Present: –

Justice Girish Chandra Gupta,

Chairperson.

File number 4007/25/26/2021.

The Ganashakti, a Bengali daily newspaper, published a news item under the caption "trapped by micro-finance 65 farmers commit suicide" on 11 November 2021. The chairperson, following the usual practice in the covid era, sent a WhatsApp message to the system administrator of the commission intimating "ld Registrar is directed to visit with a team to be selected by him the concerned district and contact as many victims as possible, record statements and collect legible photocopies of the documents of micro-finance and report back by 24 November 2021." It is a matter of record that during his tenure commencing from 21 December 2016 till date, barring the period when he was hospitalised due to bypass surgery, 90% or more of the suo motu cognizance was proposed by him and hardly is there any instance when any such proposal was objected to by the honourable member except in one case where he had expressed his reservations but ultimately agreed to the proposal. Naturally without any apprehension of any possible objection the ld Registrar was directed to undertake the enquiry at once considering the gravity of the matter. The ld Registrar as directed submitted his report[1] on 24 November 2021. However by a note dated 30 November 2021 he pointed out amongst others that "it is verbally informed by the office that the honourable member is not inclined to sign as the note sheet containing the order dated 11. 11. 2021 and already signed by the chairperson."

On 30 November 2021 the additional Secy,in the circumstances, was directed "to seek the views of the honourable member regarding suo motu cognizance in this case. This is urgent."

The honourable member on 3 December 2021 directed the ld Registrar to discuss the matter with him considering that "he undertook an enquiry on 22/11/2021 and completed the same. On 30/11/2021, he is making certain comments against member of human rights commission".

On 6 December 2021 the honourable member recorded "I have discussed the matter with ld Registrar and enquired of him as to why he undertook the enquiry on 22-11-2021 and completed the same knowing fully well that member had not approved of the same. He informed that as the honourable Chairman had directed him, he undertook the enquiry. In view of the ld Registrar's discussion with me it appears to me that this cognizance and subsequent enquiry was done at the instance of the honourable Chairman and there was no need of the member' s view to be incorporated prior to undertaking enquiry by ld Registrar. Since the entire process has been completed by the ld Registrar without my approval I refrain to intervene in this matter, any further."

[1] at page--31

The fact that the enquiry was conducted on the basis of the order passed by the chairperson was already known to him for that any discussion was not necessary. Consent of the honourable member in matters of suo motu cognizance was presumed following the past experience. The order dated 11 November 2021 taking suo motu cognizance was produced to him which he chose not to sign. It is as such not correct to say that his consent was not considered necessary. It is also not correct to say that the entire process has been completed. The enquiry conducted by the ld Registrar is a step in aid of the process which has just begun. Even in the order dated 6 December 2021 no reason has been disclosed why suo motu cognizance in this case was not necessary. Considering the statutory mandate requisite steps for the protection of human rights are not a matter of choice rather is a duty.

The ld Registrar collected documents and noted statements of the following borrowers of the micro-finance companies including Bandhan Bank which may briefly be noticed for a fruitful discussion on the subject.

a) Tapan Sarkar stated[2] " I have been borrowing since the year 2016. I continued to repay the loans on time. However there have been defaults during the period of lock down. My wife is an Asha karmi. She is the sole earner in my family. The micro-finance companies have been harassing me in different ways refusing to consider my difficulties." The documents disclosed by him project the following picture: –

His wife Bulti is the principal borrower. He is the co-borrower. Initially ₹ 15,000 was lent[3] by Ujjivan financial services Private Limited on 18 March 2013 repayable together with annualised interest at the rate of 25% within 21 March 2014. The loan was pre-closed i.e. the amount of loan together with interest was converted into a fresh loan of ₹ 25,000 on 10 March 2014 repayable by 18 March 2016 together with annualised interest at the rate of 24% which was also similarly converted into a fresh loan on 16 March 2019 for a sum of ₹ 95, 584 repayable with annualised interest at the rate of 23.25% by 19 February 2021 which also could not be paid.

She took another loan from Satya micro-capital Ltd[4] on 24 August 2021 for a sum of ₹ 50,000 repayable in 24 biweekly instalments together with interest at the rate of 21.94% plus insurance premium, GST at the rate of 18%. Needless to say that there has also been default in repayment.

Yet another loan was taken by Tapan, her husband, from Bandhan bank[5] on 19th of August 2021 for a sum of ₹ 120,000 and there has been default in repaying the debt.

The next in the line of the examined borrowers is Achintya Santra.[6] He stated inter alia as follows: –

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[2] at page--43
[3] at pages—52,51,50,45,44
[4] at page--48
[5] at pages--46-47
[6] at page--54

"I am a mason and also a farmer. I depend mainly on my farming income. For agricultural purposes I borrowed from Bandhan Bank and Ashirbad micro-finance. I was regularly repaying but at present my financial condition is very bad. Still the lenders are not harassing me. They told me to repay as per my ability". The documents disclosed by him go to show that he borrowed ₹ 35,000 from the Bandhan bank[7] in February 2016 , which when he failed to repay, the loan together with interest was converted into a loan[8] of ₹ 50,000 on 30 August 2017 which when he failed to repay was similarly converted into a loan[9] of ₹ 1 lakh on 10 October 2018, in the name of his wife Manju , which once again was similarly converted into a further fresh loan which is evidenced by the fact that a sum of ₹ 69000 of the so-called fresh loan has been deposited in cash in order to square up the previous account in July 2019. The subsequent statements have not been submitted by him.

He took another loan of ₹ 40,000 from Ashirbad micro-finance on 29 November 2019 repayable together with interest at the rate of 21.60%; insurance premium; processing fee et cetera. There has been default in paying the instalments from the very beginning that is to say January 2020.

The next borrower examined was Sufal Mondal. He stated[10] inter alia that "I am a landless labourer. I cultivate land on contract. I have borrowed money from various companies including Bandhan, Ujjivan and Ashirbad. The modus operandi followed by them is to grant fresh loan for the purpose of repaying the existing loan. During the last few years due to natural calamity and lock down I could not repay the loan. The companies for that reason have been harassing me."

