



**LAW COMMISSION OF INDIA**

**SIXTY THIRD REPORT**

**ON**

**THE INTEREST ACT, 1839**

February, 1975

**GOVERNMENT OF INDIA**

**Ministry of Law, Justice and Company Affairs**

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D. O. No. F. 2(5)/74-L.C.  
SHASTRI BHAVAN,  
NEW DELHI-110001.  
February 21, 1975.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Sixty-third Report of the Law Commission on the Interest Act, 1839 (Act 32 of 1839 passed on the 30th December, 1839).

The Act is very short one; besides a preamble, it contains only one section and a proviso. However, it is a statute of importance since it prescribes the general law of interest which becomes applicable in the absence of contractual or statutory provisions specifically dealing with the subject.

I would like to add that almost every phrase used in the Act has given rise to problems of interpretation and judicial decisions disclose divergence of views in respect of the same.

Besides, the Act is very old and the Commission thought it required reconsideration from the point of view both of substance and of form, that is why, the Commission took up the task of revising the Act *suo motu*.

The Report of the Commission will show that the various recommendations made by us seek to bring about a total revision of the Act, and to make its provisions comprehensive, these recommendations will, it is hoped make the provisions of the Act more precise, specific, unambiguous and juristically satisfactory.

The Commission takes the view that it is necessary that the Act of general importance should be a self-contained statute, containing in one place, in an easily intelligible form the relevant provisions which, at present, the ordinary citizen has to gather from numerous judicial pronouncements. This, in substance, is the approach which the Commission has adopted in making its Report.

As usual, after a preliminary study of the subject, a Draft was prepared by Mr. P. M. Bakshi, Member-Secretary. This Draft was carefully examined, revised and finalised in accordance with the conclusions reached by the Commission. That is how the report has taken its present form.

I may incidentally, mention that this is the Second Report of the present Commission since it was reconstituted on the 1st of October, 1974.

With warm regards,

Your sincerely  
Sd/  
(P. B. GAJENDRAGADKAR)

Hon'ble Shri H. R. GOKHALE,  
Minister of Law, Justice and Co. Affairs,  
Government of India, New Delhi.  
Encl : As above.

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## CHAPTER 1

### INTRODUCTORY

1.1. Revision of the Interest Act, 1839 (hereinafter referred to as the Act), which forms the subject-matter of this Report, has been taken up by the Law Commission *suo motu* as a part of its function of revising Central Acts of general application and importance. Though the Act is a short one, it is a legislative measure not only of importance but also of some difficulty, as will be shown by the discussion that follows in the succeeding chapters of this Report.

Genesis of the Report.

1.2. The Act does not contain all the Laws on interest. In 1855, for example, the laws against usury were repealed by a Central Act.<sup>1</sup> In 1918, by another Central Act,<sup>2</sup> certain usurious transactions were regulated. There are provisions in other laws relevant to the charge of interest in respect of transactions dealt with by those laws. Interest from the date of the suit is governed by section 34 of the Code of Civil Procedure, 1908, on which we have made a separate Report<sup>3</sup> dealing with that section.

Other laws.

Then, there are Acts in force in various States, providing for the relief of agricultural indebtedness or regulating the business of money lending. It is unnecessary for the purposes of this Report to discuss the provisions relating to interest in the various laws referred to in this paragraph. It is sufficient to state that by and large, most questions relating to interest before the date of the suit involve, directly or indirectly, a reference to, and sometimes a minute examination of, the Act. It is, therefore, impossible to make a comprehensive statement with regard to the law relating to interest as applicable to various situations without a look at the Act.

1.2A. The rule of English law<sup>4</sup> is that interest is not due on money secured even "by a written instrument, unless it appears on the face of the instrument that interest was intended to be paid, or unless it be implied from the usage of trade, in the case of mercantile instruments."

Rule of English law.

At common law, interest was not payable on ordinary debts, except by agreement or by mercantile usage, nor could damages be given for non-payment of such debt.<sup>5</sup>

1.3. It is of some interest to note that the Indian Act, enacted in 1839, followed closely on the heels of the Civil Procedure Act, 1833, which was enacted in England and which, to a large extent, relaxed the prohibition against the grant of interest which had been the general view at common law in England. When, in 1854, the usury laws were themselves formally repealed in England, the Indian Legislature also followed suit, by repealing the usury laws<sup>6</sup> in 1855. Of course, the prohibition against usury was not, in practice, enforced in courts in England even before the formal repeal by the Act of 1854.<sup>7</sup>

Indian and English legislation in the 19th century.

1.4. It will be apparent from the detailed discussion<sup>8</sup> of section 1 that follows later in this Report, that the Act keeps the right to interest within narrow limits. One reason for this approach is historical.<sup>9</sup> It can also be thought that the right

Narrow limits.

<sup>1</sup> The Usury Laws Repeal Act, 1855.

<sup>2</sup> The Usurious Law Act, 1918.

<sup>3</sup> 55th Report of the Law Commission (section 34, C.P.C.).

<sup>4</sup> *Page v. Newman*, (1829) 9 B & C. 378, 381; R. R. 204, 206 and the English authorities reviewed by Lord Herschell *L.C. & D.R. Co. v. S.E.R. Co.* (1893) A.C. 429, 437.

<sup>5</sup> *L.C. & D.R. Co. v. S.E.R. Co.* (1829) 1 Ch. 120, 140 (Lindley L.J.) approved, on appeal, *L.C. & D.R. Co. S.E.R. Co.* (1893) A.C. 429 (H.L.).

<sup>6</sup> *Usury Laws Repeal Act, 1855.*

<sup>7</sup> See Stephen, *History of English Criminal Laws* Vol. 3, page 198.

<sup>8</sup> See Chapter 3, *Infra.*

<sup>9</sup> See discussion relating to usury; Chapter 2, *Infra.*

to claim interest was kept within narrow limits in order to induce the creditor to take a prompt action to file a suit. It is well-known that once a suit is instituted,<sup>1</sup> the discretion of the court to award interest is wider than that conferred by the Interest Act.

## CHAPTER 2

### HISTORY OF INTEREST AND USURY

The concept of interest.

2.1. Before we discuss the law on the subject, it is desirable to make certain general observations about the concept of interest and its relationship to usury.

Interest is a return on a loan or other monetary obligation. To the lender, it is the difference between the money now and money in the future, seen as a profit.

Interest is,<sup>2</sup> in general terms, the return or consideration or compensation for the use or retention by one person of a sum of money, belonging to, in a colloquial sense, or owed to, another. There may be other essential characteristics of interest, but they are not material here for our present purpose.

People have different preference as between money now and money in the future. Hence a "natural" rate of interest on loan arises. Ordinarily, the lender will take advantage of the present necessity of the borrower, in contrast with the future need of the lender, to take a higher rate than is reasonable; and this he will do *regardless of the prevailing economic conditions*.<sup>3</sup>

Market rate and agreed rate.

2.2. The market rate of interest may not be necessarily the same as that which is agreed upon between an individual lender and borrower. As has been stated by a writer<sup>4</sup> on the subject :

"The market rate of interest, as economists now commonly agree, is determined by conditions of time preference<sup>5</sup> investment opportunity, and liquidity preference." This rate expresses the common estimate of buyers and sellers of the price of loanable funds, or the present exchange ratios of funds available at different points of time .....

After stating that the market rate is determined by competitive conditions, he says,

"The competitive conditions assumed above apply particularly to the money and capital markets. The assumption is likely to be less realistic in loans for consumption. Here the danger of usury in the modern sense is greatest. Yet, in this instance, interest payments will include, in addition to pure interest, charges to cover operating costs and risks of non-repayment. In the field of small money lending, some protection to borrowers against usurious rates is afforded by both federal and State legislation in the United States and similar laws in other countries."

Justifications for charging interest—money as productive of income.

2.3. In economic theory, the justifications of interest are many. One writer<sup>6</sup> has thus analysed the position :

"The first formal, theoretical justification of interest was a demonstration that the use of money could be productive of income. Although fragmentary indications were prevalent in earlier writings, the productivity approach

<sup>1</sup> Section 34, Code of Civil Procedure, 1908.

<sup>2</sup> Reference regarding Validity of Farm Security Act, (1947) S.C.R. 394, 411 (Canada).

<sup>3</sup> See Dr. Francis Hyde, Chaddock Professor of Economics, Science, University of Liverpool—article on "Usury" in Chambers Encyclopaedia, (1959), Vol. 14, p. 213.

<sup>4</sup> Thomas F. Divine, Professor of Economics, St. Louis University, in Encyclopaedia Americana, Vol. 27, page 825, article on "Usury".

<sup>5</sup> See para 2.4, *infra*.

<sup>6</sup> Para 2.5, *infra*.

<sup>7</sup> William Kinnard Jr. (University of Connecticut), Article on "Interest", in Encyclopaedia Americana, Vol. 15, page 191.

to interest theory really developed with Adam Smith (1723-1790). Despite many variations, the basic thesis is that money will be borrowed and interest paid, so long as the return that can be earned on the borrowed funds exceeds the interest rate. Interest was, therefore, paid because income could be derived from the use of money."

2.4. Another economic justification for interest—the theory of "time preference"—has been explained by the same writer<sup>1</sup> in these words:

"The supply side of interest rate theory was first treated systematically by Eugen Bohm—Bewerk in the 1880's. His was a time preference, or abstinence theory. According to it, the worth of a sum of money presently held is greater than the worth of the same sum payable at some time in the future. The preference of the lender for money to use now over money promised in the future causes him to require some premium."

2.5. Modern economic analysis has added variations to these basic approaches.<sup>2</sup> John Maynard Keynes (1883-1946), for example, has argued that interest stems directly from the supply of and demand for money itself, rather than the use of money. His theme is that "liquidity" is the unique characteristic of money, and he called the demand for money to hold "liquidity preference".

Variations on above approaches.

The concept of "liquidity of money" has been developed by an English economist.<sup>3</sup>

"To develop a more refined theory the notion of liquidity preference, measured by the reward required to induce owners of wealth to hold assets other than money, must be broken up into a number of aspects. Amongst the disadvantages of various kinds of assets compared to money we may distinguish:

1. *Liquidity in the narrow sense.* Liquidity partly consists in the capacity of an asset to be realised in money. A limited and imperfect market, the cost and trouble of making a sale, and the time required to effect it, reduce the liquidity of an asset quite apart from variability in its price. Liquidity in the narrow sense depends upon the power to realise its value in cash, whatever the value may be at the moment. To avoid confusion with Keynes' language we will call this quality "convenience" instead of "liquidity".
2. *Uncertainty of future capital value or capital—uncertainty* for short, due not to any fear of failure by the borrower, but to the possibility of changes in capital values owing to changes in the ruling rate of interest. (This is the main ingredient in Keynes' conception of liquidity preference. He regards the rate of interest primarily as a premium against the possible loss of capital if an asset has to be realised before its redemption date).
3. *Lender's risk*, this is, the fear of partial or total failure of the borrower. Further, when comparing long term bonds with other paper assets, we have to add one more factor:
4. *Uncertainty as to the income* that a sum of money now committed to the asset will yield in the future, or *income uncertainty*, (for short)."

It was not, however, without long controversy that the economic justification for charging interest came to be accepted.

2.6. In this context, the long controversy surrounding usury and the usury laws is of historic and economic interest. The primary object of usury laws is to prevent the exploitation by the lender<sup>4</sup> of the need of the individual borrower, as seen in contrast with prevailing conditions.

<sup>1</sup> William Kinnard Jr. (University of Connecticut), Article on "Interest", In Encyclopaedia Americana, Vol. 15, page 191.

<sup>2</sup> William Kinnard Jr. (University of Connecticut) Article on "Interest", in Encyclopaedia Americana, Vol. 15, Page 191.

<sup>3</sup> John Rebinson, The Rate of Interest and other essays (Macmillan, London, 1952), page 6.

<sup>4</sup> See para 2.2, *supra*.

"Usury" is the charging of interest *in excess of that allowed by law* for a loan of money or for the extension of the maturity of a debt. In early English law, usury meant compensation for the use of money regardless of amount. But the above is the present understanding. In the *Encyclopaedia Britannica*,<sup>1</sup> it is stated: —

"The laws against usury are of ancient origin. Early laws of China and India prohibited usury. The Mosaic law limited the exaction of interest; the Roman law prescribed or regulated such charges. In England, during the middle ages the practice of charging interest was maligned by the church and outlawed by the State. But the credit requirements of modern commerce caused removal of these restrictions in England and elsewhere.

"While the exaction of oppressive interest is not illegal under the common law of England or the United States, a public policy which protects debtors from over-reaching lenders has been implemented by the statute law of both countries. In England, the Money-lenders Acts of 1900 and 1927 constituted a code providing for registration of money-lenders, governing the form of their contracts, limiting rates of interest and providing for the reopening by the court of money-lending transactions."

Hammurabi Code  
and Roman law.

2.7. The Hammurabi Code of ancient Babylon<sup>2</sup> contained a law limiting interest on loans of corn or silver.<sup>3</sup>

Usury was an offence in Roman law, and, according to the 12 Tables,<sup>4</sup> "The Interest on money is 8½ per cent per annum. A Usurer who lends at a higher rate of interest, is punishable." The maximum rate of interest under the late Republic and early Roman Empire was set at twelve per cent.<sup>5</sup> A lender who exacted a higher interest rate could be sued for four times the amount exceeding the legal rate. Justinian later reduced the rate to 6% generally, but permitted merchants to collect 8 per cent, and persons of higher social position only 4 per cent. He also abolished the fourfold penalty.

The Code of Jewish law<sup>6</sup> contained extensive provisions outlawing any interest, which apparently carried over into early Christian Europe.

Origin of the prohibition  
against usury.

