

# DEBT TRAP:

Farmers & Labourers: DON'T SELL YOUR LAND  
...Don't kill yourselves ... Go to the Courts

## ADVICE

1. Debtors who have any doubt with regard to the legal position on interest, or who were forced by circumstances to accept a loan at exorbitant interest are advised to file a case before the Lok Adalat. The Lok Adalat has undertaken settlement of rural debt disputes.
2. Alternatively, they may approach the judicial courts for settlement of their debts. Courts cannot compel you to pay back a debt contracted illegally or at illegal interest rates.
3. Lawyers can be hired on commission basis if you have no money for legal fees. If your annual income is less than Rs 30,000, ask the judge for a free lawyer under the Legal Services Authority Act, 1987.
4. Chances are that in order to avoid disclosure of black money, a creditor will agree to an out-of-court settlement of your debt to your advantage.
5. Serve registered notice on the creditor asking for supply of accounts giving details of amount due, amount repaid and interest accrued.
6. Creditors generally take the help of police to recover a loan. Police is not empowered to interfere in civil disputes of this nature. In case of such illegal pressure, the village as a whole should protest and side with the debtor. Respond to police interference by sending a simple application to Punjab Human Rights Commission, SCO 22-23, Sector 34, Chandigarh.
7. In case of compromise with a creditor, have the compromise deal spelled out in writing on stamp paper and witnessed by the village panchayat.
8. Demand return of the pronote or any other document creating liability. Also get back stamp papers taken at time of advancing the loan or subsequently under pressure. In case there are no documents with the creditor take his written statement, attested by the panchayat, that he holds no papers.

If you live in rural Punjab you probably know someone who has despaired of repaying his loans and was driven to end his life to escape from tension, humiliation and harassment. You will also be aware that this tragic act brought not only grief but more hardship to the family. In district Sangrur's Lehra and Andana blocks (subdivision Moonak) 80 such suicides have taken place, of which 56 have been officially verified. In the rest of Punjab the position is also dismal. Three per cent of Punjab's land is passing into hands of moneylenders each year.

In Punjab, 75 to 80 per cent of the population lives in villages. Their economic position has been reduced to a level where, for debts ranging from a few thousands to a few lakh rupees, villages take their lives. Contrast this with the situation of businessmen and

industrialists. According to the Reserve Bank of India, 284 defaulting companies in Punjab (each owing Rs 1 crore or more) their total debt stands at Rs 2753 crore! Are these men taking their lives? *NO !* There is a clear nexus between the political system and the captains of industry, trade and commerce, with an obliging section of the bank managers. They are enjoying all the luxuries of life without harassment or fear of jail. Suicides are left for the poor villagers.

The purpose of this booklet is to explain how the laws protect debtors and enable farmers and farm labourers to take full advantage of this protection so that they can withstand the pressures of moneylenders and extricate themselves from illegal debts. This booklet sets out in brief all the laws applicable to rural debt. Read it carefully.

Under Rule 24 (11b) of Punjab Agricultural Produce Market (General) Rules, 1962, a commission agent is required by law to make payment from his own funds to the farmer as soon as his crop is weighed and a bill prepared. The bill must mention the quantity, rate and total amount payable to the producer. The purpose of such a bill is to document receipt of the crop and its value. With rare exceptions, commission agents do not prepare such bills. When a commission agent does not present a bill or make immediate payment, he is able to continue charging the farmer interest on previous debt even after he has sold the crop. Failure to pay the farmer immediately on receipt of the crop should be made a penal offense and the license of the defaulting commission agent revoked. If your commission agent does not give a bill or make immediate payment for your crop, complain in writing against him to the district food and civil supplies department.

Section 3 of the Regulation of Accounts Act, 1930 requires the commission agent to give the farmer an account of each crop that he sells, including the amount advanced to him, the payment the commission has made and the balance to be paid. The account has to be given every six months in writing. This is provided in the Act. Failure to present this account results in disallowing of the whole or a portion of the interest found due, as the court may deem reasonable and costs shall be disallowed as per Section 4 of that Act.

The Usurious Loans Act outlaws interest exceeding 18% per annum. Loans advanced by commission agents to farmers generally range from 25% to 60%. These rates are illegal under the act and the commission agent cannot legally collect such a debt.