From the documents disclosed it appears that his wife Kamala is the borrower. Bandhan bank[11] granted loan for ₹ 80,000 on 16 May 2016 which when he failed to repay was converted into a loan of ₹ 1 lakh on 19 July 2017. The same was further converted into a loan of ₹ 150,000 on 24 April 2018. After substantial repayments a fresh loan of ₹ 150,000 was granted on 27 February 2019 out of which ₹ 1 lakh was applied in repaying the existing loan. A fresh loan of Rs 2 lakhs was granted[12] on 11th March 2020 out of which rupees 91,000 was applied for repaying the existing loan. The rate of interest and the other charges payable by the borrower have not been disclosed by the bank.

Another loan of rupees 75,000 was granted by Ujjivan small finance bank[13] repayable in two years together with annualised interest at the rate of 23.25% per annum together with insurance premium processing charges GST et cetera. From the statement there appears to have again been default in repaying the loan.

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[7] at page--56
[8] at page--56
[9] at page--58
[10] at page--63
[11] at page--65
[12] at page--70
[13] at page--72

The next borrower examined was Purnima Pramanik.[14]She stated that " Bandhan bank did not create any difficulty for us on the contrary exhorted us by asking to repay according to our ability but Ashirbad finance has been harassing us in spite of the fact that the loan granted by them has almost been repaid".

The documents disclosed go to show that a loan of ₹ 150,000 was granted[15] by the Bandhan bank on 16 March 2021 out of which ₹1,31,000 was applied in repaying the existing loan which kept on revolving together with interest from the initial loan of ₹60,000 granted on 12 April 2016.

Ashirbad micro-finance Ltd[16] appears to have granted a loan of ₹ 45,000 on 9 August 2019 repayable together with interest at the rate of 21.17% per annum together with processing charges insurance premium et cetera. The first instalment was payable in September 2019 and there has possibly been default from the very beginning.

The next borrower examined was Sumana mandal[17]. She has borrowed money both from Bandhan bank and Ashirbad finance. She stated "we are facing difficulty with the Ashirbad finance. They are insisting upon full payment of the existing loan by taking fresh loan. But I am not interested in aggravating the burden of loan. Bandhan bank however has assured us to repay as per our ability."

The documents show that Ashirbad micro- finance has granted[18] a loan of ₹ 40,000 in August 2019 for agricultural purposes repayable with interest at the rate of 21.70% together with insurance premium and other expenses. The petitioner has been defaulting in repayment from the very beginning.

Bandhan bank granted loan[19] of ₹ 15,000 on first June 2015 which together with interest was converted into a loan of ₹ 30,000 on 25 July 2017 and further similarly converted into a loan of ₹ 50,000 on 25 June 2019.

Apu Bag alias Roy stated[20] "I'm a married woman but I'm dependent upon my father. My father does not have any regular income. For this reason in order to repay the loan of one cooperative I had to borrow from another cooperative. The lenders are creating pressure for refund of their money"

It appears that a sum of ₹ 43,013 was lent by Arohan[21] financial services Ltd on 17 October 2020 repayable with interest at the rate of 20.56% per annum. There has been default in making repayment.

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[14] at page--74
[15] at page--75
[16] at page--77
[17] at page--85
[18] at page--86
[19] at page--88
[20] at page--93
[21] at page--94

The next borrower examined was Bharati Soren[22]. She stated "Bandhan bank is agreeable to accept repayment according to our ability but Satya micro-capital is creating pressure for full payment"

It appears Satya micro-capital[23] lent ₹ 40,000 repayable within 24 months together with interest at the rate of 21.89% together with insurance premium and GST and processing charges. She has also obtained Loan from Bandhan Bank on 27th October 2021 for rupees 80,000 out of which ₹ 76,000 was disbursed [24]

Sukumoni Soren[25] stated that she has "borrowed both from the Bandhan bank and Satya micro-capital. Due to natural calamity and lock down there have been defaults. For this reason both the banks are creating pressure".

Documents disclosed reveal that Bandhan bank granted a loan[26] of ₹ 30,000 on 19 August 2016 which together with interest was converted into a loan of ₹ 90,000 on 15 May 2018 and further similarly converted into a loan for Rs 1,20,000 on third April 20, 2019 and finally applying the same process into a loan[27] of ₹ 130,000 on 17 March 2020.

Satya micro-capital Ltd granted a loan of ₹ 45,000 on 11 January 2021 repayable together with interest at the rate of 21.89% but the account statement has not been disclosed.

Kalpana Soren[28] stated that "we are landless labourers. We work in the land of others. For farming on contract basis I borrowed money from companies but could not repay due to lock down and natural calamity. They are creating pressure." The documents disclosed are incomplete. Nothing as such could be deciphered.

Sabita[29] Murmu stated that she borrowed "from Satya micro-capital Ltd and Arohan but could not repay due to natural calamity and lock down. Both the companies were creating pressure for repayment."

The documents disclosed go to show that Satya micro-capital Ltd[30] lent ₹ 45,000 on 11 January 2021 repayable in 24 monthly instalments together with interest at the rate of 21.89% together with insurance premium processing charges and GST. The loan statement has not been disclosed. Another document of Arohan[31] has been disclosed to show that ₹ 27,500 was lent on 8 July 2020 repayable with interest at the rate of 20.59%. There have been defaults in making repayment.

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[22] at page--104
[23] at page--105
[24] at page--107
[25] at page-- 108
[26] at page--110
[27] at page--114
[28] at page--117
[29] at page--123
[30] at page--124
[31] at page--125

Kartik Das[32] stated that "I am a farmer. I borrowed money from Bandhan bank, Ashirbad and Ujjibani. After lockdown the repayment has become irregular. When we are unable to pay we have to flee from home." No documents regarding loans were however disclosed.

