-lender shall take from a debtor or intending debtor any note, promise to pay, bond or security which does not state the actual amount of the loan, nor shall he take from any debtor or intending debtor any instrument in which the principal amount is left blank for being filled in at a later date.

(2) Whoever intentionally contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to one thousand rupees.

(3) Notwithstanding anything contained in any law for the time being in force, any note, promise to pay, bond, security or document referred to in sub-section (1) shall be void and unenforceable.

Penalty for molestation.

40. (1) Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover a debt shall be punishable with imprisonment of either description which may extend to three months or with fine which may extend to five hundred rupees or with both.

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing or to do any act which he has a right to do or to abstain from doing—

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof,

shall be deemed to molest such other person.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be a cognizable offence as defined in that Code and the rest of the provisions of that Code shall have effect accordingly. V of 1898.

(3) Nothing in this section shall be deemed to repeal or affect any law for the time being in force but a person shall not be punished twice for the same offence.

41. Whoever intentionally makes default in complying with or intentionally acts in contravention of any of the provisions of this Act shall, if no specific penalty has been provided in this Act, be punished for the first offence with fine which may extend to five hundred rupees, for the second offence with fine which may extend to one thousand rupees and for any subsequent offence to imprisonment which may extend to six months. Penalties.

42. Every officer of the Crown acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the ¹[Pakistan] Penal Code. Every officer to be public servant.

XLV of 1860.

43. No suit or proceeding shall lie against any officer of the Crown for anything which is in good faith done or intended to be done under this Act. Protection to persons acting under the Act.

44. The Provincial Government may, by notification in the *Official Gazette*, for any special reason or reasons to be stated in such notification, exempt any class of money-lenders or any class of loans in the whole or any part of the Province from the operation of all or any of the provisions of this Act. Exemption.

45. Nothing contained in this Act shall restrict the operation of the ²[Sind] Agriculturists' Relief Act, 1879, in so far as it applies to Sind, or the Sind Agriculturists Relief Act, 1940. Savings.

XVII of 1879.
Sind VIII of 1940.

46. (1) The Provincial Government may make rules for carrying out the purposes of this Act. Rules.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for the following matters —

(a) the form of the Register under section 7;

(b) the form of the application for a licence and the further particulars to be included therein under section 10;

(c) the form and conditions of the licence and the manner of payment of licence fee under section 11;

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 4 (w.e.f. 30th May, 1955), for "Indian",

² Subs. *ibid.*, s. 7, Sch. III, for "Dekkhan".

(d) the language, form, manner of the statement of accounts and the details to be included therein under section 24 and the sum of money to be paid for a copy of a document ;

(e) the fee and the sum of expenses to be paid under section 24 ; and

(f) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(3) Rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

SCHEDULE OF LICENCE FEE.

Section II.

		The amount of licence fee payable per year.
		Rs.
1.	Where the place or principal place of business of money-lending is	
1.	• • • within a district headquarter town or within a Municipal borough constituted under the [Sind] Municipal Boroughs Act, 1925.	25
2.	Where such place is within any other area	10

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¹ The word "within the City of Karachi" as defined in the City of Karachi Municipal Act, 1933, or "rep. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 6. Sch. II.

² Subs. *ibid.*, s. 3 (1) (w. e. f. 30th May, 1951), for "Bombay".