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# FATEHCHAND HIMMATLAL & OTHERS

*v.*

# STATE OF MAHARASHTRA ETC.

*January* 28, 1977

B [A. N. RAY, C.J., M. H. BEG, P. N. BHAGWATI, V. R. KRISHNA IYER AND S. M. FAZAL ALI, JJ.]

*Constitution of India—Article* 301-304(*b*)—*Freedom of trade and commerce—Reasonable restrictions.*

*Article* 252, 254(2), *Seventh Schedule, List I, Entry* 52, 97, *List II Entry* 30.

C *Doctrine of occupied field—State making a law on a different topic but covering in part the same area—Whether irreconcilable conflicts necessary—Whether incidental provisions can be struck down—Gold Control Act* 1968—*Conflict between a Central law and a State law—Effect of the assent of the President.*

*Interpretation of legislative entries in the Seventh Schedule, whether broad and liberal construction to be adopted.—Seventh Schedule List II Entry* 30, *meaning of money lending and money lenders and relief of agricultural* D *indebtedness—Whether impugned Act is covered by this Entry.*

*Maharashtra Debt Relief Act* 1976—*Constitutional validity of—Whether the State legislature has legislative competence—Whether violative of Article* 304(*b*)—*Whether the freedom of trade is absolute—Whether money-lending to the little pedsants, landless tiller, bonded labour, the pavement tenant and the slum dweller a trade—Whether every systematic profit oriented activity, however, sinister suppressive or socially diabolic can be said to be trade—Whether* E *the test of reasonableness is to be applied in vacuum or in the context of life's realities.*

*Perspective of poverty jurisprudence—Whether different from the canons of traditional Anglo-Indian jurisprudence—Whether while testing constitutionality the principles of developmental jurisprudence must come into play—Procedural unreasonableness—Whether the burden of proving debtors' financial position on the lender—Issuance of certificate in favour of debtor having presumptive value without hearing the creditor—Absence of appeal—Obligation of the cre-* F *ditor to move the machinery—Deposit of the ornaments before the proceedings can commence—Whether reasonable—Adoption of summary proceedings, whether valid.*

The Maharashtra Legislature passed the Maharashtra Debt Relief Act, 1976. By the said Act the existing debts of some classes of some indigents have been liquidated. The Act is a temporary measure. The validity of the said Act was challenged in the present writ petition and appeals on the following grounds :

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(1) Money lending was a trade covered by Article 304 of the Constitution. The restriction both substantive and procedural imposed by the impugned Act are not reasonable within the meaning of Article 304(b).

(2) The State Legislature has no legislative competence to enact the statute.

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(3) So far as the Gold ornaments are concerned the field is occupied by the Gold Control Act 1968 passed by the Parliament. Therefore, inasmuch as the said Act deals with Gold Ornaments it is beyond the legislative competence.

The respondents contended that : A

(1) The money lending in the present case was not a trade.

(2) Even if it was trade the restrictions imposed by the statute are reasonable.

(3) The State Legislature is competent to enact the impugned Act.

(4) The doctrine of occupied field has no application.

(5) The Gold Control Act and the impugned Act deal with two completely different situations. B

(6) In any case, there is no inconsistency between the two Acts.

Upholding the validity of the Act,

HELD : (1) It is cruel legal jike to legitimate as trade this age and bleeding business whereby the little peasant, the landless tiller, the bonded labour, the pavement tenant and the slum dweller born and buried during the Raj and the Republic in chill penury. [836 B-C] C

*Atiabari Tea Co.* (1961) 1 SCR 809, 843, referred to.

(2) The topics of legislation listed in the 7th Schedule must receive a large and liberal and realistic interretation. [836 E]

(3) The freedom while it is wide is not absolute. Every systematic, profit oriented activity, however sinster, suppressive or socially diabolc, cannot *ipso facto* exalt itself into a trade. Dealings of Banks and similar institutions having some nexus with trade, actual or potential, may itself be trade or intercourse. All modern commercial credit and financial dealings amount to trade. However, the village based age old, feudal pattern of money lending to those below the subsistence level to the village artisan, the bonded labourer, the marginal tiller and the broken farmer, who borrows and repays in perpetual labour, hereditary service, periodical delivery of grain and unvouchered usurious interest is a countryside incubus. Such debts ever swell, never shrink, such captive debtors never become quits. Such countryside creditors never get off the backs of the victims. [840 D, 841 F-H] D E

*Ibrahim* (1970) 3 SCR 498, referred to.

*Automobile Transport* (1963) 1 SCR 491, followed.

(4) The economic literature, official and other, on agricultural and working class indebtedness is escalating and disturbing. Indeed the money lender is an oppressive component of the scheme. [844 G]

(5) The test of reasonableness is not to be applied in vacuum but in the contest of life's realities. The Legislature was confronted with the cruel species of money-lenders. The life of the law is not noisis but actual experience. The perspective of poverty jurisprudence is radically different from the canons and values of traditional Anglo-Indian Jurisprudence. The subject matter of the impugned legislation is indebtedness, the beneficiaries are petty farmers, manual workers and allied categories steeped in debt and bonded to the money lending tribe. So, in passing on its constitutionality, the principles of Developmental Jurisprudence must come into play. [846 B, 848 G-H] F G

(6) The exemption granted by the statute to credit institutions and banks is reasonable because liabilities due to Government, local authorities and other credit institutions are not tainted with exploitation of the debtor. Likewise, debts due to banking companies do not ordinary suffer from over-reaching, unscrupulous or harsh treatment. Financial institutions have until recently treated the village and urban worker and petty farmer as untouchables. [849 E-H]

(7) Maybe some stray money-lenders may be good souls but the Legislature cannot easily make meticulous exceptions and has to proceed on broad categorisations, not singular individualisations. The creditors have not placed material before the Court to contradict the presumption which must be made H

A in favour of the legislative judgment. Since nice distinctions to suit every kindly creditor is beyond the law-making process, the court has to uphold the grouping as reasonable and the restrictions as justified in the circumstances of the case. [850 C-E]

*Australian Bank Nationalisation Case*: *Commonwealth of Australia* v. *Bank of New South Wales*: 1950 A.C. 235, 311, approved.

B (8) The Court negatived the contention of the petitioner that there was procedural unreasonableness in the Act. The section which imposes the obligation on the money lender to prove the debtor's financial position, the issuance of a certificate in favour of the debtor having a presumptive value without hearing the creditor, the absence of appeal, obligation of the creditor to move the machinery and the period of 7 days and the deposit of the ornaments before the proceedings can commence are all reasonable in the circumstances of the case. Viewed in the abstract, those grievances look genuine but when we get C down to the reality, nothing so exists in the so-called provision. The provision requiring the creditor to move and not the debtor is reasonable because between the two, the money-lender is sure to be far shrewder and otherwise more capable of initiating proceedings. To cast that obligation on the debtor when in bulk of cases he is the village artisan, landless labourer or industrial worker is to deny relief in effect while bestowing it in the book. There is nothing objectionable in the debtor seeking a certificate of qualification from the small officer of the area. The officer or the Government servant possesses familiarity with the wherewithal and the whereabouts of the persons. Hearing the creditor D before the certificate is issued would merely prolong and puzzle the proceedings. The creditor does not suffer because the certificate that the applicant is a debtor raises only a rebuttable presumption and it is idle to argue that the creditor has no means of disproving the income or assets of his debtor. Ordinarily, the money-lender and the petty borrower live in and around the same neighbourhood. As proforma of the certificate to be issued needs mentioning several particulars these have to be filled by the certifying officer who has, therefore, to make the necessary enquiries from and about the debtor. Authorised Officer is one who exercises quasi-judicial powers even otherwise on the Revenue side. E The adoption of the procedure under the Maharashtra Land Revenue Code is a fair safeguard although it is a summary procedure. To equate summary with arbitrary is contrary to common experience. The obligation for the production of the pledged article by the creditor as a preliminary to the institution of the proceedings is also a just measure so that when a decision is reached the article may be returned to the debtor in the event of the verdict going in his favour. Where the subject matter is substantial and fraught with serious consequences and complicated questions are litigatively terminated summarily, without a second look at the findings by an appellate body it may be that unfairness F is inscribed on the face of the law but where little men with petty debts, legally illiterate and otherwise handicapped are pitted against the money-lenders, absence about appeal cannot invalidate the statute. Where the enquiry is a travesty of justice or violation of provisions, where the finding is a perversity of adjudication or fraud on power the High Court is not powerless to grant remedy even after the recent package of constitutional amendments.

[852 A-H, 853 A-H, 854 A-B]

G (9) Entry 30 in List II in the 7th Schedule is money lending and money lenders; relief of agricultural indebtedness. If common sense and common English are components of Constitutional construction relief against loans by scaling down, discharging, reducing interest and principal, and staying the realisation of debts will among other things fall squarely within the topic. [854 F-H]

(10) The argument that the subject matter of the present legislation would fall under the residuary power under Entry 97 of List I is negatived. [855 B]

H (11) Where Parliament has made a law under Entry 52 of List I and in the course of it framed incidental provisions affecting gold loans and money lending business involving gold ornaments. The State making a law on a different topic but covering in part the same area of gold loans must not go into irreconcilable conflicts. The doctrine of occupied field does not totally

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deprive the State Legislature from making any law incidentally referable to gold. In the event of a plain conflict the State Law must step down unless Aricle 252(2) can be invoked. In that case the State law would still prevail if the assent of the President has been obtained. There is no conflict between the Gold Control Act and the impugned Act. Secondly, the subjects of both the legislations can be traced to the Concurrent List and Article 254(2) validates within the State the operation of the impugned Act since the assent of the President has been obtained. [858 B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 632 to 646 of 1976.