Mayna Hembram[33] stated "we do not have any cultivable land. We both husband and wife cultivate land on contract basis. For that purpose loan was taken. After lockdown we are in great difficulty and unable to pay the instalments and for that reason the banks are creating tremendous pressure"

It appears Arohan[34] has granted loan of less than ₹ 20,000 repayable with interest at the rate of 20.56%. There has been default from the very beginning of advancing the loan i.e. January 2020.

₹ 50,000 was lent by the Bandhan bank[35] in September 2018 which together with interest was converted into a loan of ₹ 60,000 on 21 October 2019.

A report[36] prepared by the District Magistrate, East Bardhamaan was submitted to the learned Registrar apropos the report of Ganashakti stating inter alia that "there was no suicide of farmers in Purba Bardhaman district as reported in the news paper. It is true that some farmers had taken (loan) from the micro-finance companies at high rate of interest but they enjoy all other schematic facilities offered by the state government."

The additional Supdt of police, Purba Bardhaman submitted a report[37] dated 21 November 2021 to the superintendent of police, redirected to the ld Registrar, stating amongst others that some farmers were examined who "stated that the representatives of the finance companies neither pressurised not threatened the farmers ever, although the companies have warned that if do not pay back loan amount in near future, the interest would increase uncontrollably. Some of the farmers tried to avoid said Representative due to their insolvency and leave home temporarily."

There are some other reports which are not material for our purpose. It is firmly established that the report as regards alleged suicide was incorrect. Tension arising out default in repayment of loan is evidently there. The report submitted by the additional SP stating that "the representatives of finance companies neither pressurised nor threatened the farmers" is against the preponderance of evidence discussed above.

There can be no gain saying that the rate of interest charged by the micro-finance companies is exorbitant. The practice of extending loan for the purpose of repayment of the existing loan together with interest is pernicious and creates a debt trap which is potentially a device to turn the borrowers into Bandhua mazdoors. Take for instance the case of Bulti wife of Tapan. She borrowed ₹ 15,000 from Ujjivani financial services Private Limited on 18th March 2013. The

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[32] at page-- 126
[33] at page--127
[34] at page--128
[35] at page--130
[36] at page--134
[37] at page--151

said loan of ₹ 15,000 ripened into a loan of rupees 95,584 on 16th of March 2019. Achintya Santra borrowed ₹ 35,000 from Bandhan bank in February 2016 which matured into a loan of more than ₹ 1 lakh in July 2019. Kamala wife of Sufal borrowed ₹ 80,000 on 16 May 2016 from Bandhan bank which ripened into a loan of ₹ 2 lakhs on 11 March 2020. Purnima borrowed ₹ 60,000 on 16 May 2016 from Bandhan bank which matured into a loan of ₹ 150,000 on 16 March 2021. Sumana borrowed ₹ 15,000 from Bandhan bank on 1 June 2015 which ripened into a loan of ₹ 50,000 on 25 June 2019.Sukumoni borrowed ₹ 30,000 on 19 August 2016 from Bandhan bank on 19 August 2016 which matured into a loan of ₹ 130,000 on 17 March 2020. Mayna borrowed ₹ 50,000 from Bandhan bank in September 2018 which culminated into a loan of ₹ 60,000 on 21 October 2019.

It would appear from the aforesaid analysis that almost all the borrowers have simultaneously borrowed from more than one lender. Bulti simultaneously borrowed from Satya micro-capital Ltd; her husband Tapan from Bandhan bank; Achintya simultaneously borrowed from Ashirbad micro-finance; Kamala from Ujjivani small finance bank; Poornima fromAshirbad micro-finance; Sumana also from Ashirbad micro-finance; Bharti simultaneously borrowed both from Satya micro-capital and Bandhan bank; similarly Sukumani borrowed both from Bandhan bank and Satya micro-capital; Sabita borrowed simultaneously from Satya micro-capital and Arohan and Mayna borrowed both from Bandhan bank and Arohan.

There is nothing to show that before lending money any scrutiny as regards the purpose of loan or the capacity to repay the loan or any enquiry about previous loan if any was made or even taken into consideration. The unbridled race amongst the lenders, aimed at earning huge profits by lending at high rate of interest, far from helping the borrowers, has the effect of creating a noose for them and unless checked, the time is fast coming when the false alarm about alleged suicide may become a reality.

This issue has also been highlighted by the Reserve Bank of India in its Consultative Document on Regulation of Microfinance dated June 14, 2021 which contains the following admission:-

"1.3 Concerns in Microfinance Sector related to Customer Protection

1.3.1 Over-indebtedness and Multiple Lending

The comprehensive regulatory framework is applicable only to NBFC-MFIs, whereas other lenders, which comprise of around 70 per cent share in the microfinance portfolio, are not subjected to similar regulatory conditions. As a result, small borrowers are increasingly able to get multiple loans from several lenders, contributing to their over-indebtedness which, then, can potentially get manifested into coercive recovery practices. This compromises the essential objective of protection of small borrowers enshrined in the NBFC-MFI regulations which do not permit more than two NBFC-MFIs to lend to the same borrower. Besides, there is a regulatory ceiling on the maximum amount that can be lent by an NBFC-MFI to a microfinance borrower. With decline in the share of NBFC-MFIs in the overall volume of microfinance, it is the customer who ends up being the victim of over-indebtedness."

We shall now examine the provisions of law operating in the state of West Bengal and compare the same with the laws governing the field legislated by the other states in the country.

