

Usurious Loans Act, 1977

47 of 1977

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Rate Of Interest To Be Decreed By Courts
4. Rate Of Interest Upon A Judgment Or Decree
5. Contract For Usufruct Of Property In Lieu Of Interest
6. Rate Of Interest On Future Adjustment Of Accounts
7. Re-Opening Of Transactions

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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, Extent And Commencement :-

- (1) This Act may be called the Usurious Loans Act, 1977.
 - (2) It extends to the whole of the Jammu and Kashmir State. It shall come into force on the 1st of Baishakh, 1978.
 - (3) 1[The Government] may, by notification in the Jammu and Kashmir Government Gazette, direct that it shall not apply to any specified area, class of persons, or class of transactions.
1. In section 1 (3) the words "the Government" substituted for the words "His Highness" by Act X of 1996.

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 commencement of this Act.

3. Rate Of Interest To Be Decreed By Courts :-

In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon or where the Court considers the stipulated rate as excessive or unfair, at such rate as the Court shall deem reasonable.

4. Rate Of Interest Upon A Judgment Or Decree :-

Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

5. Contract For Usufruct Of Property In Lieu Of Interest :-

A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

6. Rate Of Interest On Future Adjustment Of Accounts :-

In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may have been entered into before, or which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein, or if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

7. Re-Opening Of Transactions :-

(1) In any suit to which this Act applies whether heard ex parte or otherwise if the Court has reason to believe-

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely,-

(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; and

(iii) set aside either wholly or in part or revise or alter 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) 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 person from whom they claim at a date more than six years from the date of the transaction;

(ii) do any thing 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 (i), the first of such transactions.

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

(b) 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;

(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 conditions 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 a 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.

(4) Nothing in this section shall affect the right 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 a person shall be said to have "notice " of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made or gross negligence he would have known it, or when information of the fact is given to, or obtained by his agent under the circumstances mentioned in the Contract Act, section 229.

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