(From the Judgment and Order dated the 22/23/26/27th of April, 1976 of the Bombay High Court in S.C.A. Nos. 997, 2128, 2773, 2077, 2065, 2045, 1172, 1193, 1195, 1196, 1199, 1200, 1210/75 and 2050 & 2071 of 1976) and

*CIVIL APPEALS NOS.* 655 & 1286 *of* 1976

(From the Judgment and Order dated the 14-5-1976, 23rd, 24th, 27th April, 1976 of the Bombay High Court in S.C.A. No. 2985 of 1976 and Misc. Petition 4 of 1976) and

*WRIT PETITIONS NOS.* 98, 102-107, 110-113 & 115-120 *of* 1976 Under article 32 of the Constitution of India)

*B. Sen,* (in CA. 632) *Y. S. Chitale,* (in CA. 633) *Sachin Chowdhary,* (in CA. 634) *F. S. Nariman* and *R. N. Bennerjee,* Adv. (in CA. 637) *H. P. Shah,* (in CAs. 632-638) *A. J. Rana,* (in CA. 635) *P. H. Parekh & Miss Manju Jetly,* with them, for the appellants in CAs. 632-637

*Vallabhadas Mohta, Sardar Bahadur Saharya & Vishnu Bahadur Saharya,* for the appellants in CAs. 638-644 & 644.

*J. L. Nain, A. J. Rana, Janendra Lal, B. R. Agarwala* and *Gagrat & Co.,* with him for the appellants in CAs 645 & 646 except for appellant No. 52 in CA. 646

*F. S. Nariman, R. N. Banerjee, J. B. Dadachanji & K. J. John* with him for the appellant No. 62 in 646/76

*Madhukar Soochak, K. Rajendra Chowdhary, K. A. Shah* and (*Mrs.*) *Veena Devi Khanna,* Advocates for the Appellant in CA. 1286/76

*S. K. Dholakia, V. J. Kankaria & R. C. Bhatia,* for the petitioners in all the Writ Petitions.

*Niren De, Attorney Genl.* (only in CAs. 632, 638 and W.P. No. 98/76 *I. W. Adik,* Adv. Genl. of Maharashtra, *M. N. Shroff,* for the Respondents in the appeals and Writ Petitions

*M. P. Chandrakantraj Urs* and *N. Nettar,* for the intervener in CA. 632/76 (State of Karnataka)

A *K. Parasaran,* Adv. Genl. Tamil Nadu. *A. V. Rangam, V. Sathiadev* and (*Miss*) *A. Subhashini,* in the for the intervener in CA. 632 (State of Tamil Nadu;

*K. Rajendra Chowdhary,* for the interveners/Applicants *A Ratnasabhapati* and Jayalakshimi & Co.

B *M/s. Jeshtmal, K. R. Chowdhary, Mrs. Veena Devi Khanna,* for the intervener/applicant *N. Dhanraj.*

*B. A. Desai, S. C. Agarwala* and *V. J. Francis,* for Respondents 4 & 5 in CA. 1286/76.

The Judgment of the Court was delivered by

C KRISHNA IYER, J. The distance between societal realities and constitutional dilettantism often makes for the dillemma of statutory validity and the arguments addressed in the present batch of certificated appeals and writ petitions evidence this forensic quandary. Likewise, the proximity between rural-cum-clum economics and social relief legislation makes for veering away from verbal obsessions in legal construction. A constitution is the documentation of the founding faiths of a nation and the fundamental directions for their fulfilment. So much so, an organic, not pedantic, approach to interpretation, must guide the judicial process. The healing art of harmonious construction, not the tempting game of hair-splitting, promotes the rhythm of the rule of law. These prologuic observations made, we proceed to deal with the common subject matter of the appeals and the writ petitions.

A bunch of counsel, led by Shri Nariman and seconded by Shri B. Sen, have lashed out against the *vires* of the Maharashtra Debt Relief Act, 1976 (for short, the Debt Act). The former has focused on the fatal flaw in the Act based on Art. 301 of the Constitution and the latter has concentrated his fire on the incompetency of the State Legislature to enact the Debt Act. A plurality of submissions by a procession of lawyers has followed, although the principal points have been comprehensively covered by Shri Nariman and Shri B. Sen. To encore is not to augment, and yet, some counsel, who had not much to supplement, claimed the right to be heard and exercised it *ad libiem,* essaying what had already been forcefully urged and forgetting that a fine, fresh presentation of a case is apt to be staled by a second version of it and pejorated by a third repetition. While in constitutional issues of great moment this Court is reluctant to ratio oral submission it is important, by comity of the Bench and the Bar, to conserve judicial time in the name of public justice so that internal allocations avoiding over-lapping may be organised among many counsel who may appear in several appeals, substantially dealing with the same points. A happy husbandry of advocacy is helpful for judge and lawyer alike and to streamline forensic business is the joint responsibility of both the limbs of the institution of justice.

Back to the beginning. Art. 301 of the Constitution mandates .

"301. *Freedom of trade, commerce and intercourse.*—

Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

We may also read the cognate provision viz., Art. 304 (b) :

"304 (b). *Restrictions on trade, commerce and among States.*—

Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law—

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(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

The unmincing submission of Shri Nariman is that money-ending is very much a trade, that the Debt Act deals drastically with money-lenders in defiance of Art. 301 and, since the manacles on money-lenders and money-lending are unreasonably harsh and callously indiscriminate, the 'freedom" which belongs constitutionally to professional money-lenders is breached by the statutory liquidation of their loans. Nor can the invalidatory consequence of this violation be obviated by Art. 304(b). This latter provision salvages statutes which contravene freedom of trade, commerce and inter-course only if they possess the virtues of reasonableness and public interest. The injustice of wiping out the debts of marginal farmers, rural artisans, rural labourers and workers as provided in the scheme of the Act was anathematised by Shri Nariman as an unwarrantedly unreasonable annihilation of the trade and its capital.

We will deal with this contention presently but we may merely mention for later discussion another short, lethal objection to a part of the law, put forward by counsel. He stated that there was legislative incompetency for the State Legislature because it had forfeited the power to legislate on money-lending where gold loans were involved, since Parliament had occupied the field under Entry 52 of List I by enacting the Gold Control Act, 1968, and had thereby elbowed out the State Legislature from that field.

Considerable eclectic study of English, Australian and American cases was displayed in the course of arguments, reverberating in Indian precedents dealing with Part XIII of the Constitution. Of course, we will refer to them with pertinent brevity, although we must administer to ourselves the caveat that the same words used in constitutional enactments of various nations may bear different connotations

A and when Courts are called upon to interpret them they must acclimatize the expressions to the particular conditions prevailing in the country concerned. Different lands and life-styles, different value systems and economic solutions, different social milieus and thought-ways, different subject matters and human categories—these vital variables influence statutory projects and interpretations, although lexicographic aids and understandings in alien jurisdictions may also be
B looked into for light, but not beyond that.

The constitutional guarantee of the commercial mobility and unity of the country in Art. 301 is sought to be made the major sanctuary of 'money-lenders' whose 'freedom' to lend and thereby end the lendee is, by legislative judgment, hand-cuffed. Before unravelling the provisions of the Debt Act, we must first found ourselves on the quintes-
C sentials of Art. 301 and the juristic and economic basics implied in that provision. We are not construing a petrified legal parchment but reading the luscent lines of a human text with a national mission. We must never forget that the life of the *suprema lex* is nourished by the social setting, that juridical abstractions and theoretical conceptions may be fascinating forensics but jejune jurisprudence, if the raw Indian realities are slurred over. We are expounding the Constitu-
D tion of a nation whose people hunger for a full life for each, and therefore, a perception of the signature of social justice writ on it is imperative. 'Nothing is more certain in modern society', declared the American Supreme Court at mid-century, 'than the principle that there are not absolutes'. Legal Einsteinism guides the Court, not doctrinal absolutes, as we will presently discuss.

E Since Art. 301 has loomed large in the debate at the bar, it is pertinent to ask what is its object and design. For, if the impugned legislation does violate Art. 301, it must perish unless rescued by Art. 304(b).

This Court, in *Atiabari Tea Co.* (1), tracing the roots of Art. 301, observed :

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> "Let us first recall the political and constitutional background of Part XIII. It is a matter of common knowledge that, before the Constitution was adopted, nearly two-thirds of the territory of India was subject to British Rule and was then known as British India, while the remaining part of the territory of India was governed by Indian Princes and it consisted
> G of several Indian States. A large number of these States claimed sovereign rights within the limitations imposed by the paramount power in that behalf, as they purported to exercise their legislative power of imposing taxes in respect of trade and commerce which inevitably led to the erection of customs barriers between themselves and the rest of India. In the matter of such barriers British India was governed by
> H the provisions of s. 297 of the Constitution Act, 1935. To the provisions of this section we will have occasion later to

(1) [1961] 1 S.C.R. 809, 843.

refer during the course of this judgment. Thus, prior to 1950 the flow of trade and commerce was impeded at several points which constituted the boundaries of Indian States. After India attained political freedom in 1947 and before the Constitution was adopted the historical process of the merger and the integration of the several Indian States with the rest of the country was speedily accomplished with the result that when the Constitution was first passed the territories of India consisted of Part A States which broadly stated represented the Provinces in British India, and Part B States which were made up of Indian States. This merger or integration of Indian States with the Union of India was preceded by the merger and consolidation of some of the States *inter se* between themselves. It is with the knowledge of the trade barriers which had been raised by the Indian States in exercise of their legislative powers that the Constitution-makers framed the Articles in Part XIII. "The main object of Art. 301 obviously was to allow the free flow of the stream of trade, commerce and intercourse throughout the territory of India."