Kerala Money Lenders Act, 1958 defines a loan under section 2(5) as follows: –

"2. Definitions.— In this Act, unless the context otherwise requires—

(5) "loan" means an advance whether of money or in kind at interest, and includes any transaction which the Court finds in substance to amount to such an advance but does not include—

> *(i) a deposit of money or other property in a Government Post Office Savings Bank or in a bank, or in a company as defined in the Companies Act, 1956 (Central Act I of 1956), or with a co-operative society;*
>
> *(ii) an advance made to any loan floated by the Government of India or the Government of any State;*
>
> *(iii) an advance made by a bank or a Co-operative society or an advance made from a provident fund to which the Provident Funds Act, 1925 (Central Act XIX of 1925) applies;*
>
> *(iv) an advance made by the Government or by any person authorized by the Government to make advances in their behalf, or by any local authority;*
>
> *(v) an advance made by any authority specified by the Government by notification in the Gazette;*
>
> *["(vi) an advance made by a trader bona fide carrying on any business, other than money lending, if such loan is advanced in the regular course of such business;"]*
>
> *[(vii) [* * *]*
>
> *(viii) an advance made to its members by any Nidhi or Permanent Fund ["established by or under an Act of Parliament or the Legislature of a State and sponsored by the Central Government or the State Government or their agency, or by any nationalised Bank"]*
>
> *(ix) an advance made under any chit fund scheme or kuri or chitty;"*

Rajasthan Money Lenders Act, 1963 defines a loan as follows: –

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

(9)'loan means an advance at interest, whether of money or in kind, but does not include: —

> *(a) a deposit of money or other property in a Government Post Office Savings Bank or in any other bank or in a company or with co-operative society;*

(b) a loan to or by, or a deposit with, any society or association regis tered or deemed to be registered under the Rajasthan Societies Registration Act, 1958 or any other enactment, relating to a public, religious or charitable objects;

(c) a loan advanced by Government or by any local authority authorized by Govt.;

(d) a loan advanced to a Government servant from a fund established for the welfare and assistance of Govt. servants and which is sanctioned by the State Govt;

(e) a loan advanced by a co-operative society;

(f) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund;

(g) a loan to or by an insurance company as defined in the Insurance Act, 1938 (Central Act IV of 1938);

(h) a loan to, or by a bank;

(i) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881) other than a promissory note:

(j) except for the purposes of sections 27 and 29.

(i) a loan to a trader, or

(ii) a loan to a money-lender who holds a valid licence;"

Andhra Pradesh Micro Finance Institutions (Regulations of Money Lending) Act, 2011 defines a loan as follows: –

"2. Definitions.—In this Act, unless the context otherwise requires:

(c) 'Loan' means an advance whether of money or in kind given to the borrowing SHG at interest, whether given before the commencement of this Act or after such commencement and includes advance, discount, money paid for or on account of or paid on behalf of or at the request of any person, or any account whatsoever, and every agreement (whatever its terms or form may be) which is in substance or effect a loan of money or in kind given to an SHG and further includes, an agreement relating to the repayment of any such loan;"

Compare the provision of Bengal Money-Lenders Act, 1940 wherein the expression loan has been defined as follows: –

"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,— (12) "loan" means an advance whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include—

[* *]*

[* *]*

(c) a loan taken or advanced by [by the Central Government or any State Government] or by any local authority in [West Bengal];

(d) a loan advanced before or after the commencement of this Act—

(i) by a bank; or

(ii) by a co-operative life insurance society, Co-operative society, insurance company, life assurance company, [Life Insurance Corporation of India,] mutual insurance company, provident insurance society or provident society or from a provident fund;

(e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (XXIV of 1881), other than a promissory note;

[* *]*

[* *]*

(h) a loan made to or by the Administrator-General and Official Trustee of [West Bengal] or the Commissioner of Wakfs or the Official Assignee or the Official Receiver of the High Court in Calcutta;

(i) a loan or debenture in respect of which dealings are listed on any Stock Exchange;"

"Moneylender" has been defined by the Kerala Money Lenders Act, 1958 as follows: –

"*2. Definitions.— In this Act, unless the context otherwise requires—*

[(7)["money-lender" means a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker, but does not include—

(a) a bank or a co-operative society; or

(b) the Life insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956); or

["(bb) the industrial Credit and Investment Corporation of India Limited incorporated under the Indian Companies Act, 1913 (7 of 1913);"];

(c) the industrial Finance Corporation established under section 3 of the Industrial Finance Corporation Act, 1948 (Central Act 15 of 1948)

*[(d) * * *]*

(e) the State Financial Corporation established under section 3 of the State Financial Corporation Act, 1951 (Central Act 63 of 1951); or

(f) any institution established by or under an Act of Parliament or the Legislature of a State, which grants any loan or advance in pursuance of the provisions of that Act, or

(g) any institution in the public sector, whether incorporated or not exempted by the Government by notification.

Explanation I.— Where a person, who carries on in the State of Kerala the Business of advancing and realising loans is resident outside the State, the agent of such person resident in the State shall be deemed to be the money-lender in respect of that business for the purposes of this Act.

Explanation II. — For the purposes of this Clause (7A), proviso to sub-section (1) of section 3, clause (a) of sub-section (3) of section 10, [section 16B] and section 17, the word "person" shall include "a firm or a joint family;""

"Moneylender" has been defined by the Rajasthan Money Lenders Act, 1963 under section 2(10) as follows:

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

(10) "money-lender" means:-

(i) an individual or

(ii) an individual Hindu family, or

(iii) a company (not being a banking company as defined in section 5 of the Banking Regulation Act, 1949;, body or institution other than such of them as may, by notification in the Official Gazette, be exempted from the provision's of this Act by the Stale Government on being satisfied that it is necessary or expedient so to do in public interest, or]

(iv) an un-incorporated body of individuals, who or which—

(a) carries on the business of money-lending in the State; or

(b) has his or its principal place of such business in the State."