2.8. The modern European experience with usury has its roots in the time of Charlemagne, when the prohibition against taking interest was directed primarily at clerics, apparently because collecting interest showed greed, or at least a lack of charity.<sup>7</sup> The prescription against charging interest was gradually extended to laymen, and the whole concept of usury as a lack of charity was transformed into the idea that interest was a moral injustice similar to theft. There is considerable disagreement as to why this development occurred, but, since the type of borrowing then most prevalent involved loans from a large landowner to a small farmer of a sum for day-to-day expenses, and since a lender could seize a borrower's property when the borrower defaulted on a loan, one principal reason for the wider ban may have been to decelerate further consolidation of land-holdings.<sup>8</sup>

The Scholastic philosophers, working on the foundations of (i) patristic teachings, (ii) the classification of voluntary contracts in Roman law, and (iii) the Aristotelian concept of the sterility of money, undertook to construct an

<sup>1</sup> *Encyclopaedia Britannica*, Vol. 22, page 908.

<sup>2</sup> Driver & Mills, *The Babylonian Laws*; Legal Commentary (1956) page 173, cited in Note on 'Usury', in 18 *Stanford Law Review* at page 1381.

<sup>3</sup> For the text of the Babylonian law, see Driver & Mills, *The Babylonian Laws: text and Translation* (1955) page 39.

<sup>4</sup> 6th Table, item 18; Stephen, *History of Criminal Law*, Vol. 1, page 10.

<sup>5</sup> Berger, *Encyclopaedic Dictionary of Roman Law* (1953), pages 469, 954, cited in note on 'Usury' in 18 *Stanford Law Rev.* p. 1381.

<sup>6</sup> Canafried & Goldin, *Code of Jewish Law* (1963), Vol. 2 Ch. 65, page 41, cited in the Note on "Usury" 18 *Stanford Law Rev.* page 1301.

<sup>7</sup> Noonan, *The Scholastic Analysis of Usury*, (1957), pages 14—17, cited in Note on Usury, 18 *Stanford Law Rev.* at page 1382.

<sup>8</sup> Noonan, *The Scholastic Analysis of Usury*, (1957), pages 14—17, cited in Note on Usury, 18 *Stanford Law Rev.* at page 1382.

analysis of interest that would apply to all debtor-creditor relationships. Goods were classified as fungible (perishable or generic), and non-fungible (durable or specific). To demand payment for the use of non-fungible goods (for example, a horse or a house) in addition to its return, was considered justifiable.<sup>1</sup> But, to charge for the use of a fungible goods (for example, bread, grain, or wine), in addition to the return of an equivalent, was declared to be a violation of justice, a charge for something that does not exist, since the use of the goods consists of its consumption or destruction. Money was classified as a fungible goods because, once it is exchanged for other goods, its use is accomplished and it ceases to exist for the borrower.

"Therefore", concluded Thomas Aquinas, "it is in itself illicit to accept a price for the use of money loaned, which is called usury."<sup>2</sup>

2.9. Yet, though interest was condemned on the basis of the intrinsic nature of the loan, it was allowed if certain extrinsic circumstances existed which gave the lender a title to compensation for loss or danger of loss. With the growth of industry and commerce and the expansion of loans for investment, the Scholastic philosophers became more and more lenient in justifying interest on the basis of these titles, such as loss incurred from delay in repayment of the loan (*damnum emergens*), or sacrifice of profit that might have been earned had the principal been invested rather than loaned (*lucrum cessante*), or risk of loss of the money loaned (*periculum sortis*) as in the case of such venture-some lending as a "loan on bottomry".

Extrinsic circumstances as justifying interest.

2.10. A second possible explanation for the broadened application of the prohibition against usury is that the mediaeval philosophers only saw examples of loan proceeds being spent on items necessary for immediate consumption, and, therefore, put forth the theory that money had no productive capability justifying the collection of interest. They distinguished interest from rent, since land had a capability to produce crops, and this entitled the lessor to exact rents, while money had no such capability.

St. Thomas Aquinas' integrated this theory into the natural law which was gaining popular acceptance at the time. It was largely due to his writings that the theory persisted for several centuries, until the commercial age and the Reformation combined to bring about its rejection.

2.11. In the mediaeval period, usury in all its forms was condemned by theorists as being contrary to scriptures and to the teachings of philosophy. But, in practice, the theorists agreed that it may be legitimate to receive payment for a loan of money where the lender undertook a part of the risk involved but not where the debt was unqualified by any share of the risk. When the structure of society grew more complex, it became evident that neither the Government nor commerce could be carried on without credit, and that there were some loans to which the overall prohibition of the usury laws on moral grounds could not apply.<sup>3</sup>

Mediaeval theory.

2.12. In practical application, therefore, the doctrine of usury had to be narrowed down to the prevention of exploitation by the money-lender. This is illustrated by an early English Act, which fixed the maximum rate of interest at 10 per cent per annum in certain cases, such as failure to pay by the specified time, as distinct from payment for the mere use of money. Subsequent legislation in England reduced the rate, and the matter evoked a lot of controversy amongst economists. Ultimately, John Locke<sup>4</sup> showed that any attempt to fix the maximum rate of interest was illusory. He pointed out that the demand for money regulates its price. He showed that a legal rate below the market rate would severely hamper trade, because people would then prefer to hoard that capital, rather than risk lending it.

Practical necessity of allowing interest to be charged.

<sup>1</sup>Thomas F. Divine, Professor of Economics, St. Louis University, in *Encyclopaedia Americana*, Vol. 27, page 824, article on "Usury".

<sup>2</sup>St. Thomas Aquinas, quoted by Thomas F. Divine in *Encyclopaedia Americana*, Vol. 27, page 824.

<sup>3</sup>Noonan, *The Scholastic Analysis of Usury* (1957), page 53, cited in Note on Usury, 18 *Stanford Law Rev.* at pp. 1382.

<sup>4</sup>Dr. Francis Hyde, in "Usury" in *Chambers Encyclopaedia*, (1959), Vol. 14, pages 213, 214.

<sup>5</sup>John Locke, "Considerations of the lowering of interest", (Works, 1801 Edition).



The controversy<sup>1</sup> between Bentham and Adam Smith on the subject of usury laws is also well-known. Adam Smith apparently accepted the usury laws, while Bentham demonstrated, from Adam Smith's own promises of natural freedom, that there could be no logical reason for the support of laws which so obviously restricted a man's freedom of action in the employment of his own capital.

According to the Code Napoleon, interest is either legal or contractual. The legal interest is fixed by law; the contractual interest may exceed the legal interest, whenever the law has not prohibited such excess.

Freedom to charge interest—a feature of modern system.

2.13. The above discussion would show that freedom to charge interest subject to the limit, if any, imposed by law, is the broad approach in most modern legal systems.

Brief history of position in England.

2.14. At this stage, a brief history of the position in England as shown by the case-law, would be useful. In *Eddowes v. Hopkins*<sup>2</sup>, Lord Mansfield, after stating that interest may be payable in consequence of the usage of particular branches of trade or a special agreement, added that interest may be payable "in cases of long delay under vexations and oppressive circumstances if a jury in their discretion shall think fit to allow." This statement of the law, it may be noted, is fairly wide, and though it emphasises the element of oppression, it does not contemplate any other limitations on the "discretion" of the jury.

Lord Ellenborough's view.

2.15. However, in a subsequent case—*De Havilland v. Bowerbank*,<sup>3</sup>—Lord Ellenborough laid down a somewhat different rule; he said that interest ought to be allowed only where there is a contract for payment on a day certain, as on bills of exchange<sup>4</sup>, where there is an express promise<sup>5</sup>, where it may be inferred from the course of dealing<sup>6</sup> and where the money has been actually used and interest made of it. This enunciation is much more limited than the doctrine laid down by Lord Mansfield.<sup>7</sup>

2.16. In 1893, Lord Herschell, in the House of Lords said<sup>8</sup> that, "Whatever might be said in regard to the older authorities upon the matter of interest, I am of opinion that the law laid down by Lord Tenterden in *Page v. Newman*<sup>9</sup>, to the effect that 'interest is not due on money secured by a written instrument, unless it appears on the face of the instrument that interest was intended to be paid, or unless it be implied from the usage of trade, as in the case of mercantile instruments, is not open to question'."

2.17. In England, the Civil Procedure Act, 1833—popularly known as Lord Tenterden's Act—was intended to make the law more liberal. In form, it gives the impression of a statute intended to narrow down the right; but, in reality, its object was to widen the power of the court. Of course, the Act did not go far enough. That is why, in 1934, a wider legislative provision was enacted.<sup>10</sup>

Before Lord Tenterden's Act, interest was payable at common law and in equity in certain cases only. The object of that Act was to make the law in regard to the granting of interest more liberal<sup>11</sup>, and not less liberal. To ensure this object, a proviso was added, leaving untouched those cases in which there

<sup>1</sup>Bentham. In Defence of Usury.

<sup>2</sup>*Eddowes v. Hopkins*, 1 Douglas, 376.

<sup>3</sup>*De Havilland v. Bowerbank*, cited in *London Chatham etc. Rly. Co. v. S. E. Rly.*, (1893) A.C. at page 438.

<sup>4</sup>*Arnott v. Reafer*, 3 Hong, 353.

<sup>5</sup>*Eddowes v. Hopkins*, 1 Douglas, 376.

<sup>6</sup>*Graven v. Tickell*, 1 Ves. Jun. 60.

<sup>7</sup>Para 2.14, *infra*.

<sup>8</sup>*L.C. and Dover Rly. Co. v. S.E. Rly. Co.* (1893) A.C. 439 (Lord Herschell).

<sup>9</sup>*Page v. Newman*, 9 B & C at p. 378, 381 (King's Bench presided over by Lord Tenterden, with Bayley Littledale and Parke JJ.).

<sup>10</sup>Para 2.20, *infra*.

<sup>11</sup>See the judgment of Lord Watson in *London Chatham & Dover Railway Co. v. South Eastern Railway Co.*, (1893) A.C. p. 429.

was already a right to interest when the Act was passed. It has been stated that the object of Lord Tenterden's Act was to put all debts of a fixed amount, and due on a fixed day, on the footing of a bill of exchange.<sup>1</sup>

2.18. Section 28 of the Act of 1833 (Lord Tenterden's Act) provided as follows:—

"28. Upon all debts or sums certain, payable at a certain time or otherwise, the jury on the trial of any issue..... may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law."

Section 29 of that Act provided as follows:—

"29. The jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damage in the nature of interest, over and above the value of the goods at the time of the conversion of seizure, in all actions of trover or trespass *de benis asportatis*, and over and above the money recoverable in all actions of policies of assurance made after the passing of this Act."

2.19. This finishes consideration of the English law as it stood before the Act was passed. In India, the position on the subject is not clearly discernible, for two reasons. The first reason is that the provisions on the subject of interest and usury are scattered, and the second reason is that the text of the principal legal provision<sup>2</sup> relating to interest, though grammatically complete, is not self-contained as regards the substance. This comment particularly applies to the proviso to section 1 of the Act.<sup>3</sup>

Obscurity of position in India.

2.20. It should be noted that, in England, in 1934, the law was made more liberal by the passing of section 3(1) of the Law Reform (Miscellaneous Provisions) Act, 1934, which extended the power of the Court to grant interest to any proceedings for the recovery of any debt or damages, and also dispensed with the requirement of a written agreement or written notice. We shall discuss this section in detail later.<sup>4</sup>

English Act of 1934.

2.21. To summarise what is stated above, the law in England, speaking chronologically, has undergone the following broad stages:—

Developments in England summarised.

- (i) Liberal view at common law.<sup>5</sup>
- (ii) Strict view at common law.<sup>6</sup>
- (iii) Statutory modification of the common law by the Act of 1833 (Lord Tenterden's Act), to a limited extent.
- (iv) Reluctance of the courts to construe the Act of 1833 liberally, accompanied, at the same time, with a criticism of its narrow scope.
- (v) Further liberal provision by statute, by the Act of 1934.
- (vi) Judicial construction of the Act of 1934.

<sup>1</sup>William Wills Q.C., in argument in *London Chatham etc. Railway Co. v. S.E. Railway Co.*, (1893) A.C. pp. 429, 432.

<sup>2</sup>The Interest Act, 1839, section 1.

<sup>3</sup>See Chapter 7, *infra*.

<sup>4</sup>See paragraph 5.2, *infra*.

<sup>5</sup>Compare Lord Mansfield's judgment.

<sup>6</sup>Compare Lord Ellenborough's judgment.

Meaning of "interest".

2.21A. Finally, it may be noted that the word "interest", is derived from the mediaeval Latin "interse" and "id quod interest", and signifies the notion of loss or damage suffered by the claimant as opposed to the usurious conception of reward for money lent—cf. the French phrase "dommages et interests".

Developments in India compared.

2.22. Having concluded this brief survey of developments in the West, we may state that developments in India stopped at stage No. (iv) above<sup>2</sup>, and have not kept pace with the statutory developments—stages (v) and (vi) above—represented by the English Act of 1934 and judicial construction thereof.

## CHAPTER 2A

### INTEREST IN HINDU LAW AND MUSLIM LAW

Introductory.

2A.1. The law relating to interest in ancient India seems to have attained an admirably high degree of sophistication and development. The law on the subject not only reveals that there must have been subtle discussions, but also contains rules which would do credit to any legal system.

Three outstanding features.

2A.2. Three features stand out on a close examination of the content of the rules—

- (a) the gradual evolution of the law from a strict attitude towards interest to a liberal one in the course of time ;
- (b) the standard of sophistication of the rules ;
- (c) the reasonableness of the content of the rules.

Gradual evolution.

2A.3. That the law gradually progressed from a strict attitude towards the charging of interest to a more liberal one, can be illustrated by stating that some of the earlier writers<sup>3</sup>—such as, Vasistha—not only provided strict rules as to the maximum rate of interest, but also mentioned that some writers had stated that the above rate of interest should not be paid for more than a year. In later works, however, such a strict emphasis on restrictions as to interest is missing.

