

# KAMONOHASHI PROJECT

Final Report in relation to study titled ‘Comparative Analysis on Money Lenders Act’

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**PRIVATE AND CONFIDENTIAL**

**FINAL REPORT**

Comparative Analysis on Money Lenders Act

*Document v3 dated 27 August 2021 | Send feedback and questions to krithika.akilabalu@gmail.com*

**EXECUTIVE SUMMARY**

This Report is the final report that outlines the context, scope, research design, methodology, research implementation process and findings for the research study titled “Comparative Analysis on Money Lenders Act”. This report has been researched and authored by the Researcher, Krithika Balu during the period from 1 April to 27 August 2021.

The purpose of the research study being carried out by the Researcher is to analyse different state-specific legislations pertaining to money lenders and money lending across India. The Researcher has undertaken a comprehensive survey of literature at the national level, as well as literature pertaining to specific states as may be available, between the period 2010 – 2021 to understand and present to Kamo what prevailing literature states, regarding the extent and scale of private money lending, focusing on migrant workers, sex workers or other groups vulnerable to usurious money lending in India. The literature review has formed the background for selecting the three (3) states for the comparative study on legislations, and for answering the eight learning objectives as mentioned by Kamo in the Terms of Reference.

The Researcher surveyed over 70 research papers, articles, media reports and technical papers and has shortlisted 38 sources for the literature review. The findings of the literature review are as follows:

***I. Scope and Extent of Money Lending, Borrowing and Indebtedness in India***

Literature on rural credit in India states that usurious money lending practices have been well-documented in the country in official reports dating back to the colonial period. Moneylenders are the “main source of emergency money funding” for a high proportion of rural and marginalised persons, due to the lack of rules around requisite documentation, eligibility to borrow and procedures, characteristic of institutional lending. Studies have shown that even though money lending affects rural communities disproportionately, there is significant exploitation in urban areas as well. The main targets of the moneylenders are poor people, followed by the middle class. Further, in urban areas, groups such as small vendors and daily wage earners have historically been excluded from institutional credit mechanisms, for whom informal money lending is the norm.

The All-India Debt and Investment Survey has stated that as on June 30, 2002 (NSS Fifty-Ninth Round released in December 2005), the share of moneylenders in the total dues of rural households had increased from 17.5 per cent in 1991 to 29.6 per cent in 2002. Further, the All-India Debt and

Investment Survey ('AIDIS') carried out in 2012 showed that 28 per of households reported outstanding loans, but only 16 percent of loans were institutional in nature. Further, sources of loans were largely informal in nature (from relatives, friends and money lenders), showing that in spite of institutional options, informal credit systems are still thriving.

The National Bank for Agriculture and Rural Development (NABARD) additionally carried out an All-India Rural Financial Inclusion Survey in 2016-17, which, amongst other aspects, examined the indebtedness of rural households in 29 States and Union Territories in the country. Taking all households together, 47.4% of total households were found to be having some outstanding debt as on the date of survey. Telangana (79 percent), Andhra Pradesh (77 percent), and Karnataka (74 percent) showed the highest levels of indebtedness, with Arunachal Pradesh (69 percent), Manipur (61 percent), Tamil Nadu (60 percent), Kerala (56 percent), and Odisha (54 percent) showing that more than half of their households were indebted at the time of survey. West Bengal, at 37 percent and Maharashtra, at 35 percent were relatively lower than other states, but still show high levels of indebtedness of households.

Data on money lending, borrowing and indebtedness of Indian households across the years from AIDIS and NABARD reinforce the trope of the exploitative moneylender that has been well-depicted in various accounts of indebtedness, poverty and vulnerability in rural India.

## ***II. Effects of Indebtedness and Informal Money Lending on Vulnerable Groups***

The government estimated, as of 2010, families that took microloans in Andhra Pradesh spent more than 60% of their incomes paying off loans (BBC, 2010). Further, in Andhra Pradesh, the plight of sex workers has been discussed in the media, with a study stating that the vast majority of about 100,000 sex workers registered in the state are subject to abuse by loan sharks on account of persistent usury over the years. The Government has still failed to formally recognise their labour, with the resultant financial and economic insecurity rendering them vulnerable to exploitation by money lenders. The implication of the Government failing to formally recognise these persons' labour is that they are not eligible for state schemes or benefits that could boost their financial security – thereby exacerbating vulnerability to informal money lending.

Literature from Maharashtra states that as a whole, private moneylending saw an increase of 28 percent in 2017. The vast majority of literature specifically focuses on farmer and agrarian indebtedness, with media reports looking at roles of *sahukars* or moneylenders in rural areas. There is similar literature from Uttar Pradesh covering wide scale of moneylending in different parts of the state (and in the state as a whole), commenting on exorbitant rates of interest charged by lenders, ranging from 75 to 350 percent per month. In Tamil Nadu, usury is historically a major problem, especially in districts like Tirunalveli, where moneylending was claimed to be professionally carried out by the Nattukottai Chettiar community and Brahmins, with the involvement of other caste and religious groups, such as Thevars, "The Labbai Muslims, Nadars, Devangas and Vaniya Chettiars".

### ***III. COVID-19 and the effects on indebtedness of vulnerable groups***

#### *Trafficking Survivors, Survivors of CSE and Sex Workers*

A study conducted by the Kailash Satyarthi Children Foundation, titled “Impact of Lockdown and Economic Disruption on Low-Income Households with Special Reference to Children”<sup>1</sup> has stated that the vast majority of non-governmental organisations (81 percent out of 53 NGOs interviewed) have voiced the concern that “there is a very high likelihood” of an increase in human trafficking for the purpose of labour in the post-lockdown period, with families being forced to avail of usurious loans. The findings of the study further attest to the economic and financial deterioration of households on account of the COVID-19 pandemic.

Another assessment carried out by a group of NGOs, including Goranbose Gram Bikas Kendra (GGBK), HELP, Partners for Anti-Trafficking (PAT) and Sanjog in July 2020, of around 230 families of survivors of human trafficking and commercial sexual exploitation in West Bengal and Andhra Pradesh has shown that 140 families (nearly 59 percent) have taken some loans to cope with the crisis. The loss of income coupled with little institutional support has put the women with no option but to turn to moneylenders, and many families have been constrained to take the loans at an extremely high rate of interests that ranged between 5 percent and 20 percent per month.

In West Bengal, anti-trafficking activists noted that survivors have been facing disproportionately adverse economic problems since the lockdown in March 2020, with their crisis being “magnified” due to the stigma attached to the survivors. It has been seen that trafficking survivors surveyed from Andhra Pradesh were reported to have taken heavy loans with high interest rates from private moneylenders as compared to women from West Bengal. The Andhra Pradesh chapter of the National Network of Sex Workers, representing 6,000 sex workers in Andhra Pradesh said more than three quarters of its members were in debt, with many living under constant threat of abuse from money lenders. In the red light areas of Andhra Pradesh, the NGO HELP has found that out of 116 survivors of commercial sexual exploitation, 83 took loans between April and June 2020.

#### *Migrant Workers*

For hundreds of millions of informal workers the COVID-19 lockdown and economic crisis has left them without cash or food, with lack of proper paperwork or bank account significantly impeding access to government assistance. In a survey of about 3,200 informal workers who were walking home in the first week of April 2020 from cities to their villages, nearly a third had loans to repay – mainly to money lenders from their communities. Almost half of those who were in debt said they feared their inability to service the loans could see them subjected to some form of violence, according to the survey by charity Jan Sahas.

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<sup>1</sup> The study is based on responses of 53 NGOs (phase-1 carried out from 27 April – 5 May 2020) and 245 households from the trafficking-prone states (phase-2 carried out from 17 – 24 May 2020). The north central zone has states: Uttar Pradesh, Delhi, Rajasthan, Uttarakhand, Haryana, Madhya Pradesh and Chhattisgarh while eastern region comprises Bihar, Jharkhand, Odisha, West Bengal, Assam and Sikkim (Press Trust of India, 2020). The south west zone comprises Gujarat, Maharashtra, Andhra Pradesh, Telangana and Karnataka.

Unorganised and migrant workers are the “easiest targets” for the organised crime of human trafficking, who are likely to be forced to accrue debt and pay amounts at predatory interest rates for their daily survival. After lifting of the nation-wide lockdown and resuming of normal manufacturing activities, employers have looked to cover their financial losses by employing cheap labour, consisting largely of ‘desperate and vulnerable’ unorganised workers.

In October 2020, a petition initiated by the Tamil Nadu Alliance – a coalition of 100 charities seeking to improve the conditions of garment industry workers – sought for cash handouts of 6,000 rupees (\$81) for at least the next four months to help prevent risky borrowing, human trafficking and child labour. The petition was signed by about 1.5 million people, including migrant workers, street vendors and home-based labourers to minimise hunger and reduce the likelihood of human trafficking, child marriage and child labour. The petition was submitted to the Central Government, with signatories from 23 Indian states. However, the present status of these handouts is still unknown.

The Supreme Court, in an order dated 29 September 2020 in *Budhadev Karmaskar v State of West Bengal and Others* (Criminal Appeal 135/2010)<sup>2</sup> referred to a court-appointed panel that had, from 2011 to 2016, been tasked with advising the Court on a range of issues, including prevention of trafficking, rehabilitation of sex workers who wished to leave sex work and conditions conducive for sex workers to live with dignity in accordance with Article 21 of the Constitution of India. The panel, in its final report submitted to the Court on 14 September 2016, found that sex workers suffered as a result of their lack of legal status in the country. Due to the difficulties in acquiring identity proof like ration cards or voter ID cards, sex workers had no access to credit facilities offered by states because of inability to open bank accounts due to lack of supporting documentation.

The Supreme Court, in its order, stated that Maharashtra, Karnataka and West Bengal had already initiated steps to provide dry rations to sex workers without insisting on producing documents as proof of identification. The Court directed State Governments and the Union Territories to provide dry rations to sex workers identified by National Aids Control Organisation (NACO) without insisting on proof of identity. The Court also directed District Legal Services Authorities to take active steps in assisting the distribution of dry rations to the sex workers without insisting on proof of identity. The case was then taken up on 28 October 2020, where it was found that several states (specific names not mentioned) had still not implemented the order. The Court directed speedy implementation by states to uniformly distribute the minimum quantity of dry ration as provided in the schemes formulated either by them or the Central Government – and thereafter, the case has not been listed.

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<sup>2</sup> An unreported judgment of the Supreme Court in Criminal Appeal 135/2010. The order dated 29 September 2020 is available on the Supreme Court website as well as at <https://indiankanoon.org/doc/47726118/>

### *Children*

The literature dwells upon how children in different jurisdictions, particularly those from vulnerable groups like children of trafficking survivors, survivors of CSE or sex workers will be disproportionately affected by the COVID pandemic. Upon commencement of manufacturing activities, a large number of desperate and vulnerable labourers are children, who are forced out of school and made to sustain their families in economic hardship. Literature opines that children are likely to be trafficked by the thousands to work in manufacturing units, heavily underpaid, most likely facing extreme physical, mental and sexual violence. Further, The Hindu reported on 15 October 2020 that according to the Andhra Pradesh NGO HELP, sex workers receiving nil or minimal government support and seeking financial help from money lenders would render their children more vulnerable to exploitation, as some of the lenders act as middlemen for traffickers.

The NGO HELP carried out a survey on the mental health status of 407 children of trafficking victims in three districts of Andhra Pradesh. The study revealed that the children suffered from multiple types of emotional disorders such as depression, anxiety, fear and avoidance, with their mental health further deteriorating due to stress triggered by COVID-19.

## ***IV. Implementation (or Non-Implementation) of Laws in Combating Usurious Money Lending***

### *Tamil Nadu*

In Tamil Nadu, the Tamil Nadu Money Lenders Act, 1957 says that money lending cannot be practiced without the lender obtaining a proper licence. The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, also deems usury a criminal offence, but has seldom been implemented. In Tirunelveli, Tamil Nadu, several borrowers complained that the police were not helpful in registering their complaints, and, in some cases, they alleged that the police worked in collusion with moneylenders. In Coimbatore, Tamil Nadu, since 2003, only 27 usury cases were registered, out of which three ended in conviction. In contrast, since 2003, 161 cases for usury were booked in Madurai district, due to a higher awareness level among people, say police officers. Law enforcement stated that political patronage or interference, informal settlements between the parties and lack of documentary evidence are serious impediments in investigating and prosecuting cases for usury.

### *Kerala*

In Kerala, there are accounts that the Kerala Prohibition of Charging Exorbitant Interest Act, 2012, which penalises charging exorbitant interests against illegal moneylenders has not been fully implemented. Harassment of borrowers by moneylenders has been made an offence, but it has been stated that the statute “suffers from a double-sided execution failure” as the police had not been effectively implementing it and the people also could not effectively use it.



### *Supplementary Research*

The literature review reveals that there are penalties for violation of provisions of state laws on money lending. Accordingly, the Researcher examined National Crime Records Bureau reports between 2016 and 2019 on Crime in India. The Report for 2016 (National Crime Records Bureau, 2017) contained ‘Money Lenders Act’ as one of the constituent laws under the head ‘Other SLL Crimes’ (State and Local Laws), alongside various other statutes containing petty offences. There were no individual statistics, either by state, or nationally, on the number of complaints, cases or trials under any of the Money Lenders Acts, seemingly showing that numbers are too low for nation-wide documentation. In the National Crime Records Bureau reports from 2017 to 2019 (National Crime Records Bureau, 2019a; National Crime Records Bureau, 2019b; National Crime Records Bureau, 2020) there is absolutely no mention of ‘Money Lenders Act’ or disputes/crimes related to money lending.

Further, in order to determine which states have recently enacted new provisions or amended antiquated laws against illegal money lending, the Researcher carried out a brief review of the states with high levels of indebtedness, as well as the states originally proposed for deeper study. Maharashtra, Kerala and Telangana have enacted laws after 2010 to address illegal/private money lending or the charging of exorbitant interest. Karnataka and Tamil Nadu seem to have similar legal frameworks around money lending, as both states have enacted laws to protect borrowers from high rates of interest (in 2004 and 2003, respectively), both states have money lending acts passed within a few years of each other (1961 and 1957, respectively) and additionally, both states have brought Rules into force, supplementing their money lending laws. Although both states have high levels of indebtedness, as per Figure IV, there is more literature on the nature of money lending in Tamil Nadu, as well as status of implementation of laws. Finally, for West Bengal, the antiquated 1940 Bengal Money Lenders Act is still in force.

### *Overall Selection of States*

The overall objective of the research study ‘Comparative Analysis on Money Lenders Act’, as stated in the Terms of Reference, is to build awareness amongst stakeholders on legislations on money lending and rules of their implementation in India. In that respect, for building awareness on a particular state, it is important to have (1) adequate baseline data to be able to demonstrate the scope and extent of the problem in the respective state; (2) data on how usurious money lending has impacted vulnerable groups in the state, particularly focusing on trafficking survivors and other populations at risk of exploitation and trafficking; (3) updated information on the effects of COVID-19 on indebtedness, lending and borrowing; and (4) an idea of whether the laws that have been enacted (if any) to protect borrowers, are being implemented or not.

From the NABARD survey, overall, Telangana (79 percent), Andhra Pradesh (77 percent), and Karnataka (74 percent) showed the highest levels of indebtedness, as of 2018. It is noteworthy that in Andhra Pradesh, periodic data is available regarding scale of money lending and specific effects of illegal money lending on sex workers, migrant workers and children as vulnerable groups.

Media reports show that there is ongoing research being carried out through the pandemic in Andhra Pradesh, including the recent vulnerability analysis of trafficking survivors and the mental health survey of children who are affected.

Further, in Tamil Nadu, which has an overall indebtedness of 60 percent, literature is available for specific districts like Tirunelveli, where usury has been a historical and social issue. There is also commentary regarding the lack of implementation of laws against illegal money lending in Tamil Nadu, as well as how awareness of the law plays a key role in effective implementation. Tamil Nadu has enacted a 1957 statute on money lending, rules of procedure supplementing this law, as well as a specific law for protection of borrowers from usurious interest rates. In this background, both Andhra Pradesh and Tamil Nadu can be considered as potential candidates for further research to build awareness.

The other initially shortlisted states of Maharashtra and West Bengal had lower levels of overall indebtedness, being 37 percent and 35 percent, respectively. The majority of literature in Maharashtra in the time period 2010-21 focused on indebtedness of farmers, which the Researcher has not cited in the literature review on account of the specific agrarian context that does not clearly encompass rural daily wage workers nor trafficking survivors. Maharashtra has quite an extensive legal framework, with both an Act and corresponding Rules, but the proposed amendments to the laws (the nature of which is still not exactly known) and the agrarian context behind enacting these laws (and now amending them) show that Maharashtra is most concerned about the farmer demographic that is suffering on an ongoing basis due to usurious money lending

West Bengal has similarly low levels of reported indebtedness as Maharashtra, but a key difference between literature on Maharashtra and West Bengal is that in West Bengal, there is significant coverage by the media and exploration by NGOs on the relationship between indebtedness, trafficking survivors and their deteriorating economic situation on account of COVID-19. The law used in West Bengal though is highly antiquated in nature, being enacted in 1940. Out of the two states, due to increased prevalence of literature on trafficking survivors, it is possible to carry out an exercise in comparing West Bengal's legal framework to other states' more contemporary frameworks to propose legal reform in the state. West Bengal can accordingly be considered for a contextual inquiry into money lending in contemporary times.

In discussion with the Kamo team, the recommended states for comparative analysis of money lending are Andhra Pradesh, West Bengal and Tamil Nadu. This pays due regard to the existing data available, so that there is sufficient background, context and awareness of the prevailing situation that will inform research and awareness-building. Creating and disseminating awareness of laws and implementation amongst stakeholders (many of whom may be working in specific states covered by the research), should ideally contain accounts of situations (general or specific) that are being experienced by the targeted beneficiaries of their programmes.

## *Comparative Analysis of States*

### *Andhra Pradesh*

In Andhra Pradesh, the latest proposed law pertaining to money lending is the Andhra Pradesh Money Lenders Bill, 2017. However, the Bill, while passed by the Legislative Assembly and Legislative Council on 30 November 2017 and 2 December 2017 respectively, has not yet been published in the Official Gazette. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 was passed to regulate money lending by Microfinance Institutions to women's Self Help Groups.

The Andhra Pradesh (Andhra Area) Debtors Protection Act, 1934 was enacted to protect borrowers from money lenders, termed as 'creditors' in the Act. However, the Act was repealed in 2018, by the Andhra Pradesh Acts and Regulations (Repeal) Act, 2018. The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 was only applicable to Scheduled Areas of the state, applicable to Scheduled Tribes in Andhra Pradesh. It is unclear as to whether the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 is still in force, given that it is not cited in any other legal documents as a law relating to money lending.

In present day Andhra Pradesh, the only applicable law that has been duly passed pertaining to money lending is the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, which exclusively covers microfinance institutions (MFIs). The enactment of this law led to the microlending industry coming to a 'grinding halt' in the state, due to the strict provisions governing lenders under the law (Pilla & Unnikrishnan, 2013). The law relating to microfinance was challenged before the Andhra Pradesh High Court in 2013, which upheld the same, but asked the state government to review the legislation in light of proposed national regulations to govern the microfinance sector (Pilla & Unnikrishnan, 2013). However, there are no national microfinance regulations in force today, with the RBI proposing the same to 'harmonise regulatory frameworks' for microlenders (PTI, 2021).

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 were enacted pursuant to the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 to prescribe requirements and formats for procedures under the Act that correspond to obligations of both MFIs as well as Registering Authorities. These include forms pertaining to registration of MFIs with their jurisdictional Registering Authority, relating to record keeping by both MFIs and Registering Authorities, terms of cancellation, suspension and renewal of registration, amongst others.

For the analysis, the Researcher examines provisions from the latest Bill as well as the Andhra Pradesh (Andhra Area) Debtors Protection Act, 1934, the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960, the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F that was in force in the Telangana area in the combined State up till 2014, the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, the Andhra Pradesh

Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 and the Andhra Pradesh Money Lenders Bill, 2017. One limitation of the research is the absence of the entire bare Act of the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 and accordingly, secondary research methods are used, where the Researcher cites scholars who have studied this Regulation.

### *Tamil Nadu*

In Tamil Nadu, the relevant laws are the Tamil Nadu Money Lenders Act, 1957 supplemented by the Tamil Nadu Money Lenders Rules, 1959. After usurious lending led to a spate of suicides, the state enacted the new law meant to protect borrowers from harassment and violence by moneylenders enacted in the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. This operates in conjunction with the 1957 law that prohibits charging of interest above 12%, with the aim of tackling usurious lending (Govindarajan, 2017).

### *West Bengal*

In West Bengal, the Bengal Money Lenders Act, 1940 is still in force today. It has only been supplemented by a notification by the Finance Department, Government of West Bengal designated Dr. Or. Sudip Kumar Sinha, IAS, Joint Secretary, Finance Department, Government of West Bengal to act as the State Registrar of Money Lenders under the 1940 Act. The Bengal Moneylenders Act, 1940 has repealed the Usurious Loans Act, 1918 in respect of money lending transactions falling within the purview of the Bengal Moneylenders Act.

### *Supplementary RBI Circulars and Guidelines*

Only Andhra Pradesh has a comprehensive law for regulation of Micro Finance Institutions ('MFIs') and borrowings by SHGs. For the other States, MFIs do not have separate regulation, but all States' MFIs have to be in compliance with RBI guidelines and circulars that are released periodically. The RBI introduced a comprehensive regulatory framework for NBFC-MFIs on 02 December 2011, which prescribed eligibility criteria for MFI loans linked to core features of microfinance *i.e.*, lending of small amounts to borrowers belonging to low-income groups, without collateral, and with flexible repayment schedules. The regulations laid special emphasis on protection of borrowers and fair practices in lending such as transparency in charges, ceilings on margins and interest rates, non-coercive methods of recovery, measures to contain multiple lending and over-indebtedness.

The comparative analysis of the laws and policies on money lending in the States are organised according to the eight (8) questions provided for in the Request for Proposals issued by Kamo.

## I. What is the definition of money lenders and lenders?

### *Money Lenders*

#### *Andhra Pradesh*

In Andhra Pradesh, there is no consolidated law governing money lending in the state. The Andhra Pradesh Debtors Protection Act, 1934 (which was repealed in 2018) defines a “creditor” in Section 2(4) in the narrowest of terms, qualifying a money lender to be either a person who advances loans in their regular course of business, as well as their legal representatives, assigns and successors. The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, which was in force in the combined state till 2014 has a broader definition of ‘money lender’ as defined in Section 2(7). The definition includes persons who advance loans in the ordinary course of their business or along with other businesses, expanding the scope of the Act to pawn brokers as well.

The Andhra Pradesh Money Lending Bill, 2017, which has not yet received Presidential assent defines money lender in Section 2(11) as persons who advance or realise loans as an occupation or as a subsidiary occupation. It also includes their employees, appointed as heads of one or more branch offices or liaison office (or the equivalent, by whatever name). It is the broadest definition of ‘money lender’, granting exemptions to banks, cooperative societies and public sector institutions.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, rather than defining ‘money lenders’, defines ‘Micro Finance Institutions’ or MFIs in Section 2(d) of the Act. It is a broad definition, including persons, partnership firms, groups of persons including companies, Non-Banking Finance Companies and cooperative societies. Further, it importantly states that to be an MFI, the relevant entity must have a principal or incidental activity that is the lending of money or offering of financial support of whatever nature to the population below the poverty line.

#### *Tamil Nadu*

The Tamil Nadu law is as broad as the Andhra Pradesh Money Lenders Bill, 2017, in terms of bringing persons who advance and realise loans and their agents (within or outside Tamil Nadu), and only makes exceptions for banks and cooperative societies.

#### *West Bengal*

The Bengal Money Lenders Act, 1940 interestingly includes definitions for ‘lender’ as well as ‘money lender’, separately. The Act also defines ‘money-lending business’ and ‘business of money-lending’ but only includes the advancement of loans, not the realisation (repayment or recovery) of loans.

### ***Borrower or Debtor***

In the Andhra Pradesh Money Lending Bill, 2017, ‘borrower’ is defined briefly in Section 2(3) as a “*person to whom a loan is advanced and includes a successor-in-interest or surety*”. The other two laws in Andhra Pradesh do not contain definitions of ‘lenders’ or ‘borrowers’. In the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, rather than defining ‘borrower’ or ‘debtor’, the definition of ‘Self Help Group’ or SHG includes a group of women who are formed on principles of self-help and registered under the Society for Elimination of Rural Poverty (SERP) in the rural areas or Mission for Elimination of Urban Poverty in Municipal areas (MEPMA) in urban areas. It is interesting that while the definition of ‘money lender’ restricts the scope of other laws, the Andhra Pradesh Micro Finance Act actually restricts its own scope through the comparatively narrow definition of ‘Self Help Group’.

There is no definition of a ‘lender’ in the Tamil Nadu Money Lenders Act, 1957. In the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, ‘debtor’ is defined in Section 2(2) as a person who receives loan for exorbitant interest. ‘Exorbitant interest’ is further defined under the Act itself. Further, the Bengal Money Lenders Act, 1940 defines “borrower” in the same way as the Andhra Pradesh Money Lending Bill, 2017 in Section 2(2) as “*a person to whom a loan is advanced and includes a successor-in-interest or surety*”.

### ***Judgments on ‘Money Lender’***

There have been several judgments of various High Courts and the Supreme Court on the definition and scope of ‘money lender’. In *Sitaram Poddar v Bhagirath Choudhary*<sup>3</sup> the Calcutta High Court referred to a number of High Court judgments to hold that one or two isolated or occasional acts of lending money will not constitute a money-lending business; instances of occasional lending of money even at a remunerative rate of interest are not sufficient to constitute business of money-lending. The Court went on to state that “Every loan is a debt, but every debt is not loan.” Thus, by laying stress on the business trait of the lending within the Act itself, the Bengal Money-Lenders Act, 1940 contemplates a professional money-lender and it is in relation to such a professional money-lender that the provisions as to a licensee and registrations are applicable.

The Calcutta High Court, in *Binapani Roja v. Rabindranath Sarkar and Ors.*<sup>4</sup> held that the word ‘loans’ in Section 2(14) of the Bengal Money-lenders Act, is in plural. Therefore, in order to establish that the Plaintiff is carrying on business of money-lending, it must be proved that he has lent money on more than one occasion. Further, the Calcutta High Court in *Satyanarayan Kamal Kumar v. Birendra Pro Singh and Anr.*<sup>5</sup>, holds that money-lender is a person, who carries on business of money-lending in a regular course of business, but a “mere lender” is not so.

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<sup>3</sup> (31.03.2011 - CALHC) : MANU/WB/0574/2011

<sup>4</sup> MANU/WB/0055/1959 : AIR 1959 Cal 213

<sup>5</sup> MANU/WB/0049/1979 : AIR 1979 Cal 197

The Andhra Pradesh High Court, in *Varalaxmi v. Syed Kasim Hussain*<sup>6</sup> states that to fall within the definition of 'money lender' it was not enough merely to show that a person had on several occasions lent money at remunerative rates of interest; there must be a certain degree of system and continuity about the transactions. The definition envisages only those classes of persons whose regular business is to advance moneys and not those who advances money casually. Further, the Andhra Pradesh High Court in *Sataram Shrawan v. Bajya Parnya*<sup>7</sup> dealt with the meaning of the term 'regular' in 'regular course of business'. The Court stated that "*the word 'regular' shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of money lending is shown to the Court it is impossible to state that the constitutes a regular course of business. It is an act of business but not necessarily an act done in the regular course of business*".

## II. What are the salient features amongst the studied state legislations?

Rather than outlining all the provisions of the legislations in this section, the Researcher has identified and put forth the statement of objects of each laws, as well as some distinctive provisions that characterise each law. The coherences and disjuncts between the laws, including certain common and unique features, are provided for in the following section.

### *Andhra Pradesh*

The Andhra Pradesh (Andhra Area) Debtors' Protection Act, 1934 was enacted to protect borrowers in the Andhra area of Andhra Pradesh, which subsisted till it was repealed in 2018. It required creditors to maintain accounts and to provide receipts containing any and all details of the loans taken by individual borrowers. Further, Section 3 seeks mandatory registration of money lenders.

The Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F was enacted to regulate money lending transactions and to make better provisions for control of private money lending. It was in force in the Telangana area of combined Andhra Pradesh and Telangana and has been adopted in the separate state of Telangana since 2014. Every moneylender has to obtain a license under the Act and no money lender can carry on the business without obtaining a license. Further, if a money lender files a suit before a Court relating to a loan, if the Court finds out that the money lender does not have a valid license, the Court shall dismiss the suit.

The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 was applicable in the Scheduled Areas of Andhra Pradesh as a law enacted to protect borrowers from Scheduled Tribes. The Andhra Pradesh Money Lenders Bill, 2017 aims to consolidate the laws relating to money lending in Andhra Pradesh. Its salient features include the prohibition of any person commencing or carrying on or continuing business as a money lender within the jurisdiction of the law, without

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<sup>6</sup> (1962) 2 Andh WR 137

<sup>7</sup> AIR 1941 Nag 177

a license. The State Government is mandated to specify the maximum rate of interest chargeable by money lenders and shall audit the accounts of money lenders at least once a year.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 was enacted to protect women's self-help groups from exploitation by micro finance institutions. The Act states that the Government of Andhra Pradesh facilitated organisation of below poverty line households into Self Help Groups (SHG) for the purpose of their economic advancement by achieving financial inclusion through linking with the banking network. The law is clearly a welfare legislation to protect the interests of SHGs and to relieve them from the undue hardship by regulating money lending transactions by money lending MFIs, who provide loans to SHGs with usurious interest rates and resort to coercive means of recovery, in turn, resulting in impoverishment and often, suicides of the borrowers. The Act contains provisions for the registration of MFIs, prohibition on MFIs from seeking security for loans, requires MFIs to display rates of interest that they charge, capping the maximum amount of interest recoverable on loans in specific cases. The Act also contains penalties against MFIs, including punishments for carrying on business without registration and for undertaking coercive actions against borrowers.