"Moneylender" has been treated as equivalent to micro-finance institution and defined by the aforesaid Andhra Pradesh Act of 2011 as follows under section 2(d)

"2. Definitions.—In this Act, unless the context otherwise requires:

(d) 'Micro Finance Institution (MFI)' means any person, partnership Firm, group of persons, including a Company registered under the provisions of the Companies Act, 1956 (Central Act 1 of 1956), a Non-Banking Finance Company as defined the Reserve Bank of India Act, 1934 (Central Act 2 of 1934), a Society registered under the A.P. Cooperative Societies Act,

1964 (Act 7 of 1964), or the A.P. Societies Registration Act, 2001 (Act 35 of 2001) and the like, in whichever manner formed and by whatever name called, whose principal or incidental activity is to lend money or offer financial support of whatsoever nature to the low income population"

"Moneylender" has been defined under the Bengal Money-Lenders Act, 1940 as follows: –

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

(13) "money-lender" means a person who carries on the business of moneylending in [West Bengal] or who has a place of such business in [West Bengal], and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872 (IX of 1872);"

It would appear that there is unanimity in the acts of Kerala, Rajasthan and Bengal moneylenders act that they are not intended to apply to the banks. One good reason for that may be that banking is in the exclusive domain of the Union of India under entry number 45 of the first list in the seventh schedule to the Constitution of India. The Andhra Pradesh act is evidently intended to regulate the micro finance institutions which have been treated as the moneylenders. Therefore the provisions of the Andhra Pradesh act are also not intended to apply to the banks. But the fact remains that under the second list to the seventh schedule of the Constitution of India entry number 30 "moneylending and moneylenders; relief of agricultural indebtedness" are in the exclusive domain of the states. It is in exercise of this power that the various acts discussed above were legislated by the respective states. The object of this recommendation is to persuade the legislature of the State of W.B. to suitably amend the provisions of Bengal moneylenders act 1940 so as to regulate the micro finance institutions by and large nonbanking finance companies registered with Reserve Bank of India under section 45IA of the Reserve Bank of India Act.

The exorbitant rate of interest, nearly 30% per annum, charged by the banks while lending money through credit cards though not a subject matter of this recommendation also needs to be kept at the back of the mind. The rate of interest charged by the Bandhan Bank has not been disclosed in the statements issued to the borrowers.

In the case of Sundaram Finance Ltd v. State of Kerala (Judgment dated 18/11/2009 in WA No. 540 of 2007) the question canvassed before the division bench of the Kerala High Court was that the nonbanking financial companies registered with the Reserve Bank of India under section 45 IA of the Reserve Bank of India act were not required to hold license under section 3 of the Kerala Money Lenders Act. The contention was rejected holding as follows:–

"4. The next question to be considered is whether the appellant/petitioner-institutions are established by an Act of Parliament or Legislature of a State, entitling them for exemption by virtue of clause (f) of Section 2(7) of the Act as claimed by them. The case of the appellants/petitioners is that they are registered under the Companies Act and so much so, they should be taken to be institutions established by Act of Parliament which is the Companies Act,1956. However, we cannot accept this contention because the Act of Parliament or the Legislature of a State referred to in clause (f) of

Section 2(7) should be a legislation providing for establishment of an institution to carry on business in the granting of loan or advance in accordance with the provisions of the said legislation. In other words, the institutions intended to be covered are statutory Corporations formed to carry on business in granting of loans or making advances based on the provisions of the statute under which they are created. Therefore, companies registered under the Companies Act or societies registered under the Cooperative Societies Act or even partnerships registered under the Partnership act or the like are not the institutions covered by clause (f) of Section 2(7). The appellants/petitioners have no case that they are carrying on money lending or finance business under the provisions of the statute under which they are constituted. In order to fall within the exception provided in sub-clause (f) of Section 2(7), it is not enough that the establishment is formed under one statute and financing is done in accordance with the provisions of another statute. In other words, a company registered under the Companies Act carrying on business in accordance with the provisions contained in the R.B.I. Act or the Money Lenders Act, cannot claim exception under clause (f) of Section 2(7). Since admittedly appellants are not carrying on money lending business in accordance with the statutory provisions under which they are registered, they are not covered by sub-clause (f) of Section 2(7) of the Act and the learned Single Judge rightly rejected their claim. We, therefore, turn down the challenge against the judgment on this ground.

5. The next ground raised by the appellants/petitioners is that after the amendment to Chapter IIIB of the Reserve Bank Act by Act 23 of 1997 with effect from 1.9.1997, the State Act has become inoperative as against the appellants/petitioners which are companies registered under the Indian Companies Act. Senior counsel appearing for the appellants/petitioners took us through the amended provisions of Chapter IIIB of the R.B.I. Act, by which effective control of the Reserve Bank of India on the Non-Banking Financial Companies is ensured and for violations, corrective and penal remedies are provided. We have to consider this contention with reference to the constitutional powers of the State Legislature and that of the Parliament. While the R.B.I. Act is enacted under Entry 38 of List I of the VIIth Schedule, the Indian Companies Act is enacted under Entry 43 of List I of the VIIth Schedule to the Constitution of India. In fact, it is worthwhile to note that even banking is an exclusive subject in the domain of the Parliament by virtue of Entry 45 of List I of the VIIth Schedule to the Constitution of India. However, Entry 30 of List II authorises the State Legislature to enact on "moneylending and money-lenders; relief of agricultural indebtedness". Appellants/petitioners have no dispute that the Kerala Money Lenders Act provide for only regulatory measures including licensing, fixation of rate of interest on loans etc. for money lenders. So much so, the Act is within the legislative competence of the State Legislature under Entry 30 of List II of the VIIth Schedule to the Constitution of India. We do not find any conflicting provisions contained in the R.B.I. Act and in the Kerala Money Lenders Act. As rightly pointed out by the learned Single Judge, the purpose of Chapter IIIB of the R.B.I. Act is essentially to ensure stability for the financial institutions and to prevent loss for the depositors. In fact, the various restrictions

provided under Chapter IIIB on Non-Banking Financial Institutions are on acceptance of deposit and deployment of funds. We do not want to repeat all the relevant provisions of Chapter IIIB because the learned Single Judge has explained the scope and purpose of each and every provision contained in Chapter IIIB of the R.B.I. Act. We are in complete agreement with the finding of the learned Single Judge that the provisions of Chapter IIIB of the R.B.I. Act are intended to protect the depositors, whereas the provisions of Money Lenders Act are essentially to protect borrowers. It is pertinent to note that restrictions contained in the Money Lenders Act are on rate of interest charged, procedure for sale of pawned articles etc. We, therefore, do not think that there is any conflict between the provisions of Chapter IIIB of the R.B.I. Act and the provisions of the Kerala Money Lenders Act and so much so, the provisions of both the Acts simultaneously apply to Non- Banking Financial Companies like the appellants/petitioners. We, therefore, reject the contention of the appellants/petitioners that since they are covered by the provisions of the Indian Companies Act and Chapter IIIB of the R.B.I. Act, they are outside the operation of Kerala Money Lenders Act."

