

## **Assam Money Lenders Act, 1934**

**4 of 1934**

**[01 April 1935]**

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### PREAMBLE

An Act to provide for more effectual control of money-lending in Assam

Whereas it is expedient to make better provision for the control of money lending and to give additional powers to Courts to deal with

money-lenders in Assam;

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act.

It is hereby enacted as follows:-

## **1. Short title, extent and commencement :-**

(1) This Act may be called the Assam Money Lenders Act, 1934.

(2) It extends to the whole of Assam including the territories mentioned in section 14 of the Assam General Clauses Act, 1915 (Assam Act-of 1915).

(3) It shall come into force on such date as the (State Government) may by notification direct.

## **2. Definitions :-**

In this Act, unless there is anything repugnant in the subject or context.-

<sup>1</sup>[(1) "Money Lender" means a person who in the regular course of business, advances a loan as defined in this Act and shall include, subject to the provisions of section 6, the legal representatives and the successors in interest whether by inheritance, assignment or otherwise of the person who advanced the loan and money-lending shall be construed accordingly;]

1. Substituted by Assam Act XVIII of 1969 w.e.f. 1.9.1969 for the following:

"(1) Money-lender means a person including any Company or Association or body of individuals, whether incorporated or not, who grants a loan."

The aforesaid definition was earlier also substituted by Assam Act XVIII of 1948.

(2) "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;

(3) 1[Loan means an advance, whether of money or in kind, made on condition of repayment with interest and includes any bond bearing interest executed in respect of past liabilities and any transaction which is in substance a loan, but does not include--

(a) a loan to, or by, or a deposit with, any Society or Association registered under the Societies Registration Act, 1860 (Act XXI of 1860) or under any other law relating to public, religious or

charitable objects,

(b) a loan advanced before or after the commencement of this Act-

(i) by a Co-operative Life Insurance Society

\* \* \*<sup>2</sup>; or

(ii) by a Bank which has been declared to be a notified Bank under section 2-A whether or not such Bank was declared to be a notified Bank at the time the loan was advanced,

<sup>3</sup>[(c) a loan advanced by Life Insurance Corporation of India, Financial Corporation of India or any other Corporate body];

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

<sup>4</sup>[(5) Registrar means any officer appointed by the State Government to perform the duties under this Act.]

1. Substituted by Assam Act XVIII of 1948.

2. The words "or a Co-operative society" omitted by Assam Act XV of 1954.

3. Sub-clause (c) inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

4. Clause (5) inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

## **2A. Notified Bank :-**

<sup>1</sup>[ The [State Government]<sup>2</sup> may, by notification in the official Gazette, declare any Bank to be a notified Bank for the purpose of this Act.]

1. Inserted by Assam Act XVIII of 1948.

2. Substituted by A.O., 1950 for the "Provincial Government".

## **3. Penalty for stating larger amount in the bond than actually lent :-**

If the loan actually made be less than the sum entered in the bond or hand note, the money-lender shall be guilty of a contravention of the provisions of this Act and shall, on conviction, be punishable with fine not exceeding two hundred rupees.

## **4. Prohibition of compound interest and provisions as to defaulting :-**

Any contract made [before or]<sup>1</sup> 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:

\* \* \* \*<sup>2</sup>

1. Inserted by Assam Act VI of 1943.

2. Proviso to section 4 deleted by Assam Act VI of 1943.

## **5. Prohibition of charge for expenses on loans by money lenders :-**

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

Exception.--This will not debar money-lenders from recovering reasonable costs of inspection of Revenue or Registration records including examination of titles and also costs of inspection of property, in cases where the contract includes a stipulation that property is given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof.

## **6. Section 6 :-**

(1) "Maintenance of accounts by Money Lender and supply of statements thereof to borrower.--

<sup>1</sup>[ Every money lender shall--

(a) regularly maintain an account for each borrower separately of all transactions with dates and places of such transactions in respect of any loan advanced to that borrower;

(b) furnish such borrower every year with a legible statement of accounts in the prescribed manner signed by the money lender or his authorised agent of any balance or amount that may be

outstanding against such borrower on such dates. Such statements of accounts shall include all transactions in respect of the loan entered into during the year of which the statement relates.

(2) The account required under clause (a) of sub-section (1) shall be so maintained that items due by way of interest shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The money lender shall not include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new annual account:

Provided that--

(i) if the loan has, since it was originally advanced, passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account under sub-section (1) for a period of two years from the date of such passing;

(ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the account under sub-section (1) in the case of a loan wherein the title to recover is sub-judice between two or more persons claiming as money-lenders adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.]

1. Section 6 substituted by Assam Act XVIII of 1969 w.e.f. 1.9.1969 for the following:

"6 Keeping of accounts.--Every money-lender shall keep accounts in the form prescribed."

#### **6A. Receipts for repayment of loan :-**

<sup>1</sup>[Every money lender, who received repayment from his borrower on account of any loan advanced to him or payment of any interest thereon shall forthwith give a receipt therefor.]

1. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

#### **7. Obligation of money lender to supply information as to state of loan and copies of documents relating thereto :-**

(1) In respect of every contract for the repayment of a loan made by a money-lender, whether made before or after the commencement of this Act the money-lender shall on demand in writing being made by the borrower at the time of executing the contract or at any time during the continuance of the contract,

supply to the borrower, or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent showing--

(a) the date on which the loan was made, the amount of the principal of the loan, and the rate per cent per annum of interest charged; and

(b) the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made; and

(c) the amount of every sum due to the money lender, but unpaid, and the date upon which it became due and the amount of interest accrued due and unpaid in respect of every such sum; and

(d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due:

Provided that when a demand under this sub-section has once been complied with, a second demand may not be made in respect of the same loan within six months.

(2) Copy of document for borrower.--A money-lender shall on demand in writing by the borrower, and on tender of the prescribed sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

(3) Civil effects of non-compliance.--If a money-lender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not so long as the default continues be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default.

#### **7A. Register of money-lenders :-**

<sup>1</sup>[(1) Every Registrar shall maintain a register of money-lenders in such form as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (Act 1 of 1872).]

1. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

#### **7B. Registration of money-lenders and registration certificates :-**

<sup>1</sup>[ Every person who carries on or intends to carry on the business of money-lending shall get himself registered by an application made to the Registrar in prescribed form and with prescribed fees and, on such registration, the Registrar shall grant a registration certificate to him in such form as may be prescribed.]

1. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

**7C. Bar to carry on business without registration certificate**  
:-

<sup>1</sup>[(1) No person shall carry on the business on money-lending unless he holds a valid registration certificate in this behalf.

(2) Whoever contravenes the provision of sub-section (1) shall be punishable for the first offence with simple imprisonment which may extend to three months or with fine which may extend to Rs. 500 or with both, and for a second or subsequent offence, with imprisonment of either descriptions which may extend to six months or with fine which may extend to rupees one thousand or with both.]

1. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

**7D. Suit not to proceed without registration certificate, etc**  
:-

<sup>1</sup>[No suit for the recovery of a loan advanced by a money-lender shall proceed in a Civil court until the court is satisfied that he holds a valid registration certificate or that he is not required to have a registration certificate by reason of the fact that he does not carry on the business of money-lending.]

1. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

**8. Presumption in the case of certain loans :-**

<sup>1</sup>[Where in any suit in respect of any money lent or any security taken for money lent by a moneylender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of  $9 \frac{3}{8}$  per cent per annum in the case of a secured loan or  $12 \frac{1}{2}$  per cent per annum in the case of an unsecured loan, the Court shall not decree as interest any sum in excess of  $9 \frac{3}{8}$  per cent annum and  $12 \frac{1}{2}$  per cent annum respectively.

Explanation.--"Secured Loans" means mortgage debts as well as

bonds, for the satisfaction of the interest whereof land has been delivered by debtors, in conformity with local custom into the possession of creditors to be enjoyed in lieu of interest by the latter,]

1. Substituted by Assam Act VI of 1943.

## **9. Section 9 :-**

<sup>1</sup>[(1) No money-lender shall, in respect of any loan made before or after the commencement of this Act, recover, on account of interest and principal, Whether through Court or otherwise or by way of usufruct of lands in usufructuary <sup>2</sup>[or anomalous] mortgages, a sum greater in aggregate than double the principal of the loan:

Provided that nothing in this sub-section shall affect:

(i) A Bank advancing money at interest not exceeding 6 per cent per annum.

or

(ii) Subscribers to a loan made to or debenture or other securities of any description issued by Government, a public body, a Bank, or a Company.

<sup>2</sup>[Provided further that in case of anomalous mortgage, where the contract is closed before the commencement of the Assam Money Lenders (Amendment), Act, 1954, it shall not be re-opened.]

Explanation.-The term aggregate means and includes the amount already paid amicably or otherwise.

(2) Notwithstanding anything contained in sub-section (1), an usufructuary <sup>2</sup>[or anomalous] mortgage, in cases where the loan did not exceed five hundred rupees in principal, shall, unless discharged previously, be deemed to stand discharged:--

(i) if the mortgage was executed before the commencement of the Assam Money Lenders (Amendment) Act, 1943, after the expiration of twelve years from the date of such execution, or

(ii) if the mortgage was executed after the commencement of that Act, after the expiration of nine years from the date of such execution.

<sup>2</sup>[Provided that in case of anomalous mortgage where the date of discharge is already past, the discharge shall take effect on the commencement of the Assam Money Lenders (Amendment) Act, 1954.]

(3) In the case of a bond or any other instrument executed for past liabilities the original sum actually advanced shall be considered as the principal of the loan for the purpose of sub-section (1).



(4) The heirs, successors or assigns of a mortgagor shall have the same rights under this section as the original mortgator would have had, and if by any instrument executed subsequently to the original instrument any property has been substituted for the property mortgaged by the original instrument, the provisions of this section shall apply to the property so substituted as if it were the property mortgaged by the original instrument.]