#### *Tamil Nadu*

The Tamil Nadu Money Lenders Act, 1957 makes it mandatory for money lenders to obtaining licenses for money lending as Section 3 of the Act, without which no person can carry on or continue to carry on business as a money lender. The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 states that no person shall charge exorbitant interest on any loan advanced by him. This is a separately punishable offence under the Act. The 1957 Act governs the overall business of money lending in the state, whereas the 2003 Act only covers the charging of exorbitant interest, specifically.

#### *West Bengal*

In *Jupiter Brokerage Services Ltd. v. Ektara Exports Pvt. Ltd. and Ors.*<sup>8</sup> the Calcutta High Court outlined the object of the Bengal Money Lenders Act, 1940 stating that it is basically a Regulatory Act, which regulates the business of money-lending. The Court pointed out that according to Section 8 of the Act, after a certain date notified in the official gazette no money-lender shall carry on the business of money-lending unless he holds an effective licence. However, the Court stated that the provision is not mandatory and that money lending without a licence is not totally barred or prohibited by the Bengal Money-Lender's Act, 1940.

The Court stated that although money lending without a license is in itself not an illegal action, if a money lender (without a license) files a civil suit to recover a loan, the Court will stay the suit until the money lender pays a penalty whose terms will be fixed by the Court. Once the money

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<sup>8</sup> (13.10.2015 - CALHC) : MANU/WB/0876/2015



lender pays the penalty, the suit will go on – but if the money lender does not pay the penalty in accordance with the terms of the Court, the suit will be dismissed.

Uniquely, the Bengal Moneylenders Act, 1940 has a provision in Section 2(4) defining “commercial loan” to mean a loan advanced to any person solely for the purposes of any business relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor. The difference between commercial loans and regular loans is that the regulation of commercial loans is lower and the interest rate permitted is higher.

### **III. What are the coherences and disjuncts amongst the studied state legislations?**

The various coherences and disjuncts between the legislations in the States are as follows.

#### *Definition of Loan*

In the Andhra Pradesh Debtors Protection Act, 1934, ‘loan’ is defined in Section 2(6) as an advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction. It includes any transaction which the Court finds in substance to amount to such an advance. This is a restrictive and antiquated definition that has nevertheless persisted till 2018 in the state. In the Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F, ‘loan’ is defined in Section 2(4) as a loan secured or unsecured, advanced on interest in cash or in kind, and includes every transaction which is in substance a loan.

In Andhra Pradesh, the Andhra Pradesh Money Lenders Bill, 2017 defines ‘loan’ as an advance, whether of money or in kind at interest (including transactions that the Court deems an advance). A key point in this is that Courts can ‘deem’ an advance as a loan ‘in substance’. This allows for ‘loans’ to be subject to interpretation, rather than subject to a static and narrow definition. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 also defines ‘loan’ in Section 2(c) very widely, including multiple kinds of payment (advance, discount, money paid for or on account of or paid on behalf or at the request of any person) as well as loans ‘in kind’. Further, the definition is not static, since any agreement, whatever its terms or form, which is in substance a loan, will fall within the scope of the Act.

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 defines loans quite differently, in conjunction with the Tamil Nadu Money Lenders Act, 1957. Section 2(6) defines ‘loan’ as an advance of money for *daily vatti*, *hourly vatti*, *kandhu vatti*, *meter vatti* or *thandal*. These terms are separately defined with ‘*daily vatti*’ meaning interest on daily basis and ‘*hourly vatti*’ meaning interest on hourly basis. Both terms are contingent on the interest working out to an interest rate more than that fixed by the Government.

‘*Kandhu vatti*’ simply means interest which will work out to an interest rate more than that fixed by the Government, ‘*meter vatti*’ and ‘*thandal*’ mean interest which will work out to an interest rate more than that fixed by the Government for every day on the loan amount not paid within the stipulated time and interest which will work out to an interest rate more than that fixed by the Government, which is to be collected daily along with the part of the loan amount. Therefore, within the mandate of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 to regulate usurious money lending with exorbitant rates of interest, these different interest structures are banned, if they are more than the maximum interest prescribed by the Government.

The Bengal Money Lenders Act, 1940 defines loans similarly to the Tamil Nadu Money Lenders Act, 1957, with a slightly different scope and exemptions. However, The Bengal Money Lenders Act, 1940 also has a definition for ‘commercial loan’ in Section 2(4), which means a loan advanced solely for the purposes of any business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment or to the occupation of wharfinger, warehouseman or contractor or any other merchant venture. This applies to all such proprietors, principals, agents or guarantors of such ventures. As stated earlier, the interest recoverable on commercial loans is higher than regular loans, Courts can order borrowers to pay higher rates of interest (exceeding 6 percent) on the principal amounts due (as decided by the Court).

#### *Applicability to Companies and Loan Exemptions*

Here, almost all the laws provide for exemptions for deposits and advances in banks, companies and cooperative societies, advances by local authorities and Governments, persons whose primary business is not money lending. The Andhra Pradesh Debtors Protection Act, 1934 provides exemptions for Advances made by a landlord to his tenant, by a less or to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture. The Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F stating that advances by employers to their agricultural labour, between traders as well as any money payable to a trader by a person other than a cultivator or a labourer for articles sold on which interest is charged by reason of non-payment on due date are exempt. The Andhra Pradesh Money Lenders Bill, 2017 makes no exemptions for advances made by agriculturalists, but there is an exemption for an advance made by landlord to tenant, lessor to lessee and partners for the purpose of carrying on agriculture.

The Tamil Nadu Money Lenders Act, 1957 prescribes extensive exemptions to advances by persons whose primary business is not money lending, Chit Funds, permanent funds and agriculturalists who pay advances to their tenants. The Bengal Money Lenders Act, 1940 has wider exemptions, but no provision pertaining to agriculturalists, tenants or traders.

#### *Maximum rate of interest Prescribed in all States*

The majority of state laws have a prescribed maximum rate of interest that can be charged, ideally varying from 9 percent simple interest per annum for secured loans and 15 percent simple interest per annum for unsecured loans (Andhra Pradesh Debtors Protection Act, 1934), 12 percent simple

interest (The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960) in Andhra Pradesh. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 is slightly different, only mandating that MFIs must prominently display the rates of interest charged by them in their premises. The limitation on interest recoverable on loans is equal to the principal amount of the respective loan.

In Tamil Nadu, maximum rates are similar to that of Andhra Pradesh, with 9 percent per annum simple interest for secured loans and 12 percent per annum simple interest for unsecured loans (G.O.Ms.No.406, Co-operation, dated 05.07.1979).

West Bengal allows for the highest rates of interest, making a distinction between regular loans and commercial loans. The Bengal Money Lenders Act, 1940 prescribes 12.5 percent per annum for unsecured loans and 10 percent per annum for secured loans (regular loans) and 20 percent per annum for unsecured loans and 17 percent per annum on secured loans (commercial loans).

### *Requirement of License*

The requirement of a money lending license is common amongst all the States. The Andhra Pradesh Debtors Protection Act, 1934, is the only Act that does not contain a provision for mandatory registration of lenders, which is telling, as this has been the main law in force in Andhra Pradesh till 2018. In the Andhra Pradesh (Telangana Area) Money Lenders Act 1349F, money lenders are mandated to obtain licenses. Notably, suits filed by money lenders pertaining to loans are liable to be dismissed if money lenders do not have valid licenses.

The Andhra Pradesh Money Lenders Bill, 2017 again mandates licenses, with money lenders being liable to pay security deposits to the licensing authority, depending upon the amount of money advanced annually by way of loans. Further, mirroring the Tamil Nadu law, the Bill calls for multiple licenses at each place of business of a money lender and associations of money lenders are only permitted if every money lender has a license designating that they are members of such associations.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 contains strict licensing provisions, creating obligations on MFIs to register themselves before the relevant authority, renew their licenses upon expiry of one year (duration of license) and refrain from granting or recovering loans if they do not possess valid registration. Registration is valid for a single district, with an MFI doing business in more than one district being required to obtain separate registration for each district. Further, the Act confers obligations on the registering authority as well, requiring the authority to conduct verification of MFI details, obtain a written undertaking from MFIs that they will always act in conformity with the law and maintain a register of all MFIs with valid registration in their areas. Procedures regarding the same are provided in the corresponding Rules.

In the Tamil Nadu Money Lenders Act, 1957, it is mandatory for money lenders to obtain licenses. The Act has a provision that pre-dates and mirrors the provisions of the Andhra Pradesh Money Lenders Bill, 2017, requiring multiple licenses at each place of business of a money lender and associations of money lenders are only permitted if every money lender has a license designating that they are members of such associations. Licenses can be transferable upon the death of money lenders to their legal heirs or legal representatives, if the heirs or representatives apply for the same.

The Bengal Money Lenders Act, 1940 does not characterise money lending without a license as an illegal action. The prohibition mentioned in Section 8 of the Act that states that money lenders shall not carry on the business of money-lending without an effective licence can be rectified in a court of law, if the money lender files a suit to recover a loan. The Court will stay the suit and prescribe a penalty, which the money lender must comply with. In the event of non-compliance, the suit is liable to be dismissed by the Court.

#### *Cancellation of License and License Validity*

The grounds for cancellation and suspension of money lenders' licenses are important in determining the extent of liability of money lenders under different state laws. The Andhra Pradesh Debtors Protection Act, 1934 does not contain provisions that require money lenders to obtain a license, so accordingly there are no provisions pertaining to grounds for cancellation or period of validity. The Andhra Pradesh Money Lenders Bill, 2017 contains a provision for revocation of license, where violations of the Act, as well as lack of provision of additional security deposit to the licensing authority, if required by the authority, can form grounds for cancellation of license. License validity is long (for three years, as in the Bengal Money Lenders Act, 1940), which must be renewed at least 2 months prior to expiration. Every order of cancellation or suspension to be notified in the District Gazette and also on the notice-board of the office of the licensing authority.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lenders) Act, 2011 provides broad scope for the Registering Authority to suspend or cancel registration of MFIs. No order of cancellation of the Registration shall be passed without issuing notice to the MFI intimating to the MFI the facts upon which the *prima facie* decision to cancel the registration was taken, and the MFI must be afforded a reasonable opportunity to show cause against such notice. The provisions are supplemented in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lenders) Rules, 2011 and Section 12 clearly states that in the event of cancellation or non-renewal of registration of an MFI due to incorrect details being furnished to the Registering Authority or due to any violation of the Act, the MFI shall not extend any fresh loans to the borrowers, but will be entitled to recover the dues of the subsisting loans, subject to provisions for 'coercive action' under the Act.

The Tamil Nadu Money Lenders Act, 1957 in Section 14 grants the licensing authority to cancel or suspend licenses by an order in writing if the licensee carries on business in contravention of

any of the provisions of the Act or its, rules or the conditions of the licence. Further, a license can be cancelled or suspended if the licensing authority is made aware that the money lender meets any of the conditions under the Act for refusal of license. Licenses are liable to be cancelled or suspended if the licensee is convicted of an offence of entering the wrong sum (or leaving blank) in a note, promise to pay, acknowledgement, power of attorney, bond, security or other document, the loan amount, interest or time for repayment (Section 10A of the Act). Money lenders who actually advance amounts less than the amount shown in accounts, registers or other documents relating to the loan, or who take or receive interest or any other charge at a rate higher than the rate shown in the accounts, registers or documents are liable to have their licenses cancelled or suspended (Section 11 of the Act). Finally, money lenders who commit or abet molestation under Section 13 of the Act or who keep false accounts are also liable to have their licenses cancelled or suspended.

The Tamil Nadu Money-Lenders Rules, 1959 increases the strictness of the Tamil Nadu laws in cancelling licenses, providing for a time-limit for commencement of action after suspension of a licence under Section 14(2A) of the Tamil Nadu Money Lenders Act, 1957, which allows the licensing authority to suspend a money lending license that the authority deems liable to be cancelled, without having to send a show cause notice to the money lender. It states that the licensing authority shall commence further action towards cancellation of the license within a period of fifteen days from the date of suspension of the licence.

The Bengal Money Lenders Act, 1940, while not as strict as Tamil Nadu, states in Section 14 states that a person can be disqualified for holding a licence if so ordered by a Court; or if he has been convicted of any offence specified in the Schedule to the Act which has not been set aside by any legal proceeding. In West Bengal, license validity is throughout the State for a period of three years from the date of issue, or until it is cancelled.

#### *Money Lenders to Maintain accounts and Furnish Statements to Debtors*

All the laws in Andhra Pradesh, including Andhra Pradesh Debtors Protection Act, 1934, Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F, The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 and The Andhra Pradesh Money Lenders Bill, 2017 mandate money lenders to maintain accounts and provide statements of accounts to borrowers, pursuant to a requisition. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 takes it further to state that MFI shall deliver a statement of loan to every borrower within seven days from the date of granting the loan, which must contain the amount and date of the loan and of its maturity, the name and address of the functionary of the MFI and the effective rate of interest charged.

Further, every MFI is mandated to submit a Monthly Statement to the Registering Authority before the 10<sup>th</sup> day of each month, providing a list of borrowers, loans provided to each and interest rate for repayments. Associated forms and procedures for the duties imposed on the MFIs are provided

for in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011, which also provides in Section 22 that statements of accounts should be delivered free of cost, on demand to borrowers, and specifies in Section 21 that MFIs shall maintain copies of payment receipts in their records, which show every repayment made by the borrower. In Tamil Nadu, the Tamil Nadu Money Lenders Act, 1957 also states that money lenders are to keep books and give receipts to debtors.

Section 24 of the Bengal Money Lenders Act, 1940 states that every money lender shall keep and maintain at least a cash book, a ledger and a receipt book. Every money lender shall deliver to the borrower at the time a loan is advanced a statement, showing such details of the conditions of the loan and other information. Every money lender must provide receipt for every payment made on account of any loan at the time of such payment. Upon repayment in full, the money lender is mandated to provide an indelible loan mark indicating full payment or cancellation of the loan on every paper signed by the borrower, and discharge, return, restore or cancel any security. Borrowers also have the right to ask for a copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower, but the money lender shall not be bound to comply with such a demand if they have previously furnished the borrower with such copy, except on payment of such fee as may be prescribed.

#### *Definition of 'Molestation'*

This is the primary provision that benefits borrowers, to criminalise harassment by money lenders or their agents. The Andhra Pradesh Money Lenders Bill, 2017 includes a definition of 'molestation' with penalties for commission or abetment in Section 21. The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F defines molestation, with offences including obstruction, violence, intimidation of debtor, following the debtor, interfering with his property, loiters at or near place of residence, work or business or being there by accident. It includes punishments for the commission or abetment of molestation.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 contains a similar definition for the offence of 'coercive action', which extends liability to MFIs, persons connected with and responsible for the day-to-day control, business and management of MFIs including the Partners, Directors and employees. 'Coercive action' includes, notably, any action that seeks to forcibly remove any document from the borrower which entitles the borrower to a benefit under any Government programme. Notably, protection extends to family members of borrowers, which is given a wide definition in Rule 2(g) of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 to include husband, child, adopted child, parents, grandparents, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, siblings and grandchildren of the SHG woman, who are residing under one roof in the house of the SHG woman.

The Tamil Nadu Money Lenders Act, 1957 has a broad definition of ‘molest’ in Section 2(7) to include obstruction, violence, intimidation of debtor, following the debtor, interfering with his property, loiters at or near place of residence, work or business, does any act to annoy or intimidate the debtor or a family member or moves or acts in a way which causes or aims to cause alarm or danger to the debtor or their property. The term ‘molestation’ has been defined to include use of violence/intimidation against the debtor or family members/loitering near the house or work place/doing of any act calculated to annoy the debtor, *etc.* (RBI, 2007).

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in Section 4 provides penalties for molestation or abetment of molestation. Further, Section 9 states that if a debtor or their family member die by suicide and it is shown that immediately prior to the suicide, the deceased was subjected to molestation, the person who has advanced the loan shall be deemed to have abetted the commission of such suicide. It is notable, however, that the definition of ‘member of family’ only includes the spouse, unmarried daughter or unmarried son of a borrower, and is therefore much narrower than the definition provided in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011.

In West Bengal, the Bengal Money Lenders Act, 1940 has almost the same definition of ‘molestation’ in Section 41, stating that a person who, with intent to obstruct/coerce the debtor, obstructs, uses violence, or intimidates the debtor, follows the debtor, interferes with the debtor’s property, or loiters at or near place of residence, work or business of the debtor – is deemed to molest.

All the state laws make an exception that a person shall not be deemed to molest a debtor if the person is at or near the debtor’s house, building or place for the purpose only to make formal demand for repayment of a loan that is due or for obtaining or communicating information.

#### *Change of Place of Business of Money Lenders*

In Tamil Nadu, Section 5 of the Tamil Nadu Money Lenders Act, 1957 states that no money lender shall change his place of business without previous notice to the licensing authority and without having the address of the new place of business duly endorsed on his licence. The Tamil Nadu Money Lenders Rules, 1959 and Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 do not contain any provisions in this regard.

#### *Money lenders to exhibit their names over shops*

Section 6 in The Tamil Nadu Money Lenders Act, 1957 states that every money lender shall always keep exhibited over his shop or place of business his name with the words “*money lender*” and its equivalent in the regional language. This is exclusively for the state of Tamil Nadu, with no such provisions in the laws of Andhra Pradesh (except for the 2017 Bill that is not in force) or West Bengal.

### *Power of Courts*

In Andhra Pradesh, Courts can limit interest due in money lending cases. In Tamil Nadu, Courts have the power to limit interest recoverable in certain cases, to direct payment of decretal amounts in installments and to reopen any transaction between the parties. Further, The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 upholds the power of the Court to order the restoration of possession of movable/immovable property to debtor (upon a petition filed by the debtor) forcibly taken by any person towards repayment of the loan or interest. Further, Court has the power to pass an order for adjustment of interest paid by the debtor, over and above the rate of interest fixed by the Government. In Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, Section 6 states that the Court may, on filing a petition by the debtor, order the restoration of possession of property whether movable or immovable, if any, forcibly taken by any person towards repayment of the loan advanced or interest therefor. Further, the Court has the power to pass an order for adjustment of interest paid by the debtor, if it is over and above the rate of interest fixed by the Government.

The Bengal Money Lenders Act, 1940 also grants the Court the power to direct payment by annual instalments subject to terms outlined by the Court. The Court can order the sale of property in execution of decrees in respect of loans, to the extent that the price is sufficient to satisfy the decree. A Court can also reopen transactions if the Court has reason to believe that the exercise of one or more of its powers will give relief to the borrower.

#### **IV. What are the implications of these laws on the lenders?**

A review of the salient features, commonalities and disjuncts between the laws of the States show several implications on lenders in the respective states. The Researcher has condensed these points for the sake of simplicity and clarity and some broad implications of the legal framework are as follows:

1. The legal framework in the state of Andhra Pradesh is extremely convoluted with three separate laws governing three different areas of Andhra Pradesh, namely The Andhra Pradesh (Andhra Area) Debtors' Protection Act, 1934 to cover the Andhra area of the erstwhile state, the Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F to cover the Telangana area of the erstwhile state and the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 to cover areas inhabited by Scheduled Tribes in the state. Before the separation of Andhra Pradesh and Telangana, there was already a lack of uniformity in money lending laws in the combined state, with money lenders in the Andhra area not requiring compulsory registration or licensing, whereas those in the Telangana and Scheduled regions did require licenses to carry on money lending. After the separation of the states in 2013, the Andhra Pradesh Debtors' Protection Act, 1934 still continued in force in present day Andhra Pradesh, but was repealed in 2018 by the Andhra Pradesh Acts and Regulations (Repeal) Act, 2018. The failure to obtain Presidential assent for the Andhra



Pradesh Money Lenders Bill, 2017 means that as of date, there is no consolidated law pertaining to private money lending in Andhra Pradesh.

2. The lack of requirement for licensing of money lenders as well as the lack of a consolidated law to govern private money lending in Andhra Pradesh has serious implications for lenders, as there is no centralised state mechanism to keep track of money lenders, nor can lenders avail of specific protections that may be afforded by money lending legislations. The Andhra Pradesh High Court judgments restricting the definition of ‘money lender’ to only include classes of persons whose regular business is to advance moneys and not those who advance money casually, restrict the scope of the Act, as well as the redressal for borrowers under the Act. Further, even though the Andhra Pradesh Debtors Protection Act, 1934 contained provisions to restrict the maximum interest that could be charged by money lenders by way of simple interest per annum (9 percent for secured loans and 15 percent for unsecured loans), it is not in force anymore and without State or legislative action to regulate interest in the state, money lenders could potentially undertake usurious lending with impunity.
3. The only avenue for money lender regulation, borrower protection and settlement of disputes in Andhra Pradesh is contained in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011. This is a law containing strong provisions that aim to hold MFIs accountable to registering authorities, protect SHGs against coercive actions by MFIs and to regularise the money lending framework in Andhra Pradesh, as far as the specific context of microfinance lending is concerned. However, the requirement that borrowers must either be SHGs or members of SHGs does restrict the scope of the Act, in terms of the borrowers who are actually eligible for protection and redressal. Further, limitations on borrowing capacity of borrowers, including the prohibition of MFIs from granting a loan to a member of an SHG during the subsistence of two previous loans, irrespective of the source of the previous two loans have implications for borrower’s credit options. This becomes even more important in the larger context of Andhra Pradesh’s laws, which do not govern money lending at all presently, apart from the 2011 law.
4. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 supplement the 2011 Act passed in the State. These Rules are quite extensive, with detailed processes and procedures that aim to enforce obligations on MFIs and Registering Authorities. These provisions contribute to making sure that compliance with the provisions of the Act takes place smoothly, violations and offences are dealt with expeditiously and that extensive records are kept by MFIs and Registering Authorities, which give a clear picture of loans under the Act as well as MFIs in different jurisdictions. Further, the fact that there is a format for complaints to be filed by borrowers and the general public provided by the Rules can have positive implications for such persons who seek quick redressal.

5. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 also serve to regulate SHGs, in addition to MFIs, prohibiting dual membership of any individual in more than one SHG. The Rules require Registering Authorities to maintain a complete and updated database of the all Self Help Group members and the list of borrowers furnished by the Micro Finance Institutions operating in the district. Further, even though granting multiple loans to any SHG or its members having an outstanding loan is prohibited, the Rules provide a format for prior approval of such loans that can be made by the MFI to the appropriate Registering Authority. These procedures, reinforced by forms and formats, ensure that records are kept on borrowers as well, which restricts and formalises their loan-taking options.
6. In Tamil Nadu, the two Acts for money lending and charging of exorbitant interest, namely the Tamil Nadu Money Lenders Act, 1957 and the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 create a layered framework for governing money lending and within such governance, separate emphasis on prohibiting usurious money lending. The strict requirements for licensing of money lenders, coupled with the fact that every place of business requires a separate license, is aimed to keep track of specific places of money lending, along with their associated money lenders – even if such places of business are outside the state, managed by agents of money lenders within Tamil Nadu. The strict licensing provisions also help to clearly define liability of specific money lenders, if borrowers wish to take legal action or complain against them.
7. Although in Tamil Nadu, the basic money lending Act is antiquated, the enactment of a separate, more contemporary legislation to tackle usurious lending (Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003) has major implications for borrowers. This law prohibits specific types of culturally-unique interest structures imposed by money lenders (*daily vatti*, *hourly vatti*, *kandhu vatti*, *meter vatti* or *thandal*), if they work out to be more than the maximum interest specified by the State Government. Since the 2003 Act mentions separate offences that focus on the charging of exorbitant interest, borrowers have immediate avenues for recourse under this law, if they are charged excessively in any manner. This Act is a positive step in updating the legal framework around money lending in the State.
8. In West Bengal, the Bengal Money Lenders Act, 1940 is the only law that includes regular loans taken by individuals as well as commercial loans that are advanced for the sole purpose of trade, commerce, industry or occupation. The difference between commercial loans and regular loans is that the regulation of commercial loans is lower and the interest rate permitted is much higher. Although this provision can be said to promote commercial loans, it can also be oppressive for poorer persons who may be unable to pay such high rates of interest. Even though the Act prohibits the mischaracterisation of a regular loan as a commercial loan in loan documentation, it is still liable to be misused, especially amongst

marginalised persons, who may not have bargaining power with money lenders and who may even be illiterate and unaware of such mischaracterisation.

9. In West Bengal, the licensing of money lenders under the Bengal Money Lenders Act, 1940 is lenient, as compared to Tamil Nadu, with licenses being valid across the whole state for a period of 3 years. This provision has implications for lenders in terms of firstly, how effectively local and State authorities can keep track of money lenders. Even if a money lender obtains a license in one part of the State and is under the scrutiny of the local authority there, the lender can move to any other part of the state and (unlike in Tamil Nadu) is not bound to declare any change in place of business, nor display their status as 'money lender' over their shop/place of business. Such provisions could reduce the level of scrutiny on such lenders, affecting the ability of lenders to seek effective redressal against them, as they may not know which authorities to approach, nor any concrete details about the money lender's license.
10. In West Bengal, the Calcutta High Court has firstly stated that one or two isolated or occasional acts of lending money will not constitute a money-lending business, thereby restricting the definition of 'money lender', and has secondly stated that money lending without a license is, per se, is not an illegal action, as the same can be rectified if the money lender pays a penalty in court. This adds more layers to the difficulties of borrowers to seek recourse under the Act, as the law seems to be skewed in favour of money lenders, trying to make money lending (for commercial and regular purposes) easier as a trade or a business, with isolated acts of money lending not within the scope of the Act.

## **V. What are the protection mechanisms each legislation offers to lenders who borrow from private moneylenders?**

The protective mechanisms for borrowers include provisions that directly and indirectly benefit borrowers who borrow from private money lenders.

The Andhra Pradesh Debtors Protection Act, 1934 provides for the duty of creditors to maintain accounts and provide receipts. It also prescribes a penalty for failing to keep proper accounts, provide borrowers with receipts every time they make a repayment and also states that if a borrower requisitions a statement of their loan account, failure of the money lender to provide the same within a month will disentitle the money lender to interest during the period of default. This is beneficial for borrowers who may be unaware of the status of their account, ensuring that the default or delay of the money lender is not at the borrower's expense.

One very interesting provision to protect borrowers is found in the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, which states in Section 7 that debtor to whom a statement of account has been furnished, shall not be bound to admit or deny the correctness of such account and from the debtor's 'mere silence' it shall not be presumed that he has admitted the correctness of the account. Therefore, even if the debtor does not immediately dispute the amount in the statement

of account as provided by the money lender, there is no legal presumption that the debtor has agreed to the amount.

Section 11(4) of the Andhra Pradesh Money Lenders Bill, 2017 contains a similar provision to Section 7 of the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, stating that debtors to whom statements of accounts are furnished, and who fail to object to correctness of the account shall not, by such failure alone, be deemed to have admitted to the correctness of such amounts. Section 10 of the Andhra Pradesh Money Lenders Bill, 2017 contains a provision that allows for borrowers to deposit monies or property into a Court, if the money lender does not accept the amount for some reason. The Court can record full or partial settlement of the debt, upon an application by a borrower and deposit of the amount. This could be invaluable in situations where borrowers prefer Court supervision for the repayment of loan by the borrower.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 is in itself a law to protect women's Self Help Groups from exploitation by Micro Finance Institutions in Andhra Pradesh. SHGs, SHG members and members of the public are allowed to complain to the Registering Authority appointed pursuant to the Act, which can form grounds for suspension or cancellation of registration of MFIs. Further, the act prohibits MFIs from seeking any security from a borrower, whether through pawn, pledge or any kind of security, stating that any security provided before the commencement of the Act shall be released in favour of borrowers. Further, the Act provides protection to borrowers in firstly, mandating that MFIs prominently display the rate of interest charged, prohibiting MFIs from charging any other amount – and importantly stating that all interest recovered must be less than the principal amount of the loan provided. Even loans taken before the commencement of the Act, where MFIs had recovered an amount equal to twice of the principal, would stand discharged and borrowers are entitled to obtain refunds, which MFIs are bound to provide, of excess amounts paid by borrowers.

These provisions are supplemented by the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011, which obligates MFIs to display the effective interest rates being charged on the loans given by them prominently in all their offices; and to furnish the same to the borrowers in writing. Further, based on the database submitted by Micro Finance Institutions registered under the Rules, each Registering Authority shall identify such loans where the interest paid has exceeded the principal borrowed, and issue a direction for discharge of such loans and for return of the excess interest amount to the borrower.

MFIs are prohibited from employing recovery agents for recovery of loans except employees already named by the MFIs within their applications for registration. Any person who is unnamed by the MFI but effecting recovery shall be treated as a recovery agent, and the responsible MFI would become liable for violating the provisions of the Act. Additionally, no MFI shall collect repayment of any instalment due in urban areas, except in a public place like the office of the Slum Level Federation or ward office. These restrictions on MFIs can greatly reduce the scope for coercive action or harassment of borrowers at the time of repayment of loans.