It is fair to realise that Art. 301 springs from Indian history and hope. We may recall the political and constitutional background of Part XIII—the divided days of British rule, the united aspirations of Independent India, the parochial pressures and regional pulls leading inevitably to the erection of fiscal barriers and hampering of economic oneness. The integration of India was not merely a historical process but a political, social and economic necessity. Gajendragadkar J., in *Atiabari Tea Co.* (supra) pointed out :

"In drafting the relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stablity and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom which had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity." (p. 843)

"Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the country. The provision contained in Art. 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of a directive principle of State policy; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country." (p. 844)

A Such being the perspective, the judicial sights must be set high while reading Article 301. Social solidarity is a human reality, not mere constitutional piety, and a non-exploitative economic order outlined in Art. 38, is the bedrock of a contented and united society. Social disorder is the *bete noire* of commerce and trade. All this is non-controversial ground but the learned Attorney General contests the very applicability of Art. 301 to money-lenders and money-
B lending *vis a vis* the humble beneficiaries of the statute, viz., the marginal farmers, rural artisans, rural labourers, workers and small farmers. It is a cruel legal joke to legitimate as trade this age-old bleeding business of agrestic India whereby the little peasant. the landless tiller, the bonded labourer, the pavement tenant and the slum dweller have been born and buried during the Raj and the Republic in chill penury. Is trade in human bondage to be dignified legally,
C betraying the proletarian generation? For whom do the constitutional bells of the socialist Republic toll? Therefore, argues the Attorney General, it is juristic blasphemy to call 'unscrupulous money-lending'—a rural spectre which stalks Maharashtra—a trade at all. These chronic operations, socially obnoxious and economically inhuman, cannot be recognised as licit and wear the armour of Art. 301, for this preliminary reason. Not all systematic economic activity is
D trade. Sinister, socially shocking ones, are not.

Shri Nariman has counter-asserted, backed by a profusion of precedents, that money-lending in the modern complexities of business life is a lubricant for the wheels of commerce and has been treated as trade. It is the life-blood of business. It needs no argument to say
E that the topics of legislation, listed in the Seventh Schedule, must receive a large and liberal, yet realistic, interpretation. So understood, the expression 'trade' in its wide import, covers not merely 'buying and selling of goods' but trading facilities like advances, overdrafts, mercantile documents, trading intelligence, telegraphic and telephonic communications, banking and insurance and many other sophisticated operations connected with and essential for commerce
F and intercourse. Even travel facilities in certain circumstances have a nexus with trade and commerce and are part of them. Learned counsel referred to *Ibrahim*(1) wherein this Court has referred to the corresponding provisions in the Australian Constitution and imparted a comprehensive meaning to 'trade'. American and Australian case-law, Halsbury and the Judicial Committee, were read with special emphasis on the amplitude of the expression 'trade'. An inventory
G of Indian statutes wherein 'money-lending' as a business was mentioned and licensed, was also brought to our notice. Indeed, this wealth of legal literature may well be held to make out that money-lending, banking, insurance and other financial transactions, commercial credit and mercantile advances may, conceptually, be characterised as 'business'. Mercantile credit, money-lending, pawn-broking and advances on pledges are business. Otherwise, the commerce of our
H country will grind to a halt. Can we conceive of trade without credit, or commerce without mercantile documents, discounting, lending and

(1) [1970] 3 S.C.R. 498.

negotiable paper? To deny to monetary dealings the status of trade is to push India into the medieval age : Broadly viewed, money-lending amongst the commercial community is integral to trade and is trade. A

So far we go with Shri Nariman and others who have urged the same point with allomorphic modifications.

The learned Attorney General's stance is radical and rooted in the rural bondage to break which is the mission of this legislation. If accepted, it will mean that money-lending, in the limited statutory setting and projected on the Indian rural-urban screen *vis a vis* the exploited people below-the-poverty-line, cannot be regarded as 'trade'. B

It is apt to be reminded of the then famous epigram of Frederick W. Maitland : "A woman can never be outlawed, for a woman is never in law." Money-lending-is it in law at all? C

No trade, no Art. 301, and so the baptismal certificate that Art. 301 insists upon from the economic activity that seeks its 'free' blessings is that it is 'trade, commerce or intercourse'. Thus the critical question is as to whether money-lending and the class of money-lenders who have been preying upon the proletarian and near-proletarian segments of Indian society for generations may be legally legitimated as 'traders' or 'businessmen'. This is not an abstract legal question turning on semantic exercises but a living economic question of incurable indebtedness. Blood, sweat and tears animate amelioratory law which exiles literal interpretation. The heart-beats of the Debt Act, according to the State counsel, cannot be felt without humanistic insight by first ostracising, in the name of social order, the die-hard, death-grip practices which have defied legislative policing in the past and have kept, in chronic servitude, vast numbers of the Indian agrarian community and working class. But if, as urged by the opposition, the law flatly flouts Art. 301, it fails. D E

The rule of law, for functional success, must run close to the rule of life. Therefore, constitutional assays must be on the touchstone of societal factors. So we cannot embark upon a study of the working of stock-exchanges, the dependence of industry and business on credit and key-loans, the role of pledges in financing commercial activity, when the challenge is to an economic legislation dealing with the lowliest and the lost, the destitude and the desperate, far from big business and industry, trade and commerce and high finance and sophisticated credit. We must zero-in on the social group the Debt Act seeks to save, the pattern of lending the statute strikes at, the heaviness of the blow and on whom it falls, and the *raison d'etre* of the measure. Does this specific species of deleterious economic activity, masked as money-lending 'trade', qualify for the freedom that Art. 301 confers on trade? The specific social malady and the legislative therapeutics suggested guide the court. Here again, relativity, not absolutes, rules jurisprudence. F G H

Of course, while interpreting the relevant Articles in Part XIII and pronouncing upon the concept of 'trade', we must have regard to the general scheme of the Constitution and should not truncate the

A scope and amplitude of economic unity, free movement, protection from discrimination, unhampered financial arrangements and the like. Undoubtedly, the freedom, while it is wide, is not absolute. Our Constitution, framed by those who were sensitive to the massive poverty of the country and determined to extirpate the social and economic backwardness of the masses, could not have envisioned a development where some will be 'free' to keep many 'unfree' [See Articles 38
B and 39 (c)]. That is why, to make assurance doubly sure, a further provision is made in Art. 304(b) by adding a rider to the freedom of commerce subjecting it to the requirement of reasonableness and imposition of restrictions in public interest. Das, J., in *Automobile Transport* (1) struck the true note, if we may say so with great respect, that while the text of the Articles is a vital consideration in interpreting them, 'we must' at the same time, remember that we are
C dealing with the Constitution of a country and the interconnection of the different parts of the Constitution forming part of an integrated whole'. The learned Judge asks : 'Even textually, we must ascertain the true meaning of the word 'free' occurring in Art. 301 From what burdens or restrictions is the freedom assured? This is a question of vital importance even in the matter of construction'. Later, in the judgment, Das J., drives home the point that 'the conception of free-
D dom of trade in a community regulated by law pre-supposes some degree of restriction, that freedom must necessarily be delimited by considerations of *social orderliness*' (underscoring supplied). Even the Australian Case (1916 22 CLR 556, 573) conceptulizes freedom as nothing *extra legem,* lest freedom should be confounded with anarchy. 'We are the slaves of the law', said Cicero, 'that we may be free'. Sir Samuel Griffith, C. J. in *Duncan* v. *State of Queensland*
E (22 CLR 556, 573), said : "But the word 'free' does not mean *extra legem* any more than freedom means anarchy. We boast of being an absolutely free people, but that does not mean that we are not subject to law." The conscience of the commerce clause in India, as elsewhere, is the promotion of an orderly society. social justice is the core of the constitutional order.

F Two inter-connected, but different facets of freedom of trade and commerce fall for serious consideration in the light of the above discussion. Is anti-social, usurious, unscrupulous money-lending to economically weaker sections, eligible for legal recognition as 'trade' within the meaning of Art. 301 ? Secondly, assuming that even such activities have title to be termed 'trade' are the provisions of the Debt Act reasonable, regulatory and in the public interest ?

G The learned Attorney General argued for the proposition that the narrow, noxious category of money-lending with which we are concerned is so oppressive and back-breaking so far as the poorest sections of the community are concerned that a sense of social justice forbids the court to legitimate it as 'trade'. Not all systematic economic activity, even if not formally banned by the law, can be christened 'trade',
H he submits, and relies on *Chamorbaughwala* to reinforce this reason-

(1) [1963] (1) S.C.R. 491.

(2) [1957] S.C.R. 930.

ing. In that case the impugned Act was said to offend against Art. 301. The Court, therefore, considered whether gambling was not 'trade, commerce or intercourse' and took a sky-view of the numerous decisions in various countries bearing on this branch of sociological jurisprudence. One of the Australian cases dealing with lotteries (*Mansell* v. *Beck*) elicited the observation that lotteries, not conducted under the authority of government, were validly suppressed as pernicious. Taylor, J. made the trenchant observation :

> ". . . .whilst asserting the width of the field in which s. 92 may operate it is necessary to observe that not every transaction which employs the forms of trade and commerce will, as trade and commerce, invoke its protection. The sale of stolen goods, when the transaction is juristically analysed, is no different from the sale of any other goods but can it be doubted that the Parliament of any State may prohibit the sale of stolen goods without infringing s. 92 of the Constitution ? The only feature which distinguishes such a transaction from trade and commerce as generally understood is to be found in the subject of the transaction; there is no difference in the means adopted for carrying it out. Yet it may be said that in essence such a transaction constitutes no part of trade and commerce as that expression is generally understood. Nnmerous examples of other transactions may be given, such as the sale of a forged passport, or, the sale of counterfeit money, which provoke the same comment and, although legislation prohibiting such transactions may, possibly, be thought to be legally justifiable pursuant to what has, on occasion, been referred to as a 'police power', I prefer to think that the subjects of such transactions are not, on any view, the subjects of trade and commerce as that expression is used in s. 92 and that the protection afforded by that section has nothing to do with such transactions even though they may require for their consummation, the employment of instruments, whereby inter-State trade and commerce is commonly carried on."
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> ((RMDC Case, pp. 915-916)

In the United States of America, operators of gambling sought the protection of the commerce clause. But the Court upheld the power of the Congress to regulate and control the same. Likewise, the Pure Food Act which prohibited the importation of adulterated food was upheld. The prohibition of transportation of women for immoral purposes from one State to another or to a foreign land was held valid. Gambling itself was held in great disfavour by the Supreme Court which roundly stated that 'there is no constitutional right to gamble'.