Sophistication.

2A.4. The standard of sophistication of the rules on the subject is also illustrated by various provisions on matters of detail, for example, provisions prohibiting interest when the loan was secured by a pledge, rules dealing with various kinds of special interest, such as compound interest and daily interest, and similar other refinements.

Damdupat.

2A.5. The Hindu law rule of "Damdupat" is well-known, and it may be stated that this rule is of very ancient origin, having been mentioned by most writers of Smritis.<sup>4</sup> It may, for example, be of interest to note that Vasistha<sup>5</sup> lays down the rule that in principle the lender of a sum of money cannot demand a total of interest higher than the amount of principal lent: "For gold, double ; for cereals, triple (the amount of the loan)".

Content of the rules.

2A.6. The content of the rules is of interest. A few salient features may be referred to. Take, for example, the question of rate of interest.

Rate of interest.

2A.7. Leaving out of consideration the case of pledge, we find that ordinarily the rate of interest was fixed by law ; The rate varied according to the amount of risk incurred by the creditor<sup>6</sup> ; thus, an unsecured debt carried a

<sup>1</sup>Westminster Bank Ltd., v. Riche, (1946) 1 All E.R. pp. 466, 472.

<sup>2</sup>Para 2 24, supra.

<sup>3</sup>Vasisthan even condemned extortion of interest. P. N. Sen, Hindu Jurisprudence (1918), page 306.

<sup>4</sup>Gautama, XII, 31; Manu, VIII, 51 ; Yaajnavalkya, II 39; Vishnu, VI, II, 17.

<sup>5</sup>See Ganga Nath Jha, Hindu Law in its Sources, Vol. 1, Ch. 5, for the Texts.

<sup>6</sup>Vasistha, II, 441.

<sup>7</sup>P. N. Sen, Hindu Jurisprudence, (1918), page 307.

higher rate of interest than a secured debt; moreover, the rate of interest also varied according to the caste of the debtor; one belonging to a higher caste being liable to pay at a lower rate than one belonging to a lower caste. Incidentally, we may add that this was due to the values based on the hierarchy which was then a part of the social structure.

Then, again, when the lending of the debt involved an exceptional risk,—as for instance, where the debtor intended to undertake a journey through a forest, or a sea-voyage after taking the loan, the creditor was considered entitled to claim interest at a higher rate than was ordinarily allowed, in consideration of his incurring the risk of losing even the principal itself.

The maximum rates are variously expressed by the various writers, and it is not necessary to go into details.

2A.8. Interest, where expressly stipulated, was of course, permissible, subject to a legal maximum. What is remarkable is that the Hindu Law allowed the creditor to charge interest under certain circumstances even in the absence of a definite contract in that respect.

Interest in absence of express stipulations.

Interest does run where there is an agreement. But, even in the absence of an agreement, when a debt is demanded and is not paid, interest accrues from the date of demand. In friendly loans, in the absence of an agreement, no interest was chargeable. With this rule, we may compare Antonio's retort to Shylock:

"For when did friendship take, A breed for barren metal of his friend."

But such a friendly loan was presumed to be for 6 months only<sup>2</sup>.

2A.9. Vishnu<sup>3</sup> laid down that when a person took a loan without interest, promising to repay it within a definite period, but did not fulfil that promise within the limited time out of avarice, then the debt would carry interest from after the expiry of that period. Even where there was no definite period of repayment fixed by the contract, after the expiry of a specified interval (six months according to Narada<sup>4</sup>, and a year according to Vishnu<sup>5</sup>), the creditor could charge interest at the legal rate. According to Katyayana, however, interest should not run until there had been a previous demand.

Vishnu and Narada.

It would thus seem that where there is no contract for the payment of interest but there is a fixed period within which the loan is promised to be repaid, the loan will carry interest after the expiry of that period without payment; this much is perfectly clear. Some doubts exist in regard to the question if the creditor becomes entitled to claim interest when there is neither any contract to pay interest, nor any fixed period for repayment.

2A.10. Certain texts lay down that interest should run after the expiry of certain stated intervals in such cases. On the other hand, the text of Katyayana<sup>6</sup> suggests that interest should run on the failure of the debtor to pay on demand, whenever that demand may be made.

Starting point.

2A.11. The text of Katyayana (which is the last portion of a larger text<sup>7</sup>), deals with three classes of debtors—

Katyayana.

- (1) a debtor who goes abroad without repaying his debt;
- (2) a debtor who goes abroad after demand of repayment made by his creditor; and
- (3) a debtor who resides in his own country and yet does not pay after demand.

<sup>1</sup>Merchant of Venice, Act, I, Scene 3, line 128.

<sup>2</sup>Narada I. 108—109.

<sup>3</sup>Vishnu. For Sanskrit text, see P. N. Sen, Hindu Jurisprudence (1918), page 406.

<sup>4</sup>Narada I. 108.

<sup>5</sup>Vishnu.

<sup>6</sup>Katyayana referred to separately.

<sup>7</sup>See (a) V. N. Manlik, Hindu Law or Vyavhar Mayukh, page 103, lines 11 to 20.

(b) Stokes, Hindu Law Books, pages, 111-112.

Katyayana here provides for cases where a debtor has taken a loan called *Yachitika* (payable on demand), and goes abroad before a demand is made, (there being no contract for payment of interest). In such cases, interest will run after the expiry of a year, and where a demand has been made before the debtor's departure, the debtor is allowed a free grace of three months whereafter interest begins to run.

In the case of the first class, interest runs after a year; in the case of the second, interest runs after three months; in the case of the third<sup>1</sup>, interest, literally, according to the text, begins to run "from that time".<sup>2</sup>

Vijnaneshwara.

**2A.12.** On the authority of these texts of Narada and Katyayana, Vijnaneshwara, the author of the *Mitakshara*, had deduced the rule that in cases of absence of a stipulation for interest, interest will be payable from the date of demand.<sup>3</sup> The gloss of Vijnaneshwara, which is material for the point now under discussion, is as follows:

"Again, as to him, who, even residing in his own country, does not pay the debt, though it has been demanded, the King shall cause interest to be paid by him from the date of demand<sup>4</sup>."

Admissibility of interest.

**2A.13.** In short<sup>5</sup>, (1) a person who goes abroad to a different country without returning what he has borrowed shall be liable to pay interest after the expiry of one year; (2) if he does so after the lender has demanded the return of the loan, it will carry interest after the expiry of three months; and (3) when the borrower does not leave the country, but still fails to return the loan upon demand, he shall be made to pay interest although there is no contract for it, from after the date of such demand.

Legal interregnum on death of King.

**2A.14.** Vasistha's rule of "legal interregnum" is also interesting<sup>6</sup>, enunciating as it does, a remarkable doctrine.<sup>7</sup> When the king died, the running of interest ceased until the coronation of the new king<sup>8</sup>. All official and legal transactions were dated in regnal years of the ruling king, counted from his coronation. With this we are familiar from Ashoka's inscriptions as well as documents in Sanskrit. The period between the two points of time—the death of the ruling king and his successor's coronation—was a legal interregnum. It was non-existent in the eye of the law, and no interest, therefore, argued Vasistha, was to be counted for the period. This doctrine is not, however, found in the two Codes of Manu and Yajnavalkya, or in the Codes subsequent to them. Jayaswal says<sup>9</sup>—"It seems that the doctrine never found approval with practical legislators."

**2A.15.** The position under Muslim Law is of interest. In the Dictionary of Islam, T.P. Hughes<sup>10</sup> deals with usury as follows:—

Muslim law as to usury.

"*Usury* Arabic *RIBA*. A word which, like the Hebrew *neshek*, includes all gains upon loans, whether from the loans of money, or goods or property of any kind. In the Mosaic law, conditions of gain for the loan of money or goods, were rigorously prohibited: 'If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury<sup>11</sup>.' 'If any brother be waxen poor .....

<sup>1</sup>See *Saundanappa v. Sivabasappa* (1907) I.L.R. 31 Bom. pp. 354, 360 to 363.

<sup>2</sup>The Sanskrit word is

<sup>3</sup>*Mitakshara*, under Y. II. 39.

<sup>4</sup>*Saundanappa v. Shivbasappa*, (1907) I.L.R. 31 Bom. pp. 354, 360 to 363.

<sup>5</sup>P. N. Sen, *Hindu Jurisprudence* (1918) pages 308-309.

<sup>6</sup>*Vasistha II*, 49.

<sup>7</sup>Jayaswal, *Manu and Yajnavalkya* (1930), pages 116-117.

<sup>8</sup>Buhler, *Sacred Books of the East*, Vol. 14, p. 15 n.

<sup>9</sup>Jayaswal, *Manu and Yajnavalkya* (1930) pages 116-117.

<sup>10</sup>T. P. Hughes—*A Dictionary of Islam* (1973) (Oriental Pub.) pages 656-657.

<sup>11</sup>*Exodus*, xxii, 25.

take no usury of him or increase: but fear the God; that the brother may live with thee. Thou shalt not give him the money upon usury, nor lend him thy victuals for increase".

**2A.16.** The following further points are made in the same work<sup>a</sup> :

- (1) The teaching of the Quran on the subject is given in Surah ii 276; "They who swallow down usury, shall arise in the Last Day only as he ariseth, whom Satan has infected by his touch." This for that they say "Selling is only the like of 'usury', and yet God has allowed selling and forbidden usury; and whosoever receiveth *this* admonition from his Lord, and abstaineth *from it*, shall have *pardon* for the past and his lot shall be with God. But they who return to usury, shall be given over to the fire,—therein to abide for ever."
- (2) In the Traditions, Muhammed is related to have said:—  
"Cursed be the taker of usury, the giver of usury, the writer of usury, and the witness of usury, for they are all equal."  
  
"Verily the wealth that is gained in usury, although it be great, is of small advantage."  
  
(Sahihu Muslim, Babu'r—Riba').
- (3) *RIBA*, in the language of the law, signifies 'an excess' according to a legal standard of *measurement* or *weight* in one of two *homogeneous articles* (or weight or measurement of capacity) opposed to each other in a contract of exchange, and in which such excess is stipulated as an obligatory condition on behalf of the parties, *without any return*, that is, without anything being opposed to it.
- (4) Usury, as an illegal transaction, is occasioned (according to most Mohammedan doctors) by *rate*, united with *species*. Here, however, it must be observed, that *rate* amongst the Musalmans, applies only to articles of weight or measurement of capacity, and *not* to articles of *longitudinal* measurement such as cloth etc., or of articles like eggs, dates, walnuts etc. when exchanged from hand to hand.
- (5) Usury cannot take place between a master and his slave. Nor can it take place between a Muslim and a hostile infidel in a hostile country, in accordance with the saying of the Prophet: "There is no usury between a Muslim and a hostile infidel in a foreign country", and on the further ground, that the property of a hostile infidel being free to the Muslim, it follows that it is lawful to take it by whatever mode may be possible, provided there be no deceit used.

**2A.17.** The testimony of a person who receives usury is inadmissible in a court of law. It is recorded in the *Mabsut*, however, that the evidence of an usurer is inadmissible only in case of his being so in a notorious degree; because mankind often make invalid contracts, and these are in some degree usurious<sup>b</sup>.

**2A.18.** According to the authors of Muslim law, the position on this subject appears to be that the strict injunction against the levy or charging of interest had in course of time become obsolete.

Prohibition obsolete.

**2A.19.** Tyabji<sup>c</sup> quotes a "tradition" in this behalf<sup>d</sup>. "Abu Hurairat said: The Apostle of God, said, "really a time is coming to man when all will eat interest; if he will not eat the interest, its impression will reach him, such as the giving interest, the witness of it, or the writer of interest".

Tyabji's view.

<sup>a</sup>Leviticus xxv, 35—37.

<sup>b</sup>T. P. Hughes—A Dictionary of Islam (Oriental Publishers, 1973), page 656-657.

<sup>c</sup>*Hidayah*, Grady's edition, P. 362; cited by T. P. Hughes, A Dictionary of Islam (1973) under "Evidence".

<sup>d</sup>Tyabji, Muslim Law (1968) page 29, para 4, and footnotes 17, 18.

<sup>e</sup>Miscat-ul Masbih: Traditions as to INTEREST, Book 12, Ch. 4, Part 2.

But Tyabji adds<sup>1</sup> that the prohibition has become obsolete. In one of the earliest cases decided by Peacock C.J.<sup>2</sup>, calculation of interest on dower was justified as representing the profits that might have accrued.

Dower.

2A.20. Interest on dower can, apparently, be explained on the ground of equitable considerations<sup>3</sup>. But there have been other cases<sup>4</sup> where interest was allowed on the ground of usage,—e.g. between Bhora traders.

## CHAPTER 2B

### PREAMBLE

Recommendation to delete the preamble.

2B.1. We now address ourselves to the amendments required in the Act. An important question concerning the preamble to the Act may be disposed of first. The preamble reads—

“Whereas it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her Majesty’s Court as elsewhere, the provisions of the Statute 3rd and 4th, William IV, Chapter 42, section 28, concerning the allowance of interest in certain cases.”

It is obvious that the preamble is out-dated and has now become totally obsolete and irrelevant. We are of the view that it should be deleted. We recommend accordingly.

## CHAPTER 3

### CONSTITUTIONAL POSITION AND TERRITORIAL EXTENT

Introductory.

3.1. We propose to discuss, in this Chapter, the constitutional position as to the Interest Act, with reference to legislative competence as regards its subject-matter, and the connected question of the territorial extent of the Act. At the outset, we should state that from the point of view of legislative competence, it is difficult to place the subject-matter of the Interest Act, 1839, within one particular legislative entry. In so far as interest is to be awarded on a *contractual obligation*, it could be said that the Act comes within the Concurrent List, entry 7, “Contracts .....”. In so far as the award of interest concerns the procedure of the Court, the Concurrent List, entry 13, relating to “Civil Procedure” may be noted. As the Act stands at present, interest on damages is not allowed; but, if any amendment in that regard is proposed<sup>5</sup> then the Concurrent List, entry 7, “actionable wrongs” would also be relevant.