The law in Tamil Nadu takes protection of the borrower one step further, with The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in Section 8 stating that the Court may, on a petition filed by the debtor for settlement of loan including the interest therefor, pass an order for the adjustment of the interest, if any, paid by the debtor, over and above the rate of interest fixed by the Government under the Tamil Nadu Money Lenders Act, 1957 towards the loan. Therefore, even if the debtor had been paying exorbitant interest, the Court has the power to adjust excess amounts paid against future/outstanding amounts, if any.

In the Bengal Money Lenders Act, 1940, Section 26 mirrors provisions in Andhra Pradesh and Tamil Nadu laws, stating that the borrower is not bound by money lender's statement of accounts. A borrower shall not be bound to acknowledge or deny the correctness of a statement of account, and their failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account. Further, according to Section 39, borrowers can deposit money in the Court if a lender refuses to accept the same. The Bengal Money Lenders Act, 1940 makes a separate provision for commercial lending, stating in Section 40(5) that before a Court, the burden of proving that a loan is a commercial loan is on the money lender. This is extremely important, as commercial loans attract lower regulation and higher rates of interest, which can be coercive for a borrower. Therefore, if a lender and borrower go to Court over a particular loan, the loan will not be presumed to be a commercial loan unless it is conclusively proved by the lender.

The Bengal Money Lenders Act, 1940 importantly, in Section 19 allows for any borrower to make an application to a Competent Court for an order to cancel the license of the money lender from whom the borrower has taken a loan, on the ground that such money lender has contravened provisions of the Act to render him unfit to carry on the business of money-lending. On receipt of such application, the Court shall hold an inquiry as it deems necessary.

## **VI. What is the redressal mechanism offered by the law?**

### *Jurisdictional Courts*

The Andhra Pradesh Money Lending Bill, 2017 provides, in Section 20(2) that no court inferior to a Judicial Magistrate of First Class shall try any offences. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 calls for the establishment of Fast-Track Courts in every district of the State for the protection of debtors and for the settlement of disputes of a civil nature between parties, relating to the Act (unclear if this has been implemented). Further, it is the only law that provides for a time limit, providing that cases filed before Fast-Track Courts must be disposed of within three (3) months. Importantly, the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 provides that the progress of investigation and prosecution in all criminal cases filed against MFIs (including for 'coercive action' or for carrying on business without valid registration) shall be reported to the Registering Authority on a monthly basis.

In Tamil Nadu, Section 20 of The Tamil Nadu Money Lenders Act, 1957 states that no Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try any offence punishable under this Act. The Bengal Money Lenders Act, 1940 has a different position with respect to courts, with Section 4 designating Competent Courts as empowered to pass orders as contemplated in the Act, including the Court of Small Causes of Calcutta for cases in Calcutta and the Court of the District Judge and any Court to which they may transfer the proceedings, outside Calcutta.

#### *Procedures before Courts and Appeals*

In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F, Section 9 looks at the procedure for recovery of loans to be followed in Courts. Courts shall first decide whether the money lender is a 'money lender' within the scope of the Act, and if the person is a money lender but does not have a license, the suit will be dismissed. If the money lender has not kept accounts, furnished statements, or provided receipts, the Court may disallow interest and costs of the suit and if the money lender has not furnished statement of accounts to the borrower in time, the Court will exclude the interest accrued during the period of default of the money lender.

The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F states, in Section 3 that appeals regarding licensing of money lenders, if the licensing authority is a Tahsildar, will lie with the Collector as an appellate authority. If the licensing authority is a Collector, the appeal will lie with the Board of Revenue as an appellate authority. All decisions of the designated appellate authority will be final. The Act further states in Section 2A and Section 3 that if a money lender, (i) who is not a citizen of India, or (ii) who practices money lending without a license; is convicted of the respective offence under the Act by a Collector, the appeal shall go to a Sessions Judge. The Andhra Pradesh Money Lenders Bill, 2017 does not provide for any procedure before Courts, with the provisions of the Code of Civil Procedure, 1908 being applicable to suits under the Act.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 provides for extensive procedures before the Registering Authority to undertake action against MFIs, based on complaints or *suo moto*, as well as a requirement that for offences of 'coercive action' or carrying on business without registration, the Officer in Charge of the jurisdictional police station shall register a case (either upon receiving a complaint, or *suo moto*) and shall proceed according to the Code of Criminal Procedure, 1973.

The Tamil Nadu Money Lenders Act, 1957 does not provide for any procedure before Courts, with the provisions of the Code of Civil Procedure, 1908 being applicable to suits under the Act. However, Section 12 states that no criminal court can take cognizance of an offence under the Act, except on a complaint in writing made by a prescribed authority. The prescribed authority is mentioned in the Tamil Nadu Money Lenders Rules, 1959 in Rule 13, designated as the Revenue Divisional Officer, Assistant Collector or Sub-Collector, as the case maybe, having jurisdiction over the place of business of the money lender. Where there is no Revenue Divisional Officer,

Assistant Collector or Sub-Collector, the Gazetted Assistant to the District Collector shall be the appellate authority. Where there is no Revenue Divisional Officer, Assistant Collector or Sub-Collector or a Gazetted Assistant to the District Collector, the District Collector shall be the appellate authority.

Therefore, it is not possible for borrowers to institute a complaint directly before a Court regarding offences under the Act. The Act makes an exception for the offence under Section 18-A (money lending carried out by a non-citizen is prohibited) which is cognizable by a Court.

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 in Section 5 provides for the procedure to be followed when a borrower seeks to deposit money in the Court. The borrower may deposit money due for a loan, along with a petition to record that the amount deposited is in full or part, satisfying the loan. The Court shall refer a copy of the petition to the person mentioned in the petition (the lender), directing him to give his version (response) of the case within 15 days. After due inquiry and after considering the versions of the parties, the Court may pass orders recording the satisfaction of the loan and interest.

The Bengal Money Lenders Act, 1940 designates certain Competent Courts under the Act, but does not designate any distinct procedure for cases filed under the Act. Instead, Section 5 states that the Competent Court shall have the same powers and follow the same procedure as it follows in civil suits, with the Code of Civil Procedure, 1908 applying in proceedings and appeals. Appeals from decisions made by the Court of Small Causes of Calcutta under the Act shall lie with the High Court of Calcutta.

## **VII. What is the punishment if moneylenders violated the rights of the lendee?**

### *Failure to provide Requisitions to Borrowers*

The laws of Andhra Pradesh, except for the Andhra Pradesh Money Lenders Bill, 2017 and the laws of Tamil Nadu and West Bengal all state that if a lender fails to give to the debtor a receipt in accordance with the Act or to furnish, on a requisition made by the borrower, a statement of account as required therein within a certain time period, the lender shall not be entitled to interest for the period of the default. The Andhra Pradesh Money Lenders Bill, 2017 goes one step further, prescribing a fine, which may extend to twenty thousand rupees or imprisonment that may be up to three years, or both. The only Act that provides for a general penalty is the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, which prescribes a fine of INR 10,000/- and/or imprisonment for six months.

### *Entering incorrect sums or leaving blanks in bonds, security or other documents*

The Tamil Nadu Money Lenders Act, 1957, in Section 10A, penalises entry of wrong sum in bond, note, promise to pay, acknowledgement, power of attorney, security or other document. Such a document, which does not state the actual amount of the loan, the rate of interest charged and the

time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly or leaves any of these fields blank is an offence. Contravention of the provision can be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

The Bengal Money Lenders Act, 1940 in Section 40 provides that the entry of an amount in a bond, etc., that different to the amount actually lent, is an offence. Whoever intentionally contravenes the provision shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

*Money lender advancing smaller amount or securing higher interest than that specified in the accounts*

The Andhra Pradesh Money Lenders Bill, 2017 contains a provision to this effect in Section 18, which shall be punishable with imprisonment for a term extending for up to three years and with a fine of up to INR 50,000/- (Indian Rupees Fifty Thousand only). Further, for a repeat offender, the Court convicting the person may cancel his license as a money lender.

In the Tamil Nadu Money Lenders Act, 1957, Section 11 contains the offence and penalty for money lenders advancing smaller amount or securing higher interest than that specified in the accounts. The offence shall punished with imprisonment for a term not exceeding six months, but not less than three months and the Court may, in addition to such imprisonment, impose fine which may extend to one thousand rupees.

The Tamil Nadu Money Lenders Act, 1957 in Section 11(1-A) importantly states that in any suit by or against a money lender, whether licensed or not, or in any prosecution or other proceeding in a Court, the burden of proving that the money lender had actually advanced to the debtor the amount specified in any document relating to the loan; or the accounts or registers of such money lender, shall be on the moneylender. This is extremely critical to ensure that debtors are not made to bear the brunt of prosecution or proving that the money lender has advanced a smaller amount or has secured greater interest.

*Penalty for Molestation or Abetment of Molestation of Debtor*

In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, Section 13 provides for punishments for molestation of debtor. The punishment is rigorous imprisonment for a term which may extend to two years or with fine or with both. In the Andhra Pradesh Money Lenders Bill, 2017, Section 21 provides for a penalty for molestation or abetment that prescribes imprisonment for up to three years and a fine of up to INR 50,000/- (Indian Rupees Fifty Thousand only), which is the strictest provision but unfortunately not in force.

Similarly, in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 the penalty for 'coercive action' (abetment is not mentioned) is imprisonment which may



extend up to a period of three years or with fine which may extend to one lakh rupees or both. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 prohibits the employment of recovery agents by MFIs, restricting the role to employees priorly disclosed by the MFI to the Registering Authority at the time of registration. This is highly useful for borrowers, as they can complain about any action taken by unauthorised persons, which would render the responsible MFI liable under the general penalty provided in the Act.

In the Tamil Nadu Money Lenders Act, 1957, Section 13 provides that whoever molests or abets the molestation of any debtor for the recovery of any loan shall be punished with imprisonment for a term not exceeding six months, but not less than three months. the Court may, in addition to such imprisonment, impose fine which may extend to one thousand rupees. In the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, Section 4 provides that the penalty for molestation or abetment of the molestation of any debtor for recovery of any loan shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to thirty thousand rupees. This is the strictest provision in force.

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in Section 9 expands the scope for molestation or abetment for molestation, specifically in scenarios where debtors or their family members (including their spouse, unmarried daughter or unmarried son) die by suicide. The provision states that if it is shown that immediately prior to such suicide, the debtor or any member of his family was subjected to molestation by any person, the person who has advanced loan shall, unless the contrary is proved, be deemed to have abetted the commission of such suicide.

The Bengal Money Lenders Act, 1940 in Section 41 provides that the penalty for molestation or abetment includes imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

#### *Charging of Excessive Interest*

In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, Section 10(1B) states that whoever, being a money lender, demands or charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the Government, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 does not provide for a specific penalty for charging exorbitant interest, but interestingly provides for a penalty for MFIs which levy any charge or impose any cost by whatever name called, on the borrowers except the interest rate as disclosed in the letter granting the loan and as reported to the Registering Authority. Further, Rule 20 provides that loan repayment shall be on a periodicity of not less than one month and that interest needs to be calculated on diminishing balances and not on the principal amount. Violations of any of these terms would attract liability under the general penalty clause of the Act.

In the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, the penalty for charging of exorbitant interest in Section 4 is imprisonment for a term up to three years and a fine for up to thirty thousand rupees.

**VIII. What is said about reporting, implementation or monitoring of these laws that are common or unique?**

The implementation of laws in Andhra Pradesh is highly convoluted in the sphere of money lending. The Andhra Pradesh Debtors Protection Act, 1934, which was the primary legislation for money lending was repealed in 2018. The Andhra Pradesh (Telangana Area) Moneylenders Act, 1349 F (Act No. V of 1349 F), which was in force till 2014, was again adopted by Telangana after separation of the states. Further, Bills introduced in 2015 and most recently, in 2017 have aimed to enact a unified law in the state, but have not received Presidential assent, preventing their implementation.

Although the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 contains strict provisions for the regulation and functioning of money lending by MFIs to SHGs in the State, it seems like the Act has not been implemented to its full extent since then. Firstly, there is no notification available to show that Fast-Track Courts have actually been set up by the State Government pursuant to the Act. Secondly, certain provisions of the Act were said to slow down the functioning of MFIs themselves (Mahajan & Navin, 2013). These included firstly, the provision that visits by MFI staff to the residence or work place of the borrowers for recovery could be construed to be a coercive practice, so instead they had to sit in a “central place” hoping for borrowers to come there; and secondly, no further loans were allowed with government permission for each individual loan. These provisions slowed down recovery drastically, leading to a mass default – over 9.2 million loans worth Rs 72000 million (about USD 1.5 billion at that time) became overdue and 90 % remained unpaid till April 2012. Banks panicked and stopped lending to MFIs all over India and the repositories of the MFIs shrank by half (Mahajan & Navin, 2013). Various MFIs approached the Andhra Pradesh High Court in 2010 and 2012, challenging the validity of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 as unconstitutional.<sup>9</sup>

On 11 February 2013, the Andhra Pradesh High Court passed an order disposing of the writ petitions, stating that in view of the passing of certain Directions issued by the RBI to regulate MFIs (that are designed to protect the interests of SHGs from usurious interest rates and coercive means of recovery), as well as the introduction of the Micro Finance Institutions (Development and Regulation) Bill, 2012 by the Central Government in the Lok Sabha, “*it would be a futile exercise for this Court to examine the legislative competence or otherwise of the State to legislate the impugned enactment*”. The Court directed the Government of Andhra Pradesh to examine

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<sup>9</sup> WRIT PETITION Nos.25891, 25894, 25999 of 2010 and 3823 of 2012 between *M/s SKS Microfinance Limited and The State of Andhra Pradesh* (decided on 11.02.2013) unreported and available at [http://tshcstatus.nic.in/hcorders/2012/wp/wp\\_3823\\_2012.pdf](http://tshcstatus.nic.in/hcorders/2012/wp/wp_3823_2012.pdf)

whether it would be necessary to have a separate state law for MFIs, after enactment of the comprehensive 2012 Central Bill. The Court therefore did not stay the operation of the 2011 Micro Finance Law in Andhra Pradesh, instead choosing to defer the issue to the State Government, contingent on enactment of the Micro Finance Institutions (Development and Regulation) Bill, 2012 into a law.

The 2012 Bill however, did not become a law. The MFIs appealed the Andhra Pradesh High Court judgment before the Supreme Court, which passed a final order on 25 November 2019, stating that *“the High Court could not have abdicated its responsibility of deciding on the legislative competence of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, merely on the footing that a Central Bill of 2012, allegedly on the same subject matter, was pending before the Union Parliament.”*<sup>10</sup> The Supreme Court therefore restored the writ petitions to the High Court of Telangana at Hyderabad, setting aside the order of 11 March 2013. Further, the Supreme Court directed that the High Court dispose of the writ petitions “as early as possible”, considering that they were originally filed in 2010 and 2012 by the MFIs.

Since then, the case has come back on file before the Telangana High Court at Hyderabad, which issued notice to the Parties.<sup>11</sup> However, no substantive order has been passed yet, with the next listing date of the case being 11 August 2021, presumably for completion of service to all the parties. This is a development that needs to be monitored, since the Telangana High Court is now required to adjudicate the constitutional validity of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011.

According to District Authorities in West Bengal, the Bengal Money Lenders Act, 1940 is ‘irrelevant’ because of the penetration by banks across the state. Applications for licenses were pending for consideration with SDOs/Collectors for over 3 to 5 years according to a study carried out by a Technical Group, set up by the Reserve Bank of India, to review the efficacy of the legislative framework governing money lending (RBI, 2007). According to the study that interviewed the Registrar of Moneylenders (RML) in West Bengal, money lending legislation did not get proper attention from the SDOs/Collectors because they had “other pressing matters to attend to” (RBI, 2007). Extremely high informal interest rates were said to be charged by the moneylenders (RBI, 2007).

The study interestingly took into account the experiences of money lenders in the system. They stated that applications for renewal of licences remained pending with licensing authorities for long periods, resulting in loss of business for them. Overall, money lenders in West Bengal were

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<sup>10</sup> CIVIL APPEAL NO. 4244 OF 2019 with CIVIL APPEAL NO. 4245 OF 2019 CIVIL APPEAL NO. 4246 OF 2019 CIVIL APPEAL NO. 4247 OF 2019 CIVIL APPEAL NO. 4248 OF 2019 CIVIL APPEAL NO. 4249 OF 2019 between *M/S. BHARAT FINANCIAL INCLUSION LIMITED (FORMERLY KNOWN AS M/s. SKS MICRO FINANCE LTD.)* and *STATE OF ANDHRA PRADESH & ORS.* (decided on 25.11.2019) unreported, available on the Supreme Court website, available at [https://main.sci.gov.in/supremecourt/2013/7476/7476\\_2013\\_4\\_31\\_18467\\_Order\\_25-Nov-2019.pdf](https://main.sci.gov.in/supremecourt/2013/7476/7476_2013_4_31_18467_Order_25-Nov-2019.pdf)

<sup>11</sup> Case status available at [http://tshcstatus.nic.in/judgmnt\\_ts\\_new/](http://tshcstatus.nic.in/judgmnt_ts_new/)

of the opinion that they were doing “a service to the people”, seeking issue of one-time licences (RBI, 2007).

### *Concluding Observations*

The legislative frameworks around money lending in the States show that there is significant scope for legal reform. Out of the three States, Andhra Pradesh seems to be most in flux, given that at present there is no consolidated state law regulating private money lending outside MFIs and by extension, no law protecting borrowers who are not members of SHGs. The structure of the Tamil Nadu legislation is interesting, with one law (the Tamil Nadu Money Lenders Act, 1957) governing money lending on an overall basis, supplemented by the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, which focuses specifically on the issue of usurious money lending, taking into account local names for exorbitant interest. The value of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 lies in its relevance to exploitative practices within money lending that are prevalent in Tamil Nadu today, as well as the penalty and redressal mechanism set up under the Act for borrowers to be able to complain about usurious money lending.

It is well known that usurious money lending is ubiquitous across the country, affecting poorer and marginalised populations who do not have access to formal credit mechanisms. In spite of this fact, it is surprising to see that in the States, other than Tamil Nadu, Andhra Pradesh does not have any dedicated state-wide punishment for usurious money lending, nor does West Bengal. From a reading of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 and Bengal Money Lenders Act, 1940, even though usurious lending with interest above the rate mandated by the State Government is technically punishable under General Penalties, the quantum of punishment is relatively low and accordingly, investigating such offences may not be a priority for law enforcement.

The effectiveness of a welfare legislation depends on the implications of the legislation for the people it seeks to protect (in this case, borrowers or debtors), the robustness of protective mechanisms that are set up to prevent or mitigate exploitation, the ease of seeking redressal by those who are to be protected by the law, as well as the quantum and scope of penalties, which will act as a deterrent against the commission of offences. We see that currently, in spite of the relatively debtor-friendly legal framework in Tamil Nadu, as well as the expansion of scope of the Bengal Money Lenders Act, 1940 to include commercial loans, levels of indebtedness remain high in these states.

The Researcher has included provisions of the Andhra Pradesh Money Lenders Bill, 2017 to show the direction in which the law is heading, to aim to regulate usurious money lending. The provisions of the new law are promising, drawing from both the Tamil Nadu and West Bengal laws in some places, but the lapse of almost 4 years since the Bill was passed by the Andhra Pradesh Legislative Assembly and Legislative Council is telling of state apathy in this subject.

Further, the impending adjudication on the constitutionality of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 will definitely have implications for State will to effectively implement the law until the petitions are decided by the High Court.

## **INTRODUCTION AND CONTEXT**

This Final Report outlines the context, scope, research design, methodology, and research implementation process for the research study titled “Comparative Analysis on Money Lenders Act” commissioned by Kamonohashi Project (“Kamo”). This report has been researched and authored by the Researcher, Krithika Balu during the period 1 April – 27 August 2021.

Kamo had sent out a Terms of Reference for the study in March 2020, in response to which the Researcher submitted a proposal dated 7 March 2021, as amended on 15 March 2021 and 19 March 2021. This Final Report is the final of four (4) deliverables submitted by the Researcher.

The purpose of the research study being carried out by the Researcher is to analyse different state-specific legislations pertaining to money lenders and money lending across India. The three states that the study was originally meant to focus on include Maharashtra, West Bengal and Andhra Pradesh, but the final list of states has been determined to be Andhra Pradesh, Tamil Nadu and West Bengal. This Final Report presents the findings in the research process for the period between 1 April and 27 August 2021, including the scope and findings of the literature review, the selection of the states and the comparative analysis of the legislations of the states.

The Researcher has undertaken a comprehensive survey of literature at the national level, as well as literature pertaining to specific states as may be available, between the period 2010 – 2021 to understand and has presented to Kamo what prevailing literature states, regarding the extent and scale of private money lending, focusing on migrant workers, sex workers or other groups vulnerable to usurious money lending in India. The literature review has formed the background for selecting the three (3) states for the comparative study on legislations, and answering the eight learning objectives as mentioned by Kamo in the Terms of Reference.

Pursuant to carrying out the literature review and selecting the three states of Andhra Pradesh, Tamil Nadu and West Bengal (‘the States’), the Researcher has utilised the Bare Acts of relevant laws in each state, as well as Government Orders that influence the infrastructure, authorities and implementation of each law in the respective state. The Researcher has carried out a review of jurisprudence on money lending in each state High Court (High Court of Andhra Pradesh, High Court of Calcutta and the Madras High Court) as well as the Supreme Court of India, all with the aim of carrying out a comprehensive and thorough comparative analysis of the legal framework around money lending in the States. The Researcher has organised the comparative analysis in accordance with the eight (8) learning objectives put forward by Kamo in the Terms of Reference.

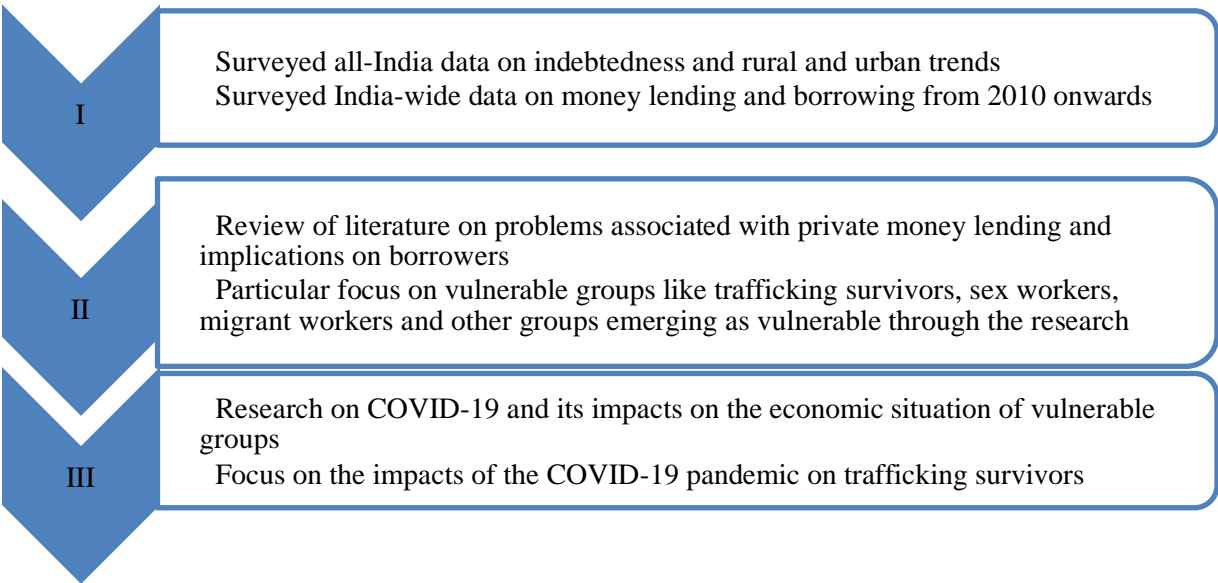
**RESEARCH METHODOLOGY AND TIMELINES**

This section outlines the research methodology adopted in accordance with the approach proposed by the Researcher in the Proposal. The study’s methodological orientation is towards a contemporary and contextual inquiry into money lending, with a view to identifying the states for detailed research and thereafter, carrying out a cross-cutting comparative analysis of regulation of money lending across these states.

The methodology followed in the literature review has been designed to formulate clear responses to the key questions raised in the RFP in a manner that will support the ongoing and planned work of the Kamonohashi Project. In particular, the Researcher has intentionally focused on insights and learnings towards understanding legal and policy frameworks governing money lending in the States, as well as the impacts of the functioning (or non-functioning) of such frameworks on borrowers, especially in the background of COVID-19.

The specific methods employed by the study included carrying out a **literature review of money lending, effects and implications in India; identifying legislations and policies on money lenders in India, identifying supplementary sources that affect implementation of laws and policies, carrying out a comparative analysis of the laws and policies and presenting the research findings.**

The Researcher undertook strategic compilation of literature, considering pieces from multiple sources, including government statistics, media reports, working papers and journal articles in relation to the scope and extent of illegal money lending in India as well as particular susceptibilities, vulnerabilities and implications of such illegal money lending on survivors of trafficking, migrant workers, sex workers and other groups. For the literature review, the Researcher followed the process as depicted in Figure I below.



**.Figure I: Process of Carrying out Literature Review**

The findings of the literature review, as presented in this Report, has informed further discussions between Kamo and the Researcher to finalise the three (3) states forming the subject matter of more detailed research under this study, which are Andhra Pradesh, Tamil Nadu and West Bengal ('the States'). The Researcher has undertaken a comprehensive comparative analysis, based on the eight (8) questions in the Terms of Reference, using the legislations, Government Orders, independent studies and High Court and Supreme Court jurisprudence. The timeline of activities in the project has been as follows:

<b>Time</b>	<b>Activities</b>	<b>Status</b>
<b>1 – 15 April 2021</b>	<ol style="list-style-type: none"> <li>1 Call(s) and/or meeting(s) with the Kamo team/contact person to discuss research requirements and access additional resources (if any) to optimise research.</li> <li>2 Literature review of money lending, effects and implications in India</li> </ol>	<b>Done</b>
<b>15 April 2021: Submission of Inception Report</b>		
<b>16 April – 24 May 2021</b>	Revision of Inception Report in accordance with comments	<b>Done</b>
<b>24 May 2021: Submission of Revised Inception Report</b>		
<b>24 May – 10 June 2021</b>	<ol style="list-style-type: none"> <li>1. Identification of legislations and policies on money lenders in India</li> <li>2. Identification of supplementary sources affecting implementation of laws and policies</li> <li>3. Comparative analysis of laws and policies</li> </ol>	<b>Done</b>
<b>12 June 2021: Submission of Draft Research Report and PPT</b>		
<b>23 June 2021: Presentation of Research Findings</b>		
<b>12 June – 4 July 2021</b>	Incorporation of feedback and preparation of Research Report.	<b>Done</b>
<b>4 July 2021: Submission of Draft Research Report v2</b>		
<b>5 July – 26 August</b>	<ol style="list-style-type: none"> <li>1. Discussion with Kamo Team/contact person regarding feedback received on the Draft Report.</li> <li>2. Incorporation of feedback and preparation of Final Report.</li> </ol>	
<b>27 August 2021: Submission of Final Research Report</b>		

**Table I: Timeline of Research Project**



## **FINDINGS OF LITERATURE REVIEW**

This section of the Final Report focuses on presenting the findings of the literature review. The Researcher has focused on the period from 2010 to 2021, to determine:

- I. The scope and extent of money lending, borrowing and indebtedness in India
- II. The causes and effects of indebtedness and informal money lending on trafficking survivors, sex workers, migrant workers and other vulnerable groups
- III. The effects of COVID-19 on indebtedness, economic situations and trafficking of vulnerable groups
- IV. The implementation (or non-implementation) of laws in deterring and combating illegal money lending in different parts of the country

The Researcher surveyed over 70 research papers, articles, media reports and technical papers and has shortlisted 38 sources for the literature review.

### ***I. Scope and Extent of Money Lending, Borrowing and Indebtedness in India***

Literature on rural credit in India states that usurious money lending practices have been well-documented in the country in official reports dating back to the colonial period (Shah et. al., 2007). Money lenders secured their power in rural societies by charging high rates of interest to borrowers, sometimes higher than usual for poorer borrowers in more vulnerable and desperate positions (Shah et. al., 2007). Even several decades after independence, banking reforms that were introduced by the Indian Government from 1991 onwards were seen to affect accessibility to institutional credit by weaker sections and rural populations, leading to a situation where especially in rural areas, the rural moneylender became indispensable (Shah et. al., 2007).

Scholars have written about the “inescapable cycle of debt” (Qazi, 2017) that has gripped rural India, citing proverbs like “a village can be formed wherever there come together a river, a priest, and a moneylender” (Qazi, 2017; Ray, 2018). Moneylenders are the “main source of emergency money funding” for a high proportion of rural and marginalised persons, due to the lack of rules around requisite documentation, eligibility to borrow and procedures, characteristic of institutional lending (Paul and Silambarasan, 2020).