Das, C. J., after making a survey of judicial thought, here and abroad, opined that freedom was unfree when society was exposed to grave risk or held in ransom by the operation of the impugned

activities. The contrary argument that all economic activities were entitled to freedom as 'trade' subject to reasonable restrictions which the Legislature might impose, was dealt with by the learned Chief Justice in a sharp and forceful presentation :

> "On this argument it will follow that criminal activities undertaken and carried on with a view to earning profit will be protected as fundamental rights until they are restricted by law. Thus there will be a guaranteed right to carry on a business of hiring out goondas to commit assault or even murder, of housebreaking, of selling obscene pictures, of trafficking in women and so on until the law curbs or stops such activities. This appears to us to be completely unrealistic and incongruous. We have no doubt that there are certain activities which can under no circumstance be regarded as trade or business or commerce although the usual forms and instruments are employed therein. To exclude those activities from the meaning of those words is not to cut down their meaning at all but to say only that they are not within the true meaning of those words. Learned counsel has to concede that there can be no 'trade' or 'business' in crime but submits that this principle should not be extended. . . ."

We have no hesitation, in our hearts and our heads, to hold that every systematic, profit-oriented activity, however sinister, suppressive or socially diabolic, cannot, *ipso facto,* exalt itself into a trade. Incorporation of Directive Principles of State Policy casting the high duty upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice—social, economic and political—shall inform all the institutions of the national life, is not idle print but command to action. We can never forget, except at our peril, that the Constitution obligates the State to ensure an adequate means of livelihood to its citizens and to see that the health and strength of workers, men and women, are not abused, that exploitation, moral and material, shall be extradited. In short, State action defending the weaker sections from social injustice and all forms of exploitation and raising the standard of living of the people, necessarily imply that economic activities, attired as trade or business or commerce, can be de-recognized as trade or business. At this point, the legal culture and the public morals of a nation may merge, economic justice and taboo of traumatic trade may meet and jurisprudence may frown upon dark and deadly dealings. The constitutional refusal to consecrate exploitation as 'trade' in a socialist Republic like ours argues itself.

The next question then is whether rural and allied money-lending is so abominable as to be 'bastardized' by the law—for which the Attorney General pleaded. Shri Nariman controverted the vulgar generalisation that all money-lenders are vampirish as unveracious imagery. He argued that many of them were not only licenced but had complied with the conditions of their licences in doing honest lending business and supplying rural credit to those in need. He

pointed out that institutional credit had hardly penetrated rural India and the non-institutionalised money-lenders had done economic service to a primitive peasantry although several of them had abused the situation of helplessness in which the weaker denizens of backward regions found themselves. His contention was that there was no justification for castigating money-lending as non-trade nor was there valid material to condemn wholesale all those who had served as the financial backbone of agricultural communities in the past. Reasonable restrictions to obviate abuse were permissible legislation, but obdurate refusal to treat what in fact was trade as trade was injustice born of hostile hunches. He had separate arguments on the unreasonableness of the provisions of the Debt Act which we will deal with later. The bone of contention between the parties, therefore, is as to whether money-lenders as a class and money-lending as a systematic traditional activity in the special context of the weakest sections of agrarian humanity and the working class, can be called 'trade'. The legal principles have already been explained by us which we may sum up briefly by stating that, generally speaking, the systematic business of lending is trade, as understood in the commercial world and in ordinary monetary dealings. Moreover, trade cannot be confined to the movement of goods but may extend to transactions linked with merchandise or the flow of goods, the promotion of buying and selling, advances, borrowings, discounting bills and mercantile documents, banking and other forms of supply of funds.

A B C D

It is possible, however, to project a different view point and this is precisely what the learned Attorney General has done. Free flow, understood in Article 301, implies some *movement* from place to place. Freedom of trade, subject to reasonable restrictions, is guaranteed under Art. 19. The special advantage derived by the Trade by virtue of Art. 301 consists in the interdict on impeding, directly and immediately, movement of goods or money transactions connected with movement of merchandize or commercial intercourse. In short, the Attorney General considers the element of movement as essential to Art. 301 in contrast with Art. 19. We see the force of the submission but are inclined to the view that dealings of Banks and similar institutions having some nexus with trade, actual or potential, may itself be trade or intercourse. All modern commercial credit and financial dealings, covered by the various rulings cited at the bar, come under this heading. Even so, the village-based, age-old, feudal pattern of money-lending to those below the subsistence level, to the village artisan, the bonded labourer, the marginal tiller and the broken farmer, who borrows and repays in perpetual labour, hereditary service, periodical delivery of grain and unvouchered usurious interest, is a countryside incubus. This is not an isolated evil but a ubiquitous agrarian bondage. Such debts ever swell, never shrink, such captive debtors never become quits, such countryside creditors never get off the backs of the victims. The worker and peasant of India whose lot is to be 'born to Endless Night' is symbolized by Jawaharlal Nehru, an architect of the Constitution, as the Man with the Hoe :

E F G H

A "Bowed by the weight of centuries he leans
Upon his hoe and gazes on the ground,
The emptiness of ages on his face,
And on his back the burden of the world.

x x x x

"Through this dread shape the suffering ages look,
B Time's tragedy is in that aching stoop,
Through this dread shape humanity betrayed,
Plundered, profaned and disinherited,
Cries protest to the powers that made the world,
A protest that is also prophecy."

All this painful poetry and prose is borne out by the record in the
C case and by studies by economists.

A recent issue of the Eastern Economist reads :

"The problem of rural indebtedness is as old as Indian agriculture itself. It is the net result of usurious money lending, improvident spending and adversities in agriculture. The heavy burden of debt not only continues to cripple our
D rural economy, but it also grows in alarming magnitude. Several attempts have been made by expert bodies from time to time for a realistic estimation of rural indebtedness. Nevertheless, the fact remains that the rural indebtedness in physical terms is mounting up and the nightmare of indebtedness continues to haunt the Indian peasants...

E Quite recently the report published by the All India Rural Debt and Investment Survey relating to 1971-72 also depicts an increasing trend in rural indebtedness. It has been estimated that the aggregate borrowings of all rural households on June 30, 1971 was Rs. 3921 crores, while the average per rural household being Rs. 503/-. Fortythree per cent of the rural families had reported borrowings. ...
F

If the problem of rural indebtedness is to be kept within meaningful limits and manageable proportions, following legislative and non-legislative measures should be taken :

1. At present the institutional agencies provide only 50 per cent of the total rural credit needs. Increased efforts
G by all the institutional agencies are called for especially in the context of the declaration of moratorium on rural debt which may affect the flow of non-institutional finance.

2. There are about 75 million marginal farmers with less than one hectare of operational holding, 20 million artisans and 47 million agricultural labourers in rural sector, who
H constitute the rural poor. *Liquidation of existing debt is an essential step in order to give relief to these weaker sections.* The Debt Relief Acts passed in different states should be effectively implemented.

3. Institutionalisation of rural savings and inculcation of saving habits amongst rural folk is a positive step to mitigate this problem. .Massive propaganda and education on economising expenditure may discourage extravagant spending by certain categories of rural households. If necessary, certain legislative measures such as abolishing dowry system and imposing austere marriages may also be resorted to.

4. *Attempts must also be made to bring the money lenders under some form of monetary regulation and control on the lines suggested by the Banking Commission.* Though at present legislations exist in several states for the regulation of money lenders they lack enforcement which render the ineffective." (emphasis, added)

('Current Trends in Rural Indebtedness—by M. Gopalan & V. Kulandaiswamy—Eastern Economist d/April 23, 1976 Vol. 66, No. 17, pp. 826-829)

Professor Panikar, referring to the nightmare of debt has this to say :

"Perhaps, it may be that the need for borrowing is taken for granted. But the undisguised fear that the oppressive burden of debt on Indian farmers is the main hindrance to progress is unanimous. There are many writers who depict indebtedness of Indian farmers as an unmixed evil. Thus, Alak Ghosh quotes with approbation the French proverb that 'Credit supports the farmer as the hangman's rope the hanged'."

(Rural Savings in India—P. G. K. Panikar—Somaiya Publications Pvt. Ltd., Bombay, 1970)

Dr. Bhattacharya, in his book 'Social Security Measures in India' (Metropolitan Book Co., Delhi, 1970) dwells on the problem of agricultural indebtedness :

"A sample survey conducted by Second Agricultural Commission revealed the grim condition of rural indebtedness. The Survey observes, 'Of the estimated total number of 16.3 million agricultural labour households in the country, 63.9 per cent were indebted and debt per indebted household was Rs. 138 per annum'. This is indeed a danger signal particularly for a country whose entire economy is dependent on the prosperity of rural population. The same source sums up the total volume of rural indebtedness in the following words, 'Thus the total volume of debt of the indebted agricultural labour households may be estimated at about Rs. 143 crores in 1956-57. A similar estimate was made on the basis of the results of the 1950-51 Enquiry (*i.e.*, the First Agricultural Commission Report) and it worked out to about Rs. 80 crores, Even though the estimated number of agriculture labour households in

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> 1956-57 was lower by 1.6 million as compared with 1950-51, the total debt of indebted agriculture labour household had considerably increased in 1956-57." (pp. 164-165)

Dhires Bhattacharya in his 'Concise History of the Indian Economy' (Progressive Publishers, Calcutta, 1972) refers to the Indian rural B drama and the role of the anti-hero played by the money-lender :

> "Money-lending thus became an easy method of earning an income and subsequently of acquiring valuable title to land in the event of default by the debtor. Throughout the nineteenth century ownership rights in land were being lost by the ryot and acquired by moneyed interests, C both rural and urban."