The provisions of the Interest Act (1978) do not apply since, under Section 2 (G) of the Act, debt means liability for an ascertained sum of money, but in the case of loans advanced by commission agents, the account is mutual, open and current account because the price of crops sold are credited to the account of the farmer and advanced are made to him from time to time. Therefore, there is no ascertained sum of money but even where some writing to reference to the rate of interest in the commission agent's account books is signed by the farmer, even then, as per the Rules and Orders of the Punjab and Haryana High Court Volume 1, Chapter 2, Part D, if the court comes to the

conclusion that interest stipulated in the writing is excessive, it is within the authority of the court to award interest at a lower rate.

The rule of *dam-do-pat*, as provided under section 30 of the Punjab Relief of Indebtedness Act (1934) still hold good and no court is competent to pass or execute a decree for a sum larger than twice the amount of the sum found by the court to have been actually advanced, less any amount already received by a creditor in excess of the amount due to him under the Usurious Loans Act. But future interest is not to be considered for counting the double sum.

The Punjab Relief of Indebtedness Act (1934) also contains penal provisions to safeguard debtor against harassment from creditors. If a creditor files a suit for recovery of a false loan or an amount exceeding the sum actually due, the creditor can be punished with imprisonment up to three months or a fine up to Rs 1000 can be imposed on him. The court can send a complaint to this effect to a magistrate for this purpose after preliminary inquiry.

### **Your Questions Answered**

Q 1. Can higher than permissible interest be enforced? If not, does it invite legal sanction against the creditor?

A 1. Higher than permissible interest cannot be enforced. Section 3 of the Usurious Loans Act provides that where the court is satisfied that the interest is excessive and that the transaction was substantially unfair, the court can reopen the transaction, take an account between the parties and relieve the debtor of all liabilities in respect of any excessive interest. No legal sanction against the creditor is invited in such cases. 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. The rate of interest may of itself be sufficient evidence that the transaction was substantially unfair. As per amendment in the aforesaid Central Act for the states of Punjab, Haryana and Chandigarh, the court shall deem interest to be excessive if it exceeds 7.5 % per annum simple interest or is more than 2 % per annum over the bank rate, whichever is higher at the time of taking the loan, in the case of secured loans or 12.5 % per annum simple interest in the case of unsecured loans. But this provision is not applicable to the banks, companies and cooperative societies.

Q 2. Is money advanced by an unlicensed money-lender (not a commission agent or licensed money-lender) permissible under law? Does it become permissible if the license is obtained after the loan is made?

A 2. Advancement of money by an unlicensed moneylender is permissible under the law but suits by the creditor for recovering the amount or execution applications by him

will be barred under Section 3 of the Punjab Registration of Moneylenders Act. However, the creditor can file such a suit if he satisfied the court that he has applied to the Collector to be registered and licensed and his such application is pending. In such a situation, the suit or application shall not be finally decided until the application of the moneylender for registration and grant of license pending before the Collector is finally decided.

Q 3. In case of inability of the debtor to repay the loan what protection is available to the debtor for his land, animals, implements, houses/buildings/trees or possessions?

A 3. In case of inability of the debtor to repay the loan, the land of the debtor is liable to attachment and sale in view of provisions contained in section 60, cpc, however, milch animals, whether in milk or in calf, kids, animals used for the purposes of transport or draught card and open spaces and enclosures belonging to an agriculturalist and required for use in case of need for tying cattle, parking carts or stacking fodder or manure are not liable to attachment. Similarly, in the case of agriculturalists, his implements of husbandry and such cattle and seed grains as are necessary to enable him to earn his livelihood are exempted from attachment and sale. Houses that are not let out on rent, are left vacant for a period of one year or more, are also not liable to attachment. On main residential house is also exempted from attachment and sale. Trees are part of the land as such go with the land and are liable to attachment.

Q 4. Generally, commission agents and money-lenders get signatures/thumb impressions of the debtor on blank stamped paper. Later, the document is written to indicate the hypothecation of land, house, etc. What is the validity or legal value of such a document?

A 4. In case a commission agent or moneylender got signatures/thumb impressions of the debtor on blank stamped paper and later wrote a document to indicate hypothecation of land, house, etc, the onus is on the debtor to show by evidence that the consideration for the document was actually different than the one recited in the document. Since the debtor admits his signatures on the document, the onus is heavy upon him and it is very difficult for him to lead direct evidence on the subject. However, some of the methods used to prove this fact are:

- The debtor can prove the watermark of the paper, stamp paper and revenue stamp to show that these were not of the period to which the document relates.
- The age of the two inks used, ie. The one used for signing and the other used for the writing of the document can be proved to be different. The testimony of a handwriting expert should be advanced. The expert can also testify that different pen and ink were used for signatures and writing of the document.
- Spacing between lines can also be proved to be irregular and abnormal because when the document is already signed the forger of the document is likely to leave less or more space between lines while reaching near the signature.