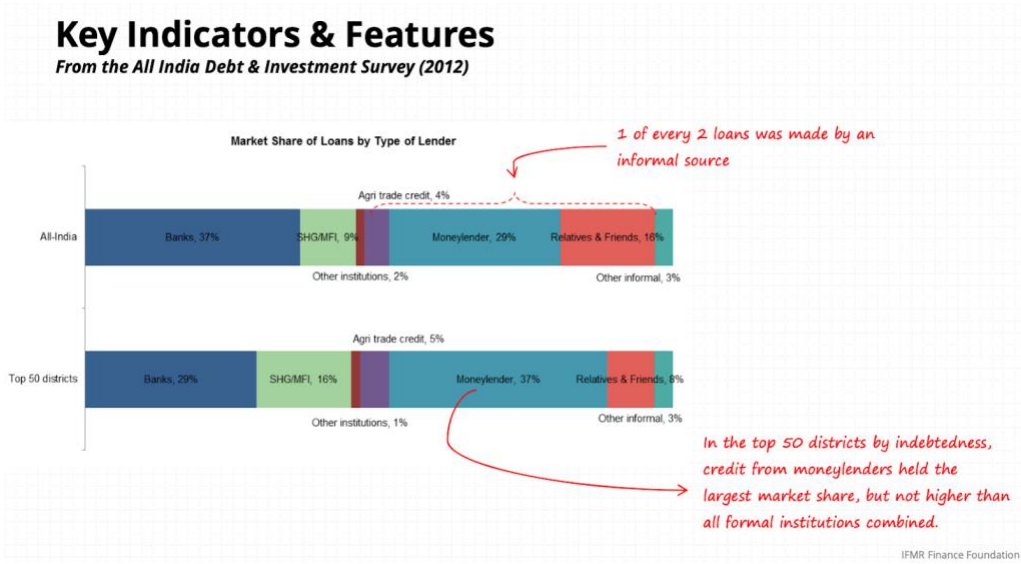
Data from 2012 onwards has shown that not only does India have a low number of bank branches in proportion to its population, but also that the average number of people served by individual bank branches consistently reduced between 2012 and 2014 due to the lack of infrastructure to serve populations in remote areas, as well as relatively strict documentation requirements that would automatically exclude persons from the informal economy from availing of bank services (Paul and Silambarasan 2015). Although, in 2014 the Central Government started a programme to improve Indian people’s access to the formal banking system, it was seen that poor and marginalised groups were still unable to provide any collateral for loans, resulting in such persons

approaching moneylenders anyway, in spite of usurious rates of interest (Parussini 2015). It was found that even if people approached banks with the relevant documentation for a loan, corruption and bribery amongst bank officials would result in the more vulnerable persons being forced to resort to informal money lending (Parussini, 2015).

Studies have shown that even though money lending affects rural communities disproportionately, there is significant exploitation in urban areas as well. The main targets of the moneylenders are poor people, followed by the middle class (Sargam, 2019; The Hindu, Oct 2017). In Tamil Nadu, articles state that rather than licensed money lenders, anyone who has “surplus money” and “authority” can become involved with money lending, including but not limited to government employees, private company employees, informal chit funds, shopkeepers, schoolteachers, police officials and people with surplus incomes (Sargam, 2019; Paul and Silambarasan, 2020).

Further, in urban areas, groups such as small vendors and daily wage earners have historically been excluded from institutional credit mechanisms, for whom informal money lending is the norm (Special Correspondent for The Hindu, 2017). Lenders tend to come from the same areas where the borrowers live or work, with lenders in some cases even being related to the borrowers (S. Aadhirai, 2018). Borrowers have reported reasons for continued reliance on private lenders, including feeling intimidated by banks and finding repayment of loans to easily accessible lenders on a daily or weekly basis more convenient (Special Correspondent for The Hindu, 2017).

The All-India Debt and Investment Survey has stated that as on June 30, 2002 (NSS Fifty-Ninth Round released in December 2005), the share of moneylenders in the total dues of rural households had increased from 17.5 per cent in 1991 to 29.6 per cent in 2002 (RBI, 2007). Further, the All-India Debt and Investment Survey (‘AIDIS’) carried out in 2012 showed that 28 per of households reported outstanding loans, but only 16 percent of loans were institutional in nature. Further, sources of loans were largely informal in nature (from relatives, friends and money lenders), showing that in spite of institutional options, informal credit systems are still thriving. Some key findings of the All India Debt and Investment Survey (2012) are depicted in Figure II below.



**Figure II: Sources of Loans (AIDIS, 2012)**

The National Bank for Agriculture and Rural Development (NABARD) additionally carried out an All-India Rural Financial Inclusion Survey in 2016-17, which, amongst other aspects, examined the indebtedness of rural households in 29 States and Union Territories in the country (NABARD, 2018).

NABARD used the following classifications and definitions in its survey, as seen in Figure II below. The households were categorised into ‘Agricultural Households’ and ‘Non-Agricultural Households’, with ‘indebtedness’ being interpreted in more of a general manner, as seen below.

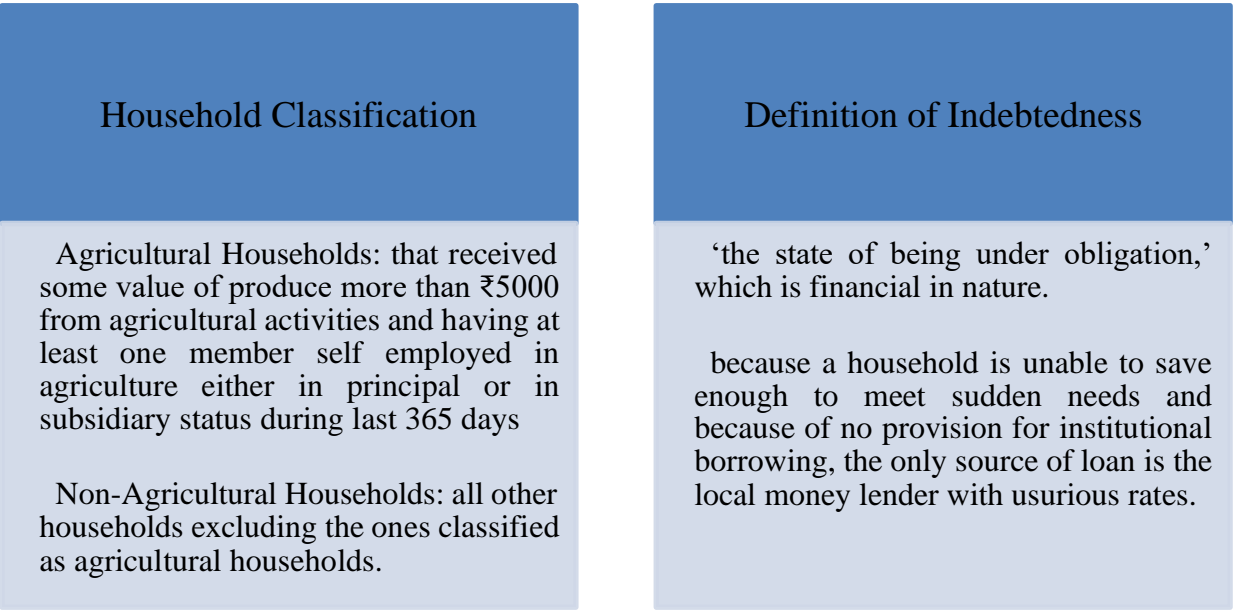


Figure III: Definitions under NABARD Rural Financial Inclusion Survey 2016-17

Taking all households together, 47.4% of total households were found to be having some outstanding debt as on the date of survey (NABARD, 2018). State-wise findings with respect to incidence of indebtedness (both institutional as well as non-institutional) is depicted in Figure IV below.

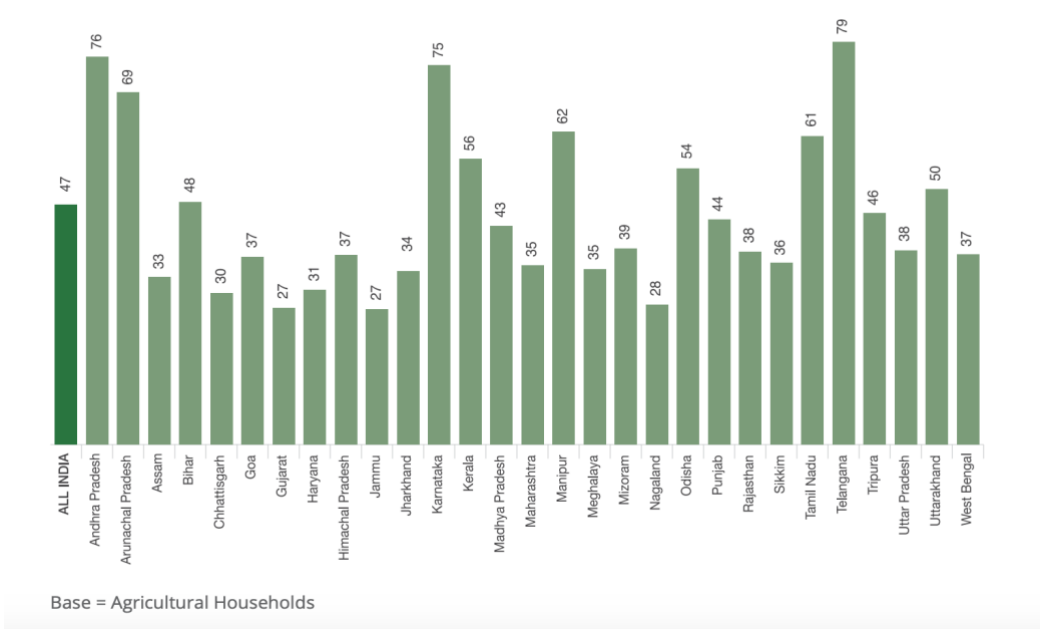
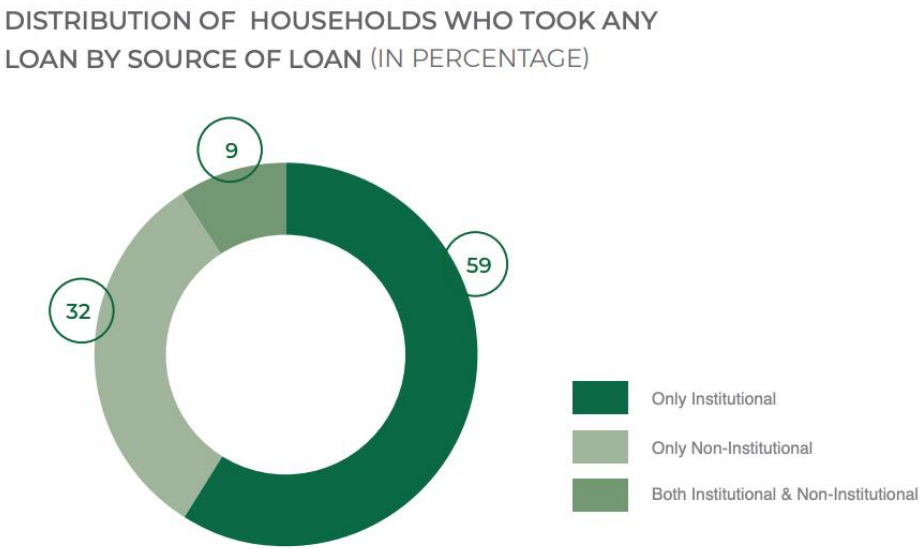


Figure IV: State-Wise Household Indebtedness (NABARD, 2018)

As per the data, it is clear that states like Telangana (79 percent), Andhra Pradesh (77 percent), and Karnataka (74 percent) showed the highest levels of indebtedness, with other states like Arunachal Pradesh (69 percent), Manipur (61 percent), Tamil Nadu (60 percent), Kerala (56 percent), and Odisha (54 percent) showing that more than half of their households were indebted at the time of survey (NABARD, 2018). West Bengal, at 37 percent and Maharashtra, at 35 percent were relatively lower than other states, but still show high levels of indebtedness of households (NABARD, 2018).



**Figure V: Distribution of Households by Source of Loan (NABARD, 2018)**

The findings from the NABARD Survey in 2018 largely mirror the AIDIS Survey of 2012 in showing that about 32 percent of households surveyed across India avail only of non-institutional credit. What is even more striking is that only 59 percent of surveyed households use institutional credit mechanisms including banks, cooperative societies, financial corporations and insurance (NABARD, 2018).

NABARD (2018) carried out a more detailed stratification of the types of institutional and non-institutional credit mechanisms availed of by households across India from June 2015-16, with loan distribution as described in Figure VI below.

It is clear that according to the data below in Figure VI, between June 2015 and June 2016, about 11.5 percent of all households took loans from moneylenders. The proportion of non-agricultural households that took loans from moneylenders was slightly higher than agricultural households, with the research stating that “consumptive purposes” were the “key driving forces” for non-agricultural households with domestic need being the reason for about one-third of the loans were sought and consequently, key reasons for indebtedness (NABARD, 2018). Meeting financial requirements for housing purposes (21 percent) and medical expenses (17 percent) were other common purposes for various loans taken by non-agricultural households (NABARD, 2018). The study stated that persons resorting to loans from local money lenders often included either the

illiterate or extremely poor, who are deemed ineligible for institutional loans, or households that do not have social networks that can help them in times of need (NABARD, 2018).

Table 8.7 Distribution of loans according to sources for Households Reporting to have Taken any Loan between July, 2015 to June, 2016 (in percentage)			
Agency	Agricultural Households	Non-Agricultural Households	All Households
1	2	3	4
Institutional Sources			
Commercial Bank / RRB	46.2	26.4	36.6
SHG-Bank Linked	10.6	14.4	12.4
SHG-NBFC/MFI	9.2	13.5	11.3
Co-op. Society / Bank	6.0	5.3	5.7
Financial Company	1.0	1.7	1.3
Finance Corporation	0.7	2.1	1.3
Provident Fund	0.5	0.2	0.3
Insurance	0.3	0.2	0.2
Non-Institutional Sources			
Relatives & Friends	22.7	26.8	24.7
Moneylenders	10.8	12.3	11.5
Landlord	6.1	4.3	5.2
Doctors, Lawyers, etc.	0.1	0.1	0.1
Input Supplier	0.1	0.1	0.1
Totals exceed 100% as a household may have taken loan from more than one sources			
Base = All loans taken by households in the said reference period			

**Figure VI: National Average Percentage of Distribution of Loans According to Households who Availed of Loans in June 2015 – June 2016 (NABARD, 2018)**

Data on money lending, borrowing and indebtedness of Indian households across the years from AIDIS and NABARD reinforce the trope of the exploitative moneylender that has been well-depicted in various accounts of indebtedness, poverty and vulnerability in rural India. The widespread reliance of rural households on high-cost debt from the informal sector at rates of up to 150 percent per annum has been documented and over the past two decades, micro-finance institutions have rapidly expanded into markets previously served almost exclusively by traditional moneylenders (Hoffman et. al., 2017). However, this inflow of competition has not yet been seen to affect existing credit markets (Hoffman et. al., 2017).

*II. Effects of Indebtedness and Informal Money Lending on Vulnerable Groups*

Literature from 2010 onwards shows the far-reaching implications of money lending on various vulnerable groups across the country. Literature between 2010 and 2021 on vulnerable groups and their indebtedness has focused on specific states. There is significant literature from Andhra Pradesh, especially in respect of microfinancing and its effects. Micro-financing programmes burgeoned across the country in the 2000s to enhance access to credit for marginalised populations, with the BBC (2010) reporting that more than a third of the 30 million households that took

microcredit in India live in Andhra Pradesh. The majority of the borrowers are women, and in 2010, it was reported that more than 80 people died by suicide in the span of a few months after defaulting on micro-loans, according to the government (BBC, 2010).

The government estimated, as of 2010, that families that took microloans in Andhra Pradesh spent more than 60% of their incomes paying off loans (BBC, 2010). Further, in Andhra Pradesh, the plight of sex workers has been discussed in the media, with Reuters (2021) stating that the vast majority of about 100,000 sex workers registered in the state are subject to abuse by loan sharks on account of persistent usury over the years. The Government has still failed to formally recognise their labour, with the resultant financial and economic insecurity rendering them vulnerable to exploitation by money lenders (Reuters, 2021).

Literature from Maharashtra states that as a whole, private moneylending saw an increase of 28 percent in 2017 (Ray, 2018). The vast majority of literature specifically focuses on farmer and agrarian indebtedness, with media reports looking at roles of *sahukars* or moneylenders in rural areas (Qazi, 2017). Known as “farmer suicide zones”, literature looks at the Marathwada and Vidarbha regions of the State, which have a strong parallel illegal credit system where farmers take loans from money lenders, who charge excessive interest rates without any record or registration (Jadhav, 2020). Although Maharashtra permits licensed money lenders to provide loans, farmers claim that the numbers of illegal money lenders far outweigh the registered money lenders (Jadhav, 2020).

There is similar literature from Uttar Pradesh (Paul and Silambarasan, 2020; Ray, 2018; U.S. Department of State, 2020; Press Trust of India, 2020) that talks about the wide scale of moneylending in different parts of the state (and in the state as a whole), commenting on exorbitant rates of interest charged by lenders and the implications on vulnerable groups. A similar reason for reliance on private moneylending is provided, namely the non-availability of accessible institutional credit mechanisms (Paul and Silambarasan, 2020).

There is significant literature from Tamil Nadu focusing on usury, particularly in districts like Tirunelveli, where money lending used to (and still continues, to a certain extent) to be carried out based on caste (Special Correspondent for The Hindu, 2017). In Tirunelveli district, moneylending was claimed to be professionally carried out by the Nattukottai Chettiar community, as well as by Brahmins, with the involvement of other caste and religious groups, such as “The Labbai Muslims, Nadars, Devangas and Vaniya Chettiars” (Velmani 2002: 631–35; S. Aadhirai, 2018). In recent times, it is reported that people from the Thevar caste have become important in carrying out usurious money-lending activities, with one Tamil daily claiming that between 2010 and 2017, around 800 persons died by suicide in Tamil Nadu because of usury (Dinamalar 2017; S. Aadhirai, 2018).

Apart from the above-mentioned general literature on the specific states of Andhra Pradesh, Tamil Nadu, Uttar Pradesh and Maharashtra, articles and papers that focus on vulnerable groups in other states are mentioned hereinafter in this report.

### ***III. COVID-19 and its Effects on Indebtedness of Vulnerable Groups***

The COVID-19 pandemic has had significant implications for the economic situations, overall indebtedness and life options, in general, for vulnerable groups across the country. Such literature covering this subject matter widely agrees that the pandemic has pushed vulnerable groups deeply into debt, trapping millions of people into cycles of poverty and exploitation.

Poor and low-income households in rural areas, marginal farmers and farm labourers, daily wage workers, women-headed families, sex workers and survivors of commercial sexual exploitation who live in and around red light areas depend on private borrowings to meet their needs, as written by Saroj Pattnaik (2020). In the COVID-19 pandemic when there are no sources of income and a dearth of job opportunities, there has been a surge in dependency on borrowings, mostly through private money lending (Pattnaik, 2020).

#### *Trafficking Survivors, Survivors of CSE and Sex Workers*

A study conducted by the Kailash Satyarthi Children Foundation, titled “Impact of Lockdown and Economic Disruption on Low-Income Households with Special Reference to Children”<sup>12</sup> has stated that the vast majority of non-governmental organisations have voiced the concern that "there is a very high likelihood" of an increase in human trafficking for the purpose of labour in the post-lockdown period (Press Trust of India, 2020). (Press Trust of India, 2020).

At the time of the study, it was shockingly found that almost 85 percent of surveyed households reported having absolutely no income (Press Trust of India, 2020). Prior to the lockdown, 47 per cent households were in the income range of Rs 3,001-10,000, which came down to a mere 3 per cent during the lockdown (Press Trust of India, 2020). This attested to the economic and financial deterioration of households on account of the COVID-19 pandemic, supplemented by statements from 81 percent of NGOs, who opined that families may avail of usurious loans from local moneylenders in the post-lockdown period and may resultantly fall into the trap of debt bondage (Press Trust of India, 2020).

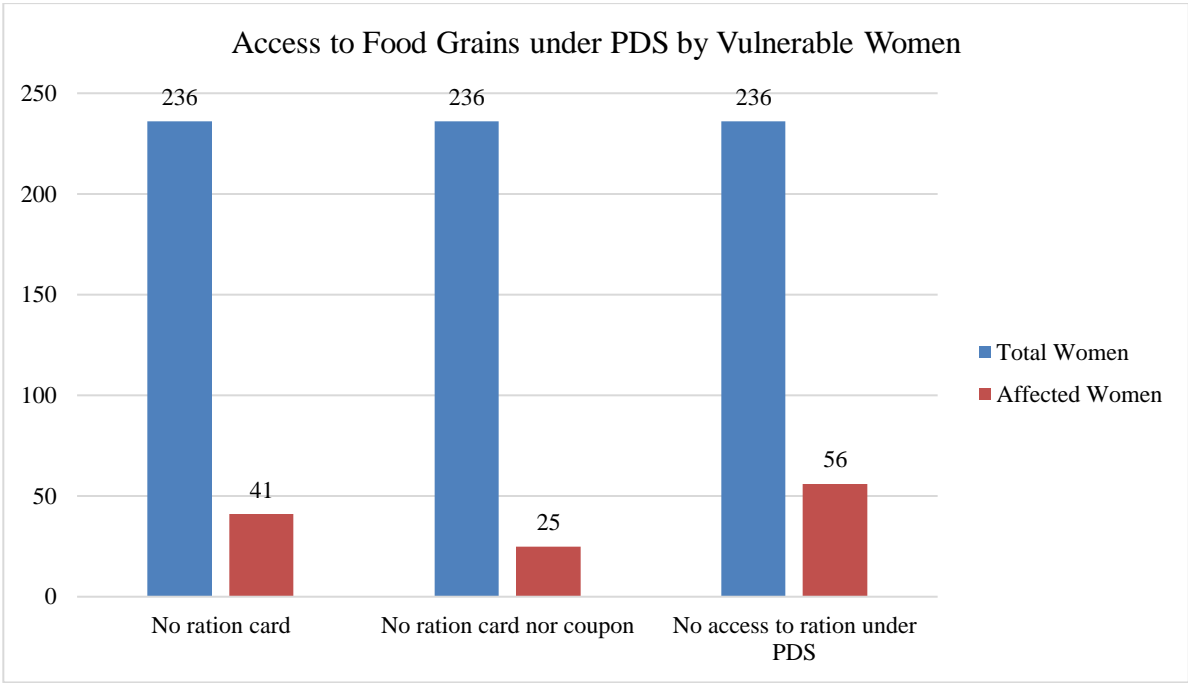
Another assessment carried out by a group of NGOs (Pattnaik, 2020), including Goranbose Gram Bikas Kendra (GGBK), HELP, Partners for Anti-Trafficking (PAT) and Sanjog (Singh, 2020) in July 2020, of around 230 families of survivors of human trafficking and commercial sexual

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<sup>12</sup> The study is based on responses of 53 NGOs (phase-1 carried out from 27 April – 5 May 2020) and 245 households from the trafficking-prone states (phase-2 carried out from 17 – 24 May 2020). The north central zone has states: Uttar Pradesh, Delhi, Rajasthan, Uttarakhand, Haryana, Madhya Pradesh and Chattisgarh while eastern region comprises Bihar, Jharkhand, Odisha, West Bengal, Assam and Sikkim (Press Trust of India, 2020). The south west zone comprises Gujarat, Maharashtra, Andhra Pradesh, Telangana and Karnataka.

exploitation in West Bengal and Andhra Pradesh has shown that 140 families (nearly 59 percent) have taken some loans to cope with the crisis (Pattnaik, 2020). Many of these families have been constrained to take the loans at an extremely high rate of interests that ranged between 5 percent and 20 percent per month (Pattnaik, 2020).

The vulnerability assessment examined access to food grains under the public distribution system (PDS), of the 236 vulnerable women (Singh, 2020). Out of these women, 41 reported that they did not have a ration card, while 25 of them had neither ration card nor a coupon to receive free or subsidised ration during the lockdown period (Singh, 2020). About 56 reported that they had no access to regular ration supplied under the PDS (Singh, 2020). The loss of income coupled with little institutional support has put the women with no option but to turn to moneylenders (Singh, 2020).



**Figure VII: Access to Food Grains under PDS (Singh, 2020)**

It was seen that out of the 236 women, 143 had already taken some loan before the lockdown, and another 106 were forced to take loans to cope with the financial crisis, with loan amounts varying from as low as INR 1,500/- (Indian Rupees Five Thousand only) to INR 4,30,000/- (Indian Rupees Four Lakhs Thirty Thousand only) (Singh, 2020).

In West Bengal, anti-trafficking activists noted that survivors have been facing disproportionately adverse economic problems since the lockdown in March 2020, with their crisis being “magnified” due to the stigma attached to the survivors (Awasthi, 2020). Although traffickers initially “took a back seat”, it was opined by an activist in West Bengal that the arrival of migrants compounded by the unemployment would definitely result in trafficking growing at “an unprecedented scale” in the near future (Awasthi, 2020). It has been seen that trafficking survivors surveyed from Andhra Pradesh were reported to have taken heavy loans with high interest rates from private moneylenders as compared to women from West Bengal (Singh, 2020). A collective representing 6,000 sex workers in Andhra Pradesh said more than three quarters of its members were in debt, with many living under constant threat of abuse from money lenders (Reuters, 2021).



In the red light areas of Andhra Pradesh, it has been seen that out of 116 survivors of commercial sexual exploitation, 83 took loans between April and June 2020 (Pattnaik, 2020). Interactions with them have revealed another angle to this debt crisis – the business called “call money” in which a person can avail a loan by just calling to the lender over the phone has been very active during these days (Pattnaik, 2020). The lenders would hand over the money to borrowers against a notarised document, often undated, which falsely mentions a low interest rate, as opposed to generally 20-30 percent per month as actual interest payable by the borrower (Pattnaik, 2020). Failure to repay on time will typically entail severe harassment, coercion and blackmail (Pattnaik, 2020).

### *Migrant Workers*

For hundreds of millions of informal workers who form 90 percent of India’s 450-million person workforce (Nagaraj, 2020), the COVID-19 lockdown and economic crisis has left them without cash or food, with lack of proper paperwork or bank account significantly impeding access to government assistance (Nagaraj and Srivastava, 2020; Chopra, 2020). In a survey of about 3,200 informal workers who were walking home in the first week of April 2020 from cities to their villages, nearly a third had loans to repay – mainly to money lenders from their communities (Nagaraj and Srivastava, 2020). Almost half of those who were in debt said they feared their inability to service the loans could see them subjected to some form of violence, according to the survey by charity Jan Sahas (Nagaraj and Srivastava, 2020).

For migrant workers returning to their villages during the COVID-19 lockdown, literature shows that in Bihar’s Sitamarhi district, for example, the men who have returned home hardly have any money or income source to support their families, while those still on the way or stranded in their places of work are asking their families to send money to sustain themselves or pay for tickets to come back (Taskin and Yadav, 2020). This has put the economic burden of the household on women, and led to a trend of illegal borrowing from money lenders at high interest rates (Taskin and Yadav, 2020). Many families have resorted to availing of usurious loans for survival, falling deeper into debt and likely to end up trapped in bonded labour – India’s most prevalent form of modern slavery (Nagaraj and Srivastava, 2020; Chopra, 2020).

Unorganised and migrant workers are the “easiest targets” for the organised crime of human trafficking, who are likely to be forced to accrue debt and pay amounts at predatory interest rates for their daily survival (Chopra, 2020). After lifting of the nation-wide lockdown and resuming of normal manufacturing activities, employers have looked to cover their financial losses by employing cheap labour, consisting largely of ‘desperate and vulnerable’ unorganised workers (Chopra, 2020).

In October 2020, a petition initiated by the Tamil Nadu Alliance, a coalition of 100 charities seeking to improve the conditions of garment industry workers, sought for cash handouts of 6,000 rupees (\$81) for at least the next four months to help prevent risky borrowing, human trafficking

and child labour (Nagaraj, 2020). The petition was signed by about 1.5 million people, including migrant workers, street vendors and home-based labourers, who require the money as a “safety net”, minimising hunger and reducing the likelihood of human trafficking, child marriage and child labour among the informal labour force (Nagaraj, 2020). The petition was submitted to the Central Government, with signatories from 23 Indian states. However, the present status of these handouts is still unknown.

The Durbar Mahila Samanwaya Committee petitioned the Supreme Court in 2020 for monthly dry rations to sex workers, cash transfer of INR 5,000/- per month, additional cash transfers of INR 2,500/- for sex workers with school-going children and COVID-19 prevention measures such as masks, soaps, medicines and sanitisers to be delivered through Targeted Intervention Projects/State AIDS Control Societies and Community Based Organisations. The Supreme Court, in an order dated 29 September 2020 in *Budhadev Karmaskar v State of West Bengal and Others* (Criminal Appeal 135/2010) referred to a court-appointed panel that had, from 2011 to 2016, been tasked with advising the Court on a range of issues, including prevention of trafficking, rehabilitation of sex workers who wished to leave sex work and conditions conducive for sex workers to live with dignity in accordance with Article 21 of the Constitution of India. The panel, in its final report submitted to the Court on 14 September 2016, found that sex workers suffered as a result of their lack of legal status in the country. Due to the difficulties in acquiring identity proof like ration cards or voter ID cards, sex workers had no access to credit facilities offered by states because of inability to open bank accounts due to lack of supporting documentation.

The Supreme Court, in its order, stated that Maharashtra, Karnataka and West Bengal had already initiated steps to provide dry rations to sex workers without insisting on producing documents as proof of identification. The Court directed State Governments and the Union Territories to provide dry rations to sex workers identified by National Aids Control Organisation (NACO) without insisting on proof of identity. The Court also directed District Legal Services Authorities to take active steps in assisting the distribution of dry rations to the sex workers without insisting on proof of identity. The case was then taken up on 28 October 2020, where it was found that several states (specific names not mentioned) had still not implemented the order. The Court directed speedy implementation by states to uniformly distribute the minimum quantity of dry ration as provided in the schemes formulated either by them or the Central Government – and thereafter, the case has not been listed.