> "The situation created by such extensive loss of property by the cultivating classes exploded into riots against money-lenders and usurpers of land in several parts of the country. The agricultural riots in Poona and Ahmednagar in Bombay Presidency in 1875 are most widely D known because they were followed by the appointment of a Commission of Inquiry." (pp. 77-78)

The author recounts the series of legislation made during the British Indian period and concludes :

E

> "These laws also failed in their purpose because no restrictions had been imposed on the transfer of land between members of the agricultural classes. Money-lenders could, therefore, operate through a benamidar (fictitious agent) belonging to an agricultural class and acquire land almost as easily as before. At the same time the bigger F agriculturists had no difficulty in swallowing up the smaller ones by giving loans at exorbitant rates of interest to the latter. (p. 78)

The economic literature, official and other, on agricultural and working class indebtedness is escalating and disturbing. Indeed, the G 'money-lender' is an oppressive component of the scheme. A. N. Agrawal, in his book 'Indian Economy' (Vikas Publishing House) indicates that 'money-lenders charge heavy interest ranging from 15% 50% and often more. In addition to high interest, these people take advantage of illiteracy of agriculturists and manipulate the accounts regarding loans to their advantage. The conditions of loan repayment are so designed that the debtor is forced H to sell his produce to the mahajan at low prices and purchase goods for consumption and production at high prices. In many other ways take advantage of the poverty and the helplessness of farmers and exploit them. . . . Unable to pay high interest and the principal,

the farmers even lose their land or live from generation to generation under heavy debt.....Unless viable alternatives are made available, the mahajan will continue to hold an important, harmful and enervating place in this sphere'. The harmful consequences of indebtedness are economic and affect efficient farming, social in that the 'relations between the loan givers and loan receivers take on the form of relations of hatred, poisoning the social life'. The money-lenders, few in number, belong to poor class. *There are often disputes between the two classes which get sharpened*...on the exploitation of the poor. In fact the social groups get split into two broad classes. The exploiting class and the exploited class. .*Apart from losing land and leading to tension in the villages their evil effect is rampant*...*the heavily indebted farmers lose even their human existence.* They not only render bonded labour to money-lenders, *their very self-respect and even respect of their women folk do not remain safe*.. *They are forced to live the life of slaves.* Of course, laws have now been enacted which protect these debtors. *But these laws are difficult to be enforced either because farmers are illiterate,* or *they do not have enough resources to go to the courts,* or *the money-lenders prove too clever for them.*"

Dr. C. B. Mamoria in his book 'Agricultural Problems of India' (Kitab Mahal) has stressed that rural indebtedness has long been one of the most pressing problems of India. "Rural people have been under heavy indebtedness of the average money-lenders and sahukars. The burden of this debt has been passed on from generation to generation inasmuch as the principal and interest went on increasing for most of them. .According to Wold, 'The country has been in the grip of Mahajans. It is the bond of debt that has shackled agriculture."

Very convincing and compelling, with special reference to Maharashtra, is the Report of a high-powered Committee appointed by the Government of Maharashtra to make recommendations for the relief of rural and urban indebtedness. The study is at once revealing and grim. Rural artisans, industrial workers, marginal farmers and indigent agriculturists have been steeped in debt despite statutory measures and ineffective credit institutions. These human areas have been the happy hunting ground of money-lenders. The Bombay Moneylenders' Act, according to the Committee, hardly helped bail out the weaker sections. Despite the Act, licensed and unlicensed moneylenders pursued their exploitative profession. The Debt Act implements some of the recommendations of this Committee although positive institutional finance to save the sunken segments from the grip of the moneylenders remains to go into action. Even enforcement of the Bombay Moneylenders' Act appears to be lukewarm according to the Committee. Be that as it may, the economic distress, for which moneylenders dealing with the weaker sections are mainly responsible, is clearly brought out in the Report. Nor is there anything in this Report or in any other literary material on rural economics (particularly relating to artisans, workers and collapsing cultivators) to substantiate the dichotomy of scrupulous and unscrupulous moneylenders, vehemently pressed before us by Shri

A Nariman. The former species are more a pious wish and the latter tribe a spectre on the increase, if statistical economic studies are to be trusted. The gravestone on the old 'moneylender' system and the cornerstone of the new liberated order are thus the programme for the Administration. The Debt Act is part of the package.

There was much argument about the reasonableness of the restriction on moneylenders, not the general category as such but the cruel species the Legislature had to confront—and we have at great length gone into the gruesome background of economic inequities, since the test of reasonableness is not to be applied in vacuo but in the context of life's realities. Patanjali Sastri C.J., in *State of Madras* v. *V. G. Rao*(1) observed :

> "It is important in this context to bear in mind that the test of reasonableness wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

Money-lending and trade-financing are indubitably 'trade' in the broad rubric, but our concern here is blinkered by a specific pattern of tragic operations with no heroes but only anti-heroes and victims.

Many Conferences, Commissions and resultant enactments before and after Independence provided but marginal protection for the rural debtor. Even licensing was evaded by the money-lender successfully and concilliation machinery proved a mirage. Statutes made of sterner stuff became the desideratum.

In the counter affidavit filed on behalf of the State of Maharashtra, a lurid presentation of the lender-borrower scenario is found. The deponent states :

> "...that it was a common sight around the secretariat, Government Offices, Textile Mills, factories and elsewhere in Bombay to find moneylenders waiting at the gates to catch workers to collect their dues."

There is also reference to a number of Official Committees which have examined the question of indebtedness in the urban and rural areas and have recommended measures of relief. The affidavit goes on to state :

> "I say that in Maharashtra and its predecessors the State of Bombay there have been several legislations on this subject including the Deccan Agricultural Debt Relief Act, 1879, Bombay Agricultural Debtors Relief Act, 1939, 1946

(1) [1952] S.C.R. 597.

and in the Vidarbha areas of the State, the Madhya Pradesh Postponement of Execution of Decree Act, 1956. I say that there is a well-established history of dealing with indebtedness in the State by means of legislation. I say that the Reserve Bank carried out an inquiry in the matter of indebtedness in 1971 which is referred to as All India Debt and Investment Survey during 1971-72. The Reserve Bank of India survey established that the total debt liabilities in the rural areas in Maharashtra was Rs. 358 crores in 1971-72. A preliminary analysis made by the Reserve Bank of India also indicated weaker sections of the community thereby showing the extent of the burden of debt on the weaker sections of the community. I crave leave to refer to and rely upon the statistical tables prepared by the Reserve Bank of India in this connection when produced. I say that the extent of indebtedness may be much more than what is indicated by the statistical survey of the Reserve Bank of India. *The licensed moneylenders alone in the State are known by themselves to have disbursed during* 1972-73 *a sum of about* 74.37 *crores* and the information gethered by the respondents indicates that the known indebtedness in the city of Bombay alone would be of the order of Rs. 45 crores. I say that *in addition to the licensed moneylenders unlicensed money lending is also carried on in the State."*

The Statement of Objects and Reasons of the Maharashtra Ordinance VII of 1975 which was the precursor to the impugned Act contains the following statement :

"The problem of urban and rural indebtedness has assumed enormous proportions in recent times. The non-institutional sources of credit, namely, unscrupulous money-lenders, have been charging usurious rates of interest, indulging in malpractices and taking undue advantage of the weak position of the economically weaker sections of the people both in rural and urban areas. The Ordinance, therefore, seeks to give relief to certain sections of people from indebtedness."

Even the 'whereas' vocabulary of the draftsman of the Act refers to the need for immediate action to provide for relief from indebtedness to certain farmers, rural artisans, rural labourers and workers in the State of Maharashtra.

The judgment under appeal also makes reference to the continual legislative effort made in the past to save the agricultural community from chronic indebtedness. The learned Judges observe :

"Indeed, agricultural indebtedness has always been the bane of Indian economy ever since the beginning of the twentieth century. Any elementary book on Indian economics will disclose that even the British Government had

A 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. B 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 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."

C Eminent economists and their studies have been adverted to by the High Court and reliance has been placed on a Report of a Committee which went into the question of relief from rural and urban indebtedness which shows the dismal economic situation of the rural farmer and the labourer. It is not merely the problem of agricultural and kindred indebtedness, but the menacing proportions of the money-D lenders' activities that have attracted the attention of the Committee. Giving facts and figures, which are alarming, bearing on the indebtedness amongst industrial workers and small holders, the Committee has highlighted the exploitative role of money-lenders and the high proportion of non-institutional borrowings.

We have made this extensive tour of the economic scene, with E special reference to agricultural indebtedness and the lot of industrial labour, only to present vividly how the predatory money-lender has had a stranglehold on rural and urban proletarians, by resort to methods which are scandalizingly calamitous and unshakably resistant to legislative policing. The learned Attorney General contends that the courts must have a sense of history and sociology informing their judicial perspective and then it is easy to understand the syndrome of F village and working class indebtedness. There are commercial lendings, banking loans and institutional finances. There are friendly loans, and occasional accommodations. There are liabilities arising from various circumstances between citizen and citizen and citizen and State. But the pernicious species of money-lending stubbornly flourishing in the rural and industrial areas of our country, with the weakest sections as their bled-white clientele, cannot be regarded as 'trade' because of the painful pages of economic history to which this country G is witness.