Then, there are entries in the Constitution having incidental relevance—e.g. Concurrent List, entry 9—“bankruptcy and insolvency”, and others. By and large, however, it can be stated that the subject-matter of the Interest Act and of amendments germane thereto, would come within the Concurrent List in part, and within the residuary entry as regards the rest. It should be pointed out that the Act is not confined<sup>6</sup> to money-lending and, therefore, State List, entry 30, relating to money-lending and money-lenders, and the relief of agricultural indebtedness, would not be directly relevant.

Entries incidentally relevant.

3.2. Entries in the State List dealing incidentally with interest are:—

Entry 18—Agricultural loans;

Entry 30—Money-lending and money-lenders, relief of agricultural indebtedness<sup>7</sup>.

<sup>1</sup>Tyabji, Muslim Law (1968) page 29, para 4.

<sup>2</sup>Woomatul Fatima v. Meerun Munuissa, (1968) 9 U.R. pp. 318, 324, 325.

<sup>3</sup>Cf. Tyabji, Muslim Law (1968), Page 135, para 113 and Nawasi Begum v. Dildarez Begum, A.I.R. 1927, All. 39.

<sup>4</sup>Advocate General v. Yusufally, (1921) 24 Bom. L.R. 1960, 1105, A.I.R. 1921 Bom., 338.

<sup>5</sup>See discussion as to amount on which interest can be awarded, Chapter 5, *infra*.

<sup>6</sup>See para 3.2, *supra*.

<sup>7</sup>See para 3.1, *supra*.

Entry 43—Public debts.

Entries in the Union List<sup>1</sup> dealing incidentally with interest are :—

Entry 35—Public debt of the Union.

Entry 39—Post Office Savings Bank.

Entry 46—Bills of Exchange, cheques and promissory notes.

3.3. It appears that the Act has not been extended to the areas which comprised the former Part B States. The Part B States Laws Act is silent about the Interest Act. Perhaps, at the time when the Part B States Laws Act was enacted, it was thought that the subject-matter of the Interest Act falls within the legislative entry relating to money-lending (which is in the State List). This assumption—if any such assumption was made—requires re-consideration. The subject-matter of the Act really falls within the residuary entry, as already pointed out<sup>2</sup>. The expressions “debt” and “creditor”, used in section 1, are not confined to money-lending. It must be stated that the text of the operative provision—section 1—is not confined to transactions between money-lenders and borrowers, whatever other limitations may flow from the language of section 1. Broadly speaking, interest can be awarded, under section 1, on a debt or sum certain, if the other conditions of the section are satisfied, and it is not necessary that there should be an element of money-lending in the origin of the debt or sum certain. In fact, legislation dealing with the relief of agricultural indebtedness or regulating the business of money-lending can impose substantive or procedural restrictions relevant to the charge of interest, by virtue of the specific power given to the States in that behalf by the State List. A law made in exercise of that power—i.e., the power relating to money-lending—would normally be reserved for the assent of the President, so that it may not be challenged as repugnant to Central legislation on a subject in the Concurrent List. This does not mean that the subject-matter of the Interest Act itself falls within the State List.

Part B States.

Incidentally, we note that in the India Code<sup>3</sup>, the Interest Act is printed in Volume 6, Part 6, page 3, under the heading of “money-lending”. Presumably, it was assumed that the Act principally deals with transactions of borrowing and lending. But, as we have already pointed out<sup>4</sup>, such an assumption would not be strictly accurate or well founded.

3.4. In our view, the words used in section 1 of the Act clearly indicate that the Act does not purport to deal solely, or even primarily or mainly, with money-lending as such; its sweep is very much wider and if, in some cases, it conceivably seems to apply to money-lending transactions, properly so-called, that is only a case of incidental application. Incidentally, most of the money-lending transactions which fall within State legislation relating to money-lending provide for the payment of interest, and it is because of those provisions that the transactions covered by such Acts are outside the purview of section 1. In pith and substance, therefore, the Act applies to matters which fall under residuary entry in the Union List, as already stated<sup>5</sup>.

Interest Act not confined to money-lending.

Our subsequent discussion will show that when judicial decisions had occasion to consider the scope and effect of section 1, most of the transactions in issue in those decisions were other than those of “money-lending” technically so-called.

3.5. Hence, there should be no constitutional difficulty in the way of recommending the extension of the Act to the whole of India<sup>6</sup>. The advantage of uniformity that will be gained by such an amendment is obvious. We, therefore, recommend that an extent clause should be inserted in the Act for the purpose, as follows:—

Recommendation as to extent clause in section 1.

“It extends to the whole of India except the State of Jammu and Kashmir.”

<sup>1</sup>See also para 3.1, *supra*.

<sup>2</sup>Paras. 3.1 and 3.2, *supra*.

<sup>3</sup>India Code, Vol. 6, part 6, page 3.

<sup>4</sup>Para 3.1 and 3.2, *supra*.

<sup>5</sup>Para. 3.1, *supra*.

<sup>6</sup>Para. 3.3, *supra*.



Misunderstanding as to Part B States caused by note in India Code.

3.6. We may mention that some misunderstanding on the question whether the Interest Act, 1839, extends to the areas of former Part B States, is caused by the footnote to the text of the Act as printed in the India Code. That footnote states that the Act has been declared to be in force "in all States" by section 3 of the Laws Local Extent Act, 1874, except as regards certain areas in Scheduled Districts. In fact, however, the Laws Local Extent Act, 1874 does not make any such declaration. On the other hand, section 3 of that Act (as printed in the India Code<sup>1</sup>), while declaring that the enactments mentioned in the Schedule to that Act—which includes the Interest Act also—extend to the specified areas, expressly excludes the areas comprised previously in Part B States.

We may cite the section:

*Extract of section 3, Law Local, Extent Act, 1874*  
(India Code, Vol. 2-C, Part 4, page 27)

"3. The Acts mentioned in the first schedule hereto annexed are now in force" [in the whole of India except<sup>1</sup> (the territories which, immediately before the 1st November, 1956, were comprised in Part B States) and] the scheduled Districts.

[The Interest Act, 1839, is mentioned in the First Schedule to the Act.]

Act not extended by Central legislation after independence.

3.7. The matter could be viewed from a different angle. The Interest Act, 1839, before independence, was not in operation outside British India of its own force. If it was to be extended to any area outside British India, that could have been done only by suitable Central legislation, or suitable Provincial or State legislation enacted after independence. We are not here concerned with Provincial or State legislation, because that would be only of local application. But so far as Central legislation is concerned, neither the Part B States Laws Act nor any other Central Act has expressly extended the Interest Act, 1839, to any area in a Part B State. Therefore, the position seems to be that the local extent of the Interest Act remains unaffected by constitutional changes that have taken place as a result of independence, so far as areas previously included in Part B States are concerned. As the Act does not have an extent clause, the position in this regard has to be ascertained from a study of the various Central Acts pertaining to the extension of existing laws to the areas of Part B States, and as already stated that study yields a negative result.

## CHAPTER 4

### SECTION 1—POWER OF THE COURT AND SUITS MERELY FOR INTEREST

Section 1—operative provision—Analysis.

4.1. We shall now proceed to deal with the operative provision. The Act contains only one section, quoted below:

"1. *Power of Court to allow interest.*—It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment: provided that interest shall be payable in all cases in which it is now payable by law."

<sup>1</sup>India Code, Vol. 2-C, Part 4, page 27.

<sup>2</sup>Subs. by the A.O. 1950 for "throughout all the Provinces of India, except".

<sup>3</sup>Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part B States".

The section has become somewhat cumbersome. It deals with several points—

- (a) Power of the court to award interest.
- (b) Amounts with reference to which the power can be exercised.
- (c) Rate of interest to be awarded by the Court.
- (d) Date of commencement of running of interest.
- (e) Savings as to existing laws (in the proviso).

We shall discuss these points serially and indicate the amendments that we recommend on each point.

4.2. In *Thawardas v. Union of India*,<sup>1</sup> Sinha J., analysing the conditions for award of interest, stated—“the following among other conditions must be fulfilled before interest can be awarded under the Act.

Conditions to be fulfilled.

- (1) there must be a debt or a sum certain ;
- (2) it must be payable at a certain time or otherwise ;
- (3) these debts or sums must be payable by virtue of some written contract at a certain time ;
- (4) there must have been a demand in writing stating that interest will be demanded from the date of the demand.”

It may be pointed out, however, that conditions (3) and (4) formulated by Sinha J.<sup>1</sup> are alternative to each other, and cannot apply together. There should either be a written instrument fixing a certain time or a written demand. We shall have occasion to consider these aspects in detail later.<sup>2</sup>

4.3. So far as the power of the court to award interest is concerned, it is to be noted that the power is expressed<sup>3</sup> in section 1 as exercisable by “the court before which such debts or sums may be recovered”. Several questions have arisen by reason of these words. In the first place, are they confined to an ordinary civil suit? It may be noted that in the corresponding current English Act,<sup>4</sup> there is a provision worded as follows (only the material portion is quoted):—

Power of the court to award interest.

“(1) *In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment*”.

4.4. It has been held<sup>5</sup> that under the corresponding English provision,<sup>6,7</sup> unsecured creditors cannot claim interest in winding up proceedings, even though the company which is being wound up is actually found to have a surplus.

Position as to winding up proceedings.

This interpretation would, it seems, apply to section 1 of our Act also. Of course, on the specific question of interest in winding up, the provision in the Companies Rules<sup>8</sup> may suffice. Rule 156, Companies (Courts) Rules, 1959, is as follows:—

“156. *Interest*—On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding up order, or the resolution as the case may be,

<sup>1</sup>*Thawardas v. Union of India*. A.I.R. 1955 S.C. 468, para 30; (1955) 2 S.C.R. 48.

<sup>2</sup>Chapter 5, *infra*.

<sup>3</sup>Para 4.1, *supra*.

<sup>4</sup>Section 3(1), Law Reform (Miscellaneous Provisions) Act, 1934.

<sup>5</sup>*RE Fine Industrial Commodities Ltd.*, (1955) 3 All E. R. 707, 709 (Vaisey J.).

<sup>6</sup>Section 3(1), Law Reform (Miscellaneous Provisions) Act, 1934.

<sup>7</sup>Para 4.3, *supra*.

<sup>8</sup>Rule 156, Companies (Courts) Rules, 1959.

the creditor may prove for interest at a rate "not exceeding four per cent per annum upto that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment."

Proceedings other than suits to be covered.

4.4A. But, in general, proceedings, other than suits would be outside the section. We are of the view that the section should be widened to cover proceedings other than suits. The discretion to award interest is as much needed in relation to other proceedings, as in relation to an ordinary civil suit. We are recommending an amendment of the section for the purpose.

Employees' State Insurance Court.

4.5. As to the expression "court", in section 1, a wide construction has been placed. It has been held<sup>1</sup> that the Employees' State Insurance Court is a "court" within the meaning of section 1, and as such can award interest on the arrears of contribution due by an employer under the Interest Act, if a demand has been made in writing claiming interest.

Ambiguity as regards the necessity of a written instrument.

4.6. Connected with the question of the power of the court is the question whether it is necessary that there must be a written instrument. The material words of the section are—"if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing." (The rest of the section is not material for the present purpose). The question that arises for consideration is whether the word "otherwise" is to be read as in contrast with the words "written instrument", or whether it constitutes a contrast only to the words "at a certain time". Either of the two constructions may be plausible. It is not necessary, for the present purpose, to examine the relative merits of the two constructions. But, as a matter of good legislation, there is no reason why the fact that there is no written instrument should be material in regard to giving discretion to the court to allow interest under the section. No doubt, the existence of a written instrument creating the debt has evidentiary value, and this is of practical importance, as disputes of fact are thereby minimised. But that should not come in the way of allowing interest where there is no written deed, if the justice of the case requires the award of interest. The origin of the debt in a written instrument, coupled with payability at a certain time, can legitimately be regarded as justifying a difference in treatment in relation to the starting point of running of interest; but it need not be regarded as destroying the very basis of the admissibility of interest.

We are, therefore, recommending an amendment of the section for the purpose, so as to make it clear that section covers the case discussed above.

Suit merely for interest.

4.7. Secondly, there appears to have been some controversy on the question whether a suit for the mere recovery of interest can be filed. The Calcutta High Court answered this question in the negative,<sup>2</sup> on the ground that the Act merely gives a discretion to the court, and there is no "right" in the creditor. The Lahore High Court, however, took a different view,<sup>3</sup> on the point. According to the Lahore view, there is nothing in law which debars a creditor from suing for the recovery of interest alone, if he has complied with the formalities required by the Interest Act, and if his case is otherwise governed by the said Act.

The Nagpur decisions<sup>4,5</sup> on the subject are conflicting. The matter, therefore, requires examination. We shall examine the case law in detail, in due course.<sup>7</sup> We may first examine the language of the section.

<sup>1</sup>Ried Co-operative Timber Works Ltd., v. E.S.I. Corporation, 1: (1970) 2 M.L.J. 40: A.I.R. 1970 Mad. 439.

<sup>2</sup>Para. 4.1, *supra*.

<sup>3</sup>Marshall v. Bengal Spinning etc. Co., (1897) 1 Cal. W.N. 219.

<sup>4</sup>Bhandari Bros. v. Municipal Committee, A.I.R. 1931 Lah. 457-462, dissenting from Marshall v. Bengal Spinning etc. Co., (1897) 1 Cal. W.N. 219.