The judgement is an authority for the proposition that the state legislation regulating the moneylending business is applicable to the nonbanking finance companies registered both under Section 45IA of the Reserve Bank of India Act and the Companies Act and carrying on business as micro finance institutions.

The aforesaid Andhra Pradesh Act of 2011 contains the following provisions for regulating grant of further loans.

"10. Prior approval for grant of further loans to SHGs or their members.—(1) No MFI shall extend a further loan to a SHG or its members, where the SHG has an outstanding loan from a Bank unless the MFI obtains the prior approval in writing in such manner as may be prescribed from the Registering Authority after making an application seeking such approval.

(2) The Registering Authority while considering such application from an MFI seeking approval as aforesaid, shall secure the following information in writing from the MFI in regard to every member of SHG namely,

i) Name of the Borrower;

ii) name of the SHG;

iii) bank from which loan has been obtained by the SHG;

iv) date of the loan granted by the bank;

v) amount paid to the SFIG by the bank;

vi) amount due from the SHG; vii) fresh amount of loan sought by the SHG from the MFI;

viii) terms of repayment proposed by the MFI;

ix) details of due diligence including the capacity of the SHG for repayment; and

x) such other details as may be prescribed.

(3) The Registering Authority shall, not later than fifteen days from the date of filing of such application for approval under sub-section (2), cause an enquiry into the contents of the application and shall grant approval for further loan unless the Registering Authority is satisfied that the SHG and its members have passed a resolution that they have understood the conditions of the loan and terms of repayment and unless the Registering Authority is also satisfied that such further loan would generate additional income to the SHG and its members, needed for servicing the debt.

(4) No MFI shall grant loan to a member of SHG during the subsistence of two previous loans irrespective of the source of the previous two loans."

Subsection 7 of section 11 of the aforesaid Andhra Pradesh Act, 2011 contains a provision regulating adoption of coercive measures for recovery of loans which provides as follows: –

"11. Duty of MFIs to maintain accounts and furnish copies.—

* * *

(7) MFI shall not deploy any agents for recovery nor shall use any other coercive action either by itself or by its agents for recovery of money from the borrower; and any form of coercive recovery including but not limited to visiting the house of the borrower shall, apart being punishable under the provisions of the Act, empower the Registering Authority to suspend or cancel the license of such an MFI as provided in Section 5."

The aforesaid provision is followed by section 16 which provides as follows: –

"16. Penalty for coercive actions MFIs.—(1) All persons who are connected with and responsible for the day-to-day control, business and management of a MFI including the Partners, Directors and the employees who resort to any type of coercive measures against the SHGs or its members of their family members shall be liable for punishment of imprisonment which may extend up to a period of three years or with fine which may extend to one lakh rupees or with both.

Explanation: For the purposes of this section, "coercive action" by an MFI against the SHGs or its members of their family members include the following:

(a) obstructing or using violence to, insulting or intimidating the borrower or his family members, or

(b) persistently following the borrower or his family member from place to place or interfering with any property owned or used by him or depriving him of, or hindering him in the use of any such property, or

(c) frequenting the house or other place where such other person resides or works, or carries on business, or happens to be, or

(d) doing any act calculated to annoy or intimidate such person or the members of his family, or

(e) moving or acting in a manner which causes or is calculated to cause alarm or danger to the person or property of such other person, or

(f) seeking to remove forcibly any document from the borrower which entitles the borrower to a benefit under any Government programme:

Provided that a person who frequents the house or place referred to in clause (c) in order merely to obtain or communicate information shall not be deemed to be using coercive action.

(2) The MFI or the persons who use coercive actions as stated in sub-section (1) shall be prosecuted in accordance with the provisions of this Act.

(3) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the proceedings before a Fast Track Court, and for the purpose of the said provisions, a Fast Track Court shall be deemed to be a Magistrate."

The Andhra Pradesh Act was challenged in the case of SKS Microfinance Ltd v. State of Andhra Pradesh reported in MANU/AP/3963/2013 wherein the following views were taken: – *"30. Though Chapter III B of the RBI Act deals with non-banking institutions receiving deposits, the provisions contained therein do not deal in extenso with the micro finance institutions, with particular reference to irregularities committed by MFIs and the penalties that may be imposed. This prompted the State Government to request the RBI to regulate the MFIs in the State which are charging usurious interest rates and resorting to coercive means of recovery. On the letter addressed by the Chief Minister of the State, it appears that the Governor of RBI, through his letter dated 19.7.2010, while intimating that the R B I had written to all banks to take suitable corrective action, stated that the role of the RBI is limited to the regulation of only those MFIs that are registered as NBFCs with the RBI, with regard to which there is already a fair practice code in place, and opined that the State Government may be the most effective agency in controlling irregularities in regard to coercive interest rates. This is the background for enacting the impugned Act which received the assent of the Governor of Andhra Pradesh on 31.12.2010 and it was published in the Andhra Pradesh Gazette on 1.1.2011. As noticed above, the object of the impugned Act is to protect the interests of self help groups from the MFIs who are providing loans to them with usurious interest rates and resorting to coercive means of recovery resulting in impoverishment and at times leading to suicides of the borrowers.*

31. From the letter dated 19.7.2010 of the Governor, RBI, it is clear that the role of the RBI is limited to regulation of only those MFIs that are registered as NBFCs with the RBI, in respect of which Chapter III B of the RBI Act applies. However

,subsequently, on 2.12.2011, the RBI issued Non-Banking Financial Company- Micro Finance Institutions (Reserve Bank) Directions, 2011, as modified on 3.8.2012, basing on the report of a sub-committee of the Central Board of RBI constituted to study issues and concerns in the MFI sector. The Union of India also introduced the Micro Finance Institutions (Development and Regulation) Bill, 2012 in the Lok Sabha and is likely to take the shape of an enactment.