The life of the law is not neat noesis but actual experience. The perspective of Poverty Jurisprudence is radically different from the canons and values of traditional Anglo-Indian jurisprudence. The subject matter of the impugned legislation is indebtedness, the beneficiaries are petty farmers, manual workers and allied categories steeped H in debt and bonded to the money-lending tribe. So, in passing on its constitutionality, the principles of Developmental Jurisprudence must come into play.

We agree with Shri Nariman that the intimate unity of national life sought to be sustained by Part XIII cannot be invidiously breached against the money-lenders provided they qualify to be traders. If a law cuts into the flesh of the commercial unity and integrity of the country, unreasonably or against public interest, Part XIII electrocutes it. A

A meaningful, yet minimal analysis of the Debt Act, read in the light of the times and circumstances which compelled its enactment, will bring out the human setting of the statute. The bulk of the beneficiaries are rural indigents and the rest urban workers. These are weaker sections for whom constitutional concern is shown because institutional credit instrumentalities have ignored them. Money-lending may be ancilliary to commercial activity and benignant in its effects, but money-lending may also be ghastly when it facilitates no flow of trade, no movement of commerce, no promotion of intercourse, no servicing of business, but merely stagnates rural economy, strangulates the borrowing community and turns malignant in its repercussions. The former may surely be trade, but the latter—the law may well say—is not trade. In this view, we are more inclined to the view that this narrow, deleterious pattern of moneylending cannot be classed as 'trade.' No other question then arises, since the petitioners and appellants cannot summon Art. 301 to their service. B C D

Assuming that all money-lending is 'trade', can it be contended that this relief measure is invulnerable to attack on the ground that the texture of the restrictions is reasonable and regulatory?

Article 304(b) relaxes in favour of the State the prohibition in Art. 301 provided the law imposes only such restrictions as are reasonable and in public interest. Shri Nariman's submission is that the Debt Act is too draconic to fair, processually and substantively, and so it cannot be rescued by Art. 304(b). With persuasive pressure he invited us to look at the horror of procrustean infliction of equal hostility by the legislature in dealing with the *asuric* Shylock and the dharmic lender. The law which brands the good and the bad alike and indiscriminately discharges all debts, just and unjust, lacks sense, conscience and reasonableness. Secondly 'How is it fair,' asks Shri Nariman, 'that, if the object of the legislation is to save the victims of rural indebtendness and working class burdens that credit institutions should be exempted while non-institutionalised lenders should be picked out for hostile treatment ?' E F

There is no merit in the plea. Liabilities due to government to local authorities are not tainted with exploitation of the debtor. Likewise, debts due to banking companies do not ordinarily suffer from overreaching, unscrupulousness or harsh treatment. Moreover, financial institutions have, until recently, treated the village and urban worker and petty farmer as untouchables and so do not figure in the picture. To exempt the categories above referred to is reasonable. Many debt relief laws adopt this classification and those familiar with the lowest layers of economic life will agree that this is as it should be. Money-lenders of the type we are concerned with in the Debt Act are, G H

by and large, heartless in their lending tactics, and the borrowers are anaemic—mostly members of the Scheduled Castes and Scheduled Tribes, nomadic groups, artisans, workers and the like. Section 13 of the Debt Act is illuminating, regarding the handicapped humans the statute is concerned with. We quote that provision :

> "13. *Agreement for labour in lieu of debt to become 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 labourer or otherwise for the creditor shall be void and of no effect and shall never be enforceable in any civil court."

Maybe, some stray money-lenders may be good souls and to stigmatize the lovely and unlovely is simplistic betise. But the legislature cannot easily make meticulous exceptions and has to proceed on broad categorisations, not singular individualisations. So viewed, pragmatics overrule punctilious and unconscionable money-lenders fall into a defined group. Nor have the creditors placed material before the Court to contradict the presumption which must be made in favour of the legislative judgment. After all, the law-makers, representatives of the people, are expected to know the socio-economic conditions and customers. Since nice distinctions to suit every kindly creditor is beyond the law-making process, we have to uphold the grouping as reasonable and the restrictions as justified in the circumstances of the case. In this branch, there are no finalities. The observations of the Privy Council in the *Australian Bank Nationalisation Case*(1) are apposite :

> "Yet about this, as about every other proposition in this field, a reservation must be made. For their Lordships do not intend to lay it down that in no circumstances could the exclusion of competition so as to create a monopoly either in a State or Commonwealth agency or in some other body be justified. Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some state of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner or regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free."

We do not downright denounce all money-lenders but the law-makers have, based on socio-economic facts, picked out a special class of money-lenders whom they describe as unscrupulous.

(1) Commonwealth of Australia v. Bank of New South Wales : [1950] A.C. 235, 311.

Every cause claims its martyr and if the law, necessitated by practical considerations, makes generalisations which hurt a few, it cannot be helped by the Court. Otherwise, the enforcement of the Debt Relief Act will turn into an enquiry into scrupulous and unscrupulous creditors, frustrating, through endless litigation, the instant relief to the indebted which is the promise of the legislature. A

In this perspective, we see no constitutional flaw in the Act on the score that the sheep have not been divided from the goats. Realism in the legislature is a component of reasonableness. It was urged by Shri Chitale that the definitional deficiency in ignoring the movable wealth of debtors makes the scheme arbitrary and unreasonable. A romantic view of the debtors being considerable owners of costly art pieces and sophisticated gadgets and yet eligible for relief is good rhetoric but unrealistic. A pathetic picture of the money-lender being deprived of his loan assets while being forced to repay his lender was drawn but that cannot affect the reasonableness of the relief to the grass-roots borrower. Nor is it value to attack the Act on the score that the whole debt i.e., the very capital of the business, has been dissolved. More often than not, the money-lender would have, over the long-lived debts and repeated renewals, realized more than the principal if economic studies tell the tale truly. The injustice of today is often the hangover of the injustice of yesterday, as spelt out by history. The business of money-lending has not been prohibited. The Act is a temporary measure limited to grimy levels of society. Existing debts of some classes of indigents alone have been liquidated. If impossible burdens on huge human numbers are not lifted, social orderliness will be threatened and as a regulatory measure this limited step has been taken by the Legislature. Regulation, if the situation is necessitous, may reach the limit of prohibition. Disorder may break out if the law does not step in to grant some relief. Trade cannot flourish where social orderliness is not secure. If the tensions and unrests and violence spawned by the desperation of debtors are not dissolved by State action, no money-lending trade can survive. It follows that for the very survival of Trade the regulatory measure of relief of indebtedness is required. That form this relief should take is ordinarily for the legislature to decide. It is not ordinarily for the Court to play the role of Economic Adviser to the Administration. Here amelioratory measures have been laid down by the Legislature so that the socio-economic scene may become more contented, just and orderly. Obviously, this is regulatory in the interest of Trade itself. This policy decision of the House cannot be struck down as perverse by the Court. The restrictions under the Debt Act are reasonable. Equally clearly, if the steps of liquidation of current debts and moratorium are regulatory, Art. 301 does not hit them. B C D E F G

Even so, argues Shri Nariman, procedural presumptions grossly unreasonable, vitiate the measure. Of course, reasonableness has a processual facet and if the law is lawless in its modalities, it becomes unlaw constitutionally. We may illustratively advert to some of the criticisms but, at the threshold, we confess we are not impressed with the submissions. H

A Shri Nariman itemised the mischievous provisions in the Debt Act from the processual angle. Others too reiterated with consternation that the provision whereby every debt of every debtor of the specified category stood wholly discharged was improvident, especially because it did not even require the debtor to move the authorities in that behalf. On the other hand, the burden was on the creditor to B raise the question by instituting a proceeding as to the disqualification of his debtor for the benefit of the Debt Act. On top of this obligation to institute proceedings was the precarious prospect of the order being against the creditor because the 'authorised officer' had to hold in favour of the debtor if he merely produced a certificate under s. 7(5) from one of those officials enumerated therein—all minor minions of government at the local level. Once the certificate was produced by the debtor the onus was shifted to the creditor to make out the contC rary. 'How could the money-lender prove the debtor's financial position ?' asked Shri Nariman. Moreover, the issuance of a certificate by the local little official was a unilateral process where the creditor was not entitled to be heard as to the means or eligibility of the debtor. There were two further unreasonable procedural impositions on the creditor, argued Shri Nariman. The lender had to make his application with all the facts within 7 days from the date of receipt D of the application from the debtor intimating that the debt stood released. The 7-day period was too short even to make enquiries about the assets of the debtor, And worse, the application by the creditor shall be entertained by the authorised officer only on the creditor depositing the pledged property of its value. Thus the dice was so heavily loaded against the money-lender that even persons who were not petty debtors intended to be beneficiaries might, with illegitiE mate success, claim the bonus of the Debt Act.

Viewed in the abstract, these grievances may look genuine but when we get down to the reality, nothing so revolting exists in these provisions. It is true that the creditor has to move, and not the debtor, before the authorised officer. As between the two, the moneyF lender is sure to be far shrewder and otherwise more capable of initiating proceedings. To cast that obligation on the debtor—remember, in the bulk of cases he is the village artisan, landless labourer or industrial worker—is to deny relief in effect while bestowing it in the book. Likewise, there is nothing horrendous in the debtor seeking a certificate of qualification from the small officer of the area. After all, the officials enumerated in s. 7(5) are government servants, local G officials, possess familiarity with the wherewithal and the whereabouts of persons within their area and are therefore accessible and competent. There is no reason whatever for allowing the creditor to be heard at the certificate stage except to prolong and puzzle the proceedings and by dilatory tactics, deny the relief to be debtor. The creditor does not suffer because the certificate that the applicant is a debtor raises only a rebuttable presumption and it is idle to argue that H the creditor has no means of disproving the income or assets of his debtor. Ordinarily, the mahajan, the sowcar or money-lender and the petty borrower live in and around the same neighbourhood, the former knows the circumstances of the latter and often these are not

isolated transactions between strangers. So much so the debtor's financial horoscope or impecunious *kismet* is normally within the ken of the creditor. Moreover, a perusal of the pro-forma of the certificate to be issued needs mention of several particulars which have to be filled up by the certifying officer who has therefore to make the necessary enquiries from and about the debtor. Assurance about the credibility of the certifying officer's entries is lent by the personal responsibility cast on him for the correctness of the particulars mentioned in the certificate. This is a protection for the creditor that routine and reckless entries will not be made and that the certifying officer will take care, *prima facie,* to be satisfied by proper enquiry before issuing the certificate. Such a safeguard warrants the raising of a rebuttable presumption of correctness and reduces the possibility of injustice to the creditor for not being allowed an opportunity for being heard at this stage. In this view also we see nothing unreasonable in the presumptive evidence of the certificate without the hearing of the creditor.