### *Children*

The literature dwells upon how children in different jurisdictions, particularly those from vulnerable groups like children of trafficking survivors, survivors of CSE or sex workers will be disproportionately affected by the COVID pandemic. Upon commencement of manufacturing activities, a large number of desperate and vulnerable labourers are children, who are forced out of school and made to sustain their families in economic hardship (Chopra, 2020). Literature opines that children are likely to be trafficked by the thousands to work in manufacturing units,

heavily underpaid, most likely facing extreme physical, mental and sexual violence (Chopra, 2020). Further, with sex workers receiving nil or minimal government support and seeking financial help from money lenders, their children become more vulnerable to exploitation as some of the lenders act as middlemen for traffickers (Murali, 2020).

The NGO HELP carried out a survey on the mental health status of children of trafficking victims in three districts of Andhra Pradesh<sup>13</sup> (Murali, 2020). The study revealed that 407 children interviewed stated that they suffered from multiple types of emotional disorders such as depression, anxiety, fear and avoidance, with their mental health further deteriorating due to stress triggered by COVID-19 (Murali, 2020).

#### ***IV. Implementation (or Non-Implementation) of Laws in Combating Usurious Money Lending***

A significant amount of literature focused on improper implementation of laws pertaining to the regulation of money lending. Most of the articles focused on Tamil Nadu, with some articles looking at the lack of implementation of laws in Kerala.

##### *Tamil Nadu*

In Tamil Nadu, the Tamil Nadu Money Lenders Act, 1957 says that moneylenders should not charge interest more than the prescribed rate fixed by the government (which changes from time to time) and has been fixed at 12%, from their clients (Paul and Silambarasan, 2020). The Act also states that money lending cannot be practiced without the lender obtaining a proper licence (The Statesman, 2017; (Paul and Silambarasan, 2020). The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, also deems usury a criminal offence, punishable with imprisonment of up to three years, and a fine of up to INR 30,000/- (Indian Rupees Thirty Thousand only) (Aadhirai, 2018). The Act has, however, seldom been implemented (Aadhirai, 2018).

In Tirunelveli, Tamil Nadu, several borrowers complained that the police were not helpful in registering their complaints, and, in some cases, they alleged that the police worked in collusion with moneylenders (Aadhirai, 2018). Borrowers have submitted petitions to the Tirunelveli district collector to no avail, and in spite of failing to act on several complaints of usury, the district collector has not been penalised by any public authority for his “wilful negligence” against the victims of usury (Aadhirai, 2018).

In Coimbatore, Tamil Nadu as well, it is seen that since 2003 when the law around usury was passed, only 27 usury cases were registered, out of which three ended in conviction (Special Correspondent for The Hindu, 2017). In the same time period, 161 cases for usury were booked in Madurai district, due to a higher awareness level among people, say police officers (Special Correspondent for The Hindu, 2017). Law enforcement stated that political patronage or

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<sup>13</sup> The survey covered 67 children of women in commercial sex work, including 25 girls in Prakasam district, 210 in Guntur district, including 75 girls, and 130 in Krishna, including 45 girls.

interference, informal settlements between the parties and lack of documentary evidence are serious impediments in investigating and prosecuting cases for usury (Special Correspondent for The Hindu, 2017).

*Kerala*

In Kerala, there are accounts that the Kerala Prohibition of Charging Exorbitant Interest Act, 2012, which prescribes three-year imprisonment and a fine of INR 5,000/- (Indian Rupees Five Thousand only) for charging exorbitant interests against illegal moneylenders has not been fully implemented (Gopakumar, 2014). Harassment of borrowers by moneylenders has been made an offence, but it has been stated that the statute “suffers from a double-sided execution failure” as the police had not been effectively implementing it and the people also could not effectively use it (Gopakumar, 2014).

*Supplementary Research*

Given that the laws around money lending and usurious rates of interest are governed by states primarily – and that the literature review reveals that there are penalties for violation of provisions of these laws, including both fines and imprisonment, the Researcher examined National Crime Records Bureau reports between 2016 and 2019 on Crime in India. The Report for 2016 (National Crime Records Bureau, 2017) contained ‘Money Lenders Act’ as one of the constituent laws under the head ‘Other SLL Crimes’ (crimes pertaining to State and Local Laws), alongside various other statutes containing petty offences. There were no individual statistics, either by state, or nationally, on the number of complaints, cases or trials under any of the Money Lenders Acts, seemingly showing that numbers are too low for nation-wide documentation. In the National Crime Records Bureau reports from 2017 to 2019 (National Crime Records Bureau, 2019a; National Crime Records Bureau, 2019b; National Crime Records Bureau, 2020) there is absolutely no mention of ‘Money Lenders Act’ or disputes/crimes related to money lending.

Further, in order to determine which states have recently enacted new provisions or amended antiquated laws against illegal money lending, the Researcher carried out a brief review of the states with high levels of indebtedness, as well as the states originally proposed for deeper study. The findings are as follows:

State	Old money lending law	New law/provisions for money lending	Details
Maharashtra	The Bombay Money Lenders Act, 1946	1. Maharashtra Money Lending (Regulation) Act, 2014 (reportedly being amended)	Amendments are being proposed in the 2014 law as of November 2020 to remove shortcomings in the law and address ongoing exploitation of farmers (Jog, 2020)

		2. Maharashtra Money Lending (Regulation) Rules, 2014	
<b>Andhra Pradesh</b>	The Andhra Pradesh (Andhra Area) Debtors Protection Act, 1934 (repealed)	Andhra Pradesh Money Lenders Bill, 2017 (not an Act)  Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	Due to a call money racket that had been unearthed in 2015, the Money Lenders Act was put forth to regulate private money lending (PTI, 2015)
<b>Tamil Nadu</b>	Tamil Nadu Money Lenders Act, 1957  Tamil Nadu Money Lenders Rules, 1959	Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	After usurious lending led to a spate of suicides, the state enacted the new law that is meant to protect borrowers from harassment and violence by moneylenders. In conjunction with the 1957 law that prohibits charging of interest above 12% is meant to tackle usurious lending (Govindarajan, 2017)
<b>West Bengal</b>	Bengal Money Lenders Act, 1940	No new laws Notification dated 27 March 2017 designating State Registrar of Money Lenders	The 2017 notification by the Finance Department, Government of West Bengal designated Dr. Or. Sudip Kumar Sinha, IAS, Joint Secretary, Finance Department, Government of West Bengal to act as the State Registrar of Money Lenders under the 1940 Act.
<b>Kerala</b>	Kerala Money Lenders Act, 1958	1. The Kerala Prohibition of Charging Exorbitant Interest Act, 2012 2. State Government fixed 18% as	Due to no regulation of interest imposed by moneylenders (in spite of enactment of the 2012 law), the State Government capped the interest rate at 18% in 2019 (Special Correspondent, 2019)

		maximum rate of interest.	
<b>Telangana</b>	1. Agricultural Debtor’s Relief and Prevention of Usury Regulation, 1341 F  2. Money Lenders’ Regulation, 1347 Fasli	The Telangana Money Lenders Act, 1349 F (came into force in Telangana in 2016)	The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F. in force in the combined State, as on 02.06.2014 was adapted to the State of Telangana <i>vide</i> a Government Order dated 1 June 2016
<b>Karnataka</b>	1. Karnataka Money Lenders Act, 1961  2. Karnataka Money Lenders Rules, 1965	Karnataka Prohibition of Charging of Exorbitant Interest Act, 2004	The law is in addition to the old laws, providing for protections for borrowers (particularly farmers) who are subject to usurious lending.

Table II – Review of Recent Laws in Potentially Shortlisted States

It is seen that Maharashtra, Kerala and Telangana have enacted laws after 2010 to address illegal/private money lending or the charging of exorbitant interest. Maharashtra has quite an extensive legal framework, with both an Act and corresponding Rules, but the proposed amendments to the laws (the nature of which is still not exactly known) and the agrarian context behind enacting these laws (and now amending them) show that Maharashtra is most concerned about the farmer demographic that is suffering on an ongoing basis due to usurious money lending. Karnataka and Tamil Nadu seem to have similar legal frameworks around money lending, as both states have enacted laws to protect borrowers from high rates of interest (in 2004 and 2003, respectively), both states have money lending acts passed within a few years of each other (1961 and 1957, respectively) and additionally, both states have brought Rules into force, supplementing their money lending laws. Although both states have high levels of indebtedness, as per Figure IV, there is more literature on the nature of money lending in Tamil Nadu, as well as status of implementation of laws. Finally, for West Bengal, the antiquated 1940 Bengal Money Lenders Act is still in force.

In order to combat the “disproportionate increase in the power of local moneylenders in rural India”, Chopra (2020) recommends increased regulation. This includes widespread licensing to lend, setting of ceilings on lending rates, government banks extending long-term soft loans without

collateral, and simple and lenient recovery processes (Chopra, 2020). In this study, comparing legal systems of different states and the extent of regulation already present can create awareness on prevailing practices, possible avenues for redressal for borrowers and requisite policy change to tackle usurious and illegal money lending.

## ***V. Overall Selection of States***

The overall objective of the research study ‘Comparative Analysis on Money Lenders Act’, as stated in the Terms of Reference, is to build awareness amongst stakeholders on legislations on money lending and rules of their implementation in India. In that respect, for building awareness on a particular state, it is important to have (1) adequate baseline data to be able to demonstrate the scope and extent of the problem in the respective state; (2) data on how usurious money lending has impacted vulnerable groups in the state, particularly focusing on trafficking survivors and other populations at risk of exploitation and trafficking; (3) updated information on the effects of COVID-19 on indebtedness, lending and borrowing; and (4) an idea of whether the laws that have been enacted (if any) to protect borrowers, are being implemented or not.

From the NABARD survey, overall, Telangana (79 percent), Andhra Pradesh (77 percent), and Karnataka (74 percent) showed the highest levels of indebtedness, as of 2018. This would automatically place the first three states as preferred candidates for a deeper study on money lending, regulation and ultimately, awareness-building. However, it must be remembered that this is only overall data, and literature distribution for articles on money lending and its implications on vulnerable groups from 2010-21 focuses primarily on Andhra Pradesh, Maharashtra and Tamil Nadu, with brief mentions of Uttar Pradesh and Bihar as well.

It is noteworthy that in Andhra Pradesh, periodic data is available regarding scale of money lending, microfinancing and specific effects of illegal money lending on sex workers, migrant workers and children as vulnerable groups. Media reports show that there is ongoing research being carried out through the pandemic in Andhra Pradesh, including the recent vulnerability analysis of trafficking survivors and the mental health survey of children who are affected.

Further, in Tamil Nadu, which has an overall indebtedness of 60 percent, literature is available for specific districts like Tirunelveli, where usury has been a historical and social issue. There is also commentary regarding the lack of implementation of laws against illegal money lending in Tamil Nadu, as well as how awareness of the law plays a key role in effective implementation. Tamil Nadu has enacted a 1957 statute on money lending, rules of procedure supplementing this law, as well as a specific law for protection of borrowers from usurious interest rates. In this background, both Andhra Pradesh and Tamil Nadu can be considered as potential candidates for further research to build awareness.

The other initially shortlisted states of Maharashtra and West Bengal had lower levels of overall indebtedness, being 37 percent and 35 percent, respectively. The majority of literature in Maharashtra in the time period 2010-21 focused on indebtedness of farmers, which the Researcher

has not cited in the literature review on account of the specific agrarian context that does not clearly encompass rural daily wage workers nor trafficking survivors. Maharashtra has quite an extensive legal framework, with both an Act and corresponding Rules, but the proposed amendments to the laws (the nature of which is still not exactly known) and the agrarian context behind enacting these laws (and now amending them) show that Maharashtra is most concerned about the farmer demographic that is suffering on an ongoing basis due to usurious money lending

West Bengal has similarly low levels of reported indebtedness as Maharashtra, but a key difference between literature on Maharashtra and West Bengal is that in West Bengal, there is significant coverage by the media and exploration by NGOs on the relationship between indebtedness, trafficking survivors and their deteriorating economic situation on account of COVID-19. The law used in West Bengal though is highly antiquated in nature, being enacted in 1940. Out of the two states, due to increased prevalence of literature on trafficking survivors, it is possible to carry out an exercise in comparing West Bengal's legal framework to other states' more contemporary frameworks to propose legal reform in the state. West Bengal can accordingly be considered for a contextual inquiry into money lending in contemporary times.

In discussion with the Kamo team, the recommended states for comparative analysis of money lending are **Andhra Pradesh, West Bengal and Tamil Nadu**. This pays due regard to the existing data available, so that there is sufficient background, context and awareness of the prevailing situation that will inform research and awareness-building. Creating and disseminating awareness of laws and implementation amongst stakeholders (many of whom may be working in specific states covered by the research), should ideally contain accounts of situations (general or specific) that are being experienced by the targeted beneficiaries of their programmes.



**COMPARATIVE ANALYSIS OF MONEY LENDING LAWS**

The three (3) states that are identified for the comparative analysis include Andhra Pradesh, Tamil Nadu and West Bengal (**‘the States’**). The Researcher has identified legislations and policies on money lenders in the States and has identified supplementary sources that affect implementation of these laws and policies, in terms of judgments. An overview of the major laws and regulations in the States are as follows.

*Andhra Pradesh*

<b>Name of Law</b>	<b>Status of Law</b>
Andhra Pradesh (Andhra Area) Debtors Protection Act, 1934	Applicable till 2018 in Andhra Pradesh. Repealed in 2018.
Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F	Applicable till 2014 in combined Andhra Pradesh and Telangana
Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	Unclear. No record of current applicability. When enacted, only applicable to lending in Scheduled Tribes.
Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	In force in Andhra Pradesh.
Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011	In force in Andhra Pradesh.
Andhra Pradesh Money Lenders Bill, 2017	Not applicable. Passed by Legislative Assembly and Legislative Council; did not receive Presidential Assent.

**Table III – Review of Laws in Andhra Pradesh**

In Andhra Pradesh, the latest proposed law pertaining to money lending is the Andhra Pradesh Money Lenders Bill, 2017. Due to a call money racket that was unearthed in 2015, the Andhra Pradesh Money Lenders Bill, 2017 was put forth to regulate private money lending (PTI, 2015). However, the Andhra Pradesh Money Lenders Bill, 2017, while passed by the Legislative Assembly and Legislative Council on 30 November 2017 and 2 December 2017 respectively, has not yet been published in the Official Gazette. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 was passed to regulate money lending by Microfinance Institutions to women’s Self Help Groups.

The Andhra Pradesh (Andhra Area) Debtors Protection Act, 1934 was enacted to protect borrowers from money lenders, termed as ‘creditors’ in the Act. However, the Act was repealed in 2018, by the Andhra Pradesh Acts and Regulations (Repeal) Act, 2018.

The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 was only applicable to Scheduled Areas of the state, applicable to Scheduled Tribes in Andhra Pradesh. It is unclear as to whether the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 is still in force, given that it is not cited in any other legal documents as a law relating to money lending.

In present day Andhra Pradesh, the only applicable law that has been duly passed pertaining to money lending is the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, which exclusively covers microfinance institutions (MFIs). The enactment of this law led to the microlending industry coming to a ‘grinding halt’ in the state, due to the strict provisions governing lenders under the law (Pilla & Unnikrishnan, 2013). The law relating to microfinance was challenged before the Andhra Pradesh High Court in 2013, which upheld the same, but asked the state government to review the legislation in light of proposed national regulations to govern the microfinance sector (Pilla & Unnikrishnan, 2013). However, there are no national microfinance regulations in force today, with the RBI proposing the same to ‘harmonise regulatory frameworks’ for microlenders (PTI, 2021).

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 were enacted pursuant to the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 that prescribe requirements and formats for procedures under the Act that correspond to obligations of both MFIs as well as Registering Authorities. These include forms pertaining to registration of MFIs with their jurisdictional Registering Authority, relating to record keeping by both MFIs and Registering Authorities, terms of cancellation, suspension and renewal of registration, amongst others.

For the analysis, the Researcher examines provisions from the latest Bill as well as the Andhra Pradesh (Andhra Area) Debtors Protection Act, 1934, the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960, the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F that was in force in the Telangana area in the combined State up till 2014, the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 and the Andhra Pradesh Money Lenders Bill, 2017. One limitation of the research is the absence of the entire bare Act of the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 and accordingly, secondary research methods are used, where the Researcher cites scholars who have studied this Regulation.

### *Tamil Nadu*

In Tamil Nadu, the relevant laws are the Tamil Nadu Money Lenders Act, 1957 supplemented by the Tamil Nadu Money Lenders Rules, 1959. After usurious lending led to a spate of suicides, the state enacted the new law meant to protect borrowers from harassment and violence by moneylenders enacted in the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

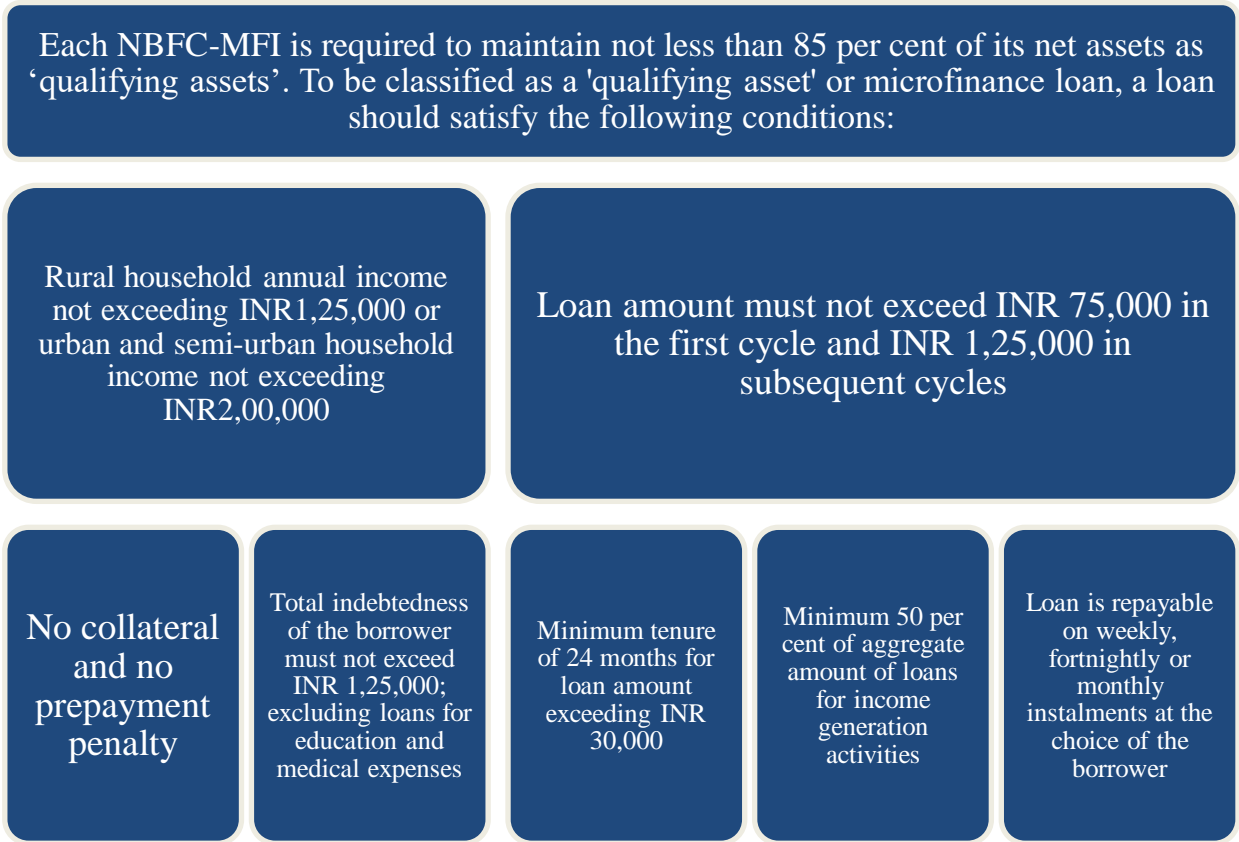
This operates in conjunction with the 1957 law that prohibits charging of interest above 12%, with the aim of tackling usurious lending (Govindarajan, 2017).

*West Bengal*

In West Bengal, the Bengal Money Lenders Act, 1940 is still in force today. It has only been supplemented by a notification by the Finance Department, Government of West Bengal designated Dr. Or. Sudip Kumar Sinha, IAS, Joint Secretary, Finance Department, Government of West Bengal to act as the State Registrar of Money Lenders under the 1940 Act. The Bengal Moneylenders Act, 1940 has repealed the Usurious Loans Act, 1918 in respect of money lending transactions falling within the purview of the Bengal Moneylenders Act.

*Supplementary RBI Circulars and Guidelines*

Only Andhra Pradesh has a comprehensive law for regulation of Micro Finance Institutions (‘MFIs’) and borrowings by SHGs. For the other States, MFIs do not have separate regulation, but all States’ MFIs have to be in compliance with RBI guidelines and circulars that are released periodically. The RBI introduced a comprehensive regulatory framework for NBFC-MFIs on 02 December 2011, which prescribed eligibility criteria for MFI loans linked to core features of microfinance *i.e.*, lending of small amounts to borrowers belonging to low-income groups, without collateral, and with flexible repayment schedules. The regulations laid special emphasis on protection of borrowers and fair practices in lending such as transparency in charges, ceilings on margins and interest rates, non-coercive methods of recovery, measures to contain multiple lending and over-indebtedness.



**Figure VIII: RBI Guidelines for Loans to Qualify as Micro Finance Loans (RBI, 2021)**

In addition to the guidelines regarding the terms of MFI loans as provided above, the RBI also enacted guidelines for the pricing of loans as well as customer protection measures, as follows.

Pricing of Loans

- Only three components viz., interest charge, processing fees (limit of 1 per cent of gross loan amount) and insurance premium on actual basis

Interest rate should be lower of

- the cost of funds plus margin of 10 per cent for NBFC-MFIs with loan portfolio exceeding INR 100 crore and 12 per cent for others
- 2.75 times of the average base rate of the five largest commercial banks.

Customer Protection Measures

- Not more than two NBFC-MFIs can lend to the same borrower.
- No security deposit/margin shall be collected from the borrower.
- There shall be no penalty charged on delayed payment.
- All sanctions and disbursement of loans shall be done at a central location.
- Recovery shall be made only at a central designated place. Field staff are allowed to make recovery at the place of residence or work of the borrower only if borrower fails to appear at the central designated place on two or more successive occasions.
- Every NBFC-MFI is required to become member of at least one self-regulatory organization (SRO) recognized by RBI and is also required to comply with the code of conduct prescribed by the SRO.

Figure IX: RBI Guidelines for Pricing of Loans and Customer Protection (RBI, 2021)

The comparative analysis of the laws and policies on money lending in the States are organised according to the eight (8) questions provided for in the Request for Proposals issued by Kamo.

I. What is the definition of money lenders and lendees?

Money Lenders

Andhra Pradesh

Name of State	Law	Definition of ‘Moneylender’	Comments
Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	<i>a person, who in the regular course of business advances a loan and includes the legal representative and the success or -in interest whether by inheritance, assignment or otherwise of the person who advanced the loan</i>	Broad definition including money lenders and their legal representatives, successors and assigns.
	Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F	<i>a person including a pawn broker, who, within the meaning of this Act, only advances loan in the ordinary course of his business or does so along with other business, and shall also include the legal</i>	Broader definition that includes pawn brokers, legal representatives, successors or assigns

		<i>representative of such person and the person claiming to be his representative on the ground of succession or assignment or otherwise”.</i>	of money lenders. Further, money lending can be carried out as along with another business.
	Andhra Pradesh Money Lending Bill, 2017	<i>a person whose main or subsidiary occupation is the business of advancing and realising loans and includes any person appointed by him to be in-charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business.</i>	Broadest definition, where the person can undertake money lending even as a subsidiary option. Also includes employees of money lenders. Grants exemptions to banks, cooperative societies, and public sector institutions.
	Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	<i>Definition of ‘Micro Finance Institution’ (MFI) is provided as any person, partnership firm, group of persons, including a Company registered under the provisions of the Companies Act 1956, (Central Act 1 of 1956) a Non-Banking Finance Company as defined under the Reserve Bank of India Act, 1934, (Central Act 2 of 1934) a Society registered under the Andhra Pradesh Co-operative Societies Act, 1964, (Act 7 of 1964) or the Andhra Pradesh Societies Registration Act, 2001 (Act 35 of 2001) and the like, in whichever manner formed and by whatever name called, whose principal or incidental activity is to lend money or offer financial support of whatsoever nature to the below poverty line population”</i>	Definition that complements the exceptions provided for in the Andhra Pradesh Money Lending Bill, but mandates that the MFI is an entity that principally or incidentally lends money or offers financial support to population below the poverty line.

**Table IV – Definition of ‘money lender’ in Andhra Pradesh**

In Andhra Pradesh, there is no consolidated law governing money lending in the state. The Andhra Pradesh Debtors Protection Act, 1934 (which was repealed in 2018) defines a “creditor” in Section 2(4) in the narrowest of terms, qualifying a money lender to be either a person who advances loans in their regular course of business, as well as their legal representatives, assigns and successors.

The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, which was in force in the combined state till 2014 has a broader definition of ‘money lender’ as defined in Section 2(7). The definition includes persons who advance loans in the ordinary course of their business or along with other businesses, expanding the scope of the Act to pawn brokers as well. The definition includes their legal representatives, as well as those who to be successors or assigns. A pawn broker is *“a person who in the ordinary course of his business advances loan and takes goods in pawn as security for payment of such loan”*.

The Andhra Pradesh Money Lending Bill, 2017, which has not yet received Presidential assent defines money lender in Section 2(11) as persons who advance or realise loans as an occupation or as a subsidiary occupation. It also includes their employees, appointed as heads of one or more branch offices or liaison office (or the equivalent, by whatever name). The definition grants exemptions to banks, cooperative societies, the Life Insurance Corporation, the Industrial Credit and Investment Corporation of India, the Industrial Finance Corporation, the State Financial Corporation, *“any institution established by or under an Act of Parliament or the Legislature of a State, which grants any loan or advance in pursuance of the provisions of that Act”*, as well as *“any other institution in the public sector, whether incorporated or not, exempted by the Government by notification”*.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, rather than defining ‘money lenders’, defines ‘Micro Finance Institutions’ or MFIs in Section 2(d) of the Act. It is a broad definition, including persons, partnership firms, groups of persons including companies, Non-Banking Finance Companies and cooperative societies. Further, it importantly states that to be an MFI, the relevant entity must have a principal or incidental activity that is the lending of money or offering of financial support of whatever nature to the population below the poverty line.

### *Tamil Nadu*

In the Tamil Nadu Money Lenders Act, 1957, ‘money lender’ is defined in Section 2(8) as *“a person whose main or subsidiary occupation is the business of advancing and realising loans, but excludes a bank or a co-operative society.”* This is explained further, stating, *“Where a person who carries on in the State of Tamil Nadu the business of advancing and realizing loans is resident outside the State of Tamil Nadu, the agent of such person resident in the State of Tamil Nadu shall be deemed to be the money lender in respect of that business for the purposes of this Act.”*

The Tamil Nadu law is as broad as the Andhra Pradesh Money Lenders Bill, 2017, in terms of bringing persons who advance and realise loans and their agents (within or outside Tamil Nadu), and only makes exceptions for banks and cooperative societies.

### *West Bengal*

The Bengal Money Lenders Act, 1940, in Section 2(9) defines "lender" as *"a person who advances a loan and includes a moneylender."* A "money lender" is defined in Section 2(13) as *"a person who carries on the business of money-lending in [West Bengal] or who has a place of such business in [West Bengal], and includes a pawnee<sup>14</sup> as defined in section 172 of the Indian Contract Act, 1872"*. Further, Section 2(14) defines "money-lending business" and "business of money-lending" as *"the business of advancing loans either solely or in conjunction with any other business"*.

The Bengal Money Lenders Act, 1940 interestingly includes definitions for 'lender' as well as 'money lender', separately. The Act also defines 'money-lending business' and 'business of money-lending' but only includes the advancement of loans, not the realisation (repayment or recovery) of loans.

### ***Borrower or Debtor***

In the Andhra Pradesh Money Lending Bill, 2017, 'borrower' is defined briefly in Section 2(3) as a *"person to whom a loan is advanced and includes a successor-in-interest or surety"*. The other two laws in Andhra Pradesh (the 1934 Act and the Telangana Area Act) do not contain definitions of 'lenders' or 'borrowers'. In the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, rather than defining 'borrower' or 'debtor', the definition of 'Self Help Group' or SHG includes a group of women who are formed on principles of self-help and registered under the Society for Elimination of Rural Poverty (SERP) in the rural areas or Mission for Elimination of Urban Poverty in Municipal areas (MEPMA) in urban areas. It is interesting that while the definition of 'money lender' restricts the scope of other laws, the Andhra Pradesh Micro Finance Act actually restricts its own scope through the comparatively narrow definition of 'Self Help Group'.

There is no definition of a 'lender' in the Tamil Nadu Money Lenders Act, 1957. In the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, 'debtor' is defined in Section 2(2) as a person who receives loan for exorbitant interest. 'Exorbitant interest' is further defined under the Act itself. Further, the Bengal Money Lenders Act, 1940 defines "borrower" in the same way as the Andhra Pradesh Money Lending Bill, 2017 in Section 2(2) as *"a person to whom a loan is advanced and includes a successor-in-interest or surety"*.