<sup>5</sup>Municipal Committee v. S.S.G. P. Factory, A.I.R. 1938 Nag. 119, 122 (Niyogi J.) (not considered in the 1944 case below).

<sup>6</sup>Western India Life Ins. Co., v. Sittabai, A.I.R. 1944 Nag. 122, 123, (Bobde J.).

<sup>7</sup>Para. 4.9, *infra*.

4.8. The opening words of section 1 indicate that it covers cases relating to "all debts or sums certain payable at a certain time or otherwise", and it confers jurisdiction on the Court to allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable. Such debts or sums may be payable by virtue of some written instrument at a certain time, or may be payable otherwise. There is no express limitation that the principal must be outstanding. In the latter case, the Court is empowered to award interest from the time when a demand for payment shall have been made in writing so that such demand shall give notice to the debtor that interest shall be claimed from the date of such demand until the time of payment. The proviso to the section prescribes that interest shall be payable in all cases in which it is now payable by law.

Section words. 1—opening

Leaving out of consideration cases falling under the proviso, we may note that the jurisdiction of the Court to award interest at any rate as specified in the section arises when the Court is one "before which a suit for recovery of a debt or sum certain may be recovered". These words are ambiguous, as would appear from reported cases.<sup>2</sup>

4.9. We shall now examine judicial decisions as to the interpretation of section 1, on the question whether a suit merely for interest is competent. We may begin with the Lahore case.<sup>3</sup> The plaintiffs in that case had supplied coal to the Municipal Committee, Amritsar, in a large quantity. Their bills were kept unpaid for a long time, and, therefore, the plaintiffs gave several notices to the Municipal Committee that interest would be charged on the unpaid bills. Subsequently, the bills were paid by the Committee *without interest*, and so the plaintiffs instituted a suit for *interest alone*. The objection was raised that a suit merely for interest could not be instituted. Overruling this objection, the High Court held that the Interest Act did not prohibit a suit for interest alone if the principal had been paid by the debtor before the institution of the suit. It said that as the plaintiffs had themselves paid interest to their bankers at 9% per annum on the sums borrowed by them for carrying on their coal business, it was reasonable to allow that amount. The claim for interest in this case was for Rs. 25,000 and odd. The following extract from the judgment of Jai Lal, J. is instructive:

Judicial decisions as to suit for interest.

"I was unable to construe the Act so as to prohibit a suit for interest alone if the principal has been paid by the debtor before its institution."

Counsel in that case relied upon the words in the Act—"the Court before which such debts or sums certain may be recovered" in this connection, and argued that these words implied that a suit for such debts or sums certain should also have been instituted along with interest as if "may be recovered" means "is sought to be recovered".

Dealing with this argument, Jai Lal J. said:

"They.....merely specify the Court which has jurisdiction to entertain a suit for interest, that is to say, it provides that the Court in which a suit for the recovery of interest *can be instituted* is the Court which has jurisdiction to entertain a suit for recovery of such debt or sums certain. If the contention of the learned counsel be correct, then it may lead sometimes to absurdities. Supposing a principal sum of Rs. 100 is due to a creditor and a notice is given by him to the debtor that interest would be claimed by him from the date of the notice, and thereafter the debtor pays, say, Rs. 90/- by nine monthly instalments of Rs. 10 each on account of principal which instalments are accepted by the creditor as such but without waiving his right to interest or expressly reserving such a right, and subsequently he institutes a suit for the recovery of Rs. 10 "and interest which has accrued due on the several balances of the principal, it is possible to argue with any reason that only interest on the remaining principal amount of Rs. 10 can be claimed and not on the whole of the principal, or the respective balances thereof? There is, in my opinion, no justification for such a contention....."

<sup>2</sup>Para. 4.9. *infra*.

<sup>3</sup>*Bhandari Brothers v. Municipal Committee, Amritsar*, A.I.R. 1931 Lahore 457, 462 (Jai Lal and Abdul Qadir JJ.)

## Aspect of equity.

4.10. This case approaches the matter from the point of view of general rules of law. A Nagpur case may<sup>1</sup> be taken as illustrating the aspect of equity. The suit was solely for interest by a widow in respect of an insurance policy. The interest was claimed at the rate of 6% per annum, for 7 months from November, 1940 to 25th June, 1941. The Insurance Company had, after a long delay, paid the principal amount due on the death of the plaintiff's husband, and the amount was sent by cheque on 18 June, 1941 which the plaintiff accepted. The Court of Small Causes had awarded interest against the Insurance Company, on the ground that there was unjustifiable remisness.

It is not clear from the report when the plaintiff made the demand for interest. The case, however, was decided with reference to the Interest Act, and one of the objections of the Insurance Company was that a suit for mere interest could not lie. The High Court rejected this contention. No authority had been cited in support of the contention. It appears that the Calcutta case was not cited.<sup>2</sup> The High Court was in agreement with the Lahore view<sup>3</sup> on the subject. The High Court also held that article 63 of the Limitation Act<sup>4</sup> suggested that a suit for mere interest is perfectly possible. It also saw no objection *in principle* to the maintainability of a suit for mere interest.

The counsel for the defendants sought to rely on section 63 of the Contract Act.<sup>5</sup> But the High Court pointed out, first, that, there was no necessary data, (for applying section 63), and secondly, that since the interest claimed in this case was not by virtue of any promise the performance whereof could be "dispensed with or remitted", section 63 could have no relevance.

4.11. In one of the Nagpur cases<sup>6</sup> which took a restrictive view, the Municipal Committee of Akola demanded the payment of certain tax, but the liability to pay the tax was disputed by the defendants. We are not concerned with the history of the litigation disputing the liability, but it may be noted that in May, 1929, the Municipal Committee demanded payment of the tax by a notice in which it *also included* a demand for interest at the rate of 12½ per cent per annum on the arrears of the tax. In November and December, 1929, it recovered the arrears of tax without interest, after the litigation had become unsuccessful. Then it served on the defendants a fresh notice of demand for interest. Since the defendant failed to pay the interest, the Municipal Committee applied to the Magistrate for recovering the amount under the Municipal Act.

The Magistrate issued the necessary warrant, but, on appeal, the Deputy Commissioner held that the notice of demand for interest only was illegal, and the eventual warrant was also illegal. The Municipal Committee then filed the present suit in which, so far as is relevant, one of the questions was whether the plaintiff could recover interest on a tax which was not paid on the due date but was paid later. The claim for interest was negatived by the High Court on the following grounds:—

"Even on the assumption that the Civil Court has jurisdiction notwithstanding section 77, Municipalities Act, I am unable to see how the Committee's claim for recovering mere interest after the principal amount had been recovered is tenable. In the circumstances of this case, the Civil Court may have the power to award interest either under the Interest Act, 1839 (32 of 1839) or section 73, Contract Act. The latter provision cannot apply because the right is not founded on any contract and there has been no breach of it. Under the Interest Act, the Court has a discretion to award interest when a claim is made for recovering any debt or any sum certain payable at a stipulated time but the Municipal Committee has already recovered its debt, assuming that the taxes could be regarded as a debt, after they fell due. The Interest Act gives power to the Civil Court but *does not create any right in favour of a creditor* and it could not therefore be the subject matter of a suit."

<sup>1</sup>Western India Life Insurance Company v. Seeta Bai, A.I.R. 1944 Nagpur 122 (Bobde J.)

<sup>2</sup>Marhsall's case, Para 4.7, *supra*.

<sup>3</sup>Bhandari Brothers v. Mani. Com., Amritsar, A.I.R. 1931 Lahore 45.

<sup>4</sup>Article 63, Limitation Act, 1963, is referred to later.

<sup>5</sup>Section 63, Contract Act, 1963, is discussed in detail later.

<sup>6</sup>Akola Municipal Committee v. S.G. and Pressing Factory, A.I.R. 1938 Nagpur 119, (Niyogi J.)

Thus, in the Nagpur High Court, there is a conflict of decisions,<sup>1</sup> one judgment taking a wide view and another judgment taking a restrictive view.

4.12. In the Calcutta case,<sup>2</sup> a learned Judge in Chambers said:

"Now it is to be observed, in the first place, that the Act (32 of 1839), upon which reliance is placed on the part of the plaintiffs, is only an enabling Act by which the Court is vested with a discretion to grant interest under certain circumstances, upon debts or sums certain, payable at a certain time. There is nothing in the Act which creates a right to interest in favour of creditors which of itself could be made the subject matter of a suit and this observation is, I think sufficient to dispose of the claim as regards the interest in respect of the instalment which was paid before suit."

This observation was commented upon by Jai Lal J. in the Lahore case,<sup>3</sup> to which we have already referred:

"With great respect I am unable to agree with the reasoning underlying this remark. It is no doubt true that the question of awarding interest and of the fixing of the rate is left to the discretion of the Court, but that is no reason for holding that the creditor has no cause of action to sue for interest. There are several instances in which the grant of relief and its extent have been left by the legislature to the discretion of the Court, but it would not be correct to hold in such cases that the plaintiff is not merely on that account entitled to sue for that relief. The reported case, it may be mentioned, was for recovery of interest due on certain debentures and this was an additional ground given by the learned Judge for dismissing the suit."

4.13. One of the provisions to be considered in this context is section 63 of the Indian Contract Act, which was referred to in the Nagpur case.<sup>4</sup> It may be debatable whether the relationship of promisor-promisee (to which alone section 63 is applicable) can be said to exist in every case under the Interest Act. However, we may consider the matter, since it was referred to in the Nagpur case. Section 63 deals with remission by the promisee. The section provides as follows:—

Section 63, Contract Act.

"63. Every promisee may dispense with or remit, wholly or in part, the performance of the promises made to him, or may accept instead of it any satisfaction which he thinks fit."<sup>5</sup>

4.14. It should be noted that this section does not provide that acceptance of a part of the debt *in itself* amounts to satisfaction of the whole debt. It leaves it to the promisee to remit *in part* the performance of the promise. There must be an acceptance *in satisfaction of the whole debt*. This is made clear by illustrations (b) and (c) to the section, quoted below:

(Illustrations to section 63, Contract Act)

"(b) A owed B Rs. 5000. A pays to B, and B accepts, in satisfaction of the whole debt, Rs. 2000 paid at the time and place at which the Rs. 5000 were payable. The whole debt is discharged.

(c) A owes B Rs. 5000. C pays to B Rs. 1000 and B accepts it in satisfaction of his claim on A. This payment is a discharge of the whole claim."

4.15. Section 41 of the Indian Contract Act deals with acceptance of performance from a third person, but that section is not of any special importance for the present purpose, at least in India. What is to be emphasised is that section 63 of the Contract Act applies only if the promisee remits performance of the promise in part, or accepts, instead of the promise, any satisfaction which he thinks fit. Hence, the choice is that of the promisee.

<sup>1</sup>Para 4.10 and 4.11, *supra*.

<sup>2</sup>*Marshall v. The Bangali Spinning and Weaving Company*, (1897) 1 C.W.M. 279 (as quoted in the Lahore case) in A.I.R. 1931 Lah. 457.

<sup>3</sup>See, Lahore case, *supra*, Para 4.9.

<sup>4</sup>*Western India Life Ins. Co., v. Seeta Bai*, *supra*.

<sup>5</sup>Illustrations not quoted.

4.16. In *Digambar's case*,<sup>1</sup> Mookerjee and Teunon, JJ. held that though a tender of a smaller amount than the amount of the entire claim may be invalid as a tender, there was nothing to prevent the creditor from accepting the amount tendered in part payment, and his doing so will not preclude him from afterwards claiming the residue of his account,—always provided that the debtor did not make it a condition of his tender that it be accepted in discharge of the whole. This view was re-iterated by Mookerjee and Rankin JJ. in the case of *Beharilal v. Nasimunness Bibi*.<sup>2</sup>

The real emphasis in section 63, Indian Contract Act, is, therefore, not on the mere acceptance of a smaller sum of money when a larger sum is due, but on the acceptance of the smaller sum *in discharge of the entire debt*. When a creditor does once so accept the money, he is estopped from claiming more. This section, however, is relevant only when the relation is of promisor and promisee.

Limitation Act.

4.17. It may be noted that article 63 of the Indian Limitation Act, 1908, read thus.<sup>3</sup>

- |          |  |
|----------|--|
| Col. (1) | .....  |
| Col. (2) | For money payable for interest upon money due from the defendant to the plaintiff. |
| Col. (3) | three years.   |
| Col. (4) | when the interest becomes due."  |

This article shows that such a suit is not ruled out.

Recommendation.

4.18. In this view of the law, as it emerges under the present section, the question which falls for our consideration is whether we should recommend that the section should be suitably amended to enable the creditor to sue for the recovery of interest alone in cases where the debt or sum certain payable to him by the debtor has been repaid, or whether the law should be amended in the opposite direction.

We have carefully considered the pros and cons of this problem, and we are satisfied that the initial bar against the competence of a claim by the creditor to recover only the interest—a bar which would arise under the narrower interpretation—is not justified on any ground of justice, equity or good conscience.

We do not think it necessary to consider the question whether, on the text of the section, the Calcutta view (the narrower one) is correct, or the Lahore one (the wider one) is correct. On principle, however, we are of the opinion that a suit merely for interest, where the principal has been paid, should be permissible. If the narrower construction is allowed to prevail, the person liable would pay up the principal just before the suit, and thus defeat the section. That would be unjust. We, therefore, recommend adoption of the wider view and an amendment of the section for the purpose.

Interest why granted.

4.19. It may be stated that interest is usually granted as a compensation for the unjust delay in payment. It is difficult to understand why a person who unreasonably delays payment of an amount due should be exempted from the liability to pay interest merely because the amount has been paid before the suit is filed. In such a case, there is no equitable consideration. Rather, the equities are all against him, by reason of his unreasonable delay and unjust detention of the debt, and by reason of the profit which he would ordinarily have made by investing the amount.

