
(1976) 04 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 1046 of 1976

Kailaschand Khusalchand Bakliwal

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-04-1976

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 19, 20, 21

Contract Act, 1872 — Section 160, 173, 174

Transfer of Property Act, 1882 — Section 52

Citation : (1977) 79 BOMLR 449

Hon'ble Judges : Lentin, J; Chandurkar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chandurkar, J.—This group of petitions under Article 226 of the Constitution of India raises a common question relating to the constitutional validity of the Maharashtra Debt Relief Act, 1975 (Act III of 1976)(hereinafter referred to as "the Act") which came into force on January 3, 1976. Some of these petitions have been filed on the Appellate Side of this Court at Bombay and some petitions which were originally filed before the Nagpur Bench were transferred to this Court for hearing and counsel appearing in these cases from Nagpur have also been heard. Similarly, Miscellaneous Petition No. 997 of 1975 which was originally filed on the Original Side of this Court challenging the Maharashtra Debt Relief Ordinance, 1975 (VII of 1975)(hereinafter referred to as "the Ordinance") has been referred to the Division Bench to be heard along with the other petitions on the appellate side and Mr. P.A. Mehta along with Mr. H.K. Shah appeared for the petitioners in that petition. After the Ordinance stood repealed and was replaced by the Act, the said petition was duly amended raising a challenge to the constitutional validity of the Act. Another petition filed on the Original Side which has also been referred to the Division Bench was Miscellaneous Petition No. 4 of 1976 in which Mr. M. Soochak appeared for the petitioner.

2. The main argument in this group of petitions on behalf of the petitioners were addressed by Mr. Soli Sorabjee appearing in Special Civil Applications Nos. 2065 of 1975 and 2060 of 1976, Mr. P.A. Mehta appearing in Miscellaneous Petition No. 997 of 1975, Mr. M.L. Pendse appearing in Special Civil Application No. 1046 of 1976 and Mr. Rana appearing in Special Civil Application No. 2071 of 1976 and Mr. V. Mohta appearing in the petitions transferred from the Nagpur Bench addressed arguments on some additional points. The case of the State of Maharashtra in support of the Act was argued by the learned Advocate-General Mr. R.W. Adik.

3. Originally the Governor of Maharashtra in the exercise of the powers conferred by Article 213(1) of the Constitution had issued the Maharashtra Debt Relief Ordinance No. VII of 1975 on August 22, 1975. The Ordinance was intended to provide for relief from indebtedness to certain farmers, rural artisans, rural labourers and workers in the State of Maharashtra. The substantive provisions in the Ordinance were contained in Clause 3 and 5 thereof. It was provided under Clause 3 of the Ordinance that notwithstanding anything contained in any other law for the time being in force in any contract or other instrument having force by virtue of any such law and save as otherwise expressly provided in the Ordinance, "every debt outstanding on the appointed day, including the amount of interest, if any, payable by a debtor to a creditor shall be deemed to be wholly discharged" and certain consequences which would ensue with effect from the appointed day were stated, the appointed day being the day on which the Ordinance came into force. Then under Clause 5 a provision was made that all proceedings in execution of any decree for money, or proceedings for making final, any preliminary decree for foreclosure or sale, or proceedings in execution of any final decree for sale, passed by a civil Court on the basis of a liability incurred before the appointed day, in which the judgment-debtor or defendant, as the case may be, was on the appointed day a small farmer, shall be stayed against such judgment-debtor or defendant on an application made by him in that behalf during the period the Ordinance remained in force. It was also provided that all attachments of growing crops, agricultural produce, live-stock and other movable property of a perishable nature made in execution of decrees for money the execution of which has been stayed under Sub-section (1) and existing on the date on which the stay order is passed shall be withdrawn. Clause 2 gave the definitions of debt, debtor, marginal farmer, rural area, rural artisan, rural labourers, small farmer, urban area and worker. Apart from the definitions of the terms debt, debtor and worker, the other definitions were more or less identical to the definitions given in the Act. The substantial effect of the Ordinance was to provide for liquidation of debts of marginal farmers, rural labourers, rural artisans and workers who were indebted and so far as small farmers were concerned, the Ordinance provided for moratorium on execution of decrees. This Ordinance came to be replaced by the Act, the provisions of which were made more comprehensive and were, to a certain extent, an improvement on the provisions of the Ordinance.

4. At this stage we will not refer in detail to the provisions in the Act. Reference to them will be made later while considering the challenge made to almost each of the provisions of the Act. Reference must, however, be made at the outset to the substantive provisions in the Act contained in Sections 4, 14 and 15. Indeed the main provision which came in for a very vehement and concentrated attack from the petitioners was the one contained in Section 4 of the Act and it is, therefore, necessary to refer to that section in detail at the outset. But before that it is necessary to refer to Section 3 of the Act which was intended to revive debts which stood discharged as a result of the provisions of Clause 3 of the Ordinance. Section 3 of the Act provides as follows:

Notwithstanding anything contained in the Maharashtra Debt Relief Ordinance, 1975, all debts of a debtor which stood discharged on the appointed day under the provisions of that Ordinance shall, on the commencement of this Act, stand revived; and accordingly, the provisions of the said Ordinance as amended by this Act as herein provided shall operate in relation to all such revived debts as if those provisions were always amended and in operation on the appointed day.

The obvious object of Section 3 of the Act was, to a certain extent, to undo the effect of Clause 3 of the Ordinance under which fictionally every debt outstanding on the appointed day, that is, August 22, 1975 including the amount of interest, if any, payable by a debtor to a creditor was to be deemed to be fully discharged for, unless those debts were revived, no provision in respect of those debts could have been made in the Act especially when the Act introduced certain modifications in regard to the substantive provisions and in regard to the persons who would, under the Act, be entitled to the benefit thereof. Section 4 which is included in Chapter III which is headed as "Liquidation of Certain Debts" then reads as follows:

Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having force by virtue of any such law, and save as otherwise expressly provided in this Act, every debt of a debtor whose immovable property if any, does not exceed twenty thousand rupees in market value and every debt of any other debtor, outstanding on the appointed day, including the amount of interest, if any, payable by a debtor shall be deemed to be wholly discharged; and the consequences as hereinafter set forth shall, with effect from the appointed day, ensue namely:

(a) no such debt due from a debtor on the appointed day shall be recoverable from him or from against any moveable or immovable property belonging to him, nor shall any such property be liable to be attached and sold or proceeded against in any manner in the execution of any decree or order relating to such debt against him;

(b) no civil court shall entertain any suit or proceeding against such debtor for the recovery of any amount of such debt, including interest, if any:

Provided that, where a suit or proceeding is instituted jointly against such debtor

or any other person, nothing in this clause shall apply to the maintainability of a suit or proceeding in so far as it relates to such other person;

(c) all suits and proceedings (including appeals, revisions, attachment or execution proceedings) pending on the appointed day for the recovery of any such debt against such debtor shall abate:

Provided that nothing in this clause shall apply to the sale of

(i) any movable property, held and concluded before the appointed day;

(ii) any immovable property, confirmed before such day;

(d) every debtor undergoing detention in a civil prison in execution of any decree for money passed against him by a civil court in respect of any such debt shall be released;

(e) every property pledged or mortgaged by such debtor shall stand released in favour of such debtor, and the creditor shall be bound to return the same to the debtor forthwith on the debtor making an application in writing in that behalf; and the creditor shall pass a receipt to the debtor of having received the application. If the creditor refuses to pass a receipt, then the debtor may get the application endorsed to that effect under the signature and date of any of the officers referred to in Section 6 or by any person authorised by them in this behalf.

Explanation 1.-Nothing in this section shall be construed to entitle any such debtor to the refund of any part of a debt already repaid by him or recovery from him before the appointed day.

Explanation 2.-For the purposes of this section, the expression "debt of a worker" includes a debt arising out of loans taken from more than one creditor.

At this stage it is necessary to refer to certain definitions in the Act. Section 2(e) defines "debt" as meaning "any liability, in cash or kind, outstanding on the appointed day, being a liability arising out of a loan (with interest if the loan is taken by a worker, and with or without interest, in any other case), whether secured or unsecured, due from a debtor whether payable under a decree or order of any court or otherwise." A "debtor" is defined in Section 2(f) as meaning "a marginal farmer, rural artisan, or rural labourers whose total income from all sources did not exceed two thousand and four hundred rupees during the year immediately before the 1st day of August 1975 and a worker whose total income from all sources did not exceed, if living in an urban area six thousand rupees during the year immediately before the said date, and if living elsewhere four thousand and eight hundred rupees during that year." The "marginal farmer" was defined in Section 2(h) as "an agriculturist who holds land measuring not more than one hectare of unirrigated land and includes an agriculturist who cultivates as a tenant or share cropper land measuring not more than one hectare of unirrigated land". A "rural artisan" was denned in Section 2(k) as "a person who

principally earns his livelihood in a rural area by practising any craft either by his own labour or with the help of labour of the members of his family but does not include an artisan who resides in an urban area." A "rural labourer" was defined in Section 2(k) as "a person who (i) does not hold any land in rural area, (ii) may or may not have any homestead therein, and (iii) earns his livelihood principally by manual labour, but does not include any such labourers residing in an urban area and a rural artisan." The Act defined a "small farmer" in Section 2(m) as meaning "an agriculturist who holds land measuring more than one hectare of unirrigated land but less than two hectares of such land and who cultivates personally such land and includes an agriculturist who cultivates as a tenant or a share cropper land measuring more than one hectare of unirrigated land but not more than two hectares of such land." There are two Explanations to Clause (m) of Section 2 of the Act. Under Explanation I it is provided that a person belonging to a Scheduled Caste, Scheduled Tribe, Nomadic Tribe or Vimukta Jatis shall be deemed to be small farmer irrespective of the extent of unirrigated land held and cultivated by him as aforesaid. Explanation II provides:

Nomadic Tribes" and "Vimukta Jatis" means Nomadic Tribes and "Vimukta Jatis determined as such by the State Government from time to time.

The only other definition which needs to be referred to is the definition of "worker" in Section 2(o) which provides that "worker" means a person who earns his livelihood through any profession, calling or trade and also a person who is working in any factory (including a badli worker therein)". By Explanation to Clause (o) the expression "factory" was to have the same meaning assigned to it in the Factories Act, 1948, with the modification that the limitation on the number of workers working therein shall be dispensed with and the expression "badli worker" meant a worker who is provided with a badli card and who is employed in a factory in place of another worker who is temporarily absent and whose name is borne on the muster-roll of the factory.

5. These definitions have to be read along with Section 4 to appreciate the real impact of the provision in Section 4 relating to liquidation of certain debts. The provision for liquidation of debts was to be operative in the case of a debtor as defined in Section 2(f), that is, marginal farmer, rural artisan or a rural labourers whose total income from all sources did not exceed Rs. 2,400 and a worker whose immovable property, if any, did not exceed Rs. 20,000 in market value with a further qualification that if he was living in an urban area, his income did not exceed Rs. 6,000 during the year immediately before August 1, 1975 and if he was not living in an urban area, then the income did not exceed Rs. 4,800 during that year. The Legislature, therefore, made provision for liquidation of certain debts, applicable only in respect of such persons who satisfied certain conditions in the substantive provision in Section 4 of the Act. What was further provided in Section 4 was merely the consequence of the statutory liquidation of the debt. The consequential provisions in Clause (a) to (c) would, therefore, really stand or fall, according to the constitutional validity of the substantive

provisions relating to the liquidation of debts. Indeed even the other provisions in chap. III were also consequential on the provisions of liquidation of the debts and are in the nature of procedural provisions. Section 6 of the Act enables certain officers enumerated therein to enforce delivery of possession of the property of the debtor to him as a consequence of the statutory discharge of the debtor's liability towards his creditor. Section 7 provides for a machinery, extremely unsatisfactory and arbitrary, according to the learned Counsel for the petitioners, to adjudicate upon the claim of a debtor to the benefit of the substantive provisions in Section 4 of the Act. To the details of that machinery, we shall refer later. Section 8 is again a power vested in the officers mentioned in Section 6 for the purposes of giving effect to provisions relating to restoring to the debtor his property which might have been pledged or any document which was intended to evidence the transaction of loan given to the debtor. Section 9 further provides that in case the possession of the property pledged by debtor cannot for any reason be delivered back to him, the creditor shall pay to the debtor the value of such property and if the creditor fails to pay the value which is to be the market value of the property, that is, made recoverable from him as an arrear of land revenue. Any dispute with regard to the value of the property is to be referred to the authorised officer who is referred to in Section 7. Section 11 provides for the bar of the jurisdiction of the civil Court "to settle, decide or deal with any question which is by or under this Chapter required to be settled, decided or dealt with by the Authorised Officer", and an order of the State Government or of any officer or authority made under chap. III is placed beyond challenge in any Court. The jurisdiction of the civil Court having been barred u/s 11, the consequential provision is made u/s 12 making it mandatory for the civil Court to stay a suit involving issues which are required to be settled, decided or dealt with by the authorised officer and the civil Court has to refer the issues to the authorised officer for determination and the suit is then to be disposed of in accordance with the decision of the authorised officer. Section 13 declares void any custom or tradition or any agreement (whether made before or after the appointed day), whereunder or by virtue of which a debtor or any member of his family is required to work as labourers or otherwise for the creditor has been made void and such a custom or agreement has been made unenforceable in any civil Court. Chapter III thus contains a scheme of statutory discharge of the liability of the debtor to the creditor and the consequent restoration of the pledged articles or the documents evidencing the creation of such liability back to the debtor. The other substantive provisions in the Act are contained in Section 14 which only provide for a moratorium on debts of certain workers. Section 14 reads as follows:

(1) Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having force by virtue of any such law, no debt of a worker who holds immovable property the market value of which exceeds twenty thousand rupees but does not exceed forty thousand rupees together with interest, if any, outstanding on the appointed day, shall

stand discharged or shall be deemed ever to have stood discharged on the appointed day; and except as hereinbefore provided, all such debts shall stand revived as provided by Section 3 and shall continue to exist until they are wholly discharged; but the payment or recovery of any such debts shall, subject to the provisions of this section, nevertheless stand stayed during the period this Act remains in force; and it shall not be lawful for any creditor to recover any such debt or any part thereof or any interest remaining unpaid on the appointed day during such period, and the provisions of Chapter V shall apply to the execution of decrees in relation to such debt against any such workers as they apply to the execution of decrees against small farmers.

(2) The amount of debt of a worker to be recovered after the expiry of this Act shall not exceed the amount of the principal by more than one hundred and fifty per cent of such amount.

(3) No interest shall accrue on any amount of the debt of a worker during the period this Chapter is in operation.

Explanation.-For the purposes of this section, the expression "debt of a worker" includes a debt arising out of loans taken from more than one creditor.

Now, the rather unusual provisions in Section 14(1) which provide initially that no debt shall stand discharged or shall be deemed ever to have stood discharged on the appointed day were intended to undo the rather drastic effect of Clause 3 of the Ordinance which had taken within its sweep originally all debts payable by any debtor to any creditor irrespective of the extent of the property owned by the debtor. That is why Section 14(1) provided that every debt would stand revived as provided by Section 3 of the Act and shall continue to exist until they are wholly discharged. Section 14(1) is now limited to a particular class of debtors. It deals with a worker who holds Immovable property the value of which exceeds Rs. 20,000 but does not exceed Rs. 40,000 and in respect of such debts, there is only a moratoria prohibiting recovery of the debt or any part thereof or even interest during the period during which the Act remains in force. We might make it clear that there was no challenge made before us to the main provisions in Sub-section (1) of Section 14 in any of the petitions. The challenge was restricted to the provisions in Sub-section (2) and (3) of Section 14 which provided that no interest shall accrue on any amount of a debt of a worker during the period when chap. IV is in operation.

6. Chapter V is intended to deal with yet another class of debtors who have been designated in the Act as small farmers. As already stated, a small farmer meant an agriculturist who holds land measuring more than one hectare of unirrigated land but less than two hectares of such land and who cultivates personally such land, and an agriculturist who cultivated as a tenant or a share cropper land measuring more than one hectare of unirrigated land but not more than two hectares of such land was included in the definition of a small farmer. In respect, of such debtors complete discharge of liability was not provided for but there was

only a moratorium on execution of decrees against such small farmers. Section 15 reads as follows:

(1) All proceedings in execution of any decree for money, or proceedings for making final, any preliminary decree for foreclosure or sale, or proceedings in execution of any final decree for sale, passed by a civil court on the basis of a liability in relation to a debt incurred before the appointed day, in which the judgment-debtor or defendant, as the case may be, is on the appointed day, a small farmer, shall be stayed against such judgment-debtor or defendant, on an application made by him in this behalf during the period this Act remains in force.

(2) All attachments of growing crops, agricultural produce, livestock and other movable property of a perishable nature made in execution of decrees for money the execution of which has been stayed under Sub-section (1) and existing on the date on which the stay order is passed shall be withdrawn.