1. Substituted by Assam Act VI of 1943.

2. Inserted by Assam Act XXIX of 1954.

#### **10. Deposit in Court of money due to money lender :-**

(1) Where a borrower has sent to a money lender by postal money order or by registered post with acknowledgment due any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same, the borrower may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender, and the Court shall thereupon keep the sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

(2) If the money-lender accepts money sent in the manner specified in sub-section (1) by a borrower or withdraws money deposited under the said sub-section, he shall not be bound by any statement made by the borrower in remitting or depositing the money.

#### **11. Restrictions on money-lending advertisements :-**

(1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name or address of a money-lender, or containing an invitation--

(a) to borrow money from a money lender; or

(b) to enter into any transaction involving the borrowing of money from a money lender; or

(c) to apply to any place with a view to obtaining information on advice as to borrowing any money from a money lender.

(2) Agents and canvassers inviting borrowers must not be employed by money-lenders.--No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any

person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender, and no person shall act as such agent or canvasser or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a money-lender any person desiring to borrow money.

(3) Penalty.--Any person acting in contravention of any of the provisions of this section shall in respect of each offence be liable, on conviction to imprisonment for a term not exceeding three months or a fine not exceeding three hundred rupees or both.

(4) Civil affects of contravention.--Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall be illegal, unless the moneylender proves that the contravention occurred without his consent or connivance.

## **12. General provisions regarding penalties :-**

<sup>1</sup>[ Whoever fails to comply with or acts in contravention of any provision of this Act, shall if no specific penalty has been provided for in this Act, be punishable--

(a) for the first offence with simple imprisonment which may extend to two months or with fine which may extend to rupees five hundred or with both, and

(b) for the second or subsequent offence with imprisonment of either description which may extend to six months or with fine which may extend to rupees one thousand or with both.]

1. Substituted by Assam Act XVIII of 1969w.e.f. 3.9.1969 for the following:

"12. Penalty in case of fraud.-

(1). Where in the suit in respect of any money lent or in respect of any security taken for money lent by a money-lender, the trying Court is of opinion that the money-lender has been guilty of fraud, or of any contravention of the provisions of this Act, or is otherwise unfit to carry on the business of money lending, the Court may make an order debarring him from carrying on such business for such time as specified in the order and an appeal shall lie from such an order to the Court to which an appeal ordinarily lies under the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) irrespective of the money value of the suit.

(2) Any money-lender carrying on the business of money-lending in contravention of any order made under sub-section. (1) shall, on conviction, be liable to a fine which may extend to five hundred rupees."

## **12A. Court competent to try offences under this Act and take cognizance :-**

<sup>1</sup>[(1) No Court other than a Court of a Magistrate of the first class shall take cognizance of, or try an offence under this Act.

(2) No Court shall take cognizance of any offence under this Act except on a complaint in writing made by an aggrieved person or an officer not below the rank of a Sub-Inspector of Police or by the Registrar or any other Officer specially or generally authorised in this behalf by the State Government.]

1. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

## **13. Appeal :-**

Any order of conviction passed under this Act shall be appealable to the Court to which appeal ordinarily lies under the Code of Criminal Procedure, 1898 (Act V of 1898)<sup>1</sup>, irrespective of the amount of fine to which an accused may be sentenced.

1. Since repealed, now read Code of Criminal Procedure, 1973.

## **13A. Section 13A :-**

<sup>1</sup>[Notwithstanding anything contained in this Act the provisions of sections 3, 4, 8, 9 and 10 of the Act shall apply also to a person or body of persons who advances a loan but who is not a money lender as defined in sub-section (1) of section 2 of this Act.]

1. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

## **14. Power of State Government to make rules :-**

(1) The [State Government]<sup>1</sup> may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

<sup>2</sup>[(i) the form and manner in which the money lender shall keep accounts and furnish the same to the borrower under sub-section (1) of section 6;

(ii) the form of maintaining register, fixation and realisation of registration fees, issue of registration certificate as provided in sections 7A and 7B.]

(iii) the manner in which an application for a deposit is to be made

under sub-section (1) of section 10, and a notice of the deposit is to be sent to the money-lender under the said sub-section; and (iv) the enforcement of orders made under sub-section (1) of the section 12;

<sup>3</sup>[(v) any other matter which is required to be or may be prescribed.]

(3) The power to make rules under this Act shall be subject to the condition of previous publication.

<sup>3</sup>[(4) Every rule made under this section shall be laid, as soon as may be, after it is made, before the Assam Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Assam Legislative Assembly agree in making any modification in the rule or the Assam Legislative Assembly agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.]

1. Substituted by A.O., 1950 for "Provincial Government".

2. Substituted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

3. Inserted by Assam Act XVIII of 1969 w.e.f. 1.9.1969.

## **15. Section 15 :-**

<sup>1</sup>[ The provisions of the Transfer of Property Act, 1882 (Act IV of 1882), the Indian Contract Act, 1872 (Act IX of 1872), the Indian Registration Act, 1908 (Act XVI of 1908), and the Civil Procedure Code, 1908 (Act V of 1908), shall to the extent necessary to give effect to the provisions of this Act, be deemed to have been repealed or modified.]

1. Inserted by Assam Act XXIX of 1954.