4.20. If the law is to be amended on the lines of the Calcutta view,<sup>4</sup> then it would follow that if the debt payable by the debtor has been already paid by him to the creditor, an action by the creditor against the debtor to recover only the interest, which may be due to him in either of the two categories of cases specified in the latter part of the section, would not be competent. The bar against the competence of such a claim would, apparently, operate even if the creditor might have accepted the debt subject to his right to recover the amount of interest due by a suit. This position is, in our view unsound.

<sup>1</sup>*Digambar v. Harendra*. (1910) 14 Cal. W.N. 617 (Mookerjee and Teunon JJ.)

<sup>2</sup>*Behari Lal v. Nasimunnessa Bibi*, A.I.R. 1923 Cal. 527.

<sup>3</sup>See now the Limitation Act, 1963.

<sup>4</sup>Para 4.18 and 4.19 *supra*.

4.21. Let us assume that the creditor gives notice to the debtor that if the debt due to him is not paid by a specified date, then, he would claim interest on the debt from the specified date. If, in such a case, after the issue of the notice and after expiry of the date, the debtor repays the debt due from him, but fails to pay interest on it which has become due, it seems unreasonable to prevent the creditor from making a claim for the recovery of such interest except where it is shown that he waives interest. The Court may, no doubt, exercise its discretion as to whether interest should be awarded, and if so, at what rate. But, subject to this provision, a claim for interest alone should not be totally barred from the very beginning. We would, accordingly, recommend an appropriate amendment<sup>1</sup> in section 1.

We have incidentally considered the question if our recommendations<sup>2</sup> to allow a suit for mere interest necessitates any amendment in the Limitation Act. In this connection, it may be pointed out that either article 25, Limitation Act, 1963 (old article 63), or the residuary article in the Act, would govern such a suit. An amendment of the Limitation Act does not, therefore, appear to be necessary.

4.22. This concludes consideration of the question of claims for interest. We now come to other points concerning section 1. While revising section 1, it should be made clear that—

- (a) nothing in this section shall apply in relation to any debt upon which interest is payable as of right by virtue of any agreement, and
- (b) nothing in this section shall affect the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque.

The reason for such a savings clause is obvious. In the first case, the agreement must prevail.<sup>3</sup> In the second case, the special provision of the Negotiable Instruments Act regarding compensation for dishonour prevails.<sup>4</sup>

4.23. If there is an express contract *not to pay interest* (i.e., prohibiting interest), interest cannot be allowed under section 1.

4.23A. We are of the view that an express provision is needed to the effect that the Act should not apply to—

- (a) cases where the right to interest is separately conferred by law or contract, or
- (b) interest on dishonour of a bill of exchange, promissory note or cheque.

We are also of the view that the Act should not apply where interest is prohibited by an express agreement.

Savings recommended for two cases—(a) interest payable as of right by agreement or otherwise; (b) bill of exchange.

Section 1 and contrary Agreement.

Right to Interest conferred by law or contract and interest on dishonour of bill of exchange etc.

Interest prohibited by express agreement.

## CHAPTER 5

### AMOUNT ON WHICH INTEREST CAN BE AWARDED

5.1. As regards the amount with respect to which the power of the Court to award interest under section 1 can be exercised, it is to be noted, that it must be "a debt or sum certain".<sup>5</sup> This phraseology definitely excludes damages, and, therefore, the question to be considered is whether damages should be included in the section.

Amount on which interest awarded.

<sup>1</sup>. The re-draft of the section is given later.

<sup>2</sup>. Para 4.18, *supra*.

<sup>3</sup>. As to provisions of other law, see discussion relating to s. 1, proviso.

<sup>4</sup>. E. g. see the Negotiable Instruments Act, 1882, sections 30, 31, 79, 80 and 117.

<sup>5</sup>. As to "sum certain" see para 5.5, *infra*.



English Act of 1934.

5.2. It may be noted in this connection, that in England, the law on this point was amended in 1934. The current statutory provision in England is quoted again<sup>1</sup> below, for ready reference :—

“3. *Power of courts of record to award interest on debts and damages.*—(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the *debt or damages* for the whole or any part of the period between the date, when the cause of action arose and the date of the judgment:

Provided that nothing in this section—

- (a) shall authorise the giving of interest upon interest, or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.”

This sub-section replaces the provisions in sections 28-29 of the Civil Procedure Act, 1833. In some respects, the repealed provisions were, perhaps, wider than those enacted<sup>2</sup> in this sub-section, but, in relation to actions in tort, the repealed provisions were certainly narrower, being limited to authorising interest by way of damages for *trover or trespass*. The new provision permits the award of interest on any award of damages for any tort, subject only to the discretion of the court.<sup>3</sup>

We think that the English provision,<sup>4</sup> allowing interest on damages, is sound in principle, and should be incorporated in our law, to the extent indicated below—

- (a) In so far as this section of the English Act relates to interest on debt or damages for the period *before* the filing of the suit, the necessary reform, for allowing interest on debts not falling, at present, within section 1, that is, on *damages*, should be made by adding a provision in the Act.
- (b) *In so far as the period after the filing of the suit is concerned, the matter* pertains to section 34 of the Code of Civil Procedure, 1908. That section<sup>5</sup> appears to be comprehensive enough to allow the award of interest on damages, for the period after the institution of the suit.<sup>7</sup>

Meaning of “debt” in section 1.

5.3. Apart from this specific question of damages, certain other points may be considered as to the denotation of the expression “debt”. The meaning of the expression “debt” in a statute often depends on the context. Even in the same statute—e.g., the Bankruptcy Act,—what may be a ‘debt’ for one purpose in bankruptcy may not necessarily be so for another purpose.<sup>8</sup>

Meaning of “debt” in common law.

5.4. The ancient common law meaning of “debt” was limited to causes of action which were enforceable in an action of “debt”, such as those arising on bonds, notes, and other express promises to pay<sup>9</sup> *quantum meruit* and *quantum valebat*. Undoubtedly, the Interest Act is intended to include such causes of

<sup>1</sup>. Section 3(1), Law Reform (Miscellaneous Provisions) Act, 1934.

<sup>2</sup>. See also para 4.3, *supra*.

<sup>3</sup>. *Re Fine Industrial Commodities, Ltd.*, (1955) 3 All E.R. 707, 709; (1956) Ch. 256, 261 (per Vaisey, J.)

<sup>4</sup>. *Carr v. Boxall*, (1960) 1 All E.R. 495.

<sup>5</sup>. Section 3, Law Reform (Miscellaneous Provisions) Act, 1934 (24 and 25 Geo. 5, Ch. 41).

<sup>6</sup>. *Bhagwant v. Gangabisa*, A.I.R. 1940 Bom. 369.

<sup>7</sup>. As to interest on damages in general, see—

(a) *Dominion of India v. A.I.R. Ltd.*, A.I.R. 1952 Nag. 32;

(b) *Arjuna v. Mohanlal*, A.I.R. 1937 Nag. 345.

<sup>8</sup>. See note, “Meaning of ‘Debt’ in Bankruptcy”, (1949) 208 L.T. Journal 302.

<sup>9</sup>. *Raborg v. Peyton*, 2 Wheat, 385, 4 L.Ed., 268.

action. But it is not confined to such causes of action, i.e., to demands enforceable in actions of "debt". Lord Coke,<sup>1</sup> referring to the statute of Merton<sup>2</sup>, said<sup>3</sup>, "Debitum signifieth not only debt, for which an action of debt doth lie, but there in this ancient Act of Parliament, it signifieth generally any duty to be yielded or paid....."

5.5. At common law,<sup>4</sup> if a creditor wished to invoke the coercive power of the state to recover goods wrongfully detained, he had to proceed through the action of debt or detinue.<sup>5</sup> The remedy to recover money secured by deed was the action of "debt". It retained its essential form and character through the whole history of common law procedure, so long as the forms of action were preserved at all.

Action of "debt".

An action of debt might also be brought<sup>6</sup>, without proof by deed, for such things as money lent, or the price of goods sold and delivered, and an action of detinue (which was but a species of debt) for chattels bailed, the cause of action being still not any promise by the defendant, but his possession of the plaintiff's money (so it was conceived) or goods.

Detinue proper lay only for specific chattels: a claim for delivery of goods not yet identified was "debt in the detiner".

5.6. But the writ for debt was a writ of right for chattels, -an action not to enforce a promise, but to get something conceived as already belonging to the plaintiff; it was called an action of property as late as the Restoration. A promise, where it was operative at all, operated not by way of obligation but as a grant of the sum expressed.<sup>7</sup> In *Edgcomb v. Dee*,<sup>8</sup> it was pointed out that contracts of debt in this sense are "reciprocal grants."

5.7. Later, an action of debt, could be on any consideration executed provided the sum be liquidated. On a contract for the sale of either goods or land also, an action may be maintained for the price before the goods are delivered or seisin given of the land.

Nevertheless, the position remained that on informal executory agreements there was, in general, no remedy in the King's Courts.<sup>9</sup>

5.8. In this connection, the history of contract is of interest. It has been observed<sup>10</sup> that the development of contract can be divided into three stages, which correspond to the history of economic and legal institutions of exchange.<sup>11</sup> In the first stage, all exchange is instantaneous, and therefore, "involves nothing corresponding to 'contract' in the Anglo-American sense of the term. Each party becomes the owner of a new thing, and his rights rest, not on a promise, but on property".<sup>12</sup>

History of contract.

In a second stage, "exchange first assumes a contractual aspect when it is left half-completed, so that only an obligation on one side remains". The "third and final stage in the development occurs when the executory exchange becomes enforceable".

<sup>1</sup>. *Miller v. Robertson*, (1924) U.S. 243, 248; 69 L. Ed. 265, 271.

<sup>2</sup>. Statute of Merton (A.D. 1235).

<sup>3</sup>. Coke, Institutes, Vol. 2, page 89, cited in *Miller v. Robertson*, (1924) 69 L. Ed. 265, 271.

<sup>4</sup>. See (a) T. Plucknett, A Concise History of the Common Law, (1956) 367-369;

(b) Holdsworth, History of English Law, Vol. 3, pages 284-285.

<sup>5</sup>. Plucknett, A Concise History of Common Law (1956), pages 362 and 365.

<sup>6</sup>. Pollock & Maitland, Hist. Eng. Law Vol. 2, page 210.

<sup>7</sup>. 6 Harv. Law Rev. 399.

<sup>8</sup>. *Edgcomb v. Dee*, (1670) Vaugh at page 101.

<sup>9</sup>. Ames, "Parol Contracts prior to Assumpsit," 8 Harv. Law Rev. 252, reprinted in *Essays in Anglo-American Legal History*, Vol. 3, page 304.

<sup>10</sup>. Worton Horwitz, "History of Contract" (March 1974) 87 Harvard Law Review, pages 917, 919.

<sup>11</sup>. See e.g. (a) L. Fuller & M. Eisenberg, *Basic Contract Law*, (1972) pages 121-22;

(b) F. Kessler & G. Gilmore, *Contracts* (1970), pages 27-28.

<sup>12</sup>. L. Fuller & M. Eisenberg, *Basic Contract Law*, (1972), pages 121-122.

The evolution and expansion of the writ of "debt", as outlined above, broadly proceeds on the same lines.

Debts payable in kind.

5.9. Reverting to the Act, we may state that there appears to be some controversy on the question whether a debt payable in kind is a 'debt' under the Act. The Bombay High Court takes a narrower view on the subject,<sup>1</sup> while the Madras view is wider.<sup>2</sup> On principle, there does not appear to be any reason why debts payable in kind should be excluded. We, therefore, recommend a clarification for the above purpose, adopting the Madras view.

Meaning of 'instrument'.

5.10. The word "instrument", in section 1 of the Act covers a decree, according to judicial construction.<sup>3</sup> On this point no change is necessary.

Meaning of 'sum certain'.

5.11. As to the expression 'sum certain' used in the main paragraph of section 1, there seems to be considerable uncertainty about its exact scope. English cases on the corresponding statute of 1833 (now repealed) lay down that it is immaterial how the sum becomes certain, the sum being certain when ascertained under the written instrument.<sup>4</sup> However, this expression does not seem to cover a case where the sum is liable to subsequent adjustment; it must be a certain sum which is due absolutely and in all events from one party to the other, though it may not come strictly within the expression 'debt'.<sup>5</sup>

We are of the view that these words are unnecessary. All that is covered by the expression "sum certain" would be covered by "debt" as it is understood at the present day. Moreover, since we are recommending the addition of a provision for interest on damages, these words would create confusion. As the same time, "debt" does not include an unascertained sum, and that could be brought out.

Recommendation.

5.12. Having considered the meaning which the expression "debt" should bear in the Act, we are of the view that it would be useful to provide that a "debt" means a liability for an ascertained sum of money and the words "sum certain" should be omitted. We recommend accordingly.

Interest on damages for death or personal injury.

5.13. The award of interest on an amount is discretionary under the present section. In general, we do not propose to disturb this scheme, even after the addition of damages. However, where damages are awarded for death or personal injury, interest should be awarded under section 1, unless there are special reasons to the contrary. Such a provision has been made recently in England,<sup>6</sup> and we recommend that it should find a place in our Act also, being a salutary one.

Interest on interest to be prohibited.

5.14. There should be no interest on interest. It may be so expressly provided and we recommend accordingly.

## CHAPTER 6

### RATE OF INTEREST AND DATE OF COMMENCEMENT

Scope of Chapter.

6.1. In this Chapter we deal with the rate of interest,<sup>7</sup> and the date of commencement of the running of interest.<sup>8</sup>

<sup>1</sup>. *Narayun v. Nagappa*, (1910) 12 Bom. Law Reporter 831.

<sup>2</sup>. *Govindan Nair v. Cheral*, (1913) I.L.R. 38 Mad. 464.

<sup>3</sup>. *Savitribai v. Radhakishan*, A.I.R. 1938 Nag. 49 (Decree creating charge for maintenance).