(3) Any judgment-debtor or defendant who is a small farmer may, notwithstanding that no proceedings of the nature referred to in Sub-section (1) are pending against him, make an application for stay under that sub-section.

(4) Every stay order passed by a court under this section shall relate back to the date of the application for stay filed by the judgment-debtor or defendant, as the case may be, and the proceedings shall for all purposes of this Act be deemed to have been stayed with effect from such date

Section 15 thus substantially stays proceedings for recovery on the basis of a decree passed in respect of a liability in relation to a debt incurred before the appointed day. Section 16 provides for release of persons in detention in civil prison in execution of any decree for money passed by a civil Court and it further provides that no small farmer shall in any case be liable to arrest or detention in any civil prison in execution of a decree as is referred to in Sub-section (1) during the period this Act remains in force. Section 17 further provides that where a decree for payment of a decretal amount by instalments contains a provision that in default of one or more instalments, the whole amount shall become due at once, then notwithstanding anything in such provision, non-payment of instalment falling due during the period in which the proceedings in execution remain stayed under this Act shall not be deemed to be a default for the purposes of such provision. Under Sub-section (2) it is provided that if the judgment-debtor pays the instalments so falling due within a period of twelve months after the expiry of this Act, then such instalments shall be deemed to have been paid on the due date. Section 18 relates to computation of time for execution and the period during which the proceedings are stayed will be excluded in computing the period of twelve years prescribed by the Limitation Act of 1963. Section 19 excludes the operation of chap. V in case of certain decrees. Provisions of Chap. V do not apply:

(a) to a decree for money arising out of claims relating to trusts or for maintenance or for profits in favour of a cotenant, or co-owner, or for mesne

profits or for damages for tort, or for contribution between co-tenants of agricultural lands; or

(b) to a mortgage decree against property in the hands of a subsequent transferee who has taken the transfer in order to satisfy the mortgage subject to the mortgage on the basis of which such decree has been obtained; or

(c) to the decisions or orders or awards given or made by the Registrar, persons appointed to assist the Registrar, nominees or boards of nominees appointed by the Registrar, Liquidators, Maharashtra State Co-operative Tribunal, Cooperative Courts, Co-operative Appellate Court or other authorities under the Maharashtra Co-operative Societies Act, 1960, or the rules made thereunder.

A provision is made in Section 20 for making every transfer of property made by a small farmer against whom proceedings in execution have been stayed voidable at the option of a creditor whose claim against such small farmer is defeated or delayed. Section 21(1) puts a limit on the amount of interest which can be recovered by a creditor in a matter which was stayed u/s 15(1) and the upper limit regarding the total amount recoverable is put at 150 per cent of the amount of the principal. It also provides that no interest shall accrue on any amount included in any claim referred to in Sub-section (1) during the period when chap. V is in operation. Certain debts are exempted from the operation of the Act and such exempted liabilities include "any claim arising out of contract or transaction not connected with money lending. "The Act also repealed the Maharashtra Debt Relief Ordinance, 1975.

7. Now, such in substance are the several provisions of the Act. The scheme of the Act is to give relief of a limited nature in the form of moratorium in the case of small farmers and workers whose immovable property exceeds Rs. 20,000 but does not exceed Rs. 40,000 and to provide for a total liquidation of the liability in respect of a worker whose immovable property does not exceed Rs. 20,000 in market value as also in the case of other debtors like the marginal fanner, the rural labourer and the rural artisan whose total income from all sources does not exceed Rs. 2,400 during the year immediately before August 1, 1975. The provision relating to total discharge of debt was also applicable in the case of worker whose total income does not exceed Rs. 6,000 during the said period if he was living in an urban area or Rs. 4,800 if he was living elsewhere.

8. Two main grounds on which the provisions in Section 4 in particular and the entire Act in general have been challenged are:

(1) that the provisions of the Act suffer from legislative incompetence of the State Legislature, and

(2) that the provisions of the Act, are also violative of the constitutional protection in the matter of free trade, commerce and intercourse as contemplated by Article 301 of the Constitution of India.

9. Before, however, we take up the discussion of these two challenges, we should

deal with a contention raised by Mr. Soochak that the proceedings at least in his petition, being Miscellaneous Petition No. 4 of 1976, must be suspended in view of the provisions of Article 359. We are deciding this point at the outset because it would be anomalous to go into the merits of the controversy in other petitions which are filed after the right to move a Court to enforce the right under Article 19 was suspended and to suspend the proceedings in the petition filed by Mr. Soochak in which substantially the same questions are involved. Indisputably Miscellaneous Petition No. 4 of 1976 was filed in this Court on January 4, 1976. This petition appears to be a petition filed by the petitioners (suing for themselves and for the benefit of all creditors in Maharashtra whose lendings to their debtors stand wholly discharged by the Maharashtra Debt Relief Act, 1975) in a representative capacity. By an order dated January 4, 1976 the petitioners in that petition were directed to give a public notice and were granted leave under Order I, Rule 8 of the CPC and accordingly, the petitioners have got the said notice published in the Mumbai Samachar of January 20, 1976, in the Loksatta on January 21, 1976, in Navbharat Times on January 21, 1976, in Sakal on January 28, 1976 and in the Free Press Journal on January 19, 1976. Mr. B.A. Desai appeared for some of the respondents in this petition. There is, however, no appearance on behalf of any other debtors.

10. It is contended by Mr. Soochak that it was only on January 8, 1976 that the President of India had suspended the right of a person to move any Court for the enforcement of the right conferred by Article 19 of the Constitution. The Notification in this behalf reads as follows:

In exercise of the powers conferred by Clause (1) of Article 359 of the Constitution the President hereby declares that the right of any person to move any court for the enforcement of the rights conferred by Article 19 of the Constitution and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended for the period during which the Proclamations of Emergency made under Clause (1) of Article 352 of the Constitution on the 3rd December, 1971 and on the 25th June, 1975, are both in force.

(2) This Order shall extend to the whole of the territory of India.

What is contended is that Miscellaneous Petition No. 4 of 1976 having been filed prior to January 8, 1976, the proceedings therein would be pending within the meaning of the Notification dated January 8, 1976 and since prime facie the provisions of the Act are violative of the provisions of Article 19 of the Constitution inasmuch as the effect of the discharge of the debt liability of the debtor is bound to seriously and adversely affect the creditors and as their entire advances and interest will not be recoverable from the debtor, such restrictions prime facie would amount to unreasonable restrictions and the determination of the question of validity of the Act must therefore be held in abeyance and the proceedings suspended as directed by the Notification dated January 8, 1976.

11. In our view this argument overlooks the provisions of Article 358 of the Constitution of India. There is no dispute that the first Proclamation of Emergency under Article 352(1) of the Constitution was made by the President on December 3, 1971 and the second Proclamation was made on June 25, 1975. What then is the effect of these Proclamations on the provisions of Article 19 of the Constitution of India and the answer to this question is to be found in Article 358 thereof. This Article reads as follows:

358. While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the in-competency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

It cannot be in dispute that the power of the Legislature to make laws for the whole or any part of the State as provided for in Article 245(7) of the Constitution is expressly made "subject to the provisions of this Constitution." That power is, therefore, subject to the provisions of Part III of the Constitution which is a Chapter dealing with fundamental rights. Under the provisions of Article 358 it is expressly provided that the bar put by Article 245(1) against the Legislature not to make a law which would be violative of the provisions of Part III will not operate while a Proclamation of Emergency is in operation. It is expressly made clear in Article 358 that nothing in Article 19 shall restrict the power of the State to make any law which the State would but for the provisions contained in that Part be competent to make and in the latter part of Article 358 it is made clear that to the extent of the incompetency, such law will cease to have effect as soon as the Proclamation ceases to operate except as respects things done or omitted to be done before the law so ceases to have effect. Article 358, therefore, clearly provides that notwithstanding the fact that a legislative measure would otherwise have been violative of Article 19 and would otherwise have been ineffective and could not have been enforced, there will be no infirmity in such legislation during the period of the Emergency and the legislation could, therefore, be given effect to ignoring the fetters placed by Article 19 of the Constitution. If Article 358 expressly provides that such law would continue to have effect during the Emergency, we fail to see how during the subsistence of the Proclamation of Emergency, a challenge could be made to such a law on the ground that the provisions of Article 19 have been violated. Indeed, in our view, in relation to the kind of legislation which is contemplated by Article 358, a challenge to the constitutionality of the legislation on the ground that it is violative of the provisions relating to fundamental rights under Article 19 of the Constitution cannot even be entertained. In effect, the position under Article 358 is that the provisions of Article 19 of the Constitution stand suspended as is indicated in the marginal note to that Article. We may only refer to the decision of the Supreme Court in *Makhan Singh Vs. State of Punjab* (and

connected appeals), , where the Supreme Court was considering the effect of Articles 358 and 359 in the context of the Proclamation of Emergency following the Chinese aggression. The Proclamation of Emergency following the Chinese aggression was made on October 25, 1962. Referring to the effect of the Proclamation of Emergency under Article 352, the Supreme Court observed as follows in para. 8 of the judgment (p. 392):

It would be noticed that as soon as a Proclamation of Emergency has been issued under Article 352 and so long as it lasts, Article 19 is suspended and the power of the Legislatures as well as the executive is to that extent made wider. The suspension of Article 19 during the pendency of the proclamation of emergency removes the fetters created on the legislative and executive powers by Article 19 and if the legislatures make laws or the executive commits acts which are inconsistent with the rights guaranteed by Article 19, their validity is not open to challenge either during the continuance of the emergency or even thereafter. As soon as the Proclamation ceases to operate, the legislative enactments passed and the executive actions taken during the course of the said emergency shall be inoperative to the extent to which they conflict with the rights guaranteed under Article 19 because as soon as the emergency is lifted, Article 19 which was suspended during the emergency is automatically revived and begins to operate. Article 358, however, makes it clear that things done or omitted to be done during the emergency cannot be challenged even after the emergency is over. In other words, the suspension of Article 19 is complete during the period in question and legislative and executive action which contravenes Art, 19 cannot be questioned even after the emergency is over.

(Italics ours).

These observations leave no room for any argument that till the issuing of the Notification under Article 359(1) of the Constitution, the petitioners were entitled to enforce the provisions of Article 19. If, as pointed out by the Supreme Court, the provisions of Article 19 stood suspended by the very force of the declaration of Emergency, it would not be open to the petitioners even on the day on which they filed their petitions to challenge the impugned enactment on the ground that it is violative of the provisions under Article 19.

12. The position was further taken beyond by the later decision of the Supreme Court in *Jaichand Lall Sethia Vs. State of West Bengal and Others*, . The order impugned in that case was an order of detention made under Defence of India Rules. After referring to the decision in *Makhan Singh's* case, the Supreme Court observed as follows (p. 485):

?If the appellant seeks to challenge the validity of the Ordinance, rule or order made thereunder on any ground other than the contravention of Articles 14, 21 and 22, the Presidential Order cannot come into operation. It is not also open to the appellant to challenge the Order on the ground of contravention of Article 19, because as soon as a Proclamation of Emergency is issued by the President

under Article 358 the provisions of Article 19 are automatically suspended. But the appellant can challenge the validity of the order on a ground other than those covered by Article 358, or the Presidential Order issued under Article 359(1).

In view of these authorities, therefore, it is difficult to entertain the argument that since the petitioners have raised a question relating to the violation of the fundamental right under Article 19, the proceedings should be suspended. We must, therefore, reject the contention that we are disabled by the Notification dated January 8, 1976 from going into the merits of the contentions raised in this petition.

13. The substantial argument with regard to the legislative competence is founded on Entry 30 in List II of Schedule VII of the Constitution of India. This Entry reads as follows:

Money-lending and money-lenders; relief of agricultural indebtedness.

Broadly, the argument is that this is not a legislation with respect to money-lending or money-lenders because the words "money-lending" and "money-lenders" have a definite legal connotation and they have always been understood in legislative history as referring to a regular activity of advancing loans to persons as a matter of regular business and an isolated transaction of money-lending has never been understood as money-lending. Mr. Sorabjee on behalf of the petitioners in some cases has contended that having regard to its pith and substance, the impugned Act is not covered by the entry "money-lending and money-lenders" according to its settled legal connotation. He contends that though a wide interpretation could be given to the entry in the legislative list, this was subject to two riders

(1) that ordinary well accepted meaning must not be departed from and though as liberal a meaning as possible could be given, an artificial meaning should not be given and

(2) that the intrinsic limitation by the entry in the legislative list could not be got over by a liberal interpretation.

Mr. H.K. Shah has also contended similarly and even, according to him, Entry 30 in List II does not deal with casual money-lending and to the extent that the Act, covers even such casual transactions, it is beyond legislative competence. Mr. P.A. Mehta who also advanced arguments on the point of legislative competence has contended that in pith and substance the law does not relate to money-lending or money-lenders as in essence, it wipes out the debts altogether. Another limb of the same argument on the question of legislative competence advanced by both Mr. Sorabjee and Mr. Mehta was that the entire Act cannot be supported on the basis of the second part of Entry 30, namely, relief of agricultural indebtedness, firstly for the reason that the indebtedness contemplated by such entry must result only from borrowings made for the purposes of agriculture, so that there must be some nexus between agricultural

operations and indebtedness and secondly, provisions regarding urban workers cannot be said to be incidental or ancillary to the legislation for relief of agricultural indebtedness. Further, according to Mr. Mehta, the scope of the words "money-lending" and "money-lenders" in List II must be restricted only to regulatory provisions regulating the activities of money-lending and money-lenders and they cannot take within its sweep a legislation which has the effect of totally extinguishing debts or discharge of complete liability of the debtor. According to Mr. Shah also, having regard to the history of legislation referred to in the decisions of the Federal Court in AIR 1941 47 (Federal Court) the entry would cover only legislation which would relieve the debtor of his liability to pay interest, but the entry would not cover legislation which would wipe out the principal. The third argument dealing with legislative competence was the one advanced by Mr. Soochak and it was contended by him that in effect the legislation was one which substantially related to the transfer of property of the creditor in favour of the debtor and there was no power in the State Legislature to make any provision relating to such transfer of property of the creditor to the debtor.

14. The argument that the legislation is bad, as even stray and isolated transactions of money-lending are covered is purely hypothetical because it was not contended that any of the petitioners out of the several who had filed these petitions had any solitary transaction which was being hit by the Act. Indeed all the petitioners were in fact professional money-lenders. But since the matter has been argued exhaustively we shall proceed to decide all the contentions raised before us.

15. While dealing with the challenge to the constitutionality of the impugned Act we cannot be unmindful of the prevailing economic conditions of the class of people for whose benefit the Act has been enacted. For the halfclad, poverty stricken, illiterate rural labourer and the agriculturist who on account of the vagaries of nature and the financially exacting social conventions had been for generations almost choked to death by the cold icy grip of the village money-lender, the freedom of the country and democratic government had hardly any meaning. The lowest of the lowly has been kept away from the fruits of freedom for over a quarter of a century. Social and economic Justice which has been set out solemnly as a goal has for the weaker sections of the community remained merely a dream. The impugned enactment is mainly intended to be a drastic remedy for the cancerous disease of rural indebtedness which has been the bane of our rural economy and has prevented it from looking up.

16. We must also bear in mind the fact that we are dealing with legislative entries in a Constitution which is intended to secure social and economic justice to the weaker sections of the community. Such economic and social justice had to be secured by enacting adequate legislative measures. If the legislative field in which the legislative power is to be exercised by the State is to be ascertained with reference to the entries in List II of the seventh schedule, then, in our opinion,

we shall be justified in so construing the entries as to further the social objective of our Constitution, The legislation is intended to statutorily unburden certain classes of debtors of the debt under whose heavy weight they have remained bent for years and unless we are satisfied that the legislation is clearly and unmistakably beyond legislative competence, it will be difficult to strike down the beneficent measure as being void for want of legislative competence.

17. The contentions with regard to the legislative competence necessitate a consideration of the question as to what is the pith and substance of the impugned legislation; what is its true nature and character and whether the legislation as a whole or any part thereof would fall within Entry 30. It was not disputed by Mr. Sorabjee, as already stated, that the Entries in the Legislative Lists which are merely heads of legislation must be widely construed. Indeed such a proposition is difficult to be disputed and has now been accepted in a series of decisions of the Supreme Court.

18. We may refer with advantage to the decision of the Supreme Court in *Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another*, on which reliance was placed by Mr. Sorabjee in support of his proposition that though a wide meaning must be given to the Entries, the meaning should not be artificial. The Supreme Court in that case was dealing with the words "local area" in Entry 52 in List II and the Supreme Court quoted with approval the observations of Sir Maurice Gwyer C.J., in *In re C.P. Motor Spirit Act [1939] AIR F.C.I.* Quoting those observations and earlier observations of the Supreme Court in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, , the Supreme Court observed as follows (p. 655):

In considering the meaning of the words "local area" in entry 52 we have, on the one hand to bear in mind the salutary rule that words conferring the right of legislation should be interpreted liberally and the powers conferred should be given the widest amplitude; on the other hand we have to guard ourselves against extending the meaning of the words beyond their reasonable connotation, in an anxiety to preserve the power of the legislature. In *re C.P. Motor Spirit Act*, at p. 4, Sir Maurice Gwyer C.J., observed:

?I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or prevent the language of the enactment in the interests of any legal or constitutional theory, or even for the purpose of supplying omissions or of correcting supposed errors.