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<sup>14</sup> Section 172 of the Indian Contract Act, 1872 states that "the bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called the 'pawnor'. The bailee is called 'pawnee':.

### ***Judgments on ‘Money Lender’***

There have been several judgments of various High Courts and the Supreme Court on the definition and scope of ‘money lender’. In *Sitaram Poddar v Bhagirath Choudhary*<sup>15</sup> the Calcutta High Court referred to a number of High Court judgments to hold that one or two isolated or occasional acts of lending money will not constitute a money-lending business; instances of occasional lending of money even at a remunerative rate of interest are not sufficient to constitute business of money-lending. The Court went on to state that “Every loan is a debt, but every debt is not loan.” Thus, by laying stress on the business trait of the lending within the Act itself, the Bengal Money lenders Act, 1940 contemplates a professional money lender and it is in relation to such a professional money lender that the provisions as to a licensee and registrations are applicable.

The Calcutta High Court, in *Binapani Roja v. Rabindranath Sarkar and Ors.*<sup>16</sup> held that the word ‘loans’ in Section 2(14) of the Bengal Money lenders Act, is in plural. Therefore, in order to establish that the Plaintiff is carrying on business of money-lending, it must be proved that he has lent money on more than one occasion. Further, the Calcutta High Court in *Satyanarayan Kamal Kumar v. Birendra Pro Singh and Anr.*<sup>17</sup>, holds that money lender is a person, who carries on business of money-lending in a regular course of business, but a “mere lender” is not so.

The Andhra Pradesh High Court, in *Varalaxmi v. Syed Kasim Hussain*<sup>18</sup> states that to fall within the definition of ‘money lender’ it was not enough merely to show that a person had on several occasions lent money at remunerative rates of interest; there must be a certain degree of system and continuity about the transactions. The definition envisages only those classes of persons whose regular business is to advance moneys and not those who advances money casually. Further, the Andhra Pradesh High Court in *Sataram Shrawan v. Bajya Parnya*<sup>19</sup> dealt with the meaning of the term ‘regular’ in ‘regular course of business’. The Court stated that “*the word ‘regular’ shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of money lending is shown to the Court it is impossible to state that the constitutes a regular course of business. It is an act of business but not necessarily an act done in the regular course of business*”.

The Supreme Court explained the term ‘business’ in *State of Andhra Pradesh v. H.A.Bakshi & Brothers*<sup>20</sup> stating that “*The expression ‘business’ though extensively used is a word of indefinite import; in taxing statutes it is used in the sense of an occupation, or profession which occupies the time attention and labour of a person normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure*”.

<sup>15</sup> (31.03.2011 - CALHC) : MANU/WB/0574/2011

<sup>16</sup> MANU/WB/0055/1959 : AIR 1959 Cal 213

<sup>17</sup> MANU/WB/0049/1979 : AIR 1979 Cal 197

<sup>18</sup> (1962) 2 Andh WR 137

<sup>19</sup> AIR 1941 Nag 177

<sup>20</sup> AIR 1965 SC 531



## II. What are the salient features amongst the studied state legislations?

Rather than outlining all the provisions of the legislations in this section, the Researcher has identified and put forth the statement of objects of each laws, as well as some distinctive provisions that characterise each law. The coherences and disjuncts between the laws, including certain common and unique features, are provided for in the following section.

### *Andhra Pradesh*

The Andhra Pradesh (Andhra Area) Debtors' Protection Act, 1934 was enacted to protect borrowers in the Andhra area of Andhra Pradesh, which subsisted till it was repealed in 2018. It required creditors to maintain accounts and to provide receipts containing any and all details of the loans taken by individual borrowers. Further, Section 3 seeks mandatory registration of money lenders.

Further, if in any suit or proceeding relating to a loan advanced after the commencement of the A.P.(A.A.) Debtors' Protection (Amendment) Act, 1935, a court is found that the interest charged exceeds (for secured loans), nine percent per annum simple interest and (for unsecured loans), fifteen percent per annum simple interest – the Court shall presume for the purposes of sections 3 and 4 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was substantially unfair.

The Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F was enacted to regulate money lending transactions and to make better provisions for control of private money lending. It was in force in the Telangana area of combined Andhra Pradesh and Telangana and has been adopted in the separate state of Telangana since 2014. Every moneylender has to obtain a license under the Act and no money lender can carry on the business without obtaining a license. Further, if a money lender files a suit before a Court relating to a loan, if the Court finds out that the money lender does not have a valid license, the Court shall dismiss the suit.

The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 was applicable in the Scheduled Areas of Andhra Pradesh as a law enacted to protect borrowers from Scheduled Tribes. The Act provided for annual renewal of licence by the money lenders, and money lending without a licence was prohibited (Raju, 1985). The maximum rate of interest was fixed to be 12 per cent simple interest, with mandatory maintenance of accounts book for loans advanced (Raju, 1985). All loans advanced by unlicensed money lenders were declared null and void and each money lender had to register their name irrespective of their place of residence or operations (Raju, 1985).

The authorities designated under the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 are as follows:

1. The District Collector and Joint Collector for Scheduled Areas, undertaking overall agency under the Regulation.

2. The District Revenue Officers, for issuing licenses to money lenders in Scheduled Areas under the Regulation.<sup>21</sup>

The Andhra Pradesh Money Lenders Bill, 2017 aims to consolidate the laws relating to money lending in Andhra Pradesh. Its salient features include the prohibition of any person commencing or carrying on or continuing business as a money lender within the jurisdiction of the law, without a license. Licensees are mandated to pay security deposits ranging from INR 5,000/- (Indian Rupees Five Thousand only) to INR 2,50,000/- (Indian Rupees Two Lakhs Fifty Thousand only) depending upon the amount advanced by way of loans every year. Money lenders also need to mandatorily exhibit their status as ‘money lender’ at their place of business. The State Government is mandated to specify the maximum rate of interest chargeable by money lenders and shall audit the accounts of money lenders at least once a year.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 was enacted to protect women’s self-help groups from exploitation by micro finance institutions. The Act states that the Government of Andhra Pradesh facilitated organisation of below poverty line households into Self Help Groups (SHG) for the purpose of their economic advancement by achieving financial inclusion through linking with the banking network. The law is clearly a welfare legislation to protect the interests of SHGs and to relieve them from the undue hardship by regulating money lending transactions by money lending MFIs, who provide loans to SHGs with usurious interest rates and resort to coercive means of recovery, in turn, resulting in impoverishment and often, suicides of the borrowers. The Act contains provisions for the registration of MFIs, prohibition on MFIs from seeking security for loans, requires MFIs to display rates of interest that they charge, capping the maximum amount of interest recoverable on loans in specific cases. The Act also contains penalties against MFIs, including punishments for carrying on business without registration and for undertaking coercive actions against borrowers.

However, from an overview of the laws in Andhra Pradesh, it is seen that in spite of several laws in force, the only subsisting legislation is restricted to microfinance institutions and there is no regulation of private money lenders in force since 2018. Therefore, in Andhra Pradesh only borrowers from SHGs have recourse for usurious money lending under the current legal framework.

### *Tamil Nadu*

The Tamil Nadu Money Lenders Act, 1957 makes it mandatory for money lenders to obtaining licenses for money lending as Section 3 of the Act, without which no person can carry on or continue to carry on business as a money lender. The Act additionally states that money lenders have to obtain separate licenses in respect of each shop or place of business, if they have multiple (even in the same jurisdiction). Further, if a money lender is any other association of individuals,

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<sup>21</sup> (G.O.Ms.No. 77 Revenue, Dated 22-01-1968)

not required to be registered under the Companies Act, each individual must obtain a separate licence in their own name describing themselves as a member of the association.

The Tamil Nadu Money Lenders Rules, 1959 state in Rule 3 states that every application for a money lenders licence shall be made to the Tahsildar of the Taluk or Independent Deputy Tahsildar, as the case may be, having jurisdiction over the place of business of the money lender.

Section 7 of the Tamil Nadu Money Lenders Act, 1957 mandates that the State Government should fix a maximum rate of interest on loans to be advanced by money lenders. Money lenders shall not demand or take from the debtor any interest, profit or other sum whatsoever in excess of that payable. The Tamil Nadu Government issued an order in G.O.Ms.No.406, Co-operation, dated 05.07.1979 fixing maximum simple interest at 9% per annum for secured loan and maximum interest at 12% per annum for un-secured loan to be charged by money lenders.

Tamil Nadu Money Lenders Act, 1957 in Section 19 states that money lending licenses can be transferred to an heir of the deceased money lender or to persons claiming to be their legal representative. The heir or legal representative may apply to the licensing authority for transferring in their name the licence standing in the name of the deceased.

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 states that no person shall charge exorbitant interest on any loan advanced by him. This is a separately punishable offence under the Act.

### *West Bengal*

In *Jupiter Brokerage Services Ltd. v. Ektara Exports Pvt. Ltd. and Ors.*<sup>22</sup> the Calcutta High Court outlined the object of the Bengal Money Lenders Act, 1940 stating that it is basically a Regulatory Act, which regulates the business of money-lending. The Court pointed out that according to Section 8 of the Act, after a certain date notified in the official gazette no money lender shall carry on the business of money-lending unless he holds an effective licence. However, the Court stated that the provision is not mandatory and that money lending without a licence is not totally barred or prohibited by the Bengal Money lender's Act, 1940.

The Court stated that although money lending without a license is in itself not an illegal action, if a money lender (without a license) files a civil suit to recover a loan, the Court will stay the suit until the money lender pays a penalty whose terms will be fixed by the Court. Once the money lender pays the penalty, the suit will go on – but if the money lender does not pay the penalty in accordance with the terms of the Court, the suit will be dismissed.

Uniquely, the Bengal Moneylenders Act, 1940 has a provision in Section 2(4) defining “commercial loan” to mean a loan advanced to any person solely for the purposes of any business relating to trade, commerce, industry, mining, planting, insurance, transport, banking or

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<sup>22</sup> (13.10.2015 - CALHC) : MANU/WB/0876/2015

entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor. The difference between commercial loans and regular loans is that the regulation of commercial loans is lower and the interest rate permitted is higher.

Although regular loans have certain limitations on amounts and interest recoverable, the same do not apply to commercial loans. Section 30 states that borrowers of regular loans shall not be liable to pay any sum by way of principal and interest, which together (with any amount already paid or included in any decree in respect of the loan) exceeds twice (2x) the principal of the original loan. Further, the interest recoverable cannot be greater than the principal amount. The limit for interest on regular loans is 12.5 percent on unsecured loans and 10 percent for secured loans. For commercial loans, on the other hand, Section 30A provides limits on interest being 20 percent per annum on unsecured loans and 17 percent per annum on secured loans (simple interest).

For loans in kind (by way of moveable property, for instance) Section 32 of the Act states that the market value of the commodity at the time within the locality where the loan was advanced shall be the principal amount of the loan. In determining the amount which may be decreed in respect of any loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

III. What are the coherences and disjuncts amongst the studied state legislations?

The various coherences and disjuncts between the legislations in the States are as follows.

Definition of Loan

Feature	State	Law	Particulars
Definition of ‘Loan’	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	An advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction. Includes any transaction which the Court finds in substance to amount to such an advance.
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	Advanced on interest in cash or in kind, and includes every transaction which is in substance a loan.
		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	An advance of money or articles, goods or materials for interest and includes any transaction, which the

			Court finds in substance to amount to such an advance.
		The Andhra Pradesh Money Lenders Bill, 2017	Advance, whether of money or in kind at interest (including transactions that the Court deems an advance).
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	Section 2(6) includes advance whether of money or in kind given to the borrowing SHG at interest, including advance, discount, money paid for or on account of or paid on behalf of or at the request of any person, or any account whatsoever, and every agreement which is in substance or effect a loan of money or in kind given to an SHG.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Section 2(6) includes advance, whether of money or in kind at interest (including transactions that the Court deems an advance).
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	‘Loan’ is defined differently. It means an advance of money for <i>daily vatti, hourly vatti, kandhu vatti, meter vatti</i> or <i>thandal</i> . (defined below)
	West Bengal	Bengal Money Lenders Act, 1940	Advance, whether of money or in kind at interest (including transactions are ‘in substance’ a loan).  ‘Commercial loan’ means a loan advanced solely for the purposes of business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment or to the occupation of wharfinger, warehouseman or contractor or any other merchant venture. Applies to all such proprietors, principals,

			agents or guarantors of such ventures.
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Table V – Definition of ‘Loan’ in States

In the Andhra Pradesh Debtors Protection Act, 1934, ‘loan’ is defined in Section 2(6) as an advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction. It includes any transaction which the Court finds in substance to amount to such an advance. This is a restrictive and antiquated definition that has nevertheless persisted till 2018 in the state. In the Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F, ‘loan’ is defined in Section 2(4) as a loan secured or unsecured, advanced on interest in cash or in kind, and includes every transaction which is in substance a loan. In Andhra Pradesh, the Andhra Pradesh Money Lenders Bill, 2017 defines ‘loan’ as an advance, whether of money or in kind at interest (including transactions that the Court deems an advance). The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 defines ‘loan’ in Section 2(c) very widely, including multiple kinds of payment (advance, discount, money paid for or on account of or paid on behalf or at the request of any person) as well as loans ‘in kind’. Further, the definition is not static, since any agreement, whatever its terms or form, which is in substance a loan, will fall within the scope of the Act.

In the Tamil Nadu Money Lenders Act, 1957, Section 2(6) of the Act gives the definition of ‘loan’. ‘Loan’ means an advance, whether of money or in kind at interest (including transactions that the Court deems an advance). The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 defines loans quite differently, in conjunction with the Tamil Nadu Money Lenders Act, 1957. Section 2(6) defines ‘loan’ as an advance of money for *daily vatti*, *hourly vatti*, *kandhu vatti*, *meter vatti* or *thandal*. These terms are separately defined with ‘*daily vatti*’ meaning interest on daily basis and ‘*hourly vatti*’ meaning interest on hourly basis. Both terms are contingent on the interest working out to an interest rate more than that fixed by the Government.

‘*Kandhu vatti*’ simply means interest which will work out to an interest rate more than that fixed by the Government, ‘*meter vatti*’ and ‘*thandal*’ mean interest which will work out to an interest rate more than that fixed by the Government for every day on the loan amount not paid within the stipulated time and interest which will work out to an interest rate more than that fixed by the Government, which is to be collected daily along with the part of the loan amount. Therefore, within the mandate of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 to regulate usurious money lending with exorbitant rates of interest, these different interest structures are banned, if they are more than the maximum interest prescribed by the Government.

The Bengal Money Lenders Act, 1940 defines loans similarly as well, with a slightly different scope and exemptions. A ‘loan’ as per Section 2(12) means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan.

However, The Bengal Money Lenders Act, 1940 also has a definition for ‘commercial loan’ in Section 2(4), which means a loan advanced solely for the purposes of any business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment or to the occupation of wharfinger, warehouseman or contractor or any other merchant venture. This applies to all such proprietors, principals, agents or guarantors of such ventures. As stated earlier, the interest recoverable on commercial loans is higher than regular loans, Courts can order borrowers to pay higher rates of interest (exceeding 6 percent) on the principal amounts due (as decided by the Court).

*Applicability to Companies and Loan Exemptions*

Features	State	Law	Particulars
Applicability to Companies	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	Loans by companies are exempted.
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	Loans by companies exempted.
		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	No applicability to companies.
		The Andhra Pradesh Money Lenders Bill, 2017	No applicability to deposits in companies.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	No such exemption provided.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Applicable to companies and excludes banks. State Government may notify financial or banking institutions.
		Tamil Nadu Money Lenders Rules, 1959	No such provision.
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	No separate provision as it is applicable to entities defined in the Tamil Nadu Money Lenders Act, 1957.

	West Bengal	Bengal Money Lenders Act, 1940	Applicable to companies. Exemptions to loans by banks, including financial institutions notified by the State Government.
<b>Applicability to banks and other transactions</b>	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	No such provision.
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	Banks: Excluded Other entities: Excluded Trade Credit: Excluded Agricultural Input Credit: Not Excluded
		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	Banks: Excluded Other entities: Excluded Trade Credit: Not applicable Agricultural Input Credit: A person advancing money on the security of any standing crop or produce has been specifically included.
		The Andhra Pradesh Money Lenders Bill, 2017	Banks: Excluded Other entities: Excluded Trade credit: Excluded Agricultural Input Credit: Not Excluded (landlord to tenant, lessor to lessee and partners, co-sharers etc. for the purpose of carrying on agriculture)
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	No such exemption provided.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Banks: Excluded Other entities: Excluded by notification Trade credit: Excluded (by implication)



			Agricultural Input Credit (from agriculturist to tenant): Excluded
		Tamil Nadu Money Lenders Rules, 1959	No such provision
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	Same scope as the Tamil Nadu Money Lenders Act, 1957.
	West Bengal	Bengal Money Lenders Act, 1940	Banks: Can be excluded by notification Other entities: Can be excluded by notification Trade credit: Not excluded although commercial loan has been defined and the Act enables higher rates of interest to be charged for such loans. Agricultural input credit: Not excluded

**Table VI – Applicability of Laws to Companies and Loan Exemptions**

The Andhra Pradesh Debtors Protection Act, 1934 provides exemptions for deposits and advances in banks, companies and cooperative societies, advances by local authorities and Governments, persons whose primary business is not money lending, landlords to tenants and those based on negotiable instruments (other than promissory notes). Advances made by a landlord to his tenant, by a less or to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture are also exempt from ‘loan’ status under the Act. The Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F does not include deposits and advances to banks, companies, cooperative societies, advances from government, local authorities, advances based on negotiable instruments (other than promissory notes). The Act is distinct from the other Andhra Pradesh laws, stating that advances by employers to their agricultural labour, between traders as well as any money payable to a trader by a person other than a cultivator or a labourer for articles sold on which interest is charged by reason of non-payment on due date are exempt.

The Andhra Pradesh Money Lenders Bill, 2017 makes no exemptions for advances made by agriculturalists, but there is an exemption for an advance made by landlord to tenant, lessor to lessee and partners for the purpose of carrying on agriculture. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 does not contain such exemptions, as it includes companies, NBFCs, societies and cooperative societies, partnership firms, groups and individuals.

The Tamil Nadu Money Lenders Act, 1957 provides exemptions to deposits and advances in banks, companies defined under Companies Act, 1956 and cooperative societies. Further, it prescribes extensive exemptions to advances by persons whose primary business is not money lending, Chit Funds, permanent funds and agriculturalists who pay advances to their tenants. Further, advances made on the basis of a negotiable instrument exceeding INR 10,000/- are exempt as well. The Bengal Money Lenders Act, 1940 exempts loans advanced by Governments and local authorities in West Bengal, banks, cooperative societies, insurance companies, provident funds, dealings listed on any Stock Exchange, as well as advances based on negotiable instruments (other than a promissory note) and loans made to or by the Administrator-General and Official Trustee of [West Bengal] or the Commissioner of Wakfs or the Official Assignee or the Official Receiver of the High Court in Calcutta. There is no provision pertaining to agriculturalists, tenants or traders.

*Maximum rate of interest Prescribed in all States*

Feature	State	Law	Particulars
Maximum rates of interest that can be charged	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	9 percent simple interest per annum for secured loans; 15 percent simple interest per annum for unsecured loans
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	Not specified.
		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	12 percent simple interest
		The Andhra Pradesh Money Lenders Bill, 2017	To be specified by the State Government.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	MFIs shall not be allowed to recover interest on a loan that is in excess of the principal amount.  MFIs also have to display rates of interest charged by them in a conspicuous place in their premises in bold letters and publicly visible.
	Tamil Nadu	G.O.Ms.No.406, Co-operation, dated 05.07.1979	9 percent per annum simple interest for secured loans

			12 percent per annum simple interest for unsecured loans
	West Bengal	Bengal Money Lenders Act, 1940	Regular loans (simple interest): 12.5 percent per annum for unsecured loans 10 percent per annum for secured loans Commercial loans (simple interest): 20 percent per annum for unsecured loans 17 percent per annum on secured loans.

Table VII – Maximum Rates of Interest in States

The majority of state laws have a prescribed maximum rate of interest that can be charged, ideally varying from 9 percent simple interest per annum for secured loans and 15 percent simple interest per annum for unsecured loans (Andhra Pradesh Debtors Protection Act, 1934), 12 percent simple interest (The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960) in Andhra Pradesh. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 is slightly different, only mandating that MFIs must prominently display the rates of interest charged by them in their premises. The limitation on interest recoverable on loans is equal to the principal amount of the respective loan.

In Tamil Nadu, maximum rates are similar to that of Andhra Pradesh, with 9 percent per annum simple interest for secured loans and 12 percent per annum simple interest for unsecured loans (G.O.Ms.No.406, Co-operation, dated 05.07.1979). West Bengal allows for the highest rates of interest, making a distinction between regular loans and commercial loans. The Bengal Money Lenders Act, 1940 prescribes 12.5 percent per annum for unsecured loans and 10 percent per annum for secured loans (regular loans) and 20 percent per annum for unsecured loans and 17 percent per annum on secured loans (commercial loans).

Requirement of License

This is common to all states, except for Andhra Pradesh, as the Andhra Pradesh Debtors Protection Act, 1934 does not require licensing of money lenders. However, it does have licensing provisions that apply to MFIs.

Feature	State	Law	Particulars
Requirement of registration/license	Andhra Pradesh	Andhra Pradesh Debtors	No such provision.

<b>for carrying on the business of money lending within a State/a portion of the State</b>		Protection Act, 1934	
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	Money lenders have to obtain licenses. Suits filed by money lenders liable to be dismissed if they are without licenses.
		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	Money lending without a license is prohibited.
		The Andhra Pradesh Money Lenders Bill, 2017	Money lending without a license is prohibited. If there are multiple places of business, multiple licenses to be obtained. Associations of money lenders must have members with individual licenses. Licensees must pay a security deposit to the authority. License transferable to heirs.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	MFIs have to apply for registration. MFIs cannot grant or recover any loans without obtaining registration. There is a process for registration provided, a mandatory requirement that the Registration Authority should carry out a verification of MFIs' details and requirement that MFIs sign an undertaking to comply with the Act prior to registration.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011	Lays out forms and procedures for applications for registration, verification of MFI details, MFI undertakings, time limit for registration, renewal, cancellation and suspension of registration
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Mandatory to obtain licenses. If there are multiple places of business, multiple licenses to be obtained. Associations of money lenders must have members with

			individual licenses. License transferable to heirs.
		Tamil Nadu Money Lenders Rules, 1959	Application for a money lenders licence shall be made to the Tahsildar of the Taluk or Independent Deputy Tahsildar.
	West Bengal	Bengal Money Lenders Act, 1940	As on the date of notification by the State Government, no money lender shall carry on money lending business without an effective license. <i>Jupiter Brokerage Services Ltd. v. Ektara Exports Pvt. Ltd. and Ors.</i> states that money lending without a license is in itself not an illegal action. If a money lender (without a license) files a civil suit to recover a loan, the Court will stay the suit until the money lender pays a penalty.

**Table VIII – Requirement of Money Lending License**

The requirement of a money lending license is common amongst all the States. The Andhra Pradesh Debtors Protection Act, 1934, is the only Act that does not contain a provision for mandatory registration of private money lenders who are not MFIs. In the Andhra Pradesh (Telangana Area) Money Lenders Act 1349F, money lenders are mandated to obtain licenses. Notably, suits filed by money lenders pertaining to loans are liable to be dismissed if money lenders do not have valid licenses.

According to The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960, money lending without a license is prohibited and The Andhra Pradesh Money Lenders Bill, 2017 again mandates licenses, with money lenders being liable to pay security deposits to the licensing authority, depending upon the amount of money advanced annually by way of loans. Further, the Bill calls for multiple licenses at each place of business of a money lender and associations of money lenders are only permitted if every money lender has a license designating that they are members of such associations.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 contains strict licensing provisions, creating obligations on MFIs to register themselves before the relevant authority, renew their licenses upon expiry of one year (duration of license) and refrain from granting or recovering loans if they do not possess valid registration. Registration is valid for a single district, with an MFI doing business in more than one district being required to obtain separate registration for each district. Further, the Act confers obligations on the registering authority as well, requiring the authority to conduct verification of MFI details, obtain a written undertaking from MFIs that they will always act in conformity with the law and maintain a register

of all MFIs with valid registration in their areas. Procedures regarding the same are provided in the corresponding Rules.

In the Tamil Nadu Money Lenders Act, 1957, it is mandatory for money lenders to obtain licenses. The Act has a provision that pre-dates and mirrors the provisions of the Andhra Pradesh Money Lenders Bill, 2017, requiring multiple licenses at each place of business of a money lender and associations of money lenders are only permitted if every money lender has a license designating that they are members of such associations. Licenses can be transferable upon the death of money lenders to their legal heirs or legal representatives, if the heirs or representatives apply for the same.

In the Bengal Money Lenders Act, 1940, Section 8 states that “*after such date not less than six months after the commencement of this Act as the [State] Government shall, by notification in the Official Gazette, appoint in this behalf, no money lender shall carry on the business of money-lending unless he holds an effective licence.*” However, this provision is rectifiable in a court of law, if the money lender files a suit to recover a loan. The Court will stay the suit and prescribe a penalty, which the money lender must comply with. In the event of non-compliance, the suit is liable to be dismissed by the Court.

*Cancellation of License and License Validity*

The grounds for cancellation and suspension of money lenders’ licenses are important in determining the extent of liability of money lenders under different state laws.

Feature	State	Law	Particulars
License Cancellation and Validity	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	No such provision.
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	A license can be cancelled or suspended if the money lender is found (after the enactment of the Act) he has been found guilty by a Civil Court of specific offences in more than 2 suits, he has had a suit dismissed (wholly or partly) on grounds that a loan entry made by him was more than the actual loan advanced, he had a suit dismissed based on fraud or he has been found guilty of forgery, cheating or coercion or other specified offences under the Indian Contract Act, 1872.  Licence can be cancelled/suspended or prohibit renewal for up to 2 years.

		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	License validity is for one year and has to be renewed annually.
		The Andhra Pradesh Money Lenders Bill, 2017	Violations of the Act, as well as lack of provision of security to the licensing authority can form grounds for cancellation of license. License validity is for three years, which must be renewed at least 2 months prior to expiration. Every order of cancellation or suspension to be notified in the District Gazette and also on the notice-board of the office of the licensing authority.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	Registering authority can <i>suo moto</i> (by their own action) cancel license or can do so in response to complaints by SHGs, their members, or members or the public. The authority can only pass an order of cancellation if the MFI is given a reasonable opportunity to be heard.  License validity is for one year and has to be renewed annually.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011	Procedures regarding cancellation and suspension of registration. Additionally, in case of cancellation or non-renewal of registration due to incorrect details provided by MFI or any violation of the Act by the MFI, such MFIs shall not extend any fresh loans to the borrowers, but will be entitled to recover the dues of the subsisting loans.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Can cancel or suspend if licensee carries on business in contravention of any of the provisions of the Act or its, rules or the conditions of the licence. Further, can cancel or suspend license if licensing authority is made aware that licensee meets any of the conditions under the Act

			<p>for refusal of license, or had his license cancelled within 6 months before date of application.</p> <p>If licensee is convicted of offences under Section 10A, 11, 13 license can be cancelled or suspended.</p> <p>License validity is only for one year and can be renewed on a yearly basis.</p>
		Tamil Nadu Money Lenders Rules, 1959	<p>Licensing authority can suspend a money lending license that they think is liable to be cancelled, without having to send a show cause notice to the money lender.</p> <p>Licensing authority shall commence further action towards cancellation of the license within a period of fifteen days from the date of suspension of the licence.</p> <p>Every order of cancellation or suspension to be notified in the District Gazette and also on the notice-board of the office of the licensing authority.</p> <p>A person whose licence is void, cancelled or suspended shall not be entitled to any compensation or to any refund of any fees paid for licence.</p>
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	No such provision.
	West Bengal	Bengal Money Lenders Act, 1940	<p>A person can be disqualified for holding a licence if so ordered by a Court; or if he has been convicted of any offence specified in the Schedule to the Act which has not been set aside by any legal proceeding.</p> <p>a Sub-Registrar may, after giving the money lender an opportunity to be heard, cancel the licence if it is proved that such money lender was disqualified for holding</p>



			<p>a licence at the time which such licence was issued.</p> <p>License validity is throughout the State for a period of three years from the date of issue, or until it is cancelled</p>
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Table IX – License Cancellation and Validity

The Andhra Pradesh Debtors Protection Act, 1934 does not contain provisions that require money lenders to obtain a license, so accordingly there are no provisions pertaining to grounds for cancellation or period of validity. In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F licenses can be cancelled or suspended if it is found that a money lender has been found guilty by a Civil Court of contravening the provisions of Sections 5<sup>23</sup>, 6<sup>24</sup> or 8<sup>25</sup> in more than two suits, or a suit filed by him has been dismissed (in whole or in part) on the ground that he has made a loan entry in a document showing the amount of loan to be more than the actual loan amount.

Further, the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F expands the scope for cancellation of license by stating that licenses can also be cancelled or suspended if a suit instituted by a money lender was dismissed on the ground that it was based on fraud, or the money has been found guilty in a money transaction by a Court, of forgery, cheating or coercion; or he or his agent is guilty of contravening the provisions of Section 13<sup>26</sup> of the Indian Contract Act, 1872. This provision of the Indian Contract Act, 1872 defines ‘consent’ in terms of contracts, which qualifies legal consent as agreement between two people ‘upon the same thing in the same sense’. If the

<sup>23</sup> **5. Money lenders to maintain accounts and to furnish statements thereof to debtors.-** (1) A money lender shall

(a) maintain a regular account of loan for each debtor separately;

(b) deliver to the debtor every year the prescribed statement of account signed by him or his agent specifying the amount of loan that may be outstanding against such debtor on the prescribed date. Such statement of account shall contain all transactions of loan entered into during that year. The said statement shall be in the language of the village office of the district for which the money lender has obtained a licence.