<sup>4</sup>. (a) *Coake v. Ross*, 44 L.J. C.P. 315;

(b) *Hill v. South Staffordshire Railway*, L.R. 18 Eq. 154.

(c) *Ward v. Eyre*, 49 L.J. Ch. 659 (Jessel, M.R.)

<sup>5</sup>. *London, Chatham & Dover Railway v. South Eastern Railway*, (1893) A.C. 429 (H.L.).

<sup>6</sup>. Section 3(1A), Law Reform etc. Act, 1934, as inserted by section 22, Administration of Justice Act, 1969 (c. 58).

<sup>7</sup>. Para 6.2. and 6.3., *infra*.

<sup>8</sup>. Para 6.4., *infra*.

6.2. As regards the rate of interest, there are, theoretically speaking, several alternatives possible. The rate could be fixed in the statute. Or, the maximum rate could be fixed by statute, but, within the maximum, a discretion could be given to the court. Or, the rate could be described in terms of the current rate. We may note that under section 1,<sup>1</sup> the rate of interest is, in effect, in the discretion of the court, subject to its not exceeding the current rate. We are of the view that the rate should be left to the discretion of the Court, so that it can deal with each case in the light of its circumstances, and do substantial justice. In view of what is stated above, we do not recommend any change in this regard.

Rate of interest.

6.3. We may now refer to another point which is relevant to the rate of interest. In England, the following provision<sup>2</sup> has recently been added in section 3 of the Act of 1934:—

Provision in English Act (as amended in 1969) as to ordering different rate of interest.

“(1B) Any order under this section<sup>3</sup> may provide for interest to be calculated at different rates in respect of different parts of the period for which interest is given, whether that period is the whole or part of the period mentioned in sub-section (1) of this section.”

We have considered the need for making a similar provision, but have come to the conclusion that it is not necessary. Such a discretion may be said to be implicit in the formula employed in section 1, and an express provision is not needed.

6.4. As regards the date of commencement of the running of interest, the present law, in substance, is that interest is to commence from the time when the debt or sum certain is payable by virtue of a written instrument; or, if the debt or sum certain is “otherwise” payable, then from the time mentioned in a written demand. The word “otherwise” has come up for judicial construction.<sup>4</sup> It has been held<sup>5</sup> that where the principal sum is not payable at a certain time, interest on such sum is payable from the date of the written demand, referred to in the section.

Date of commencement of running of interest.

6.5. This part of the section requires some examination. Under the present section, the position, as we have already stated<sup>6</sup>, is this—

Starting point of interest.

- (a) In the case of a debt or sum certain payable at a certain time by virtue of a written instrument, the interest can run from the date on which the debt or sum certain is payable.
- (b) In other cases, interest can run from the date mentioned in the notice of demand of interest.

The first case creates no problems. The second case requires some discussion.

We may note that in the English Act, the date of cause of action is adopted as the possible date for the running of interest *in all cases*.<sup>7</sup>

6.6. We have examined all aspects of the matter, and, in particular, the question whether the cause of action should be substituted, as in England, as the starting point<sup>8</sup>. After careful consideration, we have come to the conclusion that except in the case of a debt payable by virtue of a written instrument at a certain time, it is the notice of written demand of interest which should be crucial, as at present. Where a definite date is not fixed in writing<sup>9</sup> for the payment of a sum, justice requires that a person who has failed to perform a monetary obligation (whether in debt or in damages) should, in cases falling under section 1, main paragraph, be given notice, by the creditor or person entitled to damages, of the intention to claim interest, so that the person liable may stop the negotiations

Notice of demand preferred as the criterion for fixing starting point.

<sup>1</sup>. Existing section 1.

<sup>2</sup>. Section 22, Administration of Justice (C. 58).

<sup>3</sup>. For the Act of 1934, see para 5.2., *supra*.

<sup>4</sup>. See also discussion as to the amount on which interest can be awarded.

<sup>5</sup>. *Province of West Bengal v. Basant Properties*, A.I.R. 1966 Cal. 36.

<sup>6</sup>. Para 6.5., *supra*.

<sup>7</sup>. Section 3, Law Reform (Miscellaneous Provisions) Act, 1964.

<sup>8</sup>. Para 6.4., *supra*.

<sup>9</sup>. The requirement of writing merely adds to the certainty of the date of payment.

which he might have undertaken or examination of the facts of the case or legal consultation, and pay the principal amount, if he so chooses. The notice of demand serves two purposes, namely,

- (a) re-asserting the claim for the principal, and
- (b) notifying the desire of the claimant for interest.

Moreover, there is a practical advantage in giving a notice of demand. It avoids disputes as to the date of breach of contract or date of commission of tort, where the claim for the principal amount is relatable to breach of contract or tort. The notice seeks to identify a particular point of time, for these events. In cases where the cause of action is based on any omission or failure rather than on a positive act, this aspect becomes of particular importance, because it is often difficult to locate the point of time of the omission or failure. There is, thus, obvious convenience in having a definite date.

Recommendation to amend section 1—  
main paragraph.

6.7. What we have said above agrees, in substance, with the section as it now stands and, therefore, in the main paragraph of section 1, the commencement of the running of interest will be from the date mentioned in the demand, except where the sum is payable by written instrument at a certain time.

## CHAPTER 7

### SECTION 1, PROVISO—INTEREST NOW PAYABLE BY LAW

Section 1, proviso.

7.1. So far, we have considered the text and case law relating to the main paragraph of section 1 of the Act. We now proceed to deal with cases which, at present, fall outside the main paragraph. For this purpose, the proviso to section 1 is material. It reads thus:

“Provided that interest shall be payable in all cases in which it is now payable by law.”

This cryptic provision, which merely refers to cases where interest is “now payable by law”, cannot be applied unless one conducts independent research to find out in what cases interest is “now payable by law”. It would, therefore, be desirable to include expressly in the section at least the important cases in which interest is “now payable by law”. Experience shows that when this question arises, considerable legal research has to be undertaken, resulting in expense and waste of time. Many of the reported decisions relating to the Proviso have gone up to the Supreme Court, and, having regard to the fact that the number of such decisions is not inconsiderable, an attempt to codify the propositions laid down,—at least in some of the important decisions—would be worthwhile.

Equitable consideration.

7.2. Broadly speaking, courts have, in cases decided in reliance on the proviso to section 1, awarded interest where the equity of the case so required. For example, where immovable property is purchased or acquired, and the price or compensation (as the case may be) has not yet been paid, there is readiness to award interest. Same is the position where there is a fiduciary relationship.

Scope and object of the proviso.

7.3. The Supreme Court has observed<sup>1</sup>, with reference to the words “interest shall be payable in all cases in which it is now payable by law”, occurring in the proviso to section 1, that the proviso applies to cases in which the *courts of Equity* exercised jurisdiction to allow interest.

Object of the proviso.

Explaining the object of the proviso, the Privy Council has said<sup>2</sup> that it applies to cases in which the Court of equity exercises jurisdiction to allow interest.

<sup>1</sup>. *Mahabir Prasad v. Durga Dutt*. (1961) 3 S.C.R. 639; A.I.R. 1961 S.C. 990.

<sup>2</sup>. *B. N. Raly Co. v. Patanji Raraji*, A.I.R. 1938 P. C. 65, 67, 79.

7.4. The proviso is, thus, of considerable juristic interest. There is a very clear statement of the principle by Sir Robert Phillimore, in *The Northumbria*.<sup>1</sup> Distinguishing the authorities cited in support of the proposition that the right to award damages depended solely on the Civil Procedure Act, 1833, sections 28 and 29, and that the Admiralty practice was erroneous as being at variance with the common law both before and since the passing of the statute, Sir Robert Phillimore said:—

Juristic importance.

“But it appears to me quite a sufficient answer to these authorities to say, that the Admiralty, *in the exercise of an equitable jurisdiction*,<sup>2</sup> has proceeded upon another and a different principle from that on which the common law authorities appear to be founded. The principle adopted by the Admiralty Court has been that of the civil law, that interest was always due to the obligee when payment was not made, *ex more of the obligor*; and that, whether the obligation arose *ex contractu* or *ex delicto*.”

7.5. A similar approach is illustrated by a Nagpur case,<sup>3</sup> where it was stated:

“We are of opinion that we are exercising *equitable powers* in maintenance cases where a charge has been created by a decree.”

7.6. The important cases in which interest is payable by the rules of equity can be thus enumerated<sup>4</sup>:

English law—fraud and other equitable considerations.

- (1) Money obtained by *fraud* or retained by fraud can be recovered with interest.<sup>5,6</sup>
- (2) Interest may also be recovered in equity in some cases where a *particular relationship* exists between the creditor and the debtor, such as mortgagor and mortgagee, obligor and obligee on a bond, executor and beneficiary, principal and sub-agent, principal and surety, trustee and *cestui que trust*, and vendor and purchaser.

Interest may be recovered on arrears of annuities where there has been misconduct or improper delay in payment.

- (3) Interest is allowed on pecuniary legacies not paid within a certain time.<sup>7</sup>

As regards annuities, the position is as follows:—<sup>8</sup>

“The general rule of the Court is, that arrears of an annuity do not carry interest. In the older cases an exception was sometimes made in favour of the annuitant where the annuity was a provision for a wife or a child. Lord Hardwicke acted on this principle in *Newman v. Auling*.<sup>9</sup> But in *Few v. Lord Winterton*.<sup>10</sup> Lord Thurlow repudiated this as a ground of decision; and his view of the law has, as I conceive, ever since been treated as sound and satisfactory.

The cases in which, in later times, the Court, in the absence of express contract, has allowed interest have been confined to those where the annuitant has held some legal security which, but for the interference of the Court, he might have made available for the obtaining of interest; or where the accumulation of arrears has been occasioned by the misconduct of the party bound to pay. In this case contract is out of the question; and as the annuitants certainly held no legal security, the only question is, whether the great

<sup>1</sup> *The Northumbria*, (1869) L.R. 3A. & E. 6, 10, cited in *The Berwickshire*, (1950) 1 All E.R. 699, 702.

<sup>2</sup> Emphasis supplied.

<sup>3</sup> *Sitaram v. Wamurad*, A.I.R. 1948 Nagpur 49,50 para 6.

<sup>4</sup> Halsbury, 3rd Ed. Vol. 27, pages 9 and 10, para 9.

<sup>5</sup> *Johnson v. N.* (1904) A.C. 817, 822 (P.C.) (Lord Macnaghten). (See also para 7, 9A, *infra*).

<sup>6</sup> For Indian Cases on fraud, see Appendix.

<sup>7</sup> Halsbury, 3rd Ed. Vol. 16 (Executors), pages 327, 328, 379, 380.

<sup>8</sup> *Torre v. Brown*, (1855) 5 H.L.C. 555, 578.

<sup>9</sup> *Newman v. Auling*, 3 Atk. 579.

<sup>10</sup> *Few v. Lord Winterton*, 1 Ves. Jun. 451.

accumulation of arrears can be attributed to the misconduct of the owners of the property charged. It is distressing to think for what an excessive length of time the rights of the parties interested in this estate have remained unsettled. But on the best consideration of the facts, I am unable to fix the blame of delay on those who were to pay the annuities rather than on those who were to receive them."

Question of enumerating the cases considered.

7.7. The fundamental question, however, to be considered is, whether, where there are special circumstances creating an equity, it is still necessary to deal with the matter on a level of discretion to be exercised in each individual case, or whether the emphasis should not be shifted to the other side, that is to say, where a monetary claim has arisen in *certain special* circumstances, interest should not, *prima facie*, be claimable unless there are special reasons to the contrary.

Need to provide for special circumstances.

7.8. Having carefully considered this aspect of the matter, we have come to the conclusion that it would be just and fair to provide for certain particular situations, without, of course, impairing the generality of the power preserved by the proviso. A few important situations are, accordingly, considered below.

Deposit.

7.9. In the case of security deposits, if a demand for interest is not made, interest is not recoverable at present.<sup>1</sup> We are of the view that the position in this regard should be altered. Now-a-days, deposits are often taken for the performance of contractual or statutory obligations, and it is but fair that interest from the date of deposit should be allowed on such deposits by an express statutory provision. A specific provision on the subject is desirable.

Fiduciary relationship.

7.10. Where there is a fiduciary relationship, interest should be allowed by a specific provision.

Fraud.

7.11. Interest should also be payable where money is obtained or retained by fraud,<sup>2</sup> by a specific provision. This, in fact, is the present position, under the case law. For example, the Supreme Court made the following observations in *Trojan & Co. v. Nagappa Chettiar*:<sup>3</sup>

"We think it is well settled that interest is allowed by a court of Equity in the case of money obtained or retained by fraud. As stated in Art. 423 of Vol. 1 of Halsbury, the agent must also pay interest in all cases of fraud and on all bribes and secret profits received by him during his agency."

The Supreme Court quoted with approval the judgment of the Privy Council in *Johnson v. Rex*, where it was held:<sup>4</sup>

"In order to guard against any possible misapprehension of their Lordships' view, they desired to say that in their opinion there can be no doubt whatever, that money obtained by fraud and retained by fraud can be recovered with interest, whether the proceedings be taken in a court of Equity or a Court of law, or in a court which has jurisdiction both equitable and legal."

It would be useful to insert an express provision on the subject.

Dower or maintenance.

7.12. It has been held that where a claim for dower<sup>5</sup> or maintenance<sup>6</sup> is decreed, it is in the discretion of the court to award interest on the amount till the recovery of the amount. We think that in such cases also interest should be specifically provided for.

This concludes discussion of the important situations which fall under the proviso and which should be dealt with specifically. We shall now discuss a few other situations.

<sup>1</sup>. *Sheikh Mahtab v. Dharamsae*, A.I.R. 1944 Nag. 330, 332, 333.