Again, in *Navinchandra v. Commr. of I.-T., Bombay*, Das J. (as he then was) delivering the judgment of this Court observed (p. 61):

?The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.

Our task being to ascertain the limits of the powers granted by the Constitution, we cannot extend these limits by way of interpretation. But if there is any difficulty in ascertaining the limits, the difficulty must be resolved so far as possible in favour of the legislative body. The presumption in favour of constitutionality which was stressed by the learned Counsel for the respondents does not take us beyond this.

19. The question which, therefore, arises is, if the word "money-lending" in Entry 30 is construed as including within its scope transactions of money-lending by persons who do not professionally carry on money-lending, shall we be extending the meaning of the word "money-lending" beyond its natural connotation or shall we be travelling beyond the ordinary natural grammatical meaning of the word "money-lending". There is no doubt that even prior to the commencement of the Constitution, there were in force in different parts of the country statutes regulating the activities of money-lenders in the conduct of their business, but these statutes and the authorities which dealt with such statutes were concerned with the construction of the provisions as contained in those statutes. The decision in *Gajnan and Others Vs. Seth Brindaban*, is one such authority on which reliance has been placed by Mr. Sorabjee. In that decision of the Supreme Court, the question which arose was whether a person who is registered as a money-lender in one district could prosecute a suit on the basis of a mortgage transaction which was of a solitary nature entered into in a district for which the money-lender did not hold a valid registration certificate. The case arose under the provisions of the C.P. and Berar Money-lenders' Act, 1934. The scheme of the C.P. and Berar Moneylenders' Act was that the money-lender had to specify an area in respect of which he wanted to be registered as a money-lender and the term "money-lender" in the Act was defined as meaning a person who in the regular course of business advances a loan as defined in the Act. The transaction in that case was held to be an isolated transaction which did not clothe the plaintiff with the character of a money-lender carrying on the business of money-lending in the district in which the mortgaged property was situated. The contention of the debtor in that case was that since the plaintiff did not hold a certificate u/s 11F of the C.P. and Berar Money-lenders Act, the transaction, in dispute was void and the suit was, therefore, incompetent. The High Court rejected this contention. When the matter was taken to the Supreme Court, the decision mainly turned on the definition of "money-lender" and a further material part in the definition of "money-lender" was "money-lending shall be construed accordingly." Section 11B of that Act made it obligatory on every person carrying on or intending to carry on the business of money-lending to get himself registered by an application made to the Sub-Registrar of any Sub-District or the District or any one of the Districts in which he carries on or intends to carry on such business and the registration certificate did not entitle the holder to carry on the business of money-lending in other districts for which he does not hold such certificate. While rejecting the contention of the defendant, the Supreme Court held that the following observations of the Nagpur High Court in *Patiram v.*

Baliram [1953] N.L.J. 517 laid down the correct law.

It will be clear from all this discussion that Section 11-F applies to the business of moneylending and not to an individual transaction of lending money and that the condition is attached and the penalty is imposed for the convenience of collection of the revenue, and the legislature did not declare an individual transaction of moneylending made by the moneylender who had not obtained a registration certificate invalid. It is not necessary for the validity of the contract of loan that the moneylender must be registered on the date of the transaction?. Though the transactions of moneylending are not affected for want of a registration certificate, a moneylender is exposed to the penalty provided by Section 11-F of the Act for carrying on the business without a valid registration certificate.

The question which fell for decision before the Supreme Court was whether the transaction which was the subject-matter of the suit was void and, therefore, unenforceable in Court of law and whether for that reason, the suit was incompetent. After considering the scheme of the Act, the Supreme Court quoted with approval the observations of Bose J., as he then was in the Nagpur High Court, in *Sitaram Shrawan v. Bajya Parnya* AIR [1941] Nag. 177. In para. 10 the Supreme Court observed as follows (p. 2013):

From the Scheme of these provisions it is evident that for a person to be a moneylender he must, in the regular course of business, advance a loan. There is a long catena of authorities on the statutes regulating and controlling moneylenders in which the expression "moneylender" has been so construed as to exclude isolated transaction or transactions of moneylending. Vivian Bose J. while dealing with the Act which concerns us, in *Sitaram Shrawan v. Bajya Parnya*, said (p. 177):

The word "regular" shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of money-lending is shown to the Court it is impossible to state that that constitutes a regular course of business. It is an act of business, but not necessarily an act done in the regular course of business.

20. Thus, the decision of the Supreme Court in *Gajanan's* case, no doubt, took notice of the fact that in several statutes regulating and controlling money-lenders, an isolated transaction or transaction of money-lending were excluded.

21. We, however, fail to see how this line of decisions could be of assistance to us in limiting the meaning of the word "money-lending" in Entry 30 only to transactions of money-lenders done in the regular course of business. In the C.P. and Berar Act, we have already pointed out that "money-lending" was not independently defined, but the definition given was that of the word "moneylender" and money-lending had to be construed accordingly. If only that person who had carried on a regular business in money-lending was to be called a moneylender for the purposes of that Act, then obviously the word "money-

lending" must also take its colour from the same kind of transactions, that is, those entered into in the regular course of business. What must, however, be noticed is that even in Gajanan's case the transaction was still held to be a money-lending transaction, though an isolated one. We are dealing with an entry in a Constitutional document which gives power to the Legislature to make laws and we are not construing a legislation made in the exercise of a legislative power. Any transaction of loan which obviously and as generally understood will be a loan advanced with interest will, no doubt, be a money-lending transaction as even recognised by Bose J. in Shrawan's case. Even an isolated transaction, according to Bose J., would be an act of business, though it was not an act in the regular course of business. A loan has always the effect of creating a debtor-creditor relationship in which the creditor is the lender of money and it is immaterial whether the creditor lends money in the regular course of business or not. In *Corpus Juris Secundum*, vol. 54, while dealing with the definition and meaning of loan, it has been stated as follows (p. 654):

A loan of money is something more than the mere delivery of money by the owner to another. In order to constitute a loan there must be a contract whereby, in substance, one party transfers to the other a sum of money which the other agrees to repay absolutely, together with such additional sums as may be agreed on for its use. A loan is made when the borrower receives money over which he exercises dominion, and which he expressly or impliedly promises to return, and in a loan the initial transaction creates a debit and credit relationship which is not terminated until replacement of the sum borrowed with agreed interest?.

In its popular sense a loan of money is understood to mean a transaction creating the customary relation of borrower and lender, in which the money is borrowed for a fixed time, and the borrower promises to repay the amount borrowed at a stated time in the future, with interest at a fixed rate.

If this be the popular sense in which the word "loan" is understood, and in the transaction of loan is implicit the concept of lending money it is difficult to see why the power to legislate in respect of "money-lending" cannot be exercised in respect of transactions which are not carried out in the regular course of business. It is Important to point out that an identical entry as found in List II at serial No. 27 of the Government of India Act, 1935, fell for consideration before the Federal Court in *Subrahmanyan v. Muttuswami*. Statutes relating to the granting of relief to indebted people have not come on the scene only after the Constitution of India was adopted. Indeed the problem of indebtedness and specially of rural indebtedness is a problem which is almost a century old and different States had already been legislating with a view to give relief to the indebted population of the rural area by enacting adequate provisions though the scope was mostly limited to restricting interest. The source of their power was to be found in Entry 27 in List II of the Government of India Act, 1935, which read as follows:

Trade and commerce within the Province; markets and fairs; money lending and

money lenders.

One such law enacted by the Madras Legislature was the Madras Agriculturists, Relief Act (4 of 1938). It is important to note that in Section 7 of that Act, it was provided:

Notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of this Act, shall be scaled down in accordance with the provisions of this Chapter.

The object of the Act as mentioned in the preamble was to provide for relief for indebted agriculturists. The word "debt" was defined as meaning any liability in cash or kind whether secured or unsecured due from an agriculturist payable under a decree or order or otherwise with two exceptions. Thus the relief which was contemplated by that Act was a relief in respect of any liability and not in respect of a liability incurred on account of debt borrowed from a money-lender in the course of business. This legislation was upheld by the Federal Court as being within the competence of the State Legislature having regard to the entry "money-lending and money-lenders". Sir Shah Muhammad Sulaiman J. while referring to the substance of the Act made the following observations (p. 54):

The substance of the Act is to give relief to agriculturists in respect of interest accruing upon the debt due from them. In one aspect it relates to moneylending and money-lenders because the reduction of interest on loans made to them by moneylenders would affect money-lending transactions.

Further it is observed (p. 55):

The legislative practice in India prior to the commencement of the Government of India Act also shows that in the various provinces there were existing legislations for relief from high rates of interest. It is therefore impossible to hold that the impugned Act is wholly outside Lists II and III of Schedule 7.

Varadachariar J. also took the view that the enactment which was intended to give relief in respect of any debt whatsoever clearly fell under the head "money lending and money-lenders" in item 27 of List II. The question of legislative competence was not independently considered by Gwyer C.J. who had, however, also upheld the validity of the Act.

22. Now, the legislative practice for which reliance was placed by Mr. Sorabjee on Gajanan's case cited supra cannot be said to be a legislative practice which recognises a restricted meaning to be given to the word "money-lending" as a head of legislation. The reference made by Bose J. was only with reference to the head "money-lender" as found in different enactments controlling the business of money-lending. The fact that the several statutes were enacted to control and regulate the business of money-lending did not deprive the Legislature of its power to enact a law covering a wider field and as long as the legislation deals with money-lenders and money-lending such an enactment cannot be challenged for want of legislative competence merely on the ground that such power was

not earlier exercised by the Legislature. The two decisions relied on by Mr. Sorabjee are, therefore, not of any assistance to the petitioners.

23. In the Diamond Sugar Mills case cited supra, the question was whether the provisions of Section 3 of the U.P. Sugarcane Cess Act, 1956, which imposed a cess not exceeding four annas per maund on the entry of sugarcane into the premises of the factory for use and sale therein was beyond the legislative competence of the State Legislature. The Supreme Court took the view that by the words in Entry 52 of List II of Schedule VII of the Constitution of India which read as "Tax on the entry of goods into a local area for consumption, use or sale therein" the Constitution makers wanted to express primarily the area in respect of which an octroi was leviable under item 7 of the Schedule Tax Rules, 1920, that is, the area administered by a local authority such as a municipality, a District Board, a Local Board or a Union Board, a Panchayat or some body constituted under the law for the governance of the local affairs of any part of the State and it was held that the "local area" in Entry No. 52 List II of Schedule VII of the Constitution was an area administered by a local body, municipality, a District Board or a Local Board, a Union Board or the like and the premises of the factory is, therefore, not a local area. We might highlight the observations made by the Supreme Court even in this case in para. 12 where reliance was sought to be placed while challenging the tax that the meaning of the words "local area" to be found in different statutes should also be taken to be the meaning of those words used in Entry 52. The Supreme Court observed (p. 655):

?While it may not be possible to say that the words "local area" have acquired a definite and precise meaning and the phrase may have different connotations in different contexts, it seems correct to say that it is seldom, if ever, used to denote a single house or a single factory. The phrase appears in several statutes, some passed by the Central Legislature and some by the Provincial or State Legislatures; but in many of these the words have been defined. These definitions being for the peculiar purpose of the particular statute cannot be applied to the interpretation of the words "local area" as used in the Constitution. Nor can we derive any assistance from the judicial interpretation of the words "local area" as used in the Code of Criminal Procedure or other Acts like Bengal Tenancy Act as these interpretations were made with reference to the scope of the legislation in which the phrase occurs.

(Italics ours)

24. These observations support the view which we are taking that the several authorities which may have construed the word "money-lender" did so for the purposes of those statutes and those constructions cannot, therefore, be of any assistance to determine or restrict the sweep and content of the words "money-lending" and "money-lenders" in Entry 30 of List II of Schedule VII.

25. In New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, , the question was

whether the Corporation was entitled to levy property tax on the value of the land inclusive of the plant and machinery contained or situated in or upon any building or land and whether while fixing the rateable value thereof, the value of plant and machinery could be taken into account. The Supreme Court took the view that Rule 7(2) of the Rules framed under the Bombay Provincial Municipal Corporations Act (59 of 1949) was beyond legislative competence because the relevant entry in List II of Schedule VII in item 49 was "Taxes on land and buildings". The Supreme Court held that in Indian statutes plant and machinery was excluded from the word "land". It was observed that if the State Legislature had power to levy a tax only on land and buildings, "we do not see how the same could be levied on machinery contained in or situate on the building even though the machinery was there for the use of the building for a particular purpose." It is obvious that the decision turned on the meaning of the words "Land and buildings" and no proposition of law on which the petitioners in the present case could draw was laid down in that case.

26. We may at this stage mention that it was conceded before us that if the legislation was construed as confined to money-lending transactions entered into in the regular course of business, then the objection on the ground of legislative competence did not survive.

27. This brings us to the second limb of the argument that the legislation in pith and substance does not relate to money-lending or money-lenders and in substance it is a legislation for wiping out the debts altogether. This was a point which was vehemently pressed upon us by Mr. Shah and he had cited certain decisions in support of the proposition that the power to legislate in respect of money-lending or money-lenders cannot be construed so widely as to include within itself "the power to negative money-lending". As we have already stated, the main attack was directed against the provisions of Section 4. We have already reproduced Section 4 of the Act and as we have pointed out Clause (a) to (e) are merely consequential provisions and if any infirmity is shown to be inherent in the main provisions in Section 4, the subsequent clauses which are consequential provisions may not be able to stand by themselves. We must, therefore, first ascertain what is the nature of the legislation. We must, however, make it clear at this stage that having regard to the declaration of Emergency the petitioners cannot fall back upon the provisions of Article 19 of the Constitution nor of Article 14 and they, therefore, vehemently pressed the argument that the legislation was not covered by Entry No. 30 in List II. Now, it cannot be seriously disputed that several provisions directly dealing with money-lending and money-lenders and styled as Money-lenders Acts in different States have restricted either the rate of interest or the total amount recoverable both, on account of principal and interest due from the debtor to the creditor. Provisions which came to be commonly known as scaling down provisions have been a regular feature of almost every Money-lenders Act and those provisions were specifically intended to give relief to debtors. The provisions of Section 4 are no doubt drastic and the effect of Section 4 in so far as it operates in respect

of the debtors of the description given therein is that there is a statutory liquidation of their debts. So far as effect of the Act is concerned, there cannot, therefore, be any doubt. The debts are not reduced, but the debts are statutorily deemed to have been discharged wholly. When the debts are statutorily discharged, the relationship of the debtor and the creditor which was existing prior to the enactment of the legislation came to an end. The transaction of money-lending has been wiped out. Money lent is statutorily provided to have been repaid. There can be no doubt that the transactions which are aimed at by Section 4 and on which impact is intended to be made were transactions of money-lending. The debt which is defined in Section 2(e) as a liability in cash or kind outstanding on the appointed day, being a liability arising out of a loan, whether secured or unsecured, due from a debtor, whether payable under a decree or order of any Court or otherwise, clearly arose out of money-lending transaction. Indeed, the source of all further dealings between the parties, the source of the right to receive back the money in favour of the money-lender, the source of the obligation to return the money, the source of the liability to pay interest, the source of the relationship of debtor and creditor was the initial transaction of money-lending. It is, therefore, difficult to see why in principle, the pith and the substance and the true nature and character of the legislation cannot be said to be one relating to money-lending. If money-lending transactions were, therefore, to be affected, it was then only a question of degree or the extent to which they could be affected. It will be too late in the day to challenge the principle that the liability of a debtor can be reduced by appropriate legislation. So far as the question of competence of Legislature is concerned, if the pith and substance of the legislation falls within the legislative entry, as long as the legislation does not violate any of the constitutional guarantees or the legislation does not exceed its legislative limits, it will be difficult to entertain a challenge to the constitutional validity of a legislation merely on the ground that the debts are completely wiped out. We are not required to decide the question of validity of the impugned enactment in the light of any fundamental right under Article 19 of the Constitution. We are unable to see any want of competence in the Legislature especially in the face of express provision in Article 358 to enact a legislation of the kind impugned in these petitions. It cannot be disputed that so far as legislative competence is concerned, the drastic effect of the legislation by itself will not affect the power of the Legislature to legislate on a subject on which it is competent to legislate. We are today really not concerned with the effects of the legislation once we find that the pith and substance and the true nature and character of the legislation falls within the appropriate legislative Entry.