(2) The account mentioned in clause (a) of sub section (1) shall be so maintained that items of principal and interest may be separately and clearly ascertained and the balance of principal and interest shall be shown separately. The money lender shall not be authorised to include the interest or any portion of interest in the principal. The opening balance of principal and interest shall be separately shown:

Provided that if after a loan was originally advanced by a money lender, a widow or minor becomes entitled to such loan, such widow or minor shall not be required to maintain the account and furnish the statement of account under sub section (1) for a period of one year from the date on which such right accrued.

(3) The licensing authority or any person authorised by him may inspect the books of account of a money lender for the purpose of satisfying himself that the provisions of this section are being complied with.

<sup>24</sup> **6. Additional accounts to be maintained by pawn brokers.** (1) In addition to the duties mentioned in Section 5, every pawn broker shall maintain a regular account showing the following particulars:

(a) details of each of the articles taken in pawn by which in can be defined.

(b) the time agreed upon between the parties for the redemption of pawn, and

(c) the name and address of the pawner.

(2) The pawn broker shall at the time of transaction deliver to the pawner a statement of the aforesaid entries under his or his authorised agent s signature, the said statement shall be in the language mentioned in clause (b) of sub section (1) of Section 5.

(3) The licensing authority or any person authorised by him may inspect the books of account of a pawn broker for the purpose of satisfying himself that the provisions of this section are being complied with.

<sup>25</sup> **8. Receipt for payment of loan.** - Every money lender shall, without delay, pass a receipt for the payment made by a debtor and if payment is made by challan an endorsement shall be made thereon acknowledging receipt thereof.

<sup>26</sup> **13. ‘Consent’ defined.**—Two or more persons are said to consent when they agree upon the same thing in the same sense. —Two or more persons are said to consent when they agree upon the same thing in the same sense."

money lender's license is liable to be cancelled or suspended, the Collector may do so for any term, or prohibit the renewal thereof for a period of up to 2 years.

The Andhra Pradesh Money Lenders Bill, 2017 has a similar provision for revocation of license, where violations of the Act, as well as lack of provision of additional security to the licensing authority can form grounds for cancellation of license. License validity is for three years, which must be renewed at least 2 months prior to expiration. Every order of cancellation or suspension to be notified in the District Gazette and also on the notice-board of the office of the licensing authority.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lenders) Act, 2011 provides broad scope for the Registering Authority to suspend or cancel registration of MFIs. No order of cancellation of the Registration shall be passed without issuing notice to the MFI intimating to the MFI the facts upon which the *prima facie* decision to cancel the registration was taken, and the MFI must be afforded a reasonable opportunity to show cause against such notice. The provisions are supplemented in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lenders) Rules, 2011 and Section 12 clearly states that in the event of cancellation or non-renewal of registration of an MFI due to incorrect details being furnished to the Registering Authority or due to any violation of the Act, the MFI shall not extend any fresh loans to the borrowers, but will be entitled to recover the dues of the subsisting loans, subject to provisions for 'coercive action' under the Act.

The Tamil Nadu Money Lenders Act, 1957 in Section 14 grants the licensing authority to cancel or suspend licenses by an order in writing if the licensee carries on business in contravention of any of the provisions of the Act or its rules or the conditions of the licence. Further, a license can be cancelled or suspended if the licensing authority is made aware that the money lender meets any of the conditions under the Act for refusal of license.

Section 4(3) of the Tamil Nadu Money Lenders Act, 1957 looks at grounds for refusal of licenses, stating that the licensing authority may refuse to grant a licence, if the applicant has not complied with the provisions of the Act and its rules in respect of an application for the grant of a licence; or that the applicant has either wilfully defaulted or acted in contravention to the Act, or that the applicant has knowingly participated in or connived at any fraud or dishonesty in connection with, the business of money-lending. Further, if the applicant has been found guilty of an offence under Chapter XVII or Chapter XVIII of the Indian Penal Code<sup>27</sup> or if it is found that the applicant has had his licence cancelled within six months before the date of application, the license is liable to be cancelled/suspended.

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<sup>27</sup> Chapter XVII includes Offences Against Property, including Theft, Extortion, Robbery/Dacoity, Criminal Misappropriation of Property, Criminal Breach of Trust, Receiving Stolen Property, Cheating, Fraudulent Deeds and Dispositions of Property, Mischief and Criminal Trespass. Chapter XVIII includes Offences Relating to Documents and to Property Marks, including Forgery, Counterfeiting and Falsification of Accounts.

Licenses are liable to be cancelled or suspended if the licensee is convicted of an offence of entering the wrong sum (or leaving blank) in a note, promise to pay, acknowledgement, power of attorney, bond, security or other document, the loan amount, interest or time for repayment (Section 10A of the Act). Money lenders who actually advance amounts less than the amount shown in accounts, registers or other documents relating to the loan, or who take or receive interest or any other charge at a rate higher than the rate shown in the accounts, registers or documents are liable to have their licenses cancelled or suspended (Section 11 of the Act). Finally, money lenders who commit or abet molestation under Section 13 of the Act or who keep false accounts are also liable to have their licenses cancelled or suspended.

Tamil Nadu Money Lenders Rules, 1959, in Section 12A, provides a time-limit for commencement of action after suspension of a licence under Section 14(2A) of the Tamil Nadu Money Lenders Act, 1957, which allows the licensing authority to suspend a money lending license that the authority deems liable to be cancelled, without having to send a show cause notice to the money lender. It states that the licensing authority shall commence further action towards cancellation of the license within a period of fifteen days from the date of suspension of the licence. Further, Section 15 states that every order of cancellation [or suspension] of a licence under this Act shall be notified in the District Gazette and also on the notice-board of the office of the licensing authority. Section 16 clarifies that a person whose licence is void, cancelled or suspended shall not be entitled to any compensation in respect of such cancellation or suspension or to the refund of any fee paid in respect of such licence. In Tamil Nadu, license validity is only for one year and can be renewed on a yearly basis.

The Bengal Money Lenders Act, 1940 in Section 14 states that a person can be disqualified from holding a licence if so ordered by a Court; or if he has been convicted of any offence specified in the Schedule to the Act which has not been set aside by any legal proceeding. Section 17 further provides that a Sub-Registrar may, after giving the money lender an opportunity to be heard, cancel the licence if it is proved that such money lender was disqualified for holding a licence at the time which such licence was issued. In West Bengal, license validity is throughout the State for a period of three years from the date of issue, or until it is cancelled.

*Money Lenders to Maintain accounts and Furnish Statements to Debtors*

Feature	State	Law	Particulars
<b>Duties of the moneylenders with respect to maintaining and providing statement of accounts to the debtors</b>	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	Duty of creditors to maintain accounts and provide receipts on request to debtors.
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	Maintenance of regular accounts for individual debtors and annual delivery of statement of accounts to be delivered to debtors.

		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	Maintenance of accounts book for loans advanced by the licensed money lenders was insisted.
		The Andhra Pradesh Money Lenders Bill, 2017	Money lenders are required to maintain accounts and provide statements of accounts to borrowers, pursuant to a requisition.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	MFIs shall keep records according to the rules prescribed under the Act. MFIs are mandated to send a loan statement to borrowers within 7 days from the date of the loan. Money lenders are not allowed to receive any payments from borrowers without providing the borrower with a signed receipt.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011	MFIs shall deliver a copy of the statement of account on demand free of cost to the borrower. Further, every payment received from a borrower shall be acknowledged by issuing a written receipt, with the MFI required to maintain a copy of the receipt in its records.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Money lenders are to keep books and give receipts. If money lenders fail to provide receipts or accounts within one month of requisition by borrowers, they shall not be entitled to interest for the period of default.
		Tamil Nadu Money Lenders Rules, 1959	No such provision.
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	No such provision.
	West Bengal	Bengal Money Lenders Act, 1940	Every money lender shall keep and maintain at least a cash book, a ledger and a receipt book.

			<p>Every money lender shall deliver to the borrower a statement at the time a loan is advanced, and shall provide a receipt upon every payment made by the borrower.</p> <p>Upon repayment in full, provide an indelible loan mark indicating full payment or cancellation on every paper signed by the borrower, and discharge, return, restore or cancel any security.</p> <p>Every money lender shall, within two months of the commencement of each year, furnish each of his borrowers with a legible statement of accounts. Further, borrowers can requisition statements of accounts and loan agreement. Money lender shall comply within 30 days from receiving a requisition or forego interest for default.</p>
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**Table X – Maintenance of Accounts and Provision of Statements**

The Andhra Pradesh Debtors Protection Act, 1934 provides for the duty of creditors to maintain accounts and provide receipts on request to debtors. In The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, Section 5 calls for money lenders to (a) maintain a regular account of loan for each debtor separately; (b) deliver to the debtor every year the prescribed statement of account signed by him or his agent specifying the amount of loan that may be outstanding against such debtor on the prescribed date. Such statement of account shall contain all transactions of loan entered into during that year. The said statement shall be in the language of the village office of the district for which the money lender has obtained a licence.

The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 calls for maintenance of accounts book for loans advanced by licensed money lenders as well. The Andhra Pradesh Money Lenders Bill, 2017 has provisions that mirror this, requiring money lenders to maintain accounts and provide statements of accounts to borrowers, pursuant to a requisition. Finally, the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 provides, in Section 11, for an affirmative duty of MFIs to maintain accounts and furnish copies to borrowers. An important provision contained in Section 11(3)(a) of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 is that every MFI shall deliver a

statement of loan to every borrower within seven days from the date of granting the loan, which must contain the amount and date of the loan and of its maturity, the name and address of the functionary of the MFI and the effective rate of interest charged.

Further, every MFI is mandated to submit a Monthly Statement to the Registering Authority before the 10<sup>th</sup> day of each month, providing a list of borrowers, loans provided to each and interest rate for repayments. Associated forms and procedures for the duties imposed on the MFIs are provided for in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011, which also provides in Section 22 that statements of accounts should be delivered free of cost, on demand to borrowers, and specifies in Section 21 that MFIs shall maintain copies of payment receipts in their records, which show every repayment made by the borrower.

The Tamil Nadu Money Lenders Act, 1957 states that money lenders are to keep books and give receipts. Every money lender shall maintain separate accounts for each debtor, include the date, principal, interest and security details. Section 9(6) states that if any money lender fails to give the debtor a receipt or to furnish on a requisition made for a statement of account within one month after such requisition has been made, the money lender shall not be entitled to any interest for the period of his default.

Section 24 of the Bengal Money Lenders Act, 1940 states that every money lender shall keep and maintain at least a cash book, a ledger and a receipt book. Every money lender shall deliver to the borrower at the time a loan is advanced a statement, showing such details of the conditions of the loan and other information. Every money lender must provide receipt for every payment made on account of any loan at the time of such payment. Upon repayment in full, the money lender is mandated to provide an indelible loan mark indicating full payment or cancellation of the loan on every paper signed by the borrower, and discharge, return, restore or cancel any security.

Section 25 states that every money lender shall, within two months of the commencement of each year, furnish each of his borrowers with a legible statement of accounts showing the amount outstanding against the borrower. Principal and interest amounts, advance and repayment amounts and corresponding dates as well as outstanding amounts. A money lender shall, on a written demand by the borrower, supply to the borrower a statement of account within thirty days from the date of receipt of the written demand. This is not mandatory, and a money lender can refuse to do so if they have already furnished a statement within the past 6 months.

Borrowers also have the right to ask for a copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower, but the money lender shall not be bound to comply with such a demand if they have previously furnished the borrower with such copy, except on payment of such fee as may be prescribed.

Definition of ‘Molestation’

This is the primary provision that benefits borrowers, to criminalise harassment by money lenders or their agents.

Feature	State	Law	Particulars
<b>Offence of intimidating the debtors or interfering with their day-to-day activities (‘molestation’)</b>	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	No such offence.
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	No usage of the term ‘molestation’ but offences include obstruction, violence, intimidation of debtor, following the debtor, interfering with his property, loiters at or near place of residence, work or business or being there by accident.  Penalties for commission and abetment are with rigorous imprisonment for term which may extend to two years or with fine or with both.
		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	Not known.
		The Andhra Pradesh Money Lenders Bill, 2017	Criminalises molestation with penalty of up to three years imprisonment and a fine of up to INR 50,000/-
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	Uses the term ‘coercive action’ rather than ‘molestation’. It includes obstruction, following the borrower or family member, frequenting their house or workplace, annoying or intimidating a borrower or family member or seeking to forcibly remove any document from the borrower that entitles the borrower to a benefit under any Government programme.

			<p>All persons connected with and responsible for the day-to-day control, business and management of a MFI including Partners, Directors and employees who resort to coercive measures against the SHGs, its members or their family members shall be liable to be imprisoned for up to 3 years or with fine which may extend to One Lakh Rupees or with both.</p>
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	<p>Broad definition of ‘molest’ to include obstruction, violence, intimidation of debtor, following the debtor, interfering with his property, loiters at or near place of residence, work or business, does any act to annoy or intimidate the debtor or a family member or moves or acts in a way which causes or aims to cause alarm or danger to the debtor or their property.</p> <p>Penalties for commission and abetment are with imprisonment for a term not exceeding six months, but not less than three months and a fine of up to INR 1,000/-.</p>
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	<p>Whoever molests or abets the molestation of any debtor for recovery of any loan shall be punishable with imprisonment for up to three years and with fine which may extend to INR 30,000/-.</p> <p>Further, if a debtor or their family member die by suicide and it is shown that immediately prior to the suicide, the deceased was subjected to molestation, the person who has advanced the loan shall be deemed</p>



			to have abetted the commission of such suicide.
	West Bengal	Bengal Money Lenders Act, 1940	Most narrow definition of ‘molestation’ to include obstruction, violence, intimidation of debtor, following the debtor, interfering with his property, loiters at or near place of residence, work or business.

**Table XI – Definition of ‘Molestation’**

The Andhra Pradesh Money Lenders Bill, 2017 includes a definition of ‘molestation’ with penalties for commission or abetment in Section 21. The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F defines molestation, with offences including obstruction, violence, intimidation of debtor, following the debtor, interfering with his property, loiters at or near place of residence, work or business or being there by accident. It includes punishments for the commission or abetment of molestation.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 contains a similar definition for the offence of ‘coercive action’, which extends liability to MFIs, persons connected with and responsible for the day-to-day control, business and management of MFIs including the Partners, Directors and employees. ‘Coercive action’ includes, notably, any action that seeks to forcibly remove any document from the borrower which entitles the borrower to a benefit under any Government programme. Notably, protection extends to family members of borrowers, which is given a wide definition in Rule 2(g) of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 to include husband, child, adopted child, parents, grandparents, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, siblings and grandchildren of the SHG woman, who are residing under one roof in the house of the SHG woman.

The Tamil Nadu Money Lenders Act, 1957 has a broad definition of ‘molest’ in Section 2(7) to include obstruction, violence, intimidation of debtor, following the debtor, interfering with his property, loiters at or near place of residence, work or business, does any act to annoy or intimidate the debtor or a family member or moves or acts in a way which causes or aims to cause alarm or danger to the debtor or their property. The term ‘molestation’ has been defined to include use of violence/intimidation against the debtor or family members/loitering near the house or work place/doing of any act calculated to annoy the debtor, *etc.* (RBI, 2007).

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in Section 4 provides penalties for molestation or abetment of molestation. Further, Section 9 states that if a debtor or their family member die by suicide and it is shown that immediately prior to the suicide, the deceased was subjected to molestation, the person who has advanced the loan shall be deemed to

have abetted the commission of such suicide. It is notable, however, that the definition of ‘member of family’ in the Explanation to Section 9 only includes the spouse, unmarried daughter or unmarried son of a borrower, and is therefore much narrower than the definition provided in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011.

In West Bengal, the Bengal Money Lenders Act, 1940 has almost the same definition of ‘molestation’ in Section 41, stating that a person who, with intent to obstruct/coerce the debtor, obstructs, uses violence, or intimidates the debtor, follows the debtor, interferes with the debtor’s property, or loiters at or near place of residence, work or business of the debtor – is deemed to molest.

All the state laws make an exception that a person shall not be deemed to molest a debtor if the person is at or near the debtor’s house, building or place for the purpose only to make formal demand for repayment of a loan that is due or for obtaining or communicating information.

*Change of Place of Business of Money Lenders*

Feature	State	Law	Particulars
<b>Change of Place of Business of Money Lenders</b>	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	No money lender shall change his place of business without previous notice to the licensing authority and without having the address of the new place of business duly endorsed on his licence.
	West Bengal	Bengal Money Lenders Act, 1940	No such provision. Licenses are valid through the entire state of West Bengal.

**Table XII – Change of Place of Business of Money Lenders**

There is no provision regarding ‘change of place of business’ in the Andhra Pradesh Debtors Protection Act, 1934 or the Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F or in the Andhra Pradesh Money Lenders Bill, 2017.

In Tamil Nadu, Section 5 of the Tamil Nadu Money Lenders Act, 1957 states that no money lender shall change his place of business without previous notice to the licensing authority and without having the address of the new place of business duly endorsed on his licence. The Tamil Nadu Money Lenders Rules, 1959 and Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 do not contain any provisions in this regard.

For West Bengal, licenses are valid through the entire state of West Bengal as per Section 9 of the Bengal Money Lenders Act, 1940, with no provision relating to the requirement that money lenders notify the licensing authority of any change in their place of business.

Money lenders to exhibit their names over shops

Feature	State	Law	Particulars
Money lenders to exhibit names over shops/place of business	Andhra Pradesh	Andhra Pradesh Money Lenders Bill, 2017	Money lenders also need to mandatorily exhibit their status as ‘money lender’ at their place of business in English or the regional language
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Every money lender shall always keep exhibited over his shop or place of business his name with the words " <i>money lender</i> " and its equivalent in the regional language.

Table XIII – Money Lenders to Exhibit Name Over Place of Business

Section 6 in The Tamil Nadu Money Lenders Act, 1957 states that every money lender shall always keep exhibited over his shop or place of business his name with the words "*money lender*" and its equivalent in the regional language. This is exclusively for the state of Tamil Nadu, with no such provisions in the laws of Andhra Pradesh (except for the 2017 Bill that is not in force) or West Bengal.

Power of Courts

Feature	State	Law	Particulars
Powers of Courts	Andhra Pradesh	Andhra Pradesh Debtors Protection Act, 1934	No such provision outlining powers of courts.
		Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F	Court has the power to limit interest recoverable in certain cases. There is a process for computing the outstanding interest due to cultivators or labourers. Court can also direct payment of decretal amounts in installments.
		The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960	Unknown.

		The Andhra Pradesh Money Lenders Bill, 2017	No suit or other proceedings shall be instituted in any court to set aside or modify any order made under the law or the Rules made pursuant to the law.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	No such provisions for power of courts.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Court has the power to limit interest recoverable in certain cases, to direct payment of decretal amounts in installments and to reopen any transaction between the parties.
		Tamil Nadu Money Lenders Rules, 1959	No such provision.
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	Power of Court to order the restoration of possession of movable/immovable property to debtor (upon a petition filed by the debtor) forcibly taken by any person towards repayment of the loan or interest. Further, Court has the power to pass an order for adjustment of interest paid by the debtor, over and above the rate of interest fixed by the Government.
	West Bengal	Bengal Money Lenders Act, 1940	Power of Court to cancel a money lender's license. Further, no court can pass a decree or order in favour of a money lender (without a license) in a suit filed by the money lender. Court has the power to direct payment of decretal amounts in installments, order the sale of

			property only to the extent that the sale amount will satisfy the decree and to reopen any transaction between the parties.
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**Table XIV – Powers of Courts**

In the Andhra Pradesh Debtors Protection Act, 1934, there is no provision that outlines the powers of Courts. In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, Section 11 provides for the power of Court to limit interest due in certain cases. In an inquiry into a loan advanced to a cultivator or a labourer, the outstanding interest shall be computed in a manner prescribed under the Act itself. Further, Section 12 of the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F states that the court may, in respect of a decree without installments, direct that the amount of the said decree shall be paid in such number of instalments and subject to such conditions and on such dates as decided by the Court. In the Andhra Pradesh Money Lenders Bill, 2017, the power of Court is outlined in Section 33, which states that no suit or other proceedings shall, except as expressly provided in the Bill, be instituted in any court to set aside or modify any order made under the law or the Rules made pursuant to the law.

In Tamil Nadu Money Lenders Act, 1957, Sections 20A-20C talk about the powers of Courts. Courts have the power to limit interest recoverable in certain cases, to direct payment of decretal amounts in installments and to reopen any transaction between the parties. Further, The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 upholds the power of the Court to order the restoration of possession of movable/immovable property to debtor (upon a petition filed by the debtor) forcibly taken by any person towards repayment of the loan or interest. Further, Court has the power to pass an order for adjustment of interest paid by the debtor, over and above the rate of interest fixed by the Government.

In Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, Section 6 states that the Court may, on filing a petition by the debtor, order the restoration of possession of property whether movable or immovable, if any, forcibly taken by any person towards repayment of the loan advanced or interest therefor. Further, Section 8 states that the Court has the power to pass an order for adjustment of interest paid by the debtor, if it is found to be over and above the rate of interest fixed by the Government.

The Bengal Money Lenders Act, 1940 in Section 34 grants the Court the power to direct payment by annual instalments subject to terms outlined by the Court. Section 35 allows the Court to order the sale of property in execution of decrees in respect of loans, to the extent that the price is sufficient to satisfy the decree. Section 36 allows Courts to reopen transactions if the Court has reason to believe that the exercise of one or more of its powers under this section will give relief to the borrower.

The Bengal Money Lenders Act, 1940 states in Section 20 that a Competent Court trying a suit to which this Act applies or a Court passing an order of conviction upon a money lender for an offence under this Act, if satisfied that the money lender has committed such contravention of the provisions of this Act or of the rules made thereunder as, in its opinion, makes him unfit to carry on the business of money-lending, shall state the particulars of the conviction or the order of the Court on the licence held by the money lender.

The Court may declare such money lender or any person responsible for the management of his money-lending business or both disqualified for holding a licence and shall cancel and impound the licence (for a maximum period of one year, unless the order is passed by a District Court, Court of an Additional District Judge or Court of Small Causes of Calcutta. If any other Court is of the opinion that a greater period of disqualification should be imposed, it shall record its opinion and forward the proceedings to the District Court having jurisdiction in the place where such Court is held.

#### **IV. What are the implications of these laws on the lendees?**

A review of the salient features, commonalities and disjuncts between the laws of the States show several implications on lendees in the respective states. The Researcher has condensed these points for the sake of simplicity and clarity and some broad implications of the legal framework are as follows:

1. The legal framework in the state of Andhra Pradesh is extremely convoluted with three separate laws governing three different areas of Andhra Pradesh, namely The Andhra Pradesh (Andhra Area) Debtors' Protection Act, 1934 to cover the Andhra area of the erstwhile state, the Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F to cover the Telangana area of the erstwhile state and the Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 to cover areas inhabited by Scheduled Tribes in the state. Before the separation of Andhra Pradesh and Telangana, there was already a lack of uniformity in money lending laws in the combined state, with money lenders in the Andhra area not requiring compulsory registration or licensing, whereas those in the Telangana and Scheduled regions did require licenses to carry on money lending. After the separation of the states in 2013, the Andhra Pradesh Debtors' Protection Act, 1934 still continued in force in present day Andhra Pradesh, but was repealed in 2018 by the Andhra Pradesh Acts and Regulations (Repeal) Act, 2018. The failure to obtain Presidential assent for the Andhra Pradesh Money Lenders Bill, 2017 means that as of date, there is no consolidated law pertaining to private money lending in Andhra Pradesh.
2. The lack of requirement for licensing of money lenders as well as the lack of a consolidated law to govern private money lending in Andhra Pradesh has serious implications for lendees, as there is no centralised state mechanism to keep track of money lenders, nor can lendees avail of specific protections that may be afforded by money lending legislations.

The Andhra Pradesh High Court judgments restricting the definition of ‘money lender’ to only include classes of persons whose regular business is to advance moneys and not those who advance money casually, restrict the scope of the Act, as well as the redressal for borrowers under the Act. Further, even though the Andhra Pradesh Debtors Protection Act, 1934 contained provisions to restrict the maximum interest that could be charged by money lenders by way of simple interest per annum (9 percent for secured loans and 15 percent for unsecured loans), it is not in force anymore and without State or legislative action to regulate interest in the state, money lenders could potentially undertake usurious lending with impunity.

3. The only avenue for money lender regulation, borrower protection and settlement of disputes in Andhra Pradesh is contained in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011. This is a law containing strong provisions that aim to hold MFIs accountable to registering authorities, protect SHGs against coercive actions by MFIs and to regularise the money lending framework in Andhra Pradesh, as far as the specific context of microfinance lending is concerned. However, the requirement that borrowers must either be SHGs or members of SHGs does restrict the scope of the Act, in terms of the borrowers who are actually eligible for protection and redressal. Further, limitations on borrowing capacity of borrowers, including the prohibition of MFIs from granting a loan to a member of an SHG during the subsistence of two previous loans, irrespective of the source of the previous two loans. This becomes even more important in the larger context of Andhra Pradesh’s laws, which do not govern money lending at all presently, apart from the 2011 law.
4. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 supplement the 2011 Act passed in the State. These Rules are quite extensive, with detailed processes and procedures that aim to enforce obligations on MFIs and Registering Authorities. These provisions contribute to making sure that compliance with the provisions of the Act takes place smoothly, violations and offences are dealt with expeditiously and that extensive records are kept by MFIs and Registering Authorities, which give a clear picture of loans under the Act as well as MFIs in different jurisdictions. Further, the fact that there is a format for complaints to be filed by borrowers and the general public provided by the Rules can have positive implications for such persons who seek quick redressal.
5. The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 also serve to regulate SHGs, in addition to MFIs, prohibiting dual membership of any individual in more than one SHG. The Rules require Registering Authorities to maintain a complete and updated database of the all Self Help Group members and the list of borrowers furnished by the Micro Finance Institutions operating in the district. Further, even though granting multiple loans to any SHG or its members having an outstanding loan is prohibited, the Rules provide a format for prior approval of such loans that can be

made by the MFI to the appropriate Registering Authority. These procedures, reinforced by forms and formats, ensure that records are kept on borrowers as well, which restricts and formalises their loan-taking options.

6. In Tamil Nadu, the two Acts for money lending and charging of exorbitant interest, namely the Tamil Nadu Money Lenders Act, 1957 and the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 create a layered framework for governing money lending and within such governance, separate emphasis on prohibiting usurious money lending. The strict requirements for licensing of money lenders, coupled with the fact that every place of business requires a separate license, is aimed to keep track of specific places of money lending, along with their associated money lenders – even if such places of business are outside the state, managed by agents of money lenders within Tamil Nadu. The strict licensing provisions also help to clearly define liability of specific money lenders, if borrowers wish to take legal action or complain against them.
7. Although in Tamil Nadu, the basic money lending Act is antiquated, the enactment of a separate, more contemporary legislation to tackle usurious lending (Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003) has major implications for borrowers. This law prohibits specific types of culturally-unique interest structures imposed by money lenders (*daily vatti*, *hourly vatti*, *kandhu vatti*, *meter vatti* or *thandal*), if they work out to be more than the maximum interest specified by the State Government. Since the 2003 Act mentions separate offences that focus on the charging of exorbitant interest, borrowers have immediate avenues for recourse under this law, if they are charged excessively in any manner. This Act is a positive step in updating the legal framework around money lending in the State.
8. In West Bengal, the Bengal Money Lenders Act, 1940 is the only law that includes regular loans taken by individuals as well as commercial loans that are advanced for the sole purpose of trade, commerce, industry or occupation. The difference between commercial loans and regular loans is that the regulation of commercial loans is lower and the interest rate permitted is much higher. Although this provision can be said to promote commercial loans, it can also be oppressive for poorer persons who may be unable to pay such high rates of interest. Even though the Act prohibits the mischaracterisation of a regular loan as a commercial loan in loan documentation, it is still liable to be misused, especially amongst marginalised persons, who may not have bargaining power with money lenders and who may even be illiterate and unaware of such mischaracterisation.
9. In West Bengal, the licensing of money lenders under the Bengal Money Lenders Act, 1940 is lenient, as compared to Tamil Nadu, with licenses being valid across the whole state for a period of 3 years. This provision has implications for lenders in terms of firstly, how effectively local and State authorities can keep track of money lenders. Even if a money lender obtains a license in one part of the State and is under the scrutiny of the local



authority there, the lender can move to any other part of the state and (unlike in Tamil Nadu) is not bound to declare any change in place of business, nor display their status as ‘money lender’ over their shop/place of business. Such provisions could reduce the level of scrutiny on such lenders, affecting the ability of lenders to seek effective redressal against them, as they may not know which authorities to approach, nor any concrete details about the money lender’s license.

10. In West Bengal, the Calcutta High Court has firstly stated that one or two isolated or occasional acts of lending money will not constitute a money-lending business, thereby restricting the definition of ‘money lender’, and has secondly stated that money lending without a license is, per se, is not an illegal action, as the same can be rectified if the money lender pays a penalty in court. This adds more layers to the difficulties of borrowers to seek recourse under the Act, as the law seems to be skewed in favour of money lenders, trying to make money lending (for commercial and regular purposes) easier as a trade or a business, with isolated acts of money lending not within the scope of the Act.