32. Having perused the material on record, we are of the view that the Directions issued by the RBI on 2.12.2011, as modified on 3.8.2012, coupled with the provisions of Chapter IIIB of the RBI Act will protect the interests of the self help groups from usurious interest rates and coercive means of recovery with which object the impugned Act was enacted. Apart from this, the Micro Finance Institutions (Development and Regulation) Bill , 2012 introduced by the Central Government in 23-11-2021 (Page 11 of 12) the Lok Sabha is a complete code in itself as regards the micro finance institutions. Once that Bill takes the shape of an enactment, we are of the opinion that it will govern every aspect of the micro finance institutions at all levels and in all respects and all the issues raised by the petitioners herein. In such circumstances, it would be a futile exercise for this Court to examine the legislative competence or otherwise of the State to legislate the impugned enactment, therefore, we have not gone into the same. The Government of Andhra Pradesh may, therefore, examine the matter , whether, in the wake of introduction of Micro Finance Institutions (Development and Regulation) Bill , 2012 in the Lok Sabha by the Union of India, which is more comprehensive than the impugned Act, dealing every activity of the micro finance institutions, and, which is likely to be passed by the Parliament, is it necessary to have the impugned enactment also on the statute book and a decision may accordingly be taken after the Central enactment comes into operation. The writ petitions are disposed of accordingly. However , the interim orders, dated 22.10.2010, as modified by order, dated 29.10.2010, shall continue to operate for a period of six weeks and no coercive steps against the petitioners be taken during the said period."

It is thus evident that the Andhra Pradesh Act was not disturbed by the court and the same shall remain valid until the central legislation on the subject is enacted according to the views expressed by the Division bench. The central legislation is yet to come. Therefore the protection provided by the act of Andhra Pradesh continues to govern the field. Identical provisions can therefore be safely inserted in the Bengal Money Lenders Act 1940.

Difficulty however arises from a judgement of the Calcutta High Court in the case of M/S Arjun Shyam & Co v. M/S Sagar Trading Co (judgment dated 11/8/2015 passed in GA 391 of 2015 with CS 243 of 2012) wherein the claim of the plaintiff to recover money from the borrower was sought to be defeated on the ground that the plaintiff/petitioner moneylender did not hold any license under the Bengal money lenders act. The contention was rejected by the learned single judge holding that *"once an NBFC holds the license by virtue whereof the said NBFC can carry on business anywhere in the country unless a state legislature specifically requires an NBFC to obtain a license under the state legislation, in my view, the claim of an NBFC to realise money cannot be defeated. It is not in dispute that the petitioner*

is holding a license and is registered as a nonbanking financial institution. The petitioner has produced the required certificate issued by the Reserve Bank of India under Section 45IA of the Reserve Bank of India Act 1934."

A different view had however been taken in an earlier judgement which was not considered in the aforesaid case of Arjun Shyam & Co. In the case of Angel's consultants Private Limited v. Anand Mehta reported in 2005 (1) CHN 357 an identical question arose. The learned single judge held *"That being the position both the statutes namely RBI Act and Bengal Money Lenders Act shall remain in their respective fields and nothing is invalid. As we have seen from the said judgement that money borrowing in the state in the shape of deposits from the third parties and lending the same are the same thing and valid, the conclusion can be drawn that the plaintiff company though having fortified with the certificate of the Reserve Bank must be treated as money lenders under Bengal money lenders act having its business within the state of West Bengal and it does not exonerate the plaintiff company to obtain license under the Bengal Money Lenders Act."*

However to avoid unnecessary controversy a provision should be included in the Bengal Moneylenders Act providing for applicability of the Act to the nonbanking financial institutions holding the exquisite license under the RBI Act.

The rate of interest permissible under the Kerala Act of 1958 is provided under section 7 as follows;- *"7. Interest and charges allowed to money-lenders.— ["(1) No money-lender shall charge interest on any loan at a rate exceeding two per cent above the maximum rate of interest charged by commercial banks on loans granted by them:*

Provided that a money-lender shall be entitled to charge a minimum of one rupee as interest on any transaction."]

["Provided further that the Government may specify, by notification, the rate of interest under sub-section (1) from time to time.";]

(2) A money-lender may demand and take from the debtor such charges and in such cases, as may be prescribed.

(3) A money-lender shall not demand or take from the debtor any interest, in excess of that payable under sub-section (1).

["(4) No money-lender shall give any presents, gifts, commission or any amount other than the interest provided in sub-section (2) of section 4 to any depositor in connection with the deposits received by such money-lender or receive any presents, gifts, commission or any amount other than the interest and other charges specified in this section from any person to whom money is advanced."]"

The rate of interest permitted by Rajasthan Money Lenders Act, 1963 would appear from Section 27 providing as follows: –

"27. Maximum amount of interest recoverable on loans and discharge of loans in certain cases.—

(1) No money-lender shall recover towards the interest in respect of any loan advanced by him, an amount in excess of the amount of principal.

(2) Any loan in respect of which the money-lender has realised from the debtor an amount equal to or more than twice the amount of the principal, shall stand discharged and the amount, if any, so realised in excess of twice the amount of the loan shall be refunded by the money-lender to the debtor :

Provided that no refund shall be made if such excess amount had been realised prior to three years from the date of commencement of the Rajasthan Money-lenders (Amendment) Act, 1976."

The question whether the moneylender was entitled to recover any amount on account of interest in excess of the amount of principal was thus answered in the negative in the case of Bastiram Vs Ghewarchand reported in AIR 1979 Raj 148.