<sup>2</sup>. Cf. The English Law, summarised in para 7.3., *supra*.

<sup>3</sup>. *Trojan & Co., v. Nagappa Chettiar*, A.I.R. 1953 S.C.235, 240.

<sup>4</sup>. *Johnson v. Rex*. (1904) A.C. 817 (P.C.)

<sup>5</sup>. *Mt. Mainuna Begam v. Sharafat Ullah*, A.I.R. 1931 All 403 (D.B.)

<sup>6</sup>. (a) *Shri Nathji v. Mt. Panta Kanwar*, A.I.R. 1935 All 239 (D.B.)

(b) *Saraswati Kuer v. Sheraratan Kuer*, A.I.R. 1934 Pat.99 (D.B.)

7.13. It has been held<sup>1</sup> that in case of delay in payment of compensation to the insurer under section 16 of the Life Insurance Corporation Act, 1956, the insurer is entitled to interest. This situation need not be specifically dealt with, the case being of an isolated nature.

Delay in payment of compensation.

7.14. The question of interest on rent payable by a tenant to his landlord has come up more than once before the courts, and the current view seems to be that if the case does not fall within the Interest Act, such a claim cannot be allowed.<sup>2</sup> No amendment is needed on this point.

Interest on rent.

7.15. Interest may also be recovered in equity in some other cases; for example, where a particular relationship exists between the creditor and the debtor, such as, mortgagor and mortgagee, obligor and obligee on a bond, executor and beneficiary, principal and agent, principal and surety, trustee and *cestui que trust*, vendor and purchaser, or in the case of arrears and annuities. These cases need not be provided for by specific provisions. The general provision in the proviso to section 1 will continue to take care of them.

Other cases.

7.16. We have enumerated above the situations where interest should be a matter of right, in the sense that it should be awarded unless there are reasons to the contrary. We shall indicate, in due course, the precise amendment to be made<sup>3</sup> in this regard. We may, at this stage, sum up the situations as follows:—

Recommendation to add right to interest in some cases.

- (a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;
- (b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;
- (c) where money or other property is obtained or retained by fraud, from the date of the cause of action;
- (d) where the claim is for dower or maintenance, from the date of the cause of action.

7.17. This concludes consideration of points of substance as to the power to award interest under the proviso. We now deal with a verbal point arising from the words "now payable by law". We are of the view that the word "now" should be omitted from the proviso. The word is confusing, and, from the point of view of drafting, inaccurate. We, therefore, recommend its deletion.

Verbal changes.

We also recommend that the words "enactment or other rule of law or usage having the force of law" should be substituted for the word "law", in this part of the proviso.

## CHAPTER 8

### SUMMARY OF RECOMMENDATIONS

8.1. We have concluded our consideration of the Act. We summarise below the recommendations made by us in various Chapters of this Report.

Summary.

- (1) The preamble to the Act should be deleted.<sup>4</sup>
- (2) The territorial extent of the Act should be widened so as to cover<sup>5</sup> the whole of India, except the State of Jammu & Kashmir.
- (3) The Act should be so re-drafted as to ensure that it applies also to proceedings other than civil suits.<sup>6</sup>

<sup>1</sup> *National Insurance Co. v. Life Insurance Corporation*, A.I.R. 1963 S.C. 1171.

<sup>2</sup> *Gophala v. N. Ramaswami*, A.I.R. 1970 Madras 417, 418, 419, para 4.5 (reviews Madras cases).

<sup>3</sup> See para 8.1, *infra*.

<sup>4</sup> Para 2B.1, *supra*.

<sup>5</sup> Para 3.5, *supra*.

<sup>6</sup> Para 4.4, *supra*.



- (4) A written<sup>1</sup> instrument should not be necessary before interest can be claimed under the Act, if the other conditions are satisfied.
- (5) The Act should be re-drafted to make it clear that it applies even where a suit merely for interest is filed<sup>2</sup>
- (6) The Act should not apply to—
  - (a) cases where the right to interest is separately conferred by law or contract, or
  - (b) interest on dishonour of a bill of exchange,<sup>3</sup> promissory note or cheque.
- (7) The Act should not apply where interest is prohibited by an express agreement.<sup>4</sup>
- (8) Interest under the Act should be awardable on damages also.<sup>5</sup>
- (8A) "Debt" should be defined in terms of an ascertained sum of money.<sup>6</sup>
- (9) It should be made clear that debts payable, in kind are also within the Act.<sup>7</sup>
- (10) The expression "sum certain" should be deleted<sup>8</sup>
- (11) For damages for death or personal injury award of interest should be mandatory, unless there are reasons to the contrary.<sup>9</sup>
- (12) Interest on claims for dower or maintenance should be specifically provided for.<sup>10</sup>
- (13) Interest on deposits required by law or contract should be specifically provided for.<sup>11</sup>
- (14) Interest on money or property obtained or retained by fraud should be specifically provided for.<sup>12</sup>
- (15) Interest should be specifically provided for where there is a fiduciary relationship.<sup>13</sup>

## CHAPTER 9

## RECOMMENDED AMENDMENTS

Recommendation as to extent clause. **9.1.** In the light of the above discussion, we recommend that in the Interest Act, 1839, a provision<sup>14</sup> regarding territorial extent of the Act should be inserted as follows: It will have to be numbered as section 1, and the present section 1 should be re-numbered<sup>15</sup> as section 2 :—

"1. This Act extends to the whole of India except the State of Jammu and Kashmir."

<sup>1</sup>. Para 4.6, *supra*.

<sup>2</sup>. Para 4.21 and 4.22, *supra*.

<sup>3</sup>. Para 4.22, *supra*.

<sup>4</sup>. Para 4.23, *supra*.

<sup>5</sup>. Para 5.2, *supra*.

<sup>6</sup>. Para 5.2A, *supra*.

<sup>7</sup>. Para 5.9, *supra*.

<sup>8</sup>. Para 5.12, *supra*.

<sup>9</sup>. Para 5.13, *supra*.

<sup>10</sup>. Para 7.12, *supra*.

<sup>11</sup>. Para 7.9, *supra*.

<sup>12</sup>. Para 7.10, *supra*.

<sup>13</sup>. Para 7.8, *supra*.

<sup>14</sup>. Para 3.4, *supra*.

<sup>15</sup>. Para 8.2, *supra*.

9.1A. The preamble to the Act should be deleted.<sup>2</sup>

Recommendation.

9.2. Section 1 should be replaced by the following sections:—

Recommendation relating to section 1. Existing section 1, main paragraph.

"2. (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate<sup>3</sup> not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

- (a) if the proceedings relate to a debt payable by virtue of some written instrument at a certain time, then from the date when the debt is payable to the date of institution of the proceedings;
- (b) if the proceedings do not relate to any such debt, then from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed to the date of institution of the proceedings:

*Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.* (New)

(2) Where, in any such proceedings as are mentioned in sub-section (1),— (New)

- (a) judgment or order is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and
- (b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death,

*then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.*

(3) Nothing in this section shall apply in relation to—

- (a) any debt or damages upon which interest is payable as of right, by virtue of any agreement, or (New)
- (b) any debt or damages upon which the payment of interest is barred, by virtue of an express agreement. (New)

(4) Nothing in this section shall affect—

- (a) the compensation recoverable for the dishonour of a bill of exchange,<sup>3</sup> promissory note or cheque; (New)
- (b) the provisions of rule 2 Order 2 in the First Schedule to the Code of Civil Procedure, 1908." (New)

(5) Nothing in this section shall empower the court to award interest upon interest. (New)

*Explanation.—In this section,—*

- (a) "court" includes a tribunal and an arbitrator; (New)
- (b) 'debt' means any liability for an ascertained sum of money, and includes a debt payable in kind, but does not include a judgment debt; (New)
- (c) 'personal injuries' includes any disease and any impairment of a person's physical or mental condition. (New)

<sup>1</sup>. Para 2B.1., *supra*.

<sup>2</sup>. Alternative draft for rate—"at such rate as the court thinks fit".

<sup>3</sup>. The various savings can be combined, if so desired.

- Existing section 1, Proviso. 3. (1) *Notwithstanding anything contained in section 2, interest shall be payable in all cases in which it is ..... payable by any enactment or other rule of law or usage having the force of law.*
- (New) (2) *Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in the following cases, allow interest from the date specified below in each case to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed—*
- (a) *where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit ;*
- (b) *where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action ;*
- (c) *where money or other property is obtained or retained by fraud, from the date of the cause of action ;*
- (New) (d) *where the claim is for dower or maintenance, from the date of the cause of action.*
- (New) 4. *Nothing in this Act shall affect the provisions of section 34 of the Code of Civil Procedure, 1908."*

We would like to place on record our warm appreciation of the valuable assistance we have received from Shri Bakshi, Member-Secretary of the Commission in the preparation of this Report.

P. B. GAJENDRAGADKAR	<b>Chairman</b>
P. K. TRIPATHI	<b>Member</b>
S. S. DHAVAN	<b>Member</b>
S. P. SEN-VARMA	<b>Member</b>
B. C. MITRA	<b>Member</b>
P. M. BAKSHI	<b>Member-Secretary</b>

*New Delhi,*

*Dated the 21st February, 1974.*

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## APPENDIX 1

### INTEREST ACT AND FRAUD

This Appendix deals with selected cases relating to fraud. In *Trojan & Co. v. Nagappa*,<sup>1</sup> the Supreme Court held that interest would be allowed by a Court of Equity in the case of money obtained or retained by fraud. In this case, it was held that by reason of the transaction brought about by fraudulent concealment of facts with regard to the purchase of shares in certain companies, the plaintiff paid to the defendants or his agents a sum of Rs. 89,000 in cash which he would not have parted with otherwise, and he also lost the money which stood to his credit with the defendants. The Supreme Court held that the agents had a large sum of the plaintiff with them which they would not have acquired but for the fraud that they practised on him. The Court held that the agent must pay interest in all cases of fraud and on all bribes and secret profits received by him during his agency.

This case was followed by the Patna High Court.<sup>2</sup> In the Patna case, money was entrusted to the defendant for a particular purpose at a time when the defendant was working as an employee of the plaintiff. The defendant was found to have wrongfully and illegally retained that money which was entrusted to him. The court purporting to apply the principle in the *Trojan* case held that the plaintiff was entitled to the money so entrusted and the interest thereon, because the equitable jurisdiction of the court was attracted.

**Comment.**—It is suggested that, in the Patna case, the defendant did not get the money initially by any fraud though his retention of it was wrongful and illegal. So to this extent, it can be said that by wrongful retention of money interest would become payable. The Patna case seems to have extended the principle in the *Trojan* case that interest is payable where money is obtained by fraud to cases where money is wrongfully or illegally retained.

In one old Madras case,<sup>3</sup> the Madras High Court has held that any money obtained by fraud can be recovered with interest under the law. In this case, A and B were two brothers who jointly advanced a sum of Rs. 1,000 on a mortgage. In October 1901, A realised Rs. 1,000 from the mortgagor in full satisfaction of the debt, without the knowledge of B's representative C. In 1906, at the time of division between C and A, the latter fraudulently misrepresented to him that the mortgage was still outstanding. In December, 1908, C became aware of the fraud, and, in 1909, sued to recover from A half of the sum which was due from the mortgagor when A realised the debt from the mortgagor. It was held that C was entitled to a decree for Rs. 500, being the amount actually collected by A, with interest from the beginning of 1906 till December 1908 and from the date<sup>4</sup> of the suit till recovery.

**Comment.**—It is not clear why interest was not allowed for the period from December 1908, when plaintiff became aware of the fraud to the date of the suit?

## APPENDIX 2

### PROVISIONS REGARDING INTEREST IN SOME LABOUR LAWS Workmen's Compensation Act, 1923

Section 4A(3) provides for simple interest at the rate of 6 per cent per annum on compensation not deposited by the employer within one month if the other conditions of the section are satisfied.

### The Payment of Wages Act, 1936

**Section 7(f), (ff) and (fff).**—These deal with deductions from the wages of an employed person—

- (f) of advances of whatever nature (including T.A. and conveyance allowance) and the interest due in respect thereof;
- (ff) of loans made from any fund constituted for the welfare of labour in accordance with rules approved by the State Government and the interest due in respect thereof;
- (fff) of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof.

<sup>1</sup>. *Trojan & Co. v. Nagappa*, A.I.R., 1963 S.C. 645.

<sup>2</sup>. *Jaggannath Singh v. Narayan Sarogi* A.I.R. 1955 Pat. 300.

<sup>3</sup>. *Avanchea Lakshminarasamma v. Lakshamma*, (1913) 21 Ind. Cas. 394 (Madras High Court).

<sup>4</sup>. Date of the suit appears to be in 1909.

**The Coal Mines Provident Fund and Bonus Scheme Act, 1948**

*Section 10F.*—Where an employer makes default in the payment of any contribution of bonus or any damages under this Act, the Central Government may recover from such employer damages not exceeding 25% of the amount of arrears.

**The Employees' Provident Fund Act, 1952**

*Section 14B.*—Where an employer makes default in payment of any contribution to the fund or in the payment of any charges, the appropriate Government may recover from the employer such damages, not exceeding 25% of the amount of arrears from the employer as it thinks fit.

**The Personnel Injuries (Compensation Insurance) Act, 1963**

Section 7 deals with the amounts to be paid as compensation under this Act. This does not include any interest on the amount.

**The Payment of Bonus Act, 1965**

*Section 21.*—Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee may make an application to the appropriate Government for the recovery of the money due, and if the Government is satisfied that it is due, it shall issue a certificate for that amount to the Collector, who can recover the same as an arrear of land revenue.

There is no mention of interest in this section.

**The Payment of Gratuity Act, 1972**

*Section 8—Recovery of gratuity.*—If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time to the person entitled thereto, the controlling authority shall, on application made by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at the rate of 9% per annum from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.