Fairplay is also afforded in the proceeding not only because the creditor can rebut the certificate but also because under s. 8(6) the authorized officer has the power and duty to determine all questions in dispute. Section 7(7) expressly provides for an opportunity to the creditor and the debtor to be heard. After all, the authorised officer is one who exercises quasi-judicialpowers even otherwise on the Revenue side. While the enquiry is summary, the procedure under the Maharashtra Land Revenue Code will be adopted which is a fair safeguard. Summary trial does not dispense with evidence or sound judgment but merely relieves the adjudicator from maintaining elaborate records. The enquiring officer, may, in appropriate cases, examine the Debtor or others who can throw light. To equate 'summary' with 'arbitrary' is contrary to common experience. The obligation for the production of the pledged article by the creditor as a preliminary to the institution of the preceedings is also a just measure so that when a decision is reached the article may be returned to the debtor in the vent of the verdict going in his favour.

The negation of a right of appeal against an order under s. 7(6) of the Debt Act is another circumstance. Shri Nariman has pressed before us. He cited other debt relief measures where a single appeal had been provided for. Does the absence of a right of appeal render the procedure unreasonable ? It depends. Where the subject-matter is substantial and fraught with serious consequences and complicated questions are litigatively terminated summarily. Without a second look at the findings by an appellate body, it may well be that unfairness is inscribed on the face of the law, but where little men, with petty debts, legally illiterate and otherwise handicapped, are pitted against money-lenders with stamina, astuteness, awareness of legal rights and other superiority, if the purpose of instant relief is to be accomplished, the provision of an appeal may, in many cases, prove abult-in booby trap that frustrates and ruins the hand-to-mouth debtor. No surer method of baulking the object can be devised than enticing

A the debtor into an appellate bout! Daughter gone and ducate too. will be the sequel! Of course, where the enquiry is a travesty of justice or violaion of provisions, where the finding is a perversity of adjudication or fraud on power, the High Court is not powerless to grant remedy, even after the recent package of Constitutional amendments.

B

It is true that in several cases this Court has held that a right of appeal is a gesture of statutory fairness in the disposal of cases. Our attention was drawn to the rulings reported as *Jyoti Pershad*(1); *Mohd. Faruk*(2); and *Ganesh Beedi Works*(3) and other cases bearing on the necessity of a right of appeal, as an incident of fair hearing. We cannot dogmatise, generalize or pontificate on questions C of law whose application depends sensitively on the nature of the subject matter, the total circumstances, the urgency of the relief and what not. We have adduced sufficient reason to hold that the Debt Act is not bad for processual perniciousness or jurisprudence of remedies.

The next constitutional missile aimed at the Debt Act was the in- D competency of the State Legislature to enact this law, for reasons more than one. The main ground was covered by Shri Nariman, but yet others made their contributions—sometimes overlapping, sometimes overflowing. Shri B. Sen also challenged the legislative competency, but on a different basis.

Several citations, home-spun and foreign, finely woven theories E and subtle punditry, gave a grave mein to the argument on this branch. But the point in issue, in our view, admits of straight solution, by-passing the heavy learning and jurisprudential finery. When Courts are cocooned by case-law or caught in the skein of scholarly doctrines, simple questions become complex. However, problems of constitutional law can be well left alone where they do not directly demand a solution in the case on hand. Enough unto the day is the F evil thereof :

What then is the incompetence of the State Legislature ? Shri B. Sen urged that the wiping out of private debts which formed the capital assets of the money-lenders—one of the main things done by the Debt Act—was not in any of the legislative Lists and even if G Parliament had residuary power under Entry 97 of List I, the State had none. Entry 30 in List II is 'money-lending and money-lenders; relief of agricultural indebtedness'. If commonsense and common English are components of constitutional construction, relief against loans by scaling down, discharging, reducing interest and principal, and staying the realisation of debts will, among other things, fall squarely within the topic. And that, in a country of hereditary

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(1) [1962] 2 S.C.R. 125.

(2) [1970] 1 S.C.R. 156.

(3) [1974] 3 SC.R. 221.

indebetedness on a colossal scale ! It is commonplace to state that legislative heads must receive large and liberal meanings and the sweep of the sense of the rubrics must embrace the widest range. Even incidental and cognate matters come within their purview. The whole gamut of money-lending and debt liquidation is thus within the State's legislative competence. The reference to the *Rajahmundry Electricity Case*(1) is of no relevance. Nor is the absence of the expression 'relief' in Entry 30, List II, of any moment when relief from money-lenders is eloquently implicit in the topic. Sometimes, arguments have only stated to be rejected.

The next ground of attack, in its multi-form presentation, is that the 'gold loan' part of the Debt Act is void because Parliament has occupied the field. It has also been urged that there is inconsistency between the Debt Act and the Gold Control Act, and *pro tanto* the former fails to have effect.

Let us look at the basics of the legal situation before us, before examining the wealth of learning counsel has accumulated. Article 246 vests exclusive power in Parliament over matters enumerated in List I (Seventh Schedule) and the State Legislature enjoys like power over topics in List II, subject to clauses (1) and (2) of the Article. Plainly, therefore, the State can legislate upon any Entry in the State List. We may visualize situations where Parliamentary occupation may exclude the State Legislature. Where, for instance, Parliament while enacting on a matter in the Union List, makes as it is entitled to make, necessary incidental provisions to effectuate the principal legislation, such ancillary expansions may trench upon the State field in List II. In such a case, if the State makes a law on an Entry in its exclusive List, and such law covers and runs counter to what has already been occupied by Parliament, through incidental provisions, it may be argued that the State law stands pushed out on account of the superior potency of Parliament's power in our constitutional scheme. Again, there are certain telltale heads of legislation in the Lists where one may plausibly invoke the doctrine of occupied field. Examples may, perhaps, be furnished by Entries 52 and 54 of List I, Entries 23 and 24 of List II and Entry 33 of List III. Without fear of contradiction, we may assert that Art. 246(3) read with Entry 30 in List II, empowers the State to make the impugned law. Why then is it incompetent? Because, says Mr. Nariman, the field of gold industry is already occupied by Parliament and the State Legislature therefore stands excluded. Entry 52 in List I reads :

> "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

Parliament, in the Industries (Development and Regulation) Act, 1951 (Act 65 of 1951) has made the necessary declaration contemplated in Entry 52 and has occupied the field of gold industry', as is

(1)[1954] S.C.R. 770.

A evident from reading s. 2 and item 1.B(2) of the First Schedule therein. This expression of Parliamentary intent to legislate upon the gold industry is enough to expel from that field the State Legislature. This is Shri Nariman's contention. But what is the sequitur? Assuming the appropriation by Parliament of the power to legislate on gold, what follows? It can make laws directly on that industry and ancillarily on every allied area where effective exercise of the B parliamentary power necessitates it. So much so 'business in gold', licensing of gold merchants, regulation of making or pledging of gold ornaments, keeping of jewellery, disclosure of gold possessions and the like are incidental to the parliamentary power and purpose and the Gold Control Act, 1968 and the Rules made thereunder are valid (vide, for example, *Bantha's Case* : 1970 I SCR 479). Several sections of the Act, some rules and a few rulings were read before us to C drive home the point that gold loans are already within the ken of the law made under Entry 52, List I. If so, what? Does it spell death sentence on the Debt Act? Or maim it? Or leave it intact?

Here we turn to Entry 24 of List II which runs : "Industries subject to the provisions of entries 7 and 52 of List I". This means that the State Legislature loses its power to make laws regarding D 'gold industry since Entry 24'. List II is expressly subject to the provisions of Entry 52 of List I. This does not mean that other entries in the State List become impotent even regarding 'gold'. The State Legislature can make laws regarding money-lending even where gold is involved under Entry 30, List II, even as it can regulate 'gambling in gold' under Entry 34, impose sales tax on gold E sales under Entry 54, regulate by municipal law under Entry 5 and by trade restrictions under Entry 26, the type of buildings for gold shops and the kind of receipts for purchase or sale of precious metal. To multiply instances is easy, but the core of the matter is that where under its this power Parliament has made a law which over-rides an entry in the State List, that area is abstracted from the State List. Nothing more.

F

In the *Kannan Devan Mills Case*(1) this Court put the point tersely while dealing with Entry 52 of the Union List :

> "Once it is declared by Parliament by law to be expedient in the public interest to control the industry, Parliament can legislate on that particular industry and the States G would lose their power to legislate on that industry. *But this would not prevent the States from legislating on subjects other than that particular industry*". (underscoring, ours).