"24.In the light of the above well established principles of interpretation, if the provisions of the Rajasthan Act are examined, sec. 27 of the Rajasthan Act can only be construed according to the definition given to the word "principal" in sec. 2(11) and for determining the quantum of interest, the transaction between the debtor and the creditor can be ripped up and re-opened and to me there does not appear to be any conflict or inconsistency between the provisions of secs. 27 and 33 of the Rajasthan Act. As such, I am unable to agree with the contention of the learned counsel for the plaintiff-respondents that the "principal of the loan" should be taken to be Rs. 2,101/- in the present case, as evidenced by the pronote dated 3-3-1963. In view of the admitted position, the principal of the loan is Rs. 1,689/11/-. The plaintiffs can only claim a sum of Rs. 189/11/- by way of interest and beyond that, the defendant is not liable to pay any interest. The total liability with regard to interest can be to the extent of the amount of Rs. 1,689/11/- and a sum of Rs. 1,500/- has already been paid by the defendant to be appropriated as interest. Thus, the plaintiffs are only entitled to a decree of Rs. 1,879/6/-."

The rate of interest permissible under the aforesaid Andhra Pradesh Act of 2011 under section 9 is as follows:-

"9. Maximum amount of interest recoverable on loans and discharge of loans in certain cases.—

(1) No MFI shall recover from the borrower towards interest in respect of any loans advanced by it, whether before or after commencement of this Act, an amount in excess of the principal amount.

(2) All loans in respect of which an MFI has realized from the borrower, whether before or after commencement of this Act, an amount equal to twice the amount of the principal, shall

stand discharged and the borrower shall be entitled to obtain refund and the MFI shall be bound to refund the excess amount paid by the borrower."

Whereas the permissible interest chargeable for non-commercial loans is provided under section 30 and for commercial loans under section 30A of the Bengal Money-Lenders Act, 1940.

"30. Limitations as to amount and rate of interest recoverable.—Notwithstanding anything contained in any law for the time being in force, or any agreement,

(1) [no borrower other than a borrower of commercial loan] shall be liable to pay after the commencement of this Act—

> *(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan.*
>
> *(b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date.*
>
> *(c) any interest other than simple interest at a rule per annum not exceeding in the case of—*
>
> > *(i) unsecured loans—twelve and a half per centum.*
> >
> > *(ii) secured loans—ten per centum.*
>
> *whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act;*

(2) [no borrower other than a borrower of commercial loan] shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a decree passed before such date, interest at rates per annum exceeding those specified in sub-clause (c) of clause (1);

(3) a lender shall be entitled to institute a suit at any time after the commencement of this Act in respect of a transaction to which either or both of the preceding clauses applies or apply."

"30-A. Limitation as to rate of interest recoverable in case of commercial loan.—Notwithstanding anything contained in any law for the time being in force or in any agreement, no borrower of a commercial loan shall be liable to pay any interest other than simple interest at a rule per annum not exceeding in the case of—

(i)	*unsecured loan*	*.. twenty per centum*
(ii)	*secured loan*	*.. seventeen per centum."*

The provision contained in section 27 (1) of the Rajasthan act which has been judicially tested may also be added to the Bengal moneylenders act.

In the aforesaid background the following recommendations are made: –

a) Subsection 13 of section 2 of the Bengal moneylenders act 1940 be amended to read as follows: – *"moneylender means a person either natural or juristic including a nonbanking financial company registered under section 45 IA of the Reserve Bank of India act 1934 and/or the Companies act carrying on the business of money lending including a micro finance institution in the state of West Bengal……"*

b) The word "twice" appearing in sub clause (a) of clause 1 of Section 30 of the Bengal Money Lenders Act 1940 be omitted.

c) Section 18A be introduced to the Bengal Money Lenders Act 1940 providing for as follows: –

"(1) The Registrar or the Sub- Registrar shall consider application from the moneylender seeking approval to extend a further loan to a borrower, who has an outstanding loan, either for the purpose of repaying the existing loan or for the purpose of obtaining further financial assistance on the basis of following information in writing from the moneylender in regard to every borrower namely

(i) Name of the Borrower;
(ii) Name of the money lender/institution from which loan has been obtained by the borrower;
(iii) date of the loan;
(iv) amount of the loan;
(v) amount repaid by the borrower;
(vi) amount due from the borrower;
(vii) fresh amount of loan sought by the borrower;
(viii) terms of repayment proposed by the moneylender;
(ix) details of due diligence including the capacity of the borrower for repayment; and
(x) such other details as may be prescribed.

(2) The Registrar or the Sub-Registrar shall, not later than fifteen days from the date of filing of such application for approval under sub-section (1), cause an enquiry into the contents of the application and shall grant approval for further loan provided the Registrar or the Sub- Registrar is satisfied that the borrower has understood the conditions of the loan and terms of repayment and further provided that the Registrar or the Sub- Registrar, as the case may be, is also satisfied that such further loan would generate additional income to the borrower needed for servicing the debt.

(3) No moneylender shall grant loan to a borrower during the subsistence of two previous loans irrespective of the source of the previous two loans."

d) Section 24A be introduced to the Bengal Money Lenders Act providing for as follows: –

(1) No moneylender shall extend a further loan to a borrower either for the purpose of repaying the existing loan or for the purpose of extending further financial assistance without prior approval in writing in such manner as may be prescribed from the Registrar or the Sub- Registrar as the case may be after making an application seeking such approval.

(2) No moneylender shall deploy any agent for recovery nor shall use any other method to molest the borrower or any of his family member for recovery of money from the borrower which shall apart from being punishable under section 41 empower the sub- registrar to cancel the licence of the moneylender under section 17 of the act.

e) The Additional Secretary is directed to communicate the recommendation to the Chief Secretary to the State of West Bengal duly authenticated as required under the provisions of the protection of human rights act;

f) The Additional Secy is further directed to have a copy of the recommendation uploaded in the website of the commission in course of the day;

g) The system administrator is directed to render necessary assistance to the Additional Secy to carry out the order as regards uploading the recommendation;

h) The Chief Secretary to the State of West Bengal is directed to file a report with the commission intimating the steps taken to implement the recommendation by 31 March 2022.

The report of the learned Registrar together with annexures thereto and the news item including connected documents be annexed to the report[38].

Chairperson.

Justice Girish Chandra Gupta.

Signed this 13th day of December 2021 .

[38] at pages—23-158