#### **V. What are the protection mechanisms each legislation offers to lenders who borrow from private moneylenders?**

The protective mechanisms for borrowers include provisions that directly and indirectly benefit borrowers who borrow from private money lenders.

The Andhra Pradesh Debtors Protection Act, 1934 provides, in Section 3, for the duty of creditors to maintain accounts and provide receipts. It also prescribes a penalty for failing to keep proper accounts, provide borrowers with receipts every time they make a repayment and also states that if a borrower requisitions a statement of their loan account, failure of the money lender to provide the same within a month will disentitle the money lender to interest during the period of default. This is beneficial for borrowers who may be unaware of the status of their account, ensuring that the default or delay of the money lender is not at the borrower’s expense.

One very interesting provision to protect borrowers is found in the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, which states in Section 7 that debtor to whom a statement of account has been furnished, shall not be bound to admit or deny the correctness of such account and from the debtor’s ‘mere silence’ it shall not be presumed that he has admitted the correctness of the account. Therefore, even if the debtor does not immediately dispute the amount in the statement of account as provided by the money lender, there is no legal presumption that the debtor has agreed to the amount.

The Andhra Pradesh Money Lenders Bill, 2017 has provisions that require money lenders to maintain accounts and provide statements of accounts to borrowers, pursuant to a requisition as well. The penalty for money lenders failing to provide such statements of accounts is a fine up to INR 5,000/- (Indian Rupees Five Thousand only). Section 11(4) of the Andhra Pradesh Money Lenders Bill, 2017 contains a similar provision to Section 7 of the Andhra Pradesh (Telangana

Area) Money Lenders Act, 1349F, stating that debtors to whom statements of accounts are furnished, and who fail to object to correctness of the account shall not, by such failure alone, be deemed to have admitted to the correctness of such amounts.

Section 10 of the Andhra Pradesh Money Lenders Bill, 2017 contains a provision that allows for borrowers to deposit monies or property into a Court, if the money lender does not accept the amount for some reason. The Court can record full or partial settlement of the debt, upon an application by a borrower and deposit of the amount. This could be invaluable in situations where borrowers prefer Court supervision for the repayment of loan by the borrower.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 is in itself a law to protect women's Self Help Groups from exploitation by Micro Finance Institutions in Andhra Pradesh. Section 5 allows SHGs, SHG members and members of the public to complain to the Registering Authority appointed pursuant to the Act, which can form grounds for suspension or cancellation of registration of MFIs. Rule 28 of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 provides for the format of such complaints as well as a time period of seven (7) days for enquiry by the Registering Authority.

Section 7 of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 prohibits MFIs from seeking any security from a borrower, whether through pawn, pledge or any kind of security. This provision also mandates that security which was provided before the commencement of the Act shall be released in favour of borrowers. Further, Sections 8 and 9 of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 provide protection to borrowers in firstly, mandating that MFIs prominently display the rate of interest charged, prohibiting MFIs from charging any other amount – and importantly stating that all interest recovered must be less than the principal amount of the loan provided. Even loans taken before the commencement of the Act, where MFIs had recovered an amount equal to twice of the principal, would stand discharged and borrowers are entitled to obtain refunds, which MFIs are bound to provide, of excess amounts paid by borrowers.

These provisions are supplemented by the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011, which in Rule 14 obligates MFIs to display the effective interest rates being charged on the loans given by them prominently in all their offices; and to furnish the same to the borrowers in writing. Further, Rule 16 states that based on the database submitted by Micro Finance Institutions registered under the Rules, each Registering Authority shall identify such loans where the interest paid has exceeded the principal borrowed, and issue a direction for discharge of such loans and for return of the excess interest amount to the borrower.

Very importantly, Rule 24 of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 prohibits MFIs from employing recovery agents for recovery of loans except employees already named by the MFIs within their applications for registration. Any person who is unnamed by the MFI but effecting recovery shall be treated as a recovery agent, and the

responsible MFI would become liable for violating the provisions of the Act. Additionally, Rule 23 provides protection to borrowers at the time of repayment to MFIs, stating that no MFI shall collect repayment of any instalment due in urban areas, except in a public place like the office of the Slum Level Federation or ward office. This restriction on MFIs can greatly reduce the scope for coercive action or harassment of borrowers at the time of repayment of loans.

The law in Tamil Nadu has similar provisions to the Andhra Pradesh Money Lenders Bill, 2017, with Section 9(3) of The Tamil Nadu Money Lenders Act, 1957 providing protection to a borrower, stating that a debtor to whom a statement of account has been furnished and who fails to object to the correctness of the account shall not, by such failure alone, be deemed to have admitted the correctness of such account.

Similar to Andhra Pradesh laws, Section 9(6) of The Tamil Nadu Money Lenders Act, 1957 states that if any money lender fails to give the debtor or his agent a receipt or to furnish on a requisition, a statement of account as required therein within one month after such requisition has been made, he shall not be entitled to any interest for the period of his default. Further, similar to Andhra Pradesh laws, Section 8 of the Tamil Nadu Money Lenders Act, 1957 allows for protection for borrowers if money lenders, for some reason, refuse to accept any portion of the money or other property due in respect of the loan. In such cases the debtor may deposit the said money or property into the Court having jurisdiction, and the Court can pass orders on the satisfaction of the loan.

The law in Tamil Nadu takes protection of the borrower one step further, with The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in Section 8 stating that the Court may, on a petition filed by the debtor for settlement of loan including the interest therefor, pass an order for the adjustment of the interest, if any, paid by the debtor, over and above the rate of interest fixed by the Government under the Tamil Nadu Money lenders Act, 1957 towards the loan. Therefore, even if the debtor had been paying exorbitant interest, the Court has the power to adjust excess amounts paid against future/outstanding amounts, if any.

In the Bengal Money Lenders Act, 1940, Section 26 mirrors provisions in Andhra Pradesh and Tamil Nadu laws, stating that the borrower is not bound by money lender's statement of accounts. A borrower shall not be bound to acknowledge or deny the correctness of a statement of account, and their failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account. Further, according to Section 39, borrowers can deposit money in the Court if a lender refuses to accept the same.

The Bengal Money Lenders Act, 1940 makes a separate provision for commercial lending, stating in Section 40(5) that before a Court, the burden of proving that a loan is a commercial loan is on the money lender. This is extremely important, as commercial loans attract lower regulation and higher rates of interest, which can be coercive for a borrower. Therefore, if a lender and borrower go to Court over a particular loan, the loan will not be presumed to be a commercial loan unless it is conclusively proved by the lender.

The Bengal Money Lenders Act, 1940 importantly, in Section 19 allows for any borrower to make an application to a Competent Court for an order to cancel the license of the money lender from whom the borrower has taken a loan, on the ground that such money lender has contravened provisions of the Act to render him unfit to carry on the business of money-lending. On receipt of such application, the Court shall hold an inquiry as it deems necessary.

**VI. What is the redressal mechanism offered by the law?**

*Jurisdictional Courts*

Feature	State	Law	Particulars
<b>Jurisdictional Courts</b>	Andhra Pradesh	The Andhra Pradesh Money Lenders Bill, 2017	No court inferior to a Judicial Magistrate of First Class shall try any offences.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	District-wise Fast Track Courts to be set up to adjudicate disputes.
		The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011	In case of any offence of ‘coercive action’ or carrying on business without registration, the Officer in charge of the jurisdictional Police Station shall register the case either on complaint or <i>suo motu</i> .
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	No Court inferior to a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try offences.
	West Bengal	Bengal Money Lenders Act, 1940	Designated ‘Competent Courts’ including Court of Small Causes in Calcutta and outside Calcutta, the Court of the District Judge and any Court to which the District Judge transfers the proceedings. No Court inferior to that of a Presidency Magistrate or a Sub-divisional Magistrate or a Magistrate of the first class shall try an offence.

**Table XV – Jurisdictional Courts**

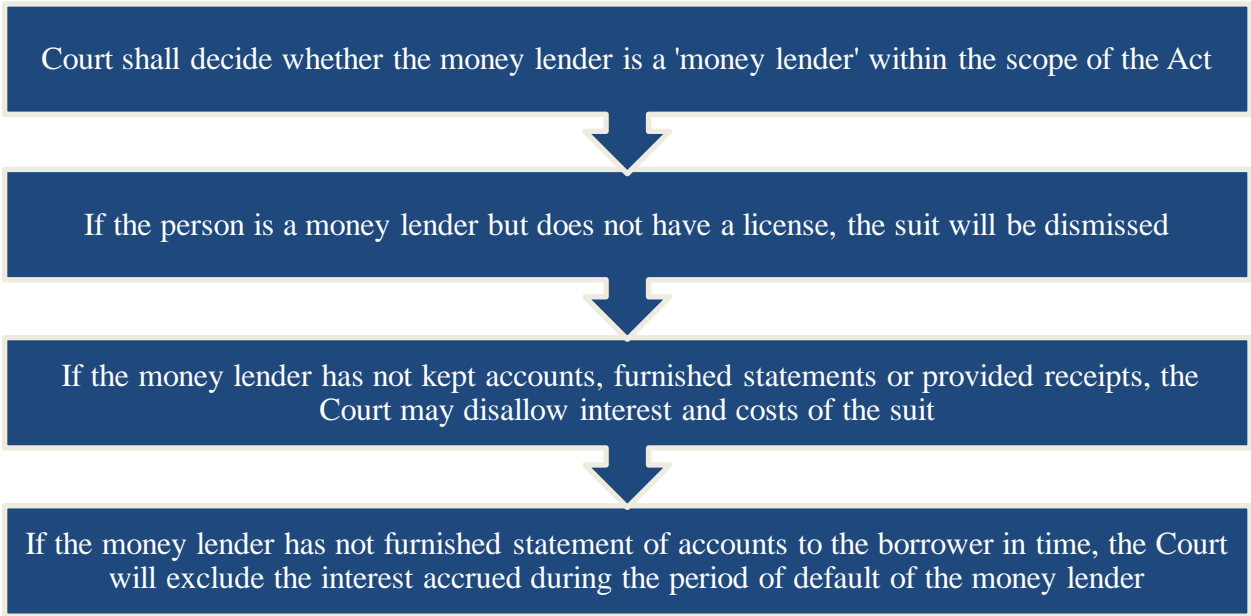
In Andhra Pradesh, the Andhra Pradesh Debtors Protection Act, 1934 and The Andhra Pradesh (Telangana Area) Money Lenders Act 1349 F do not specify which courts are empowered to take up proceedings under the Act. The Andhra Pradesh Money Lending Bill, 2017 provides, in Section 20(2) that no court inferior to a Judicial Magistrate of First Class shall try any offences.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 in Section 15 calls for the establishment of Fast-Track Courts in every district of the State for the protection of debtors and for the settlement of disputes of a civil nature between parties, relating to the Act. Further, it is the only law that provides for a time limit, with Section 15(3) providing that cases filed before Fast-Track Courts must be disposed of within three (3) months. Importantly, Rule 29(2) of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 provides that the progress of investigation and prosecution in all criminal cases filed against MFIs (including for ‘coercive action’ or for carrying on business without valid registration) shall be reported to the Registering Authority on a monthly basis.

In Tamil Nadu, Section 20 of The Tamil Nadu Money Lenders Act, 1957 states that no Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try any offence punishable under this Act. The Bengal Money Lenders Act, 1940 has a different position with respect to courts, with Section 4 designating Competent Courts as empowered to pass orders as contemplated in the Act, including the Court of Small Causes of Calcutta for cases in Calcutta and the Court of the District Judge and any Court to which they may transfer the proceedings, outside Calcutta.

*Procedures before Courts and Appeals*

In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F, Section 9 looks at the procedure for recovery of loans to be followed in Courts.



**Figure X – Procedure in Courts as per Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F**

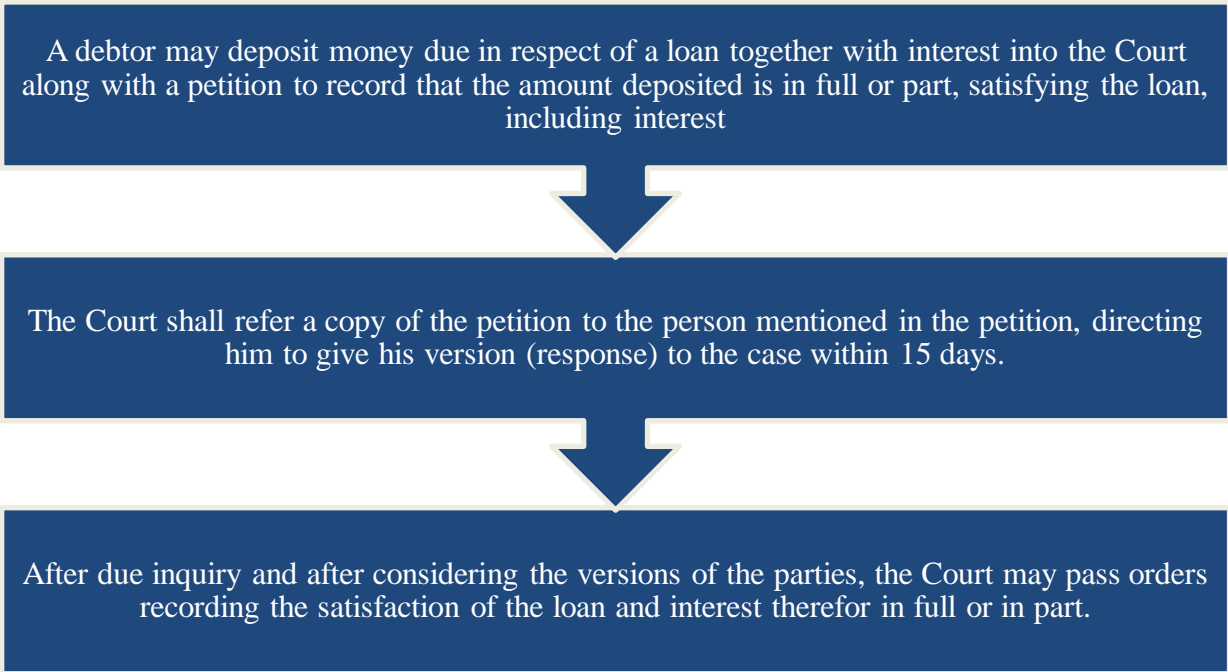
The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F states, in Section 3 that appeals regarding licensing of money lenders, if the licensing authority is a Tahsildar, will lie with the Collector as an appellate authority. If the licensing authority is a Collector, the appeal will lie with the Board of Revenue as an appellate authority. All decisions of the designated appellate authority will be final. The Act further states in Section 2A and Section 3 that if a money lender, (i) who is not a citizen of India, or (ii) who practices money lending without a license; is convicted of the respective offence under the Act by a Collector, the appeal shall go to a Sessions Judge.

The Andhra Pradesh Money Lenders Bill, 2017 and Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 does not provide for any procedure before Courts, with the provisions of the Code of Civil Procedure, 1908 being applicable. However, the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 provide for extensive procedures before the Registering Authority to undertake action against MFIs, based on complaints or *suo moto*, as well as a requirement that for offences of ‘coercive action’ or carrying on business without registration, the Officer in Charge of the jurisdictional police station shall register a case (either upon receiving a complaint, or *suo moto*) and shall proceed according to the Code of Criminal Procedure, 1973.

The Tamil Nadu Money Lenders Act, 1957 does not provide for any procedure before Courts, with the provisions of the Code of Civil Procedure, 1908 being applicable to suits under the Act. However, Section 12 states that no criminal court can take cognizance of an offence under the Act, except on a complaint in writing made by a prescribed authority. The prescribed authority is mentioned in the Tamil Nadu Money Lenders Rules, 1959 in Rule 13, designated as the Revenue Divisional Officer, Assistant Collector or Sub-Collector, as the case maybe, having jurisdiction over the place of business of the money lender. Where there is no Revenue Divisional Officer, Assistant Collector or Sub-Collector, the Gazetted Assistant to the District Collector shall be the appellate authority. Where there is no Revenue Divisional Officer, Assistant Collector or Sub-Collector or a Gazetted Assistant to the District Collector, the District Collector shall be the appellate authority.

Therefore, it is not possible for borrowers to institute a complaint directly before a Court regarding offences under the Act. The Act makes an exception for the offence under Section 18-A (money lending carried out by a non-citizen is prohibited) which is cognizable by a Court.

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 in Section 5 provides for the procedure to be followed when a borrower seeks to deposit money in the Court. The process is as follows:



**Figure XI – Procedure in Courts under Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003**

The Bengal Money Lenders Act, 1940 designates certain Competent Courts under the Act, but does not designate any distinct procedure for cases filed under the Act. Instead, Section 5 states that the Competent Court shall have the same powers and follow the same procedure as it follows in civil suits, with the Code of Civil Procedure, 1908 applying in proceedings and appeals. Appeals from decisions made by the Court of Small Causes of Calcutta under the Act shall lie with the High Court of Calcutta.

**VII. What is the punishment if moneylenders violated the rights of the lendee?**

*Failure to provide Requisitions to Borrowers*

Offence	State	Law	Penalty
Failing to respond to a requisition by borrower in time	Andhra Pradesh	Andhra Pradesh (Andhra Areas) Debtor’s Protection Act, 1934	Not be entitled to any interest for the period of the default.
		Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F	Not be entitled to interest for the period of the default.
		Andhra Pradesh Money Lenders Bill, 2017	Fine, which may extend to twenty thousand rupees or imprisonment that may be up to three years, or both.

		Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	General penalty for contravening the provisions of the Act is punishment with imprisonment for six months or fine up to INR 10,000/- or both.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Not be entitled to interest for the period of the default.
	West Bengal	Bengal Money Lenders Act, 1940	Not be entitled to interest for the period of the default.

Table XVI – Penalty for Non/Delayed Response to Requisitions

In the Andhra Pradesh (Andhra Areas) Debtor’s Protection Act, 1934 Section 6 provides that if a creditor fails to give to the debtor or his agent a receipt in accordance with the Act or to furnish, on a requisition made by the borrower, a statement of account as required therein within one month after such requisition has been made, he shall not be entitled to any interest for the period of the default. The penalty is the same in the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F.

The Andhra Pradesh Money Lenders Bill, 2017 contains a similar provision in Section 16, stating that upon conviction, the money lender may be punished with a fine, which may extend to twenty thousand rupees or with imprisonment that may be up to three years, or both. The only Act that provides for a general penalty is the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, which prescribes a fine of INR 10,000/- and/or imprisonment for six months.

*Entering incorrect sums or leaving blanks in bonds, security or other documents*

Offence	State	Law	Penalty
<b>Entry of wrong sum (or blanks) in bond, note, promise to pay, acknowledgement, power of attorney, security or other document</b>	Andhra Pradesh	Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F	Licence liable to be cancelled or suspended.
		Andhra Pradesh Money Lenders Bill, 2017	A fine, which may extend to twenty thousand rupees or with imprisonment that may be up to three years, or both.
		Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	General penalty for contravening the provisions of the Act is punishment with imprisonment for six months or fine up to INR 10,000/- or both.



	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Imprisonment which may extend to six months or with fine which may extend to one thousand rupees or both.
	West Bengal	Bengal Money Lenders Act, 1940	Simple imprisonment up to six months or fine up to one thousand rupees or both.

**Table XVII – Entry of Wrong Sum/Leaving Blanks in Documents from Debtors**

The Tamil Nadu Money Lenders Act, 1957, in Section 10A, penalises entry of wrong sum in bond, note, promise to pay, acknowledgement, power of attorney, security or other document. Such a document, which does not state the actual amount of the loan, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly or leaves any of these fields blank is an offence. Contravention of the provision can be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

The Bengal Money Lenders Act, 1940 in Section 40 provides that the entry of an amount in a bond, etc., that different to the amount actually lent, is an offence. Whoever intentionally contravenes the provision shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

*Money lender advancing smaller amount or securing higher interest than that specified in the accounts*

Offence	State	Law	Penalty
<b>Money lender advancing smaller amount or securing higher interest than that specified in the accounts, etc.</b>	Andhra Pradesh	Andhra Pradesh Money Lenders Bill, 2017	Imprisonment for a term extending for up to three years and with a fine of up to INR 50,000/- (Indian Rupees Fifty Thousand only). Further, for a repeat offender, the Court convicting the person may cancel his license as a money lender.
		Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	General penalty for contravening the provisions of the Act is punishment with imprisonment for six months or fine up to INR 10,000/- or both.

	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Imprisonment for a term up to six months, but not less than three months.  Court may, in addition to imprisonment, impose fine of up to one thousand rupees.
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**Table XVIII – Smaller amount or higher interest than Statement of Account**

The Andhra Pradesh Money Lenders Bill, 2017 contains a provision to this effect in Section 18, which shall be punishable with imprisonment for a term extending for up to three years and with a fine of up to INR 50,000/- (Indian Rupees Fifty Thousand only). Further, for a repeat offender, the Court convicting the person may cancel his license as a money lender.

In the Tamil Nadu Money Lenders Act, 1957, Section 11 contains the offence and penalty for money lenders advancing smaller amount or securing higher interest than that specified in the accounts. The offence shall punished with imprisonment for a term not exceeding six months, but not less than three months and the Court may, in addition to such imprisonment, impose fine which may extend to one thousand rupees.

The Tamil Nadu Money Lenders Act, 1957 in Section 11(1-A) importantly states that in any suit by or against a money lender, whether licensed or not, or in any prosecution or other proceeding in a Court, the burden of proving that the money lender had actually advanced to the debtor the amount specified in any document relating to the loan; or the accounts or registers of such money lender, shall be on the moneylender. This is extremely critical to ensure that debtors are not made to bear the brunt of prosecution or proving that the money lender has advanced a smaller amount or has secured greater interest.

*Penalty for Molestation or Abetment of Molestation of Debtor*

Offence	State	Law	Penalty
<b>Abetment of suicide</b>	Tamil Nadu	Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	A debtor or any family member dies by suicide. If it is shown that immediately before suicide, the deceased was subjected to molestation, the person who has advanced loan shall be deemed to have abetted the suicide.
<b>Punishment for coercive action</b>	Andhra Pradesh	Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	Punishable by imprisonment which may extend up to a period of three years or with fine which may

			extend to one lakh rupees or with both.
<b>Punishment for molestation or abetment of molestation</b>	Andhra Pradesh	Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F	Rigorous imprisonment for term up to two years or fine or both
	Andhra Pradesh	Andhra Pradesh Money Lenders Bill, 2017	Imprisonment for up to three years and a fine of up to Rupees Fifty Thousand.
	Tamil Nadu	Tamil Nadu Money Lenders Act, 1957	Imprisonment for up to six months, but not less than three months. Court may, in addition to imprisonment, impose fine up to one thousand rupees.
		Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	Imprisonment for a term up to three years and fine up to thirty thousand rupees.
	West Bengal	Bengal Money Lenders Act, 1940	Imprisonment up to one year or fine which may extend to one thousand rupees or with both.

**Table XIX – Penalty for Molestation**

In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, Section 13 provides for punishments for molestation of debtor. The punishment is rigorous imprisonment for a term which may extend to two years or with fine or with both. In the Andhra Pradesh Money Lenders Bill, 2017, Section 21 provides for a penalty for molestation or abetment that prescribes imprisonment for up to three years and a fine of up to INR 50,000/- (Indian Rupees Fifty Thousand only), which is the strictest provision but unfortunately not in force.

Similarly, in the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 the penalty for ‘coercive action’ (abetment is not mentioned) is imprisonment which may extend up to a period of three years or with fine which may extend to one lakh rupees or both. Rule 24 of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 prohibits the employment of recovery agents by MFIs, restricting the role to employees priorly disclosed by the MFI to the Registering Authority at the time of registration. This is highly useful for borrowers, as they can complain about any action taken by unauthorised persons, which would render the responsible MFI liable under the general penalty provided in the Act.

In the Tamil Nadu Money Lenders Act, 1957, Section 13 provides that whoever molests or abets the molestation of any debtor for the recovery of any loan shall be punished with imprisonment for a term not exceeding six months, but not less than three months. the Court may, in addition to

such imprisonment, impose fine which may extend to one thousand rupees. In the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, Section 4 provides that the penalty for molestation or abetment of the molestation of any debtor for recovery of any loan shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to thirty thousand rupees. This is the strictest provision in force.

The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in Section 9 expands the scope for molestation or abetment for molestation, specifically in scenarios where debtors or their family members (including their spouse, unmarried daughter or unmarried son) die by suicide. The provision states that if it is shown that immediately prior to such suicide, the debtor or any member of his family was subjected to molestation by any person, the person who has advanced loan shall, unless the contrary is proved, be deemed to have abetted the commission of such suicide.

The Bengal Money Lenders Act, 1940 in Section 41 provides that the penalty for molestation or abetment includes imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

*Charging of Excessive Interest*

Offence	State	Law	Penalty
Charging of Excessive Interest	Andhra Pradesh	Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
		Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011	General penalty for contravening the provisions of the Act is punishment with imprisonment for six months or fine up to INR 10,000/- or both.
	Tamil Nadu	Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003	Imprisonment for a term up to three years and a fine for up to thirty thousand rupees.
	West Bengal	Bengal Money Lenders Act, 1940	General provision on penalty, providing that for the first offence, fine which may extend to two hundred rupees, for the second offence, fine which may extend to five hundred rupees, and for any subsequent offence, rigorous imprisonment which may extend

			to three months and shall also be liable to fine.
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Table XX – Penalty for Charging Excessive Interest

In the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F, Section 10(1B) states that whoever, being a money lender, demands or charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the Government, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Rules, 2011 does not provide for a specific penalty for charging exorbitant interest, but interestingly provides for a penalty for MFIs which levy any charge or impose any cost by whatever name called, on the borrowers except the interest rate as disclosed in the letter granting the loan and as reported to the Registering Authority. Further, Rule 20 provides that loan repayment shall be on a periodicity of not less than one month and that interest needs to be calculated on diminishing balances and not on the principal amount. Violations of any of these terms would attract liability under the general penalty clause of the Act.

In the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, the penalty for charging of exorbitant interest in Section 4 is imprisonment for a term up to three years and a fine for up to thirty thousand rupees.

**VIII. What is said about reporting, implementation or monitoring of these laws that are common or unique?**

The implementation of laws in Andhra Pradesh is highly convoluted in the sphere of money lending. The Andhra Pradesh Debtors Protection Act, 1934, which was the primary legislation for money lending was repealed in 2018. The Andhra Pradesh (Telangana Area) Moneylenders Act, 1349 F (Act No. V of 1349 F), which was in force till 2014, was again adopted by Telangana after separation of the states. Further, Bills introduced in 2015 and most recently, in 2017 have aimed to enact a unified law in the state, but have not received Presidential assent, preventing their implementation.

Although the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 contains strict provisions for the regulation and functioning of money lending by MFIs to SHGs in the State, it seems like the Act has not been implemented to its full extent since then. Firstly, there is no notification available to show that Fast-Track Courts have actually been set up by the State Government pursuant to the Act. Secondly, certain provisions of the Act were said to slow down the functioning of MFIs themselves (Mahajan & Navin, 2013). These included firstly, the provision that visits by MFI staff to the residence or work place of the borrowers for recovery could be construed to be a coercive practice, so instead they had to sit in a “central place” hoping

for borrowers to come there; and secondly, no further loans were allowed with government permission for each individual loan. These provisions slowed down recovery drastically, leading to a mass default – over 9.2 million loans worth Rs 72000 million (about USD 1.5 billion at that time) became overdue and 90 % remain unpaid till Apr 2012. Banks panicked and stopped lending to MFIs all over India and the repositories of the MFIs shrank by half (Mahajan & Navin, 2013). Various MFIs approached the Andhra Pradesh High Court in 2010 and 2012, challenging the validity of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 as unconstitutional.<sup>28</sup>

On 11 February 2013, the Andhra Pradesh High Court passed an order disposing of the writ petitions, stating that in view of the passing of certain Directions issued by the RBI to regulate MFIs (that are designed to protect the interests of SHGs from usurious interest rates and coercive means of recovery), as well as the introduction of the Micro Finance Institutions (Development and Regulation) Bill, 2012 by the Central Government in the Lok Sabha, *“it would be a futile exercise for this Court to examine the legislative competence or otherwise of the State to legislate the impugned enactment”*. The Court directed the Government of Andhra Pradesh to examine the whether it would be necessary to have a separate state law for MFIs, after enactment of the comprehensive 2012 Central Bill. The Court therefore did not stay the operation of the 2011 Micro Finance Law in Andhra Pradesh, instead choosing to defer the issue to the State Government, contingent on enactment of the Micro Finance Institutions (Development and Regulation) Bill, 2012 into a law.

The 2012 Bill however, did not become a law. The MFIs appealed the Andhra Pradesh High Court judgment before the Supreme Court, which passed a final order on 25 November 2019, stating that *“the High Court could not have abdicated its responsibility of deciding on the legislative competence of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, merely on the footing that a Central Bill of 2012, allegedly on the same subject matter, was pending before the Union Parliament.”*<sup>29</sup> The Supreme Court therefore restored the writ petitions to the High Court of Telangana at Hyderabad, setting aside the order of 11 March 2013. Further, the Supreme Court directed that the High Court dispose of the writ petitions “as early as possible”, considering that they were originally filed in 2010 and 2012 by the MFIs.

Since then, the case has come back on file before the Telangana High Court at Hyderabad, which issued notice to the Parties.<sup>30</sup> However, no substantive order has been passed as yet, with the next listing date of the case being 11 August 2021, presumably for completion of service to all the

<sup>28</sup> WRIT PETITION