- The debtor can examine some other witnesses whose presence can be established at the place of alleged writing through other entries of the account books of the commission agents.
- The debtor can serve a legal notice calling upon the commission agent to deliver back the blank papers signed by him.

A farmer can also file a complaint against the commission agent under Section 464/477-A of the Indian Penal Code for making a false document and for falsification of accounts.

Q 5 . What is the extent of penalty that can be imposed for non-payment of loan?

A 5. In case a loan is not repaid, the remedies available to a creditor are to file a suit for recovery of the amount along with interest and costs of the suit. After decree, he has to file an execution application in which he can seek attachment and sale of moveable and immovable property of the debtor. He can also apply for arrest and detention of the judgement-debtor but detention in prison cannot be ordered until the remedies by attachment and sale of property are exhausted and an opportunity is given to the judgement-debtor for showing cause why he should not be committed to prison and the court is satisfied that the judgement-debtor is intentionally obstructing or delaying execution of the decree. The detention in civil prison is at the cost of the decree-holder. No detention in civil prison can be ordered if the total amount of the decree is Rs 2,000 or less. Where the amount of the decree is more than Rs 2,000 but less than Rs 5,000 the detention cannot be more than six weeks and where the amount exceeds Rs 5,000 the maximum period of detention can be three months. A release from detention does not discharge the debt but the debtor cannot be rearrested or detained for the same debt. A debtor in civil prison can be released at any time if, in the opinion of the court, he is not in a fit state of health to be detained in civil prison. But a debtor released on the ground of health can be rearrested, although his aggregate period of detention can in no case exceed three months. Where the arrest, attachment or injunction against a debtor is obtained on insufficient grounds, he can claim compensation for the same.

### **BE A SURVIVOR**

Punjab is passing through an economic depression that is even more severe than the one experienced in the days of Sir Chhottu Ram back in the 1930s. In those days, the state had enough federal powers to take corrective action; now most of these powers have been taken over by the Centre and it is only the Centre that can intervene. The situation is going to get worse and it would be foolish to expect any immediate help from the government. During the crisis of the 20s and 30s Punjab launched the reformist Singh Sabha Movement that campaigned to get people to change their way of life in the following ways:

1. **Stop drinking:** Villages, outlaw alcohol. When people are dying on account of debt and impoverishment we have no right to drink. Even if one has the price of a bottle, it is

at the expense of one's family. All religions preach against alcohol and other intoxicants. Give them up.

**2. Simplify ceremonies:** Stop worrying about "what will people say".

**Marriage:** A simple wedding is not less sacred than a costly one. During the Singh Sabha Movement, a marriage ceremony could be performed for Re 1, 4 annas. Perform marriages in *gurdwaras* and *mandirs*.

**Bridegroom's party:** Restrict the bridegroom's party to immediate family only.

**Dowry:** Do not give or accept dowry. Giving and accepting dowry is against the law. Dowry was never the custom of rural Punjab and was forbidden by the Gurus. Even display of the bride's personal belongings was forbidden.

**Bhog:** Neither is it necessary to conduct lavish bhog ceremonies. In the Singh Sabha days this ceremony too was performed in the *gurdwara* at a cost of Rs 1, 4 anna.

**3. Share:** Guru Nanak told us "*kirat karo, wand chako*" (Work and distribute your surplus). This is the behaviour expected of a Sikh. If you have more than you need, ask a needy person to share food with you. If there is no food in the house go to the *gurdwara* and ask for *langar*. It is no disgrace to eat in God's house; this is the purpose of a *gurdwara*.

**4. Help each other in farm operations.** It may be your turn to seek help next time. This is the traditional way of village cooperation.

**5. Educate your sons and daughters** so that they gain skills that will get them jobs. Pressure on farmers is only going to increase. Holdings are getting smaller and the old way of life in the village will no longer be able to support a family. Women are capable of earning if they have the skills that will allow them to find employment or produce saleable goods. One should feel as proud of an earning daughter as one does of an earning son.

**YOU ARE NOT HELPLESS. TAKE CONTROL OF YOUR LIFE.**

Ending your life will only add to the suffering of those you leave behind.

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