28. The two decisions relied upon by Mr. Shah referred to later cannot, therefore, be of any assistance to him.

29. The learned Counsel has relied on the decision in *Ashoka Marketing Ltd. Vs. State of Bihar and Another*, . The question which arose before the Supreme Court in that case was whether the State Legislature would have the power to recover

from the dealer certain amounts which were really not recovered by him by way of sales tax. Section 20A of the Bihar Sales Tax Act was impugned in that case. The assessed turnover of the assessee to sales tax included an amount of railway freight paid in respect of the goods supplied by the assessee. This part of the assessment was set aside by the appellate Authority. In the meantime, Section 20A of the Bihar Sales Tax Act came to be introduced in the parent Act and a notice under Sub-section (3) thereof came to be issued requiring the assessee to show cause why an amount of Rs. 23,990-11-0, being the sales tax on the railway freight, which had become refundable under the order of assessment, be not forfeited. The main question which fell for consideration was whether Section 20A of the Bihar Sales Tax Act was within the competence of the State Legislature and whether an order could be made u/s 20A for depositing with the State Government an amount collected by a registered dealer from its constituent to recoup himself for the payment of sales tax under the Bihar Sales Tax Act, which amount, according to the law then in force, the constituent was not liable to pay. Sub-section (3)(a) provided as follows:

Notwithstanding anything to the contrary contained in any law or contract or any judgment, decree or order of any Tribunal, Court or authority, if the prescribed authority has reason to believe that any dealer has or had, at any time, whether before or after the commencement of this Act, collected any such amount, in a case in which or to an extent to which the said dealer was or is not liable to pay such amount, it shall serve on such dealer a notice in the prescribed manner requiring him on a date and at a time and place to be specified therein either to attend in person or through authorised representative to show cause why he should not deposit into the Government treasury the amount so collected by him.

In support of the enactment, it appears it was contended that the power to legislate in respect of recovery of the amount collected by a dealer which in law he is not entitled to collect fell within Entries 6, 7 and 13 of List III and the Supreme Court rejected the contention with the following observations (p. 952):

?We fail to appreciate how power to legislate in respect of Entries 6, 7 and 13 would authorise the State Legislature to legislate in respect of recovery from the dealer of an amount which the dealer was in law not entitled to collect, but which he has collected. The power to legislate in respect of Sub-sections (3), (4) and (5) of Section 20A does not fall under Entries 6, 7 and 13 of List III expressly, nor can it be said that the power to legislate is necessarily incidental to the power contained in Entries 6, 7 and 13 List III.

It is difficult for us to appreciate how this decision could be of any assistance to the petitioners. The amounts which the dealer had recovered from his constituent was such that he was not entitled to collect them. The recovery from the constituents was, therefore, improper or not justified. But the Entries 6, 7 and 13 in List III were construed and it was held that there was no power in the Legislature to legislate in respect of anything but a tax. Further, it was held by the Supreme Court that what could be collected by the State from the dealer was

tax, but if the State itself was not entitled to any amount by way of tax, then the State could have no claim to any such amount. The decision turned on the scope of the legislative power in the matter of taxation and it was held that the power was only to provide for recovery of tax. If the amount could not have gone to the State, it not being tax, it was clearly outside the legislative competence.

30. In the instant case, we have come to the conclusion that the subject-matter of the legislation was money-lending and money-lenders and the power to legislate on the subject was unrestricted as long as the legislation was in pith and substance in respect of money-lending and money-lenders since having regard to the proclamation of emergency and the provisions of Article 358, no challenge could be posed to such legislation on the ground of violation of Article 19 of the Constitution of India.

31. Mr. Shah has also relied on a decision in *Check Post Officer v. K.P. Abdulla and Bros* (1970) 27 S.T.C. 1. That decision dealt with the validity of the power taken u/s 42(3) of the Madras General Sales Tax Act, 1949, for the Check Post Officer to confiscate goods and levy penalty in lieu of confiscation when in respect of the goods found in a vehicle, the driver of the vehicle was not carrying with him the documents specified in the section, and it was held that such a provision was not ancillary or incidental to the power to tax sale of goods under Entry 54. The decision is clearly distinguishable. The impugned enactment is not being justified on the ground of an incidental or an ancillary provision. Indeed, the provisions are very much substantive and, as we have pointed out, squarely they fall within the Entry.

32. Another limb of the same argument was the one advanced by Mehta. He argued that under Entry 30, the first part, the Legislature could only make regulatory provisions which could have been done by amending the Money-lenders Act and he also further argued that extinction of debts was not ancillary to money-lending and money-lenders. Now, it is difficult to appreciate the first argument that only regulatory provisions could have been made under the first part of Entry 30 and that too by amending the Money-lenders Act, Once legislative competence is found, whether the Legislature amends an existing Act or provides for certain matters by an independent enactment is a matter of little consequence. Nothing prevents the Legislature from dealing with an independent Subject falling within the Entry itself by another legislation without taking recourse to the procedure of amendment of an existing legislation. It is also difficult to accept the argument that merely regulatory provisions could be made under the first part of Entry 30. The decisions of the Supreme Court cited earlier are sufficient authority for the proposition that while determining the scope of the legislative power, the words must be given a meaning of the widest amplitude. There is no inherent limitation in the Entry itself. It is also important to point out that the scheme of the legislative list shows that wherever restriction of the legislative power to a mere regulatory enactment was contemplated, a special reference to that effect seems to have been made in the Constitution

itself. One such Entry is to be found at serial No. 23 in List II which reads as "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union". Entries 53, 54, 55 and 56 in List I specifically use the word "regulation". Entry 55 reads, "Regulation of labour and safety in mines and oilfields". Entry 56 deals with regulation and development of inter-State rivers. Entry 53 deals with regulation and development of oilfields. There is, therefore, clear indication in these Lists that where some kind of restriction was contemplated on the legislative power, nature of that restriction was clearly indicated. Again, in List II at Entry 32 the Entry reads, "Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities" and other bodies mentioned therein.

33. In *State of Bombay v. F.N. Balsam* AIR [1951] S.C. 318 : 53 Bom. L.R. 982 , the Supreme Court while dealing with Entry 31 in List II of Govt. of India Act has observed (p. 322):

"the words "possession and sale" occurring in entry 31 of List II are to be read without any qualification whatsoever and it will not be doing any violence to the construction of that entry to hold that the Provincial Legislature has the power to prohibit the possession, use and sale of intoxicating liquor absolutely.

These observations are in our view, a complete answer to the two-fold contention that ,the entry must be read as providing only for regulation and the power to legislate cannot be exercised so as to wipe out the existing liabilities of the debtors.

34. Allied with this argument is the argument of Mr. Soodhak that the legislation is one substantially relating to transfer of property of the creditor in favour of the debtor. Indeed it is really the same argument advanced by Mr. Shah and Mr. Mehta that the power cannot be so exercised as to wipe out the debt liability put in a different form.

35. The learned Counsel has referred us to the preamble of the Act in which it is stated that the reason for promulgating the Maharashtra Debt Relief Ordinance, 1975 was that the Government of Maharashtra was satisfied that circumstances existed which rendered it necessary for it to take immediate action to provide for relief from indebtedness to certain farmers, rural artisans, rural labourers and workers in the State of Maharashtra and it is contended that even though the preamble states that the original ordinance and the Act were intended to provide for relief from indebtedness, this part of the preamble must be disregarded if the words in statute clearly showed an intention on the part of the Legislature to provide for a transfer of property from the creditor to the debtor. Reference was made to the decision of the Supreme Court in *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, in which the Supreme Court pointed out that where the language of an Act is clear, the preamble must be disregarded. Reliance is also placed on the decision of this Court in *Chhotabhai Purushottam*

Patel and Others Vs. The State of Maharashtra by Secretary, Industries and Labour Department, Sachivalaya, Bombay and Others, , where while construing the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, a division Bench of this Court had observed that Statement of Objects and Reasons is neither relevant nor can control or decide the meaning of the provisions of the Act.

36. Now, the argument of the learned Counsel proceeds on an assumption that - Act relates to the transfer of property of the creditor to the debtor. When we considered the question of legislative competence, the main section which we considered and with regard to which alone a large part of the debate took place was Section 4 and we have already pointed out earlier that the pith and substance of the legislation is money-lending. The validity of the provisions of Section 4 was not decided upon either by having regard to the preamble or by reference to the Objects and Reasons of the Act but on a construction of the provisions of Section 4 of the Act. The learned Advocate-General no doubt wanted to argue alternatively that even assuming that the legislation is with respect to transfer of property, even transfer of property was a head of legislation in the concurrent list at Entry No. 6 which reads, "Transfer of property other than agricultural land; registration of deeds and documents". It may be possible to take the view that reading Entry No. 6 as a whole, it relates to an act of transfer by the transferor which is not the case in the instant case. In any case, we do not think it necessary to decide the question whether the extinguishment of the liability of the debtor would result in transfer of property as contemplated by Entry 6 because we have no manner of doubt that the legislation of the kind we are dealing with is in pith and substance expressly covered by Entry 30 of List II.

37. The learned Advocate-General has referred us to a decision of the Full Bench of the Madras High Court in *Nagaratnam v. Seshayya* AIR [1939] Mad. 361 F.B, in which the Full Bench of that Court was called upon to decide the validity of the Madras Agriculturists Relief Act (4 of 1938). Section 7 of that Act provided that notwithstanding any law, custom contract or decree of Court to the contrary, all debts payable by an agriculturist at the commencement of the Act, shall be scaled down in accordance with the provisions of chap. II of the Act. We may point out that we have already referred to the decision in *Subrahmanyam v. Muttuswami*, where the validity of that Act was later considered. The learned Advocate-General, however, wanted to underline the fact that the main provisions in the Entries were intended to scale down the debts and he mainly relied on the fact that a legislation which was intended to scale down the debts was held to be intra vires of the State Legislature having regard to Entry 27 in List II of the Government of India Act, 1935. The observations relied upon by the learned Advocate-General are to be found at page 367 in which the Full Bench has observed as follows:

The Act is certainly one which relates to money-lending to agriculturists and

money-lending is another subject which is reserved for the Provincial Legislature. The power to deal with money-lending must carry with it a power to limit the amount to be recovered by the money-lender.

(Italics ours.)

It is no doubt later observed that this position has not been seriously challenged and it was on the basis of this comment that it was contended on behalf of the petitioners that the question whether a legislation relating to giving of relief to the debtors was within the competence of the State Legislature in the light of the Entry "Money-lending and money-lenders" was not considered. Now, there is no detailed consideration of the scope of the Entry "Money-lending and moneylenders". It appears to us that the observations of the Full Bench of the Madras High Court read with the decision of the Federal Court on the same Act sufficiently settled the legal position that the debt relief legislation was squarely covered by the Entry with regard to money-lending and money-lenders. Indeed the fact that almost over a quarter of a century no such challenge to the validity on the ground of legislative competence was made to any such legislation after the Government of India Act had come into force on the ground that the legislation did not fall within the legislative entry "money-lending and money-lenders" sufficiently indicates, in our view, the futile nature of the challenge to the constitutionality on that ground. Indeed, the Full Bench of the Madras High Court has further observed that in providing for a relief to agriculturists and to reduce the liability where the maker or the endorser of a negotiable instrument was an agriculturist, the Legislature was regulating money-lending to agriculturists. We are, therefore, of the view that notwithstanding the fact that there is a complete extinguishment of the debtor's liability, the statute will still be within the competence of the State Legislature having regard to the entry "money-lending and money-lenders".

38. A further argument which was advanced before us was that the legislation cannot also be one which will fall legitimately within the Entry "relief of agricultural indebtedness" which is the latter part of Entry 30 because the nature of the legislation contemplated by the latter part of Entry 30 was with respect to indebtedness arising out of loans borrowed for the purpose of agriculture. In other words, it was argued both by Mr. Mehta and Mr. Sorabjee that there must be some nexus between agricultural operations and indebtedness and it was further argued that provisions regarding urban workers were not incidental or ancillary to legislation for relief of agricultural indebtedness. On this latter part of the submission, there can be no doubt. It has also not been contended before us by the learned Advocate-General that the legislation in respect of urban workers would be covered by the latter part of Entry 30, namely, the relief of agricultural indebtedness. But it was seriously contended by the learned Advocate-General that the latter part of the Entry could not be restricted only to enable the Legislature to enact legislation dealing with loans borrowed for the purpose of agriculture. In our view, having regard to the historical perspective in which the

Constitution came to be framed, it will be impossible to give a very restricted meaning to the words "relief of agricultural indebtedness" as contended by the learned Counsel for the petitioners. A review of the legislations prevalent in the second quarter of this century, that is, after the Government of India Act came into force and before the Constitution came to be adopted would show that uniformly the legislations which dealt with agricultural indebtedness were never restricted to only those categories of loans which arose out of transactions entered into for the purposes of borrowing money for agricultural operations. Indeed, agricultural indebtedness has always been the bane of Indian economy ever since the beginning of twentieth century. Any elementary book on Indian Economics will disclose that even the British Government had thought it necessary to make an enquiry into agricultural indebtedness. That was one of the terms of Royal Commission on Agriculture, and from time to time enquiry committees were set up including the Banking Enquiry Committee to go into the question of agricultural indebtedness with a view to find out how alternative sources of credit to be made available to the agriculturists could be brought into existence. In a sense, the phrase "agricultural indebtedness" has earned a connotation over the passage of years to indicate the unhappy position in which an Indian agriculturist has always been found ever since the phenomenal fall of prices in 1929. It has become proverbial that an Indian agriculturist is born in debt, he lives in debt and he dies in debt. An eminent economist Prof. P.J. Thomas in his thesis on "The Problem of Rural Indebtedness" has observed as follows:

Always in the front rank of India's economic problems, rural indebtedness is today one of the most pressing of them, owing chiefly to the added burden resulting from the phenomenal fall of prices since 1929. The agricultural population had long been groaning under a heavy load of debt, and today the burden is much heavier. Unless it is greatly lightened, any widespread agricultural improvement will be difficult, the standard of living will remain low, and rural backwardness is bound to persist.

The learned professor has referred to agricultural indebtedness as "an old problem, a chronic disease which cannot be remedied by any measure of immediate relief." He has further observed that it touches the fundamentals of Indian economic life. Dealing further with the causes of indebtedness, his following observations are instructive:

The peculiar feature which marks out India's agricultural indebtedness from that of other countries is that it is chiefly due to unproductive expenditure. Whilst in the United States, the great bulk of farmer's borrowings are for productive purposes, and only a small percentage for family expenses, the Indian agricultural classes borrow only very small sums for agricultural expenses; but they raise large sums for all kinds of unproductive purposes. Thus, in the United Provinces (that is, the present Uttar Pradesh), according to the Provincial Banking Committee, 70 per cent, of the existing debt was contracted for

unproductive purposes, and the same is more or less true of Bengal and Bombay.

The learned author further pointed out what he meant by unproductive loans and these, according to him, were the borrowings not merely for marriages and other social ceremonies but also for family maintenance and payment of taxes and, according to him, expenditure on social ceremonies was also the principal cause of debt in many parts of the country. The term "agricultural indebtedness" has always been used to indicate the state of indebtedness of the rural agriculturist, whatever may be the purpose for which loans were borrowed by him from the money-lender who has for decades been the only source of credit for the helpless villager, who by force of social requirements and total dependence of agriculture on natural factors was constrained to get into the clutches of the money-lender. The clutching grip which the money-lender has on the property of the debtor is poignantly highlighted by Prof. Thomas by quoting Guide who said, "It has often been said that credit holds up the landowner as the rope holds up the hanged man". It is this kind of rural scene that necessitated the several enactments dealing with money-lenders and it was obvious that it was in the context of this provision that a special provision was intended to be made to give a clear power to the State Legislatures to provide for relief of agricultural indebtedness.

39. The learned Advocate-General has also produced before us a report of a committee which went into the question of relief from rural and urban indebtedness which shows that in spite of twenty-eight years of Independence, the rural farmer and the labourer continued to exist below subsistence level. On a survey of the indebtedness, the Committee found that the indebtedness amongst the weaker sections was the result of the chronic poverty of the classes which was below subsistence level due to a wide gap between their income and essential needs and that certain type of indebtedness resulted from the consumption pattern, social convention, etc, The Committee recommended that "apart from the legislative measures, stern executive action to tackle the problem of indebtedness caused by exploitative kind of money-lenders operating both in rural and urban areas whose operations do not go on record was necessary on the lines of the steps taken against those indulging in economic offences". The Committee has gone into the figures of the rural and urban indebtedness which were indeed alarming. The indebtedness amongst the industrial workers in the predominantly industrial area of Bombay, Poona, Thana, Sholapur and Kolhapur was found to be of the order of 52.02 crores. The total liability of small holders was found to be about 132 crores of which the non-institutional borrowings were likely to be about 50 crores. Thus in all surveys it has always been implied that the ascertainment of agricultural indebtedness was not be restricted to the loans taken for the purposes of agriculture but the total indebtedness of the agriculturists had to be ascertained. Indeed there was no pattern at any stage where the purpose of the loan ever became material. What was material was that the borrower was agriculturist who was given loan on the security of either movable or immovable property by the money-lender. Application of the amount borrowed was thus never the criterion to determine

the extent of agricultural indebtedness. The phrase has always been construed as meaning indebtedness of agriculturists who would include those who owned land and cultivated their own land or those who worked as agricultural labourers. We are, therefore, not inclined to restrict the import of the phrase "relief of agricultural indebtedness" in the manner in which it was canvassed before us.