This is authority for the proposition that while Entry 23 of List II, in the light of the fact that under Entry 52 of List I Parliament H has made the Gold Control Act has become inoperative to legislate on industry, there is no inhibition whatever on State legislation on

(1) [1973] 1 S.C.R. 356.

subjects other than that particular industry. Money-lending is one such subject and the power to legislate thereon remains intact. A

We are free to agree that the word 'industry' as a legislative topic has to be interpreted in the widest amplitude. We also find, as a fact, that dealings in gold, including pledging, have been covered in part by the Gold Control Act, 1968; even so nothing prevents the State from making the impugned Act. In *Paresh Chandra Chatterjee*(1) Subba Rao J (as he then was) dealt with an apparent conflict beween the Central Act (The Tea Act) and a State legislation [The Assam Land (Requisition and Acquisition) Act, 1948]. After examining the scheme of the two laws, the learned Judge concluded : B

> "A comparative study of both the Acts makes it clear that the two Acts deal with different matters and were passed for different purposes." C

Unreal and imaginary conflicts between the Central and the State Acts cannot be the foundation for invalidation of the latter.

In *Kanan Devan* (Supra) it was further pointed out :

> "If the Act (the Tea Act) is within the competence of Parliament and the impugned Act is within the competence of the State, the petitioners must show that the impugned Act is repugnant to the Tea Act but we can see no conflict between the provisions of the impugned Act and the Tea Act." D

*Banthia*(2) was referred to in the course of the arguments and various passages were stressed by different counsel. The essential question there was as to whether manufacture of gold ornaments by goldsmiths fell within the connotation of the word 'industry'. It did. It was further pointed out by Ramaswami J in that case that some of the entries overlap and seem to be in direct conflict but the duty of the Court is to reconcile and harmonize while giving the widest amplitude to the language of the Entries. We see nothing in that decision which contradicts the position that while the Gold Control Act fell within Entry 52 of List I, the State List was not totally suspended for that reason for purposes of legislating on subjects which fell within that List, but incidentally referred also to gold transactions. Nobody disputes the paramountcy of parliamentary power. We have to reconcile the paramountcy principle with the 'trenching' doctrine. E F

In the Canadian Constitution, the question of conflict and coincidence in the domain in which provincial and dominion legislation overlap has been considered. If both may overlap and co-exist without conflict, neither legislation is *ultra vires*. But if there is confrontation and conflict the question of paramountcy and occupied field may crop up. It has been held that the rule as to predominance of dominion legislation can only be invoked in case of absolutely conflicting legislation in *pari materia* when it will be an impossibility to give effect to both G H

(1) [1961] 3 S.C.R. 88.

(2) [1970] 1 S.C.R. 479.

A the dominion and provincial enactments. There must be a real conflict between the two Acts i.e. the two enactments must come into collision. The doctrine of Dominion paramountcy does not operate merely because the Dominion has legislated on the same subject matter. The doctrine of 'occupied field' applies only where there is a clash between Dominion Legislatic : and Provincial Legislation within an B area common to both. Where both can co-exist peacefully, both reap their respective harvests (Please see; Canadian Constitutional Law by Laskin—pp. 52-54, 1951 Edn).

We may sum up the legal position to the extent necessary for our case. Where Parliament has made a law under Entry 52 of List I and in the course of it framed incidental provisions affecting gold C loans and money-lending business involving gold ornaments, the State, making a law on a different topic but covering in part the same area of gold loans', must not go into irreconcilable conflicts. Of course, if Art. 254(2) can be invoked—We will presently examine it—then the State law may still prevail since the assent of the President has been obtained for the Debt Act. Thirdly, the doctrine of 'occupied field' does not totally deprive the State Legislature from making any law D incidentally referable to gold. In the event of a plain conflict, the State law must step down unless, as pointed out earlier in the previous passage, Art. 254(2) comes to the rescue.

Many more decisions were brought to our notice bearing on paramountcy, 'occupied field,' repugnancy and inconsistency. They were elaborated by counsel sufficiently to convince us that lawyer's E law is divorced from plain semantics and common understanding of Constitutional provisions becomes a casualty when doctrinal complexities are injected. May be every profession has a vested interest in the learned art of incomprehensibility for the laity. Law, in the administration of which the Bench and the Bar are partners, probably lives up to this reputation.

F All these questions become academic for two reasons. Firstly, there is no conflict between the Gold Control Act and the Debt Act. Secondly, the subjects of both the legislations can be traced to the Concurrent List and Art. 254(2) validates within the State the operation of the Debt Act.

We are of the view, as earlier discussed, and without citing further G cases on the point, that the State's legislative power, save under the Entry 24 of List II, is not denuded. Nor is there any conflict between the two Acts. A detailed study, section by section, of both the legislations, has convinced us that they can stand together and that the two authorities and modalities do not contradict each other and that, by elementary comity, a *modus vivendi* between the Gold Act and the Debt Act can be worked out. The provisions in the H Gold Act for declarations and other formalities may not collide with the obligations and applications under the Debt Act. We have no doubt that the authorities charged with enforcement under the two statutes will understand the sense and spirit of the provisions and

see that the object of the Debt Act is not frustrated or its processes paralysed. Indeed, the learned Attorney General showed how by reading to gether the two Acts and remembering their respective purposes a viable resolution of possible imbroglios is simple, although officialdom is not unfamiliar with the art of embroilment where artless customers are involved or ulterior ends are to be served. The State, through an effective programme of legal aid and advice and other prompt instructions to the agencies involved, should avoid harassments, hold-ups and red-tapes which are the bane of processual justice. The jurisprudence of remedies is still a Cinderella of our system. The Advocate General of Maharashtra assured the Court that in the fair enforcement of the law and the follow-up of creating alternative credit agencies his client will take quick and impartial care.

The learned Attorney General, it may be mentioned before winding up this part of the discussion, did draw our attention to Art. 254(2) which is self-explanatory. The State law will prevail in the State, even if there be repugnancy with a Central or existing law, given Presidential assent—provided both the legislations fall under the Concurrent List. Do they? He says, yes; and points, *inter alia*, to Entry 6 (transfer of property) and Entry 7 (contracts). Of course, the law of contracts deals with pledges; so does the Gold Control Act. The latter does not prohibit pawns where gold is involved, but policies it to prevent evils by prescribing special modalities. The Debt Act relates to contracts and has fulfilled the requirement in Art. 254(2).

We have nearly come to the end of the judicatory journey and have reached the constitutional conclusion that the guarantee that Trade and Commerce and Intercourse shall be free does not necessitate that the little lendee shall remain unfree. Article 301 does permit, in our view, legislative action to break agrarian indebtedness and urban usurious bondage lest social disorder disruptive of Trade, break out.

The impugned Act is a partial implementation of the economic thesis of Adam Smith when he wrote, two hundred obsolescent years ago :

> "No society can surely be flourishing and happy, of which by far the greater part of the numbers are poor and miserable."

We are in a Republic with social justice as its indelible signature. And the measure under challenge promotes social justice, social order and better conditions for the business of healthy money lending.

The appalling indebtness which cripples our people is an unhappy heritage of our economic system. The bonded yesterday, the yoke of today, and the hope of tomorrow obligate the State to spell out the future tense of the rural human order and to focus on the legislative strategies of alleviation before the backlash of social confusion begins, and to administer, through working mechanisms, and direct,

through social cybernetics, our disenchanted society into fresh formulations of a free future. Without such governmental measures of rural regeneration even the good moneylenders may have to fold up and the better businessmen wind up. The larger interests of Trade, Commerce and Intercourse whose freedom is a constitutional norm demand that social order shall be preserved through legislative methodology, now radical, now reformatory but always motivated and moderated by the felt necessities of the times. To come to humane terms with harsh realities by subjecting itself to the reasonable, though unpalatable, regulations of the Debt Act and like measures or to face the adaptational breakdown where law may fail to keep order against those who have nothing to lose except their chains—this is the sort of sociological Hobson's choice before the 'money-lenders' of Maharashtra.* The option is obviously the former and that is the constitutional vindication of the impugned legislation. All these laws, in themselves marginal, are part of the programschrift for a New Deal which is the cornerstone of the Constitution.

We have been addressed many minor criticisms which have chopped little logic and made out small discriminations but serious constitutional decisions go on major considerations, not gossamer-web flimsiness. We have listened to these meticulous submissions but are not persuaded that we should even mention them in our longish judgment.

A concluding caveat. The poignant purpose of ending exploitative rural-urban lending to the weaker members of society is the validating virtue of this legislation, viewed from the constitutional angle. But, as Shri Nariman at some stage mentioned—and the learned Attorney General also concurred—mere farewell to existing debts is prone to prove a teasing illusion or promise of unreality unless the Administration fills the credit gap by an easy, accessible and need-based network of humane credit agencies, coupled with employment opportunities for the small man. The experience of the past has not inspired adequate confidence. Authoritative official pronouncement, however, owns that

> "Arrangements so far made to give credit and inputs (for rural credit) have had only limited impact. The problem is a vast one and seems to be growing in size. Rural banks, credit societies, farmers' service societies—all these have to be strengthened and their activities expanded. To give purposeful direction to this task and to ensure that the interests of agriculturists and farmers, especially the small farmer, are looked after, there is need for an Apex Agricultural Development Bank in India."

The legislation we uphold is an added responsibility on the State. it shall be vigorously enforced with sympathy for the victim class, lest the progressive measure prove a paper tiger. The cadres charged with enforcement must have right orientation correct grasp and social activism, if this law is not to leave a yawning implementation

gap. Heroics in court and hortation in the House must be followed by effective enforcement in the field. We state this not because the State is not in great earnest—it is—but because many a welfare legislation in the country reportedly remains a cloistered virtue or slumbrous in effect. The finest hour of the rule of law is when law disciplines life and matches promise with performance. On this note of hopeful valediction we wind up. A B

We dismiss the appeals and the writ petitions, leaving the parties to bear their costs, although we had at least on one occasion, sufficient provocation to make a different direction.

P.H.P. *Appeals dismissed*