40. Therefore, so far as giving of relief to the debtors who fell in the category of marginal farmers, rural artisans, rural labourers and small farmers was concerned, in our view, the legislation is also squarely covered by the Entry "Relief of agricultural indebtedness". The fact that a specific entry of relief of agricultural indebtedness has been made will not necessarily mean that the subject covered by that part of the entry will not be included in the first part of the entry, namely, "Money-lending and money-lenders".

41. In *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, the Supreme Court made reference to the Scheme of the drafting of the Entries in the legislative lists. In para. 24 they have observed (p. 569):

The scheme of the drafting is that there is in the beginning of the Entry words of general import, and they are followed by words having reference to particular aspects thereof. The operation of the general words, however, is not cut down by reason of the fact that there are sub-heads dealing with specific aspects. In *Manikkasundara. Bhattar v. R.S. Nayudu* [1946] F.C.R. P. 84, occur the following observations pertinent to the present question:

The subsequent words and phrases are not intended to limit the ambit of the opening general term or phrase but rather to illustrate the scope and objects of the legislation envisaged as comprised in the opening term or phrase.

We must, therefore, reject the contention that the legislation not having restricted its scope to loans taken only for the purpose of agriculture, the legislation becomes bad.

42. Another argument which was advanced by Mr. Sorabjee and Mr. Rana was that the provisions of the Act were in respect of a field which was already occupied by a Central legislation and, therefore, there was a repugnancy between the Central legislation and the State legislation and the Central legislation should alone prevail in view of the provisions of Article 254(1) of the Constitution of India. The Central legislation referred to was the Gold (Control) Act. The argument runs thus: The Parliament has enacted the Gold (Control) Act, 1968, "to provide, in the economic and financial interests of the community, for the control of the production, manufacture, supply, distribution, use and possession of, and business in, gold, ornaments and articles of gold and for matters connected therewith or incidental thereto." There were money-lending transactions in which gold articles or ornaments are kept as security and are pledged with the money-lenders. Therefore, dealing in gold ornaments and articles has already been legislated upon by the Parliament and in view of the provisions of Article 254(1) of the Constitution, they must alone prevail. It was

argued that the real test of repugnancy was not only whether the two statutes are so inconsistent that they cannot stand together, but, according to the learned Counsel, even if both the legislations could be obeyed or complied with, the two enactments can still be repugnant to each other if the field is already occupied by the superior Legislature.

43. Now, Article 254(1) is the only provision which is material for the purposes of this contention. It provides as follows:

If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Reliance is placed on the opening part of Article 254(1). The law made by the Parliament is the Gold Control Act. The law made by the Legislature of a State is the impugned Act. There is repugnancy, according to the learned Counsel because the subject of gold articles and gold ornaments has already been legislated upon.

44. The concept of repugnancy was explained by the Supreme Court in *State of Orissa Vs. M.A. Tulloch and Co.*, . The Supreme Court in that case has observed as follows (p. 1291):

Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation.

(Italics ours.)

It is on the later underlined portion of the statement of the law that the learned Counsel for the petitioners are relying.

45. In order to see whether the impugned Act which is a state legislation was inconsistent with the Gold (Control) Act and on that ground it was incompetent

for the State Legislature to enact the impugned Act, we must go to the relevant provisions of the Gold (Control) Act to find out whether the Parliament has expressed any intention to cover the field in the matter of either money-lending or relief of agricultural indebtedness. In our view, a bare reading of the preamble and the provisions of the Gold (Control) Act is sufficient to indicate that the fields covered by both the legislations are entirely different. The validity of the Gold (Control) Act was considered by the Supreme Court in *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, and the Supreme Court pointed out that the manufacture of gold ornaments by goldsmiths in India is a process of systematic production for trade or manufacture and so falls within the connotation of the word "industry" in the appropriate legislative entries and in enacting the Gold (Control) Act, 1968, Parliament was validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List III. Entry 33 of List III reads as follows:

Trade and commerce in, and the production, supply and distribution of

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

The relevant provisions of the Gold (Control) Act which were relied upon were in Section 8(4) which provided as follows:

Save as otherwise provided in this Act, no person shall sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, any article to a person who is not a licensed dealer or refiner:

Provided that a person may deliver an article to a certified goldsmith for the purpose of repairing or polishing or for the purpose of getting one or more ornaments made, manufactured or prepared therefrom

What is contended is that delivery or disposal of a gold article is already dealt with by the Parliament. An article under the Gold (Control) Act does not include an ornament. The article is defined as meaning "Anything (other than ornament), in a finished form, made or manufactured from or containing, gold, and includes (i) any gold coin, (ii) broken pieces of an article, but does not include primary gold". Now, it is obvious, that when the Parliament was enacting Sub-section (4) of Section 8, the kind of disposal with which the Parliament was dealing with was not of the nature of a pledge for the purpose of borrowing, a loan. The money-lender when he accepts gold article or ornament as a pledge cannot be said to be carrying on business in gold or ornaments or articles of gold. Some reference was made to Sub-section (6) which provided:

Notwithstanding anything contained in this section, the Administrator may, if he is of opinion that special circumstances of any case or class of cases so require, authorize any person or class of persons to buy or otherwise acquire, accept, or otherwise receive, or sell, deliver, transfer or otherwise dispose of, any primary

gold or article.

It was argued that for disposing of primary gold or article of gold, permission of the Administrator was necessary. Now, here again, the disposal contemplated would not include the handing over of a pledged ornament either by the borrower to the lender or delivery of it back by the lender to the borrower on redemption of the pledge. The only reference to the hypothecation, pledge or mortgage of primary gold article or ornament is to be found in Section 10 which provides as follows:

No person shall obtain from any other person any loan or advance on the hypothecation, pledge, mortgage or charge of

(a) any primary gold, or

(b) any article or ornament which is required to be included in a declaration unless such article or ornament has been so included:

Provided that, in the case of an article which is not required to be included in a declaration, no transfer or delivery thereof shall be made unless such transfer or delivery has been intimated in writing to the Administrator.

It is difficult to see how even the enactment of Section 10 can be said to cover the field of money-lending or money-lenders. All that has been provided is that any article or ornament which is obtained by way of hypothecation, pledge or mortgage has to be included in a declaration. The declaration is denned in Section 2(i) as meaning a declaration which is required by the Act or was required by Rule 126-I of the Defence of India Rules, 1962, or the Gold (Control) Ordinance, 1968, to be made with regard to the ownership, possession, custody or control of gold. The declaration, therefore, is a mere record of possession and making of a declaration does not impinge directly on any transaction of money-lending. Some reference was made to Section 28 of the Act which provides:

No licensed dealer shall, unless authorised by the Administrator so to do.

(a) carry on business as a money-lender or banker on the Security of any article, or ornament, or both,

(b) permit any other person to carry on money-lending, banking or any other business,

in the same premises in which he carries on business as such dealer.

This provision with regard to the premises is against the licensed dealer. It cannot be said to be a legislation on the subject of money-lending because the restriction placed is on the dealer alone. It is true that the Gold Control legislation makes elaborate provisions for the control of activities and transactions in gold, but it cannot be said to be a legislation where it was ever intended by the Parliament in the exercise of its residuary powers under Entry 97 to deal with the subject of money-lending or money-lenders which has been

expressly put in List II as being within the competence of the State Legislature. Thus, the challenge on the ground of repugnancy must also fail.

46. We must now deal with another argument founded upon Articles 245 and 246 read with Article 31 of the Constitution of India advanced by Mr. Soochak. In our view, the argument needs merely to be mentioned and rejected. The argument is that since the money-lenders are deprived of their right to recover back money, which is property, from the debtors and there is no provision for payment of compensation as originally contemplated by the construction placed on Articles 31(1) and 31(2) by the Supreme Court in some cases, the deprivation of this right must be said to amount to acquisition and since no provision for compensation is made, the legislation was bad on that account. In other words, the contention is that. Articles 31(1) and 31(2) must be given effect to as construed by the Supreme Court in the three cases *The State of West Bengal Vs. Subodh Gopal Bose and Others*, , *Saghir Ahmad Vs. The State of U.P. and Others*, and *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, ignoring the provisions of Article 31(2A). Indeed the learned Counsel wanted further to argue that the Constitution (Fourth Amendment) Act itself was void as being destructive of the essential and basic features of the Constitution.

47. We have declined to hear the learned Counsel on the question of validity of the Constitution (Fourth Amendment) Act. Article 31, as it now stands, reads as follows:

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash:

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1) of Article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

Sub-clauses (2B), (3), (4), (5) and (6) are not material for the purposes of the present case. It is now well-known that Articles 31(1) and 31(2), as they originally stood, were so construed by the Supreme Court in the three cases referred to above that it was held that the word "acquisition" as used in Article 31(2) did not necessarily "imply acquisition of legal title by the State in the property taken possession of, but it would comprehend cases where the citizen had been substantially dispossessed of the right to enjoy the property with the result that the right to enjoy property had been seriously impaired or the value of the property had been materially reduced by the impugned State legislation. The effect of Clause (2A) in Article 31 introduced by the Constitution (Fourth Amendment) Act, 1955, was that it was made clear that if a law did not provide for the transfer of ownership or right to possession of any property to the State, it could not be called a law to provide for compulsory acquisition or requisitioning of property notwithstanding that it deprived any person of his property. Therefore, by mere deprivation of property as a result of a State legislation, if the ownership of that property was not transferred to the State or the right to possession of that property was not transferred to the State, the provisions under Article 31(2). with regard to payment of compensation were not attracted.

48. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . this position was made clear by the Supreme Court, where it was observed (p. 314):

?Clause (2) of Article 31 has been amended, and Clause (2A) has been inserted by the Constitution (Fourth) Amendment Act, 1955. Clause (2A) has been inserted with a view to supersede the majority decisions of this Court in the cases of State of West Bengal v. Subodh Gopal (at p. 98), Dwarkadas v. Sholapur Sp. and Wg. Co. and Saghir Ahmad v. State of U.P. (at p. 739).

Dealing with the Constitution (Fourth Amendment) Act, 1955, the Supreme Court observed as follows in para. 7 (p. 315):

The Constitution (Fourth) Amendment Act, 1955, amended Clause (2) of Article 31 and inserted Clause (2A) in that Article. The amendments, in so far as they are relevant to the present purpose, substitute in place of the words "taken possession of or acquired" the words "compulsorily acquired or requisitioned" and provide an explanation of the words "acquired and requisitioned" in Clause (2A).The result is that unless the law depriving any person of his property provides for the transfer of the ownership or right to the possession of any property to the State, the law does not relate to "acquisition or requisition" of property and therefore the limitations placed upon the legislature under Clause (2) will not apply to such law.

(Italics ours.)

In the face of this dicta of the Supreme Court, it is difficult to entertain the argument that we must overlook the provisions of Clause (2A) inserted by the Constitution (Fourth Amendment) Act, 1955 and judge the validity of the

impugned legislation as if Article 31 was never amended.

49. Another argument which needs now to be noticed, which was advanced by Mr. Soochak is that notwithstanding Article 358 of the Constitution, the Legislature was bound, in view of Article 245(1) of the Constitution, to see that the law enacted by them did not contravene Article 19 or Article 14 of the Constitution. Reliance was placed on the opening words of Article 245(1). Article 245(1) reads:

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

Now, it is obvious that when Article 245(1) uses the words "Subject to the provisions of this Constitution", the legislative power of the State would also be controlled by the provisions of Article 358. If Article 358 of the Constitution has the effect of suspending Article 19 and the enforcement of the right under Article 14 is itself suspended by the Presidential Order under Article 359(1), it will not be possible to hold that the legislation should be struck down on the ground of violation of Articles 14 and 19 of the Constitution.

50. We may now notice an argument advanced by Mr. Pendse based on Clause 3 of the Ordinance and Section 3 of the Act. Mr. Pendse contended that an anomaly has been created by restricting the provisions of Section 3 of the Act to merely revival of debts and there is no provision in the Act reviving the proceedings in civil Courts which had stood abated in respect of debts irrespective of the question whether the debtors against whom those proceedings were taken were such as were entitled to the benefits of the Act or not.

51. This argument does not in fact affect in any way the constitutional validity of the Act. However, even the apprehension of Mr. Pendse that the proceedings which had once abated on the coming into force of the Ordinance have not been revived is not justified. As we have already pointed out, when the Ordinance was promulgated on August 22, 1975, the provision for liquidation of debts was made in Clause 3 of the Ordinance. It was a very widely worded provision and except as otherwise expressly provided in the Ordinance, every debt outstanding on the appointed day including the amount of interest, if any, payable by a debtor to a creditor was deemed to be wholly discharged and certain consequences were stated in the clause which would ensue with effect from the appointed day. Two important consequences so far as the jurisdiction of the civil Court was concerned were that no civil Court could entertain any suit or proceeding against the debtor for the recovery of any amount of debt including interest and this is the one with which we are immediately concerned-in Sub-clause (c) it was provided that "all suits and proceedings (including appeals, revisions, attachment or execution proceedings) pending on the appointed day for the recovery of any such debt against such debtor shall abate. As a result of this consequence between the date of the Ordinance and the date of the coming into force of the

impugned Act, all suits or proceedings pending on August 22, 1975 for the recovery of the debt as defined in Clause 2(e) of the Ordinance had abated. Now, admittedly the sweep of the impugned enactment is not as wide and vast as that of the original Ordinance. The operation of the beneficent provisions is now restricted only to such debtors as satisfy the conditions in Section 3 and the relevant definitions in Section 2. There are bound to be debtors who are now outside the present Act but who were squarely covered by the original Ordinance. Any proceedings pending against such debtors who were now outside the Act had already stood abated. The grievance is that proceedings in respect of such debtors have not been revived. Prima facie the argument appears to be plausible but does not stand close scrutiny. Section 3 in the impugned Act is worded in a rather unusual manner, but the intention of the Legislature appears to be very clear. Admittedly the Ordinance was in force till it was repealed on January 3, 1976 by the impugned Act. The Legislature seems to have taken recourse to its power of retrospective amendment of the Ordinance which continued to be effective till it was repealed. It was provided in Section 3 as follows:

Notwithstanding anything contained in the Maharashtra Debt Relief Ordinance, 1975, all debts of a debtor which stood discharged on the appointed day under the provisions of that Ordinance shall, on the commencement of this Act, stand revived; and accordingly, the provisions of the said Ordinance as amended by this Act as herein provided shall operate in relation to all such revived debts as if those provisions were always amended and in operation on the appointed day.

The effect of this section appears to be two-fold. Firstly, all the debts which had stood discharged statutorily have been revived, so that at the outset what was done by Clause 3 of the Ordinance has been undone. The effect of the first part of Section 3, therefore, is that all debts on which Clause 3 of the Ordinance operated remained intact on August 22, 1975 and they were taken out of the purview of the Ordinance as it stood on August 22, 1975 in its original form. We must not forget that abatement of proceedings was merely a consequence to ensue on the substantive provisions in the main part of Clause 3. The very basis on which the consequences were supposed to follow had thus been taken away retrospectively with the result that the consequences would not by themselves be able to stand, if the debts stood revived, the consequences could not be given effect to because the revival of the debts and the abatement of the proceedings would be inconsistent and the consequences would not be effective as on August 22, 1975. The second effect is that the Legislature has indicated that the Ordinance which is now intended to operate was not the Ordinance in its original form but as amended. It is obvious that the amendments contemplated were such that Section 4 of the Act which corresponded to Clause 3 of the Ordinance has to be read as Clause 3 in the Ordinance in place of the original Clause 3 right from the time the Ordinance was promulgated. The Ordinance would, therefore, operate only in respect of such debts as are now covered by Section 4. It was conceded on behalf of the State by the learned Advocate-General that when the

debts stood revived, all the proceedings also stood revived and only those proceedings would stand abated which would fall within the scope of Section 4 of the Act. Thus, it will not be correct to hold that the Act left the originally abated proceedings in their abated state leaving no remedy to the plaintiff or the money-lender to prosecute his suits or proceedings even in respect of his debtors who were not entitled to the benefits of the impugned enactment.

52. This must now bring us to another argument on which the petitioners were obliged to fall back in order to raise, what according to them was a substantial challenge to the impugned enactment. The debate with regard to this argument which is based on Article 301 of the Constitution of India was contributed to by Mr. P.A. Mehta, Mr. Sorabjee and Mr. H.K. Shah, learned Counsel appearing for the petitioners with their usual persuasiveness and persistence. The argument is that business of money-lending must be included within the guarantee of freedom of trade, commerce and intercourse contained in Article 301 of the Constitution of India and unless it is possible to sustain the impugned legislation as amounting to reasonable restrictions on the freedom of trade, commerce and intercourse in the public interest, as required by Article 304(6) of the Constitution of India, Section 4 of the Act must be struck down as beyond legislative competence. Mr. Mehta argued that the word "trade" in Article 301 will include any occupation and since the petitioners were by occupation money-lenders, the guarantee under Article 301 has been violated. Vehement argument was advanced with reference to the provisions in different sections that the restrictions were not reasonable and, therefore, the enactment was unconstitutional. The arguments advanced by the three learned Counsel were also adopted by Mr. Rana appearing in Special Civil Application No. 2071 of 1976.

53. It was contended in reply by the learned Advocate-General that Part XIII of the Constitution was not attracted in the case of legislation relating to the business of money-lending which was not "trade, commerce and intercourse". It was further contended that the concept of freedom of trade, commerce and intercourse contemplated in Part XIII of the Constitution contemplated only free movement, flow and passage of goods and persons inter-State as well as intra State and since only such rights were within the ambit of the said Article and the impugned legislation did not affect any such free movement of goods, the petitioners were not entitled to invoke the provisions of Part XIII of the Constitution of India. It was further contended that in respect of inter-State trade and intercourse, the provisions of Part XIII are applicable only in so far as the same directly or immediately impede or affect flow or movement of goods or passenger bearing on inter-State trade.

54. The learned Counsel appearing on behalf of the petitioners have heavily relied on two decisions of the Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , and *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , in order to show that the concept of freedom of inter-State trade, commerce and intercourse as enshrined in the Indian

Constitution is modelled on the provisions of Section 92 of the Australia Constitution and then reliance was placed on the decision of the Australian High Court in *Bank of N.S.W. v. The Commonwealth* (1948) 76 C.L.R. 1 and especially the observations of Dixon J. and the decision of the Privy Council, In the appeal from the decision in *Commonwealth of Australia v. Bank of New South Wales* [1950] A.C. 235 The argument was that the Australian High Court in the Australian case and the Privy Council had taken the view that private banking was included in trade commerce and intercourse and since money-lending is akin to banking, it must also be held as forming a part of trade, commerce and intercourse.

The learned Advocate-General, however, has vehemently contended that movement or flow of trade is an essential element of the guarantee of freedom of trade, commerce and intercourse and since a transaction of money-lending does not involve any movement of goods, it cannot be included within the scope of the guarantee under Article 301 of the Constitution of India.

55. Several cases have been referred to on both sides, to some of which we shall have to refer. Two questions will, however, arise, decision on which is necessary in order to ascertain whether the petitioners are entitled to say that business of money-lending is covered by the guarantee of free trade, commerce and intercourse. The first question is whether the business of money-lending is included in trade or the concept of trade, commerce and intercourse and it is not contended that it is included either in commerce or intercourse. The second question is whether the concept of movement alone is an essential element of the concept of trade, commerce and intercourse, inter-State.

56. Before we refer to the several authorities relied upon, we must point out that it was only by an analogy that it was sought to be argued that money-lending is a part of trade; commerce and intercourse on the ground that private banking was held to be so in the Australian case as confirmed by the Privy Council. Analogies, however, cannot be of any assistance in the construction of a statute which is not in part *materia* much less in the construction of a constitutional provision. In *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another*, the Supreme Court has pointed out (p. 524):

‘It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in *pari materia*.

In *Some shield v. Robin* [1946] 1 All. E.R. 218, when it was argued that for the purposes of determining jurisdiction u/s 48(1) of the County Courts Act, 1934, the figure of rent should be arrived at after making a notional deduction on account of payment made for use of furniture etc. in the case furnished accommodation as was possible under the Rent Act, Lord Greene M.R., observed (p. 221):

‘I cannot imagine anything more dangerous than to attempt to construe an Act

of Parliament directed to a totally different subject-matter by having regard to the very special, very obscure and artificial language of such an Act as the Rent Act, which is directed to a totally different subject-matter and actuated and governed by a completely different policy

Lord Greene further observed (p. 221):

I am averse to referring to authorities on one Act of Parliament for the purpose of construing another and quite different Act,?

The second thing which we must make clear is that so far as the decision of the Australian High Court and the Privy Council as also the decisions of the Supreme Court in the *Atiabari* and the *Rajasthan* cases are concerned, they were dealing with the concept of an inter-State trade while the question before us is not with regard to the scope of the guarantee in its inter-State aspect but in the intra-State aspect only. However, there are certain observations of the Supreme Court in the *Atiabari* and the *Rajasthan* cases which could be of some assistance to decide the questions raised. It cannot be now seriously disputed that the Supreme Court has found that the concept of freedom of trade, commerce and intercourse contained in Article 301 was based on the provisions of Section 92 in the Australian Constitution. In the *Atiabari* case in the majority judgment delivered by Gajendragadkar J., as he then was, it was observed (p. 250):

?Just as the Constitution makers had before them the said section they were also familiar with corresponding clauses included in the Federal Constitutions of other countries. The history of judicial decisions interpreting Section 92 of the Australian Constitution must have been present to their minds as also the history of the growth and development of the American Law under the commerce clause in the American Constitution.

At para. 43 the Supreme Court had pointed out that Article 301 applies not only to inter-State trade, commerce and intercourse but also to intra-State trade, commerce and intercourse. The *Atiabari* case was a case where the State of Assam had levied a tax on tea which had to pass from Assam to Bengal because tea produced in Assam had its main market in the State of Bengal. The main question which came to be canvassed in the *Atiabari* case was whether the plenary power of the State Legislature which included the taxing power given to it by the Constitution was subject to the provisions of Part XIII of the Constitution. In that case the validity of an Act called the Assam Taxation (on Goods carried by Roads or Inland Waterways) Act, 1954, enacted by the Assam Legislature under entry 56 in List II levying taxes on goods solely on the ground that they were carried by road or by inland waterways within the area of the State was challenged and the Supreme Court took the view that Article 301 read in its proper context and subject to the limitations prescribed by the other relevant Articles in Part XIII must be regarded as imposing a constitutional limitation on the legislative power of the State and whenever Article 301 applied, the legislative competence of the Legislature in question would have to be judged

in the light of the relevant Articles in Part XIII. It was further pointed out that the freedom contemplated by Article 301 was subject to such restrictions as directly and immediately restricted or impeded the free flow or movement of trade. Since the case dealt with the validity of the tax, it was pointed out that taxes may and do amount to restrictions, but it was only such taxes as directly and immediately restricted trade that would fall within the purview of Article 301. We are really not concerned with this aspect of the matter considered by the Supreme Court in the *Atiabari* case. We would, however, refer to certain observations in that case in the majority judgment which show that the historical background provided by Section 92 of the Australian Act was extensively referred to because that part of the judgment was heavily relied upon on behalf of the petitioners. It was, however, expressly stated in the majority judgment that the Court was concerned only with trade and so, commerce and intercourse was left out of consideration. (See para. 43). The majority judgment also did not go further and discuss what was the meaning of trade as would be clear from the following observations in para. 43 (p. 251):

?Even as to trade it is really not necessary to discuss or determine what trade exactly means; for it is common ground that the activity carried on by the appellants amounts to trade, and it is not disputed that transport of goods or merchandise from one place to another is so essential to trade that it can be regarded as its integral part. Stated briefly trade even in a narrow sense would include all activities in relation to buying and selling, or the interchange or exchange of commodities and that movement from place to place is the very soul of such trading activities.

We have extracted these observations to highlight the position that even according to the Supreme Court, if any activities were to be included in the concept of trade, those activities had to be in relation to buying and selling or the interchange or the exchange of commodities. Unless, therefore, there can be an activity which is connected with buying and selling or interchange or exchange of commodities in the sense in which the term "trade" is used in Article 301, that activity will not be covered by the term "trade". In para. 50 with reference to the content of the freedom provided for by Article 301, it is observed in the majority judgment (p. 253):

?whatever else it may or may not include, it certainly includes movement of trade which is of the very essence of all trade and is its integral part.

The test with regard to the validity of the legislation in the light of the restrictions put upon trade, commerce and intercourse was put thus by the majority judgment (p. 254):

?Does the impugned restriction operate directly or immediately on trade or its movement

It was this test which, according to the learned Counsel for the petitioners, had to be applied and to counter the argument of the learned Advocate-General that

unless the concept of movement was involved, the protection under Article 301 cannot be called in aid, it was argued on behalf of the petitioners that the words "trade or its movement" used by the Supreme Court showed that there could be restriction on the trade itself without there being any restriction on the movement of trade and if the restrictions are not reasonable and not in public interest, the guarantee under Article 301 will be violated. The concept of movement becomes material for the second question posed by us earlier and we shall refer to it later.

57. The principal question which must fall for determination in view of the contention raised on behalf of the petitioners is whether the business of money-lending would be included in trade or commerce. We may at this stage also refer to certain observations by Shah J. where the concept of trade and commerce has been explained by him. In para. 67 Shah J. has observed as follows (p. 259):

Trade and commerce do not mean merely traffic in goods, i.e., exchange of commodities for money or other commodities. In the complexities of modern conditions, in their wide sweep are included carriage of persons and goods by road, rail, air and waterways, contracts, banking, insurance transactions in the stock exchanges and forward markets, communication of information, supply of energy, postal and telegraphic services and many more activities-too numerous to be exhaustively enumerated-which may be" called commercial intercourse. Movement of goods from place to place may in some instances be an important ingredient of effective commercial intercourse, but movement is not an essential ingredient thereof. Dealings in goods and other commercial activities which do not import a concept of movement are as much part of trade and commerce as transactions involving movement of goods.

Even according to the learned Counsel for the petitioners, these observations of Shah J. have been approved in a later decision of the Supreme Court in *The District Collector of Hyderabad and Others Vs. Ibrahim and Co., etc.*, . So far as the present petition is concerned, we are dealing with simple transactions of money-lending by moneylenders to the agriculturists or rural labourers or the urban workers which have nothing to do with commerce nor with trade. These are not dealings which relate to any goods nor are they dealings which would be called as a part of a sequence in the series of operations which constitute trade or commerce. There can be no doubt that the transactions of money-lending which are hit by the impugned Act would not be a part of commerce in spite of the wider connotation of that term which included certain other concepts in addition to trade and traffic. We have merely to refer to the discussion of the subject of commerce in *Corpus Juris Secundum*, vol. 15, p. 256. The following observations are material:

?The question of what is commerce is to be approached both affirmatively and negatively, that is, from the points of view as to what it includes and what it excludes. While commerce includes trade, traffic, the purchase, sale, or exchange of commodities, and the transportation of persons or property, whether

on land or water or through the air, according to various definitions of the term,? according to judicial exposition apart from formal definitions, nevertheless commerce is broader than, and is not limited to, trade, traffic, transportation, or the purchase, sale, or exchange of goods or commodities. Commerce is more than any one of these things in that it is intercourse.

There was, therefore, no doubt at any stage that the concept of commerce included trade, traffic, transportation or purchase, sale or exchange of goods or commodities. The controversy was only with regard to the wider scope of the term and, as we shall presently refer to the Australian decision, the question involved there was whether intangibles could be included in trade or commerce. Therefore, whether you take trade separately or as a part of the composite phrase "trade, commerce or intercourse", so far as the present controversy is concerned, since the transactions were not in respect of either purchase, sale or exchange of commodities, it will not be possible to hold that the transaction of money-lending would be covered by either trade or commerce, however wide that concept may be.

58. It is not necessary to refer in extenso to the later decision of the Supreme Court in Rajasthan case. As is well-known it has substantially accepted the construction placed upon the freedom contemplated under Article 301 of the Constitution subject however to a further rider that regulatory measures which do not impede the freedom of trade, commerce or intercourse and compensatory taxes for the use of trade facilities were not hit by the freedom declared by Article 301 and they were excluded from the purview of the provisions of Part XIII of the Constitution "for the simple reason that they do not hamper trade, commerce or intercourse but rather facilitate them" That was again a case that dealt with inter-State trade because the levy of tax which was challenged was on the transport vehicles and the vehicles had to pass during their journey between two places in the State of Ajmer, through a part of the territory of Rajasthan and from one place in the State of Ajmer to another place in the State of Rajasthan. It is, however, important to point out how the means of transport, namely, the motor vehicles which were taxed were sought to be connected with trade and commerce. It was pointed out by the High Court which had upheld the validity of the tax that "Transport vehicles are provided by individuals carrying on business in them and those who carry on trade and commerce as a whole, can use these transport vehicles". But the High Court had ultimately held that the effect of the tax on trade and commerce was only indirect and consequential and the impediment, if any, may be regarded as remote. The validity of the tax was thus upheld by the High Court and the appeal by the transport company was rejected by the Supreme Court.

59. Subba Rao J. (as he then was) in a separate judgment referred to the decisions of the American Supreme Court in para. 27 and he took the view that transportation across the borders has always been held to be a necessary ingredient of the expression "commerce". He observed (p. 1427):

?It is not necessary for the purpose of this case to consider the conflict or the various nuances of the decisions-the concept of commerce was enlarged or reduced to meet the exigencies of different situations; but the common thread was that transportation across the borders, either physically or conceptually, was uniformly held to be a necessary ingredient of the expression "commerce" After noticing the conflict, Willis in his book on Constitutional Law summarizes the latest position thus, at p. 288:

?today the correct definition of commerce is that it is traffic and commercial intercourse?.

With reference to Article 301 of the Constitution Subba Rao J. has observed that the expression "trade, commerce and intercourse" is a composite expression and with regard to the freedom declared under Article 301, he has stated (p. 1429):

?The freedom declared under Article 301 may be defined as a right to free movement of persons or things, tangible or intangible, commercial or non-commercial, unobstructed by barriers, inter-State or intra-State or any other impediment operating as such barriers.

Thus except for certain observations made in both these decisions, the decisions do not directly become material for the purposes of the present controversy and indeed we must make it clear that the learned Counsel for the petitioners had fairly stated that these decisions were primarily being relied upon to show that the wider concept of trade, commerce and intercourse propounded in the Australian case and the Privy Council decision was accepted by the Supreme Court.

60. The Australian decision must be read in the light of the controversy which arose before the Australian High Court. The main provision challenged before the Australian High Court were those in Section 46 of the Banking Act, the effect of which was that private banking was forbidden. In that context, the question was whether Section 46 of the impugned enactment violated the carrying on of free trade and commerce u/s 92 of the Australian Constitution. While stating the manner in which the banking system in Australia operated, Dixon J. has observed as follows (p. 379):

Now, the existing system of private banking maintains an Australia-wide business upon which its whole structure rests. It sustains with respect to the transfer of money or bank credit the greater part of the commerce of the country. Branches and agencies of the various private banks are distributed over the Commonwealth and there are few towns or centres in which one or more of them is not represented. The volume of the banking transactions which cross State lines is, of course, widely different with different banks, and that is said to be true also of the proportion which in number or value inter-State transactions over a period bear to the whole business done?. In the daily course of business the private banks (with two minor exceptions) regularly transfer funds among the States, establish credits across State boundaries, and collect cheques, bills of

exchange and promissory notes drawn and lodged in one State and payable in another, and of course they negotiate such instruments. There have been placed before the Court elaborate descriptions of the many different kinds of inter-State transactions the private banks carry out, considered both from the banks' side and from the customers' side, that is an essential part of his commercial dealings. But it is enough to say that, as common knowledge might suggest, this material confirms in detail what seem to be the essential conclusions.

(Italics ours.)

The learned Judge then summarised the nature of the business of private banks in the following words (p. 380):

“(a) the constant inter-State transmission of funds and transfer of credit; (b) constant business communication and intercourse among the States; (c) the regular use for the purposes of inter-State transactions of instruments of credit and of title to goods and their inter-State transmission; (d) the integration of inter-State banking transactions with the entire business of the bank to form a system spreading over the Commonwealth without regard to State lines; (e) the furtherance of commercial dealings by inter-State traders in goods by performing an indispensable part in such transactions.

The question which the Australian High Court was called upon to decide was posed by the learned Judge thus (p. 380):

“Whether the trade, commerce and intercourse to which Section 92 gives freedom covers matters of the foregoing description.

The question posed as above will thus make it clear that the attention of the Court was directed at deciding whether having regard to the nature of the role which private banks played in inter-State trade and commerce and carrying out commercial transactions in the form of transfer of funds and credit, those activities would be included within the composite term "trade, commerce and intercourse". What was argued before the High Court was that the protection which Section 92 provides extends to the transfer from one State to another of nothing but commodities and persons and the substantial question which was posed was whether intangibles were covered. Now, the nature of the question posed before the Australian High Court and the arguments advanced indicate that trade, commerce and intercourse was sought to be given a narrow meaning restricting it to the transfer of commodities and persons and so as not to include intangibles. Thus the question whether intangibles are included in the freedom guaranteed by Section 92 of the Australian Constitution was canvassed before the High Court, The question which was raised in that case is really not at all material so far as the controversy in the case before us is concerned.

61. What was pressed upon us by Mr. Sorabjee is the observation made by Dixon J. where he has stated (p. 381):

It has been said that "trade" strictly means the buying and selling of goods.

That, however, is a specialized meaning of the word. The present primary meaning is much wider, covering as it does the pursuit of a calling or handicraft, and its history emphasizes rather use, regularity and course of conduct, than concern with commodities.

It is vehemently argued that in view of these observations, a pursuit of a calling-and in the instant case the calling of a money-lender-must also be included. Now, the observations relied upon cannot be so construed as to include within the term "calling" any business. In the context of the guarantee under Article 301, if this reasoning has to be adopted, it must refer to a calling which has something to do directly or incidentally with a trading activity and however wide the interpretation of trade, commerce and intercourse may be, we are not inclined to include within it the business of money-lending of the nature which is sought to be reached by the impugned legislation.

62. Reliance was placed on the observations on p. 382 of the Australian decision in *Bank of N.S.W. v. The Commonwealth* where the learned Judge observes:

The words "trade, commerce and intercourse" are not naturally susceptible of such a reactionary interpretation. The very manner in which they are combined would carry, even to a mind unfamiliar with their background, an intention to include all forms and variety of inter-State transaction whether by way of commercial dealing or of personal converse or passage.

Obviously the latter part relating to personal converse or passage cannot be availed of by the petitioners on the facts in the present case and all forms of variety referred to by the learned Judge refer to inter-State transaction. The reason why private banking was held to fall within the guarantee u/s 92 appears to be clear from certain later observations of Dixon J. At p. 383 the learned Judge has observed:

The contention made that what is commonly called a transmission of money or credit by a bank involves no movement, no interchange, nothing occurring across State lines, but merely the reduction of credit in one place and an increase in another, seems to substitute an analysis-and one of doubtful adequacy-belonging to monetary theory for the common understanding of the course business takes and the complexion which the law places upon it. But for myself I should think that if these interdependent and significant phenomena occurred in different States, involving, as they must, communication between the States, it would be enough. Nor do I see that it is anything to the point to consider the function of banking in providing and regulating the medium of exchange chiefly employed in the Anglo-American world, bank money or credit. That is a consequence of the relation of banker and customer. But whether, from the standpoint of the fulfilment of that vital economic function, the banking transactions that are important as inter-State trade, commerce and intercourse are regarded as falling under the category of cause, of result or of accompanying circumstance, nevertheless, as between the parties to them, they continue to possess the

characteristics which give them the complexion of trade, commerce and intercourse among the States.

We must read these observations in the light of the earlier statement of the functions of private banking and the role played by private banking in the commercial pattern in Australia so far as inter-State trade and commerce was concerned. These considerations hardly arise in a case like the one with which we are dealing where loans borrowed mostly for private consumption are the subject of legislation.

63. We need not deal at any length with the decision of the Privy Council which confirmed the decision of the Australian High Court invalidating Section 46 of the Banking Act. The observations made by the Privy Council show that, even their Lordships were taking the view that Section 46 of the Banking Act violated Section 92 of the Australian Constitution having regard to the nature of the business of private banking. Their Lordships have observed (p. 303):

“The business of banking, consisting of the creation and transfer of credit, the making of loans, the purchase and disposal of investments and other kindred activities, is a part of the trade, commerce and intercourse of a modern society and, in so far as it is carried on by means of inter-State transactions, is within the ambit of Section 92.

The observations of the Privy Council were thus clearly restricted to inter-State transactions and cannot, therefore, be of assistance so far as the present case is concerned. The Privy Council also further confirmed the view that Section 92 was violated only when the legislative or executive act operates to restrict such trade, commerce and intercourse directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote.

64. Mr. Mehta, learned Counsel appearing on behalf of some of the petitioners has referred us to a decision of this Court in *Municipality of Chopda v. Motilal* (1957) 60 Bom. L.R. 48, That decision was dealing with the power of a municipal committee to levy tax on professions, trade or calling self-contemplated by Article 276 of the Constitution. The tax levied was called a cotton manufacturing tax and was levied in respect of every bale of cotton pressed within municipal limits. It appears that it was argued that the word "trade" in Article 276 should be given a limited construction and it must be limited to a occupation which primarily concerns itself with sale and purchase of goods. The division Bench had taken the view that pursuit of a skilled employment with a view to earn profit, such employment not being in the nature of a learned profession or agriculture, must be regarded as engaging in "trade" within the meaning of Article 276 of the Constitution. That very same authority will, however, show that the division Bench had referred to the fact that the word "trade" was of very general application and must always be considered with the context in which it is used. Merely because the word "trade", which is used along with "professions, calling

or employment", has been construed as not being limited to sale and purchase of goods in the context of Article 276, there is no reason, having regard to the nature of the provision in Article 301, to give a similar meaning to that term in Article 301.

65. In the view which we are taking, we need not go to the second question posed by us, namely, whether Article 301 in its intra-State aspect would not be attracted unless a concept of movement is involved as argued by the learned Advocate-General. We need not also, therefore, further go into the several authorities cited at the Bar in order to show that where there are restrictions put by the legislation, the burden is on the State to show that the restrictions are reasonable and in public interest and that legislation in the instant case imposes unreasonable restrictions on the business of money-lending. We are also not inclined to go further into the question whether the law wiping out the debts in respect of certain transactions which took place prior to the day on which the Ordinance came into force could be treated not as amounting to a restriction but a prohibition as argued on behalf of the petitioners. It is clear that the law as such does not prohibit the business of money-lending, but what was pressed upon us was that virtually the effect of wiping out the liabilities of the debtors would be that the "stock-in-trade" to use the phrase used by Mr. Shah, has been taken away and, therefore, virtually the money-lenders have been ruined and they are unable to carry on further business. This argument is based on Article 304(b) of the Constitution which is not at all attracted in the view which we have taken that the petitioners cannot invoke the provisions of Part XIV of the Constitution. We may, however, mention that in order to show that Article 301 takes within its sweep so far as the intra-State aspect is concerned the trade without any concept of movement, the petitioners had relied on the two decisions of the Supreme Court in *Syed Ahmed Aga and Others Vs. The State of Mysore and Others*, . The learned Advocate-General has relied on two decisions of this Court in *Bapubhai Ratanchand Shah and Others Vs. State of Bombay and Another*, and *Godavari Sugar Mills v. Kamble* (1974) 77 Bom. L.R. 261 . Mr. Sorabjee seriously contended that the decision of the division Bench in *Bapubhai v. State of Bombay*, which laid down a proposition that a restriction unrelated to movement of trade was not within Article 301 was no longer good law in view of the two decisions of the Supreme Court relied upon by him. To emphasise the aspect that Article 301 is attracted only if there is a movement of trade, the learned Advocate-General had relied upon the decision in *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, , *The State of Kerala Vs. A.B. Abdul Kadir and Others*, , *State of Mysore Vs. H. Sanjeeviah*, , *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, , *Yogesh Trading Co., Kotachery Vs. The Intelligence Officer of Sales Tax Cannanore and Another*, *Suchet Singh v. State* [1970] AIR J. & K. 112 and certain observations of the Supreme Court in *Atiabari* case. The learned Advocate-General had also relied on the discussion of the Australian case by Nicholas in his book on the Australian Constitution on the chapter of Banking.

66. An argument was then advanced by Mr. Soochak that the provisions of Section 4 or the Act as a whole are in conflict with the provisions of the Usurious Loans Act. This argument must be rejected in view of the fact that the scope of the two Acts, namely, the Usurious Loans Act and the present legislation, which is a State legislation, is entirely different. The Usurious Loans Act is a limited legislation. It can be invoked only in a civil Court when the transactions are liable to be reopened. The present Act cannot be said to be covering the same field as the Usurious Loans Act.

67. Having thus disposed of the challenge to the Act generally, we must now refer to certain arguments advanced on behalf of the petitioners in respect of the particular provisions of the Act. But in the view which we have taken, we must make it clear that we cannot consider the challenge made to certain provisions on the ground that the enactment amounts to unreasonable restrictions and not in public interest as contemplated by Article 304(b) of the Constitution of India. The material arguments which were mainly advanced by Mr. Shah will, therefore, be considered without reference to the provisions of Article 304(b) of the Constitution of India.

68. With reference to the definition of debt, it was urged by Mr. Shah that the definition did not make any reference to the amount of the debt and the number of members in the family or the capacity of the debtor. It is difficult to see how such, a question can be raised. As we have already pointed out, the Legislature wanted to legislate in respect of the entire liability of the debtors to whom the legislation applied. Ultimately it was a matter of policy for the State Legislature to decide as to whether it would provide for a debt up to any limited extent or whether all debts, whatever be their magnitude, were to be covered by the legislation.

69. One thing, however, requires to be noticed so far as the definition of debt in Clause 2(e) is concerned. The clause seems to have made a distinction between the loan borrowed by a worker and loan borrowed by other class of debtors provided for in the Act in as much as so far as workers are concerned, only that loan which is advanced to the worker at interest is covered, while in any other case, even a loan which was without interest has been brought in within the definition of debt. Even if the entry No. 30, List II of Schedule VII is given the widest possible interpretation, we have not been able to accept the argument of the learned Advocate-General that the Entry must take within its sweep an advance without interest. On the construction which we have placed on the Entry No. 30 with regard to money-lending and money-lenders that a loan has always been understood as advance with interest, the definition of debt in so far as it purports to cover advances without interest also would, in our view, be beyond the legislative competence of the State Legislature. The operation of the definition of debt and the Act must, therefore, be restricted, in our view, to an advance or loan with interest alone, whether the loan was taken by a worker or the loan was taken by the debtor as defined in the Act, namely, the marginal

farmer, rural artisan or rural labourers. The Legislature was legislating with a view to give adequate relief against indebtedness which was prevalent in the State. The Legislature has also provided that so far as marginal farmer, rural artisan and rural labourers are concerned, only those of such persons would get relief whose income did not exceed Rs. 2,400 during the year immediately before August 1, 1975 and in the case of a worker, the income during the relevant period has been taken to be Rs. 6,000 in the case of a worker living in urban area and Rs. 4,800 in the case of a worker living in rural area. If these were the persons to whom the operation of the Act was to be restricted, it is obvious that the Legislature had considered the fact that persons of the category for whom this legislation is intended was really not in a position to make repayments of debts. Whether other members of the family had any capacity to pay or not was hardly relevant because there would be no legal obligation on any of them to pay the debt of the person who had borrowed.

70. With regard to the definition of debtor in Section 2(f), it was contended that the fixing of the period referred to in the definition was arbitrarily done and there was no rationale in respect of a person carrying on a trade or business as his accounting year may be different. Now, the original Ordinance came into force on August 22, 1975. The Legislature had to prescribe some period, the income during which could be taken as a criterion for determining whether the debtor would be entitled to take the benefit of this Act. If the beginning of the month in which the Ordinance was promulgated is taken as a starting point and period counted backwards, the income during the preceding year has been adopted as the qualifying criterion, we fail to see why such a criterion can be called an arbitrary criterion. That there is a uniform period for the determination of the qualifying condition whether the debtor is a marginal farmer, rural artisan, rural labourer or a worker itself shows that irrespective of the accounting years being different or the possibility of the accounting years being different, a uniform pattern has been applied in respect of the debtors covered by the Act. There was, therefore, nothing wrong in making applicable a uniform pattern of the year during which the income had to be determined.

71. With regard to the definition of marginal farmer in Section 2(f), it was contended that marginal farmer was defined as meaning "an agriculturist who holds land measuring not more than one hectare of unirrigated land and includes an agriculturist who cultivates as a tenant or share cropper land measuring not more than one hectare of unirrigated land." It was contended that the definition seems to contemplate that even if any extent or irrigated land is possessed by a person, he will want to be classified as a marginal farmer if he has less than one hectare of unirrigated land and any extent of irrigated land. In our view, that would not be the proper way of reading the definition. The definition prescribes a positive qualification and unless a person can show that he does not possess more than one hectare unirrigated land, he cannot claim to be a marginal farmer. It is obvious that! if a debtor possesses more than one hectare of unirrigated land or any irrigated land, he will not qualify for being called a "Marginal farmer".

Indeed this position was conceded by the learned Advocate-General and, in our view, rightly so.

72. Mr. Shah and Mr. Pendse further contended that Explanation I to the definition of small farmer in Section 2(m) discriminates between a person who belongs to a scheduled caste, scheduled tribe, Nomadic Tribe or Vimukta Jatis on the one side and persons not falling within these categories on the other. Challenge on the ground of discrimination is not open to the petitioners apart from the fact that it has also no substance. Now, Section 2(m) defines a small farmer as meaning "an agriculturist who holds land measuring more than one hectare of unirrigated land but less than two hectares of such land and who cultivates personally such land and includes an agriculturist who cultivates as a tenant or a share cropper land measuring more than one hectare of unirrigated land but not more than two hectares of such land." Explanation I reads:

A person belonging to a Scheduled Caste, Scheduled Tribe, Nomadic Tribe or Vimukta Jatis shall be deemed to be small farmer irrespective of the extent of unirrigated land held and cultivated by him as aforesaid;

Explanation II defines Nomadic Tribes and Vimukta Jatis as meaning Nomadic Tribes and Vimukta Jatis determined as such by the State Government from time to time. Mr. Pendse has relied on the provisions of Article 15 of the Constitution which provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Thus according to him, at least in so far as the explanation to Section 2(m) includes a person belonging to scheduled caste, whatever may be the extent of unirrigated land, a part of the explanation will be violative of Article 15(1) of the Constitution. Now, we must point out that so far as a small farmer is concerned, the only material provision is to be found in chap. V and there is only a moratorium on execution of decrees against small farmers. The Legislature has not provided that whatever may be the extent of unirrigated land of a farmer, his debts will be wiped out. A mere moratorium has been provided for u/s 15. The provisions of Section 15 read with the definition of small farmer in Section 2(m) are not challenged by a farmer who has more land than one hectare of unirrigated land and the contention is not that there is a discrimination between a farmer not belonging to scheduled caste and a farmer belonging to a scheduled caste. A challenge on the ground of discrimination under Article 15(1) would be possible only if the person discriminated against raises such a challenge on the ground that preferential treatment has been given to a person who is similarly situated in the sense that he has also more than one hectare of unirrigated land but that he is excluded from the definition of marginal farmer. It is difficult to entertain a challenge on the ground of discrimination under Article 15(1) at the instance of a creditor or a money-lender. The Legislature could well have provided for a moratorium on execution of decrees in respect of every agriculturist whatever may be the extent of the land possessed by him. We must also notice that there is in force the law relating to ceiling on agricultural

holdings and in any case, those days are long past when people in villages and especially those who live on agriculture had unlimited holding. The inclusion of the explanation in the definition of small farmer in Section 2(m) cannot, therefore, be challenged.

Mr. Mohta who appeared in Special Civil Applications Nos. 1172 of 1975, 1193 of 1975, 1199 of 1975 and four other petitions tried to challenge the definition of "rural area" and "urban area" in Section 2(j) and (n) respectively. The challenge was that areas included in "B" and "C" class municipalities have been classified as a rural area when they should really have been classified as urban area. Now, here again the question is of the policy of the Legislature. The classification of the municipal councils is made on the basis of population and if it can be within the competence of the State Legislature to nominate which areas will be "B" class and "C" class municipal areas, as long as an area which by normal standards cannot be classified as an urban area are excluded from the definition of urban area, no infirmity can be found in the definitions given by the Legislature.

73. It was next contended by Mr. Shah that the definition of a worker includes a person who earns his livelihood through any profession, calling or trade and also a person working in a factory including a Badli worker. He referred us to the definition of a debtor and, as the definition goes, the worker whose total income from all sources, if living in an urban area, did not exceed Rs. 6,000 during the year immediately before August 1, 1975 was entitled to the benefits of the Act. It was vehemently argued that the legislation was seriously defective inasmuch as so far as the debtors who possessed immovable property less than Rs. 20,000 in value are concerned, no account is taken of the extent of the movable property of the debtor. It is argued that in a given case, a worker may have borrowed money for the purposes of his own profession, trade or calling, he may have purchased certain assets requisite for his profession, trade or calling, he may have those assets still in his possession and yet merely on the ground that he does not possess immovable property of a value which does not exceed Rs. 20,000 he will claim the benefit of the drastic provision regarding wiping out his debt. It is no doubt true that the situation contemplated by the learned Counsel is likely to arise in certain cases. However, it is for the Legislature to lay down the criterion with regard to the category of debtors who were to get the benefit of the provisions of the impugned enactment. It cannot, therefore, be urged that in laying down the criterion of the value of the immovable property of the debtor the Legislature was acting beyond its legislative competence. There can be no doubt that the total assets including movable and immovable property could have been taken into consideration while deciding whether a debtor would be entitled to the benefits of the Act. It would, however, be a matter for the State Government to consider whether the eligibility of the worker could be determined with reference to the total assets of the worker and not only with reference to the extent of the value of his immovable property. We may with advantage point out that in the Punjab Agricultural Indebtedness (Relief) Act, 1975, (24 of 1975) in the definition of a "debtor", "rural artisan" and a "small farmer" one of the

conditions laid down is that the debtor in order to be "debtor", "rural artisan" or a "small farmer" for the purpose of the Act must be a person whose total assets do not exceed rupees fifty thousand in value.

74. We have dealt extensively with the substantive provisions in Section 4 of the Act which we have found to be within the legislative competence. What was then pressed upon us was that the provision in Section 9 of the Act would be extremely harsh and unfair as it requires the creditor to pay the value of the pledged article to the debtor if the pledged article cannot be returned to him as provided for in Section 4(e) of the Act. Now, as we have earlier put it, the provisions in Clauses (a) to (e) of Section 4 are merely incidental and consequential provisions following upon the effect achieved by Section 4. If the debt in respect of which an article was pledged stands discharged and in the instant case as a result of a statutory effect, the normal consequence which must follow is that the pledged article must be returned to the pledge in accordance with the provisions of the Contract Act. Section 173 of the Contract Act enables the pawnee to retain the pledge not only for payment of the debt but also for the interest of the debt and also all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. u/s 174, in the absence of a contract, a pawnee is not entitled to retain goods pledged for any debt or promise other than the debt or the promise for which they are pledged, though it is further provided that such contract in the absence of anything to the contrary shall be presumed in regard to subsequent advances made by the pawnee. u/s 160, which is a section which deals with bailments, it is clearly provided that it is the duty of the bailee to return or deliver according to the bailor's directions the goods bailed, without demand, as soon as the time for which they were bailed has expired or the purpose for which they were bailed has been accomplished. These provisions show that the moment the debt liability is discharged, there is an obligation on the pawnee to return the pledged article to the pawnor or the debtor. It must necessarily follow that if the pawned article is not for any reason available, the pawnee will be bound to pay the value thereof in lieu of the article. Section 9, therefore, does nothing more than give effect to the right of the pawnor as provided in the Contract Act. Indeed, it is expressly a provision in respect of the contract of bailment and it must be sustained even on that ground. The further provision that the market value of the property should be delivered to the debtor embodies nothing more than the principle of restitution. No challenge can, therefore, be made to the provisions of Section 4 read with Section 9 of the Act.

75. The next provision at which the attack was directed by the learned Counsel for the petitioners was Section 7 of the Act. Before we refer to the nature of the challenge it is necessary to set out the scheme of Section 7. Section 7 provides for a contingency where a creditor raises a question that a person who claims to be his debtor as defined in the Act is not a marginal farmer, a rural artisan, a rural labourer or, as the case may be, a worker. He may raise a question about the eligibility of the debtor for relief under the Act. This eligibility may be even

with regard to the valuation of the immovable property of the worker. Such a dispute has to be raised u/s 7 by the creditor by making an application in writing to an officer not below the rank of an Additional Tahsildar or any officer in any Department who, in the opinion of the District Magistrate, is of equivalent rank duly appointed by an order in writing by the District Magistrate. Such an officer is referred to as an Authorised Officer. This application has to be made by the creditor under Sub-section (2) within seven days from the application made by the debtor u/s 4(e) or from the date of endorsement made on the application u/s 4(e). The endorsement u/s 4(e) is to be made by any of the officers mentioned in Section 6, that is, the Commissioner of Police or the District Magistrate or the Superintendent of Police or the officers duly authorised by any one of them as provided in Section 6 in case where the creditor refuses to pass a receipt for the application. Under Sub-section (3) it is provided that the Authorised Officer shall not entertain an application made by the creditor unless the creditor deposits the pledged property or any document evidencing such pledge or both or the value of such property, if the property for any reason is not available with the creditor, in which case, he shall make an affidavit stating the reason for which the property is not available. The Authorised Officer is to follow the procedure for summary enquiries provided under the Maharashtra Land Revenue Code, 1966. Sub-section (5) provides that a person claiming to be a debtor shall, unless the contrary is proved, be presumed by the Authorised Officer to be a debtor if he produces a certificate from any Special Executive Magistrate, Talati, Police Patil, Sarpanch of a Village Panchayat or any person specified by the State Government in an order from time to time made in this behalf that he is a debtor as described in such certificate. We have now been shown a form which has been issued by the State Government on March 13, 1976 as required by Section 7(5). But Section 7(5) further provides that the authority issuing the certificate may not hear the creditor before issuing such certificate. Sub-section (6) authorises the Authorised Officer to determine all questions in relation to or connected with the question of dispute raised by the creditor in his application and accordingly, he may determine the extent or, as the case may be, the value of the property, give directions for the safe custody of the pledged property and may pass such orders as may be necessary in the circumstances of each case for enforcing and implementing the provisions of the Act. Sub-Section (7) provides that except as provided in Section 7, no question shall be decided by the Authorised Officer u/s 7 unless an opportunity has been given to the creditor and the debtor to be heard. Under Sub-section (8) the decision of the Authorised Officer has been made final and conclusive and is not liable to be called in question in any civil Court. It is further provided that if the property or its value is in the possession of the Authorised Officer and the decision is in favour of the debtor, it shall be delivered to the debtor forthwith and the Authorised Officer shall make an endorsement on the order that the property or the value has been delivered to the debtor.

76. Now, various speculative arguments were advanced with regard to Section 7.

Firstly, it was argued that the period is too short, Secondly, it was argued that the creditor was being required to deposit the pledged property before the application is entertained and Section 7(5) was challenged on the ground that a wide indiscriminate power is given to the authorities mentioned therein. Now, it is difficult to entertain the argument that the period prescribed by Section 7(2) is very short and, therefore, the section is bad. If the creditor wants to dispute the status of the debtor in the context of his entitlement to the benefits of the Act, there should be nothing to prevent him from making an application because he has all the facts within his knowledge. In any case, such a contention now raised when more than an year has now passed during which he could have collected the information is not tenable and it will not be possible to find a fault with the provisions of Section 7(2).

77. It is also difficult to entertain any challenge to the validity of a legal provision on the vague ground that a debtor may make a false claim and require the creditor to deposit the pledged article or its value or a document evidencing the pledge when in fact there might be no document at all or there was no pledge and the claim made by the debtor was a false one. Such a remote possibility cannot render the legal provision invalid. Even then it is difficult to see why in such a case, if ever it occurs, the creditor cannot raise the question that no pledge was ever made when he can apply u/s 7 because Section 1(3) itself enables the creditor to file an affidavit stating reasons why the property which the debtor is claiming is not available.

78. Section 7(5) refers to certain officers who are really village officers and so far as the class of debtors from the village is concerned and having regard to the village being the smallest unit of revenue administration in the State, these village officers like the Talati, the Police Patil and the Sarpanch are bound to have personal knowledge with respect to the residents of the village. Apart from this, much of the force of the challenge has been now taken away by the nature of the form which has been prescribed by the Government and it shows that before" the certificate contemplated by Section 7(5) is issued, the officer giving the certificate has to satisfy himself with regard to the assets and the income of the person to whom the certificate is being given. It is, no doubt, provided that the authority issuing the certificate may not hear the creditor. This does not mean that the authority concerned is prohibited from hearing the creditor, even if it wants to, in any given case. All that it means is that in each case, the officer ,need not necessarily hear the creditor. That does not, however, prevent the creditor from challenging the certificate because under Sub-section (6) he is entitled to raise the question of the entitlement or the eligibility of the debtor or the worker and such a question has to be decided by the Authorised Officer after giving an opportunity of being heard both to the creditor and the debtor. The presumption attached to the certificate u/s 7(5) is a presumption of fact which is rebuttable.

79. At one stage it was argued by Mr. Shah that Section 7(6) does not expressly

contemplate that the creditor will have an opportunity to adduce evidence. One has merely to refer to the provision for giving sufficient opportunity which the Authorised Officer is bound to give. Indeed, Sub-section (7) creates an obligation and the words "Except as otherwise provided in this section" could only refer to the certificate with its presumptive value u/s 7(5). But when Sub-section (7) uses the words "unless an opportunity has been given to the creditor and the debtor to be heard", it will contemplate not only filing of a statement but also giving such evidence as the creditor deems it necessary.

80. The challenge to Sub-section (8) also cannot be entertained. It is true that the decision of the Authorised Officer has been made conclusive and final. No litigant has a vested right of appeal and whether an appeal has been provided for or not, is always considered only for a limited purpose to find out whether the restrictions imposed by the Legislature can be said to be reasonable or not or whether there is any uncontrolled, unguided, arbitrary scope for exercise of discretion. If there is no vested right of appeal, merely because a provision for appeal has not been made, the provisions of Section 7(8) cannot be challenged. In view of this, it is not necessary to refer in detail to the decision in *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, cited by Mr. Shah to show that making a decision final without giving a right of appeal amounts to unreasonable restriction. Indeed we might state that Mr. Shah has fairly conceded that if Article 301 of the Constitution was not attracted, the provisions of Section 7(8) will not be open to attack.

81. Some argument was advanced with regard to the possibility of the unbridled exercise of the power of entry and search provided in Section 8. It was argued that officers referred to in Section 6 are really police officers and they were capable of exercising the powers u/s 6 given to them arbitrarily. Now, it is important to notice that though Section 8 gives the power to the officers mentioned in Section 6 to enter and search any place without any warrant, this can be only done by them if they, have "reason to believe" that the property of any debtor or any document evidencing transactions relating to a loan given to any debtor is kept or concealed". There is further power given to them to seize such property or documents and detain the same in their custody for such period as they may think fit.

82. Now, there are two safeguards which are clearly provided by the Legislature. One is that the officer mentioned in Section 6 must have sufficient material in his possession on the basis of which he can reach a subjective satisfaction that the property of any debtor or any document evidencing transactions relating to a loan given to any debtor is kept or concealed in any particular place. The provisions of Sections 6 and 8 must be read together. Neither Section 6 nor Section 8 by itself expressly make any provision for making any record of reasons as to why a particular officer has found it necessary to take recourse to the drastic procedure of search and seizure contained in Section 8. But, in our view, it is clearly implied in the use of the phrase "such officer has reason to

believe" that when a debtor applies to the officers mentioned in Section 6 that the creditor has failed to return the property and he, therefore, seeks the assistance of the officers mentioned in Section 6 for seeking out either the pledged article or the document evidencing the loan, the officers are bound to apply their mind and unless they are bona fide satisfied that the document or the pledged article is being withheld, there will be no justification for taking recourse to the drastic provisions relating to search and seizure. All this procedural requirement is, in our view, implied in the duty of the officer to act only if he is satisfied and he has reason to believe that either the article or the material document is being withheld by the creditor.

83. The second safeguard is to be found in Sub-section (2). Sub-section (2) clearly provides that except as provided in Sub-section (1) the other provisions of the Code of Criminal Procedure, 1973, as far as may be applicable shall apply to such search or seizure made under the provisions of the impugned Act. Obviously this has reference to the provisions of Sub-section (3) to Sub-section (7) of Section 100 of the Code of Criminal Procedure, where in case a search has to be made, the person making the search has to call upon two or more independent and respectable inhabitants of the locality at the time of the search to attend and witness the search, the search has to be made in their presence; a list of all things seized in the course of such search and in the places in which they are respectively found has to be prepared and signed by the witnesses and the person who is the occupant of the search is to be permitted to attend the search and a copy of the list prepared signed by the witnesses has to be delivered to him. Similarly, a list of the things taken possession of has also to be prepared and a copy thereof has to be delivered to the person concerned. These provisions, in our view, must allay all fears with regard to any arbitrary exercise of the power to search. In any case the possibility of abuse of a power cannot invalidate the conferment of that power on an authority or officer.

84. Section 14 which deals with moratorium on debts of workers was mainly challenged on the ground that it was unreasonable. As we have already pointed out, the question of reasonableness cannot now be gone into. It was sought to be contended that where there is a moratorium in the case of workers, there is a limit put on the total amount recoverable and that limit is at 150 per cent, of the principal and there is a further provision that no interest shall accrue on any amount of the debt of a worker during the period chap. V, which relates to moratorium on debts of workers, is in operation. We have earlier referred to the general pattern of legislation on the subject of relief of indebtedness. Prior to the present legislation, almost every legislation in different parts of the country has always provided for a restriction of the total interest recoverable. Even originally the rule of Damduppat, which meant that the total amount of interest recoverable would not be more than the principal was also many times given effect to. Once there is a power to limit the total amount recoverable by way of interest, where the line is to be drawn, that is, whether it has to be 200 per cent, or 150 per cent, or 100 per cent, is a matter for the Legislature to decide. It is

not a matter for the Court to limit the liability which is essentially a legislative function.

85. An argument was advanced that just as Section 20 which is in chap. V which deals with moratorium on execution of decrees against small farmers makes voidable any transfer of property made by a small farmer against whom proceedings in execution have been stayed, similar provision is not to be found in chap. IV. Now, the scope of chap. IV and chap. V is naturally different. Chapter V deals with a case where decrees are already passed against small farmers. Section 14 does not deal with such a case. Section 14 does not prevent a creditor from filing a suit against the debtor. To a limited class of cases where recovery is barred in a case where a decree has already been passed, Section 14(7) has in terms made chap. V applicable. The latter part of Section 14(1) reads:

and it shall not be lawful for any creditor to recover any such debt or any part thereof or any interest remaining unpaid on the appointed day during such period, and the provisions of Chapter V shall apply to the execution of decrees in relation to such debt against any such workers as they apply to the execution of decrees against small farmers.

(Italics ours.)

Therefore, by a process of incorporation, the provisions of Section 20 have, been incorporated now in chap. IV also. In case a suit is filed, any transfer made during the pendency of a suit is bound to attract the provisions of Section 52 of the Transfer of Property Act. No grievance can, therefore, be made in respect of the provisions of Section 14.

86. Mr. Pendse has argued with reference to Section 14 that just as Section 18 provides for an exclusion of the period of the moratorium for the purposes of execution proceedings in computing the period of twelve years prescribed by the Limitation Act, 1963, no such provision has been made with regard to the period of moratorium referred to in chap. IV. As already observed by us, Section 14 did not prevent filing of a suit and if what was stayed was mere recovery and the creditor was not prevented from filing a suit, a question of exclusion of the period of the moratorium did not arise.

87. There was some argument with regard to the penal provision in Section 5. Now, Section 5 reads as follows:

5. (1) No creditor shall after the appointed day, damage, destroy or tamper with any property pledged or mortgaged with him or any document connected therewith or part with or otherwise deal with the same except as provided in. this Act.

(2) Any person who contravenes the provisions of Sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than six months, and fine shall not be less than two hundred rupees.

The effect of Section 5 is that if a creditor damages, destroys or tampers with any property pledged or mortgaged with him or any document connected therewith or parts with or otherwise deals with the same except as provided in the Act, he is liable to be convicted and punished with imprisonment of a term which may extend to three years and with fine which may extend to one thousand rupees. The argument is that the appointed day is August 22, 1975. But there is no such provision in the original Ordinance and, therefore, the penal provision cannot be related back to August 22, 1975 with the result that such a provision will violate Article 20 of the Constitution. Now, we are not dealing with any case where any creditor is being prosecuted for a breach u/s 5. Indeed so far as the instant cases are concerned, there is no occasion to decide how and when the provisions of Section 5(1) will operate. If ever any person is prosecuted on the basis that he has committed an offence at a time between August 22, 1975 and January 3, 1976, he can raise such a defence at the appropriate time. We do not, therefore, think it proper to go into this academic question at this stage.

88. It was sought to be argued that the relevant provisions in Section 22 which exempt from the operation of the Act debts and other liabilities of any debtor or small farmer in respect of debts specified therein amount to discrimination in the sense that the Legislature has assumed that the debtors have capacity to pay the debts specified therein and if that was so, there was no reason why debts by licensed money-lenders should not have been included amongst the list of debts in Section 22. The argument again is based on Article 14 which is not available. But apart from that, there is a clear distinction between nature of the liability referred to in Section 22 and loans advanced by money-lenders, whether in the regular course of business or as isolated transactions. We can take judicial notice of the fact that in most cases of loans by money-lenders exorbitant interest is always charged and the debts by private money-lenders cannot be treated on the same footing as debts given by banks or other corporations or institutions under the control of the Government. The exemptions cannot, therefore, be open to challenge.

89. The sum and substance of the whole discussion is that we find no reason to declare ultra vires or invalid any of the provisions of the Act except to the limited extent that it covers loans without interest in the definition of debt. We must, therefore, declare that the Act will not apply to a loan which is an advance without interest as indicated in the definition of debt. So far as the other provisions of the Act are concerned, we sustain all of them as being constitutionally valid.

90. In the result, substantially the petitions fail. There is no individual petition in which there is any allegation that any particular debt in respect of any particular debtor was an advance without interest and no specific relief can, therefore, be

granted in respect of any particular loan. Substantially, therefore, all the petitions must fail and are rejected. In the circumstances of the case, we make no order as to costs.

91. Counsel ask for leave to appeal to the Supreme Court. They are asked to put in formal applications.

92. We direct that the provisions relating to the return of articles pledged should not be given effect to till Friday, April 30, 1976. Applications for leave to appeal to the Supreme Court and for stay should be put up before us on Thursday, April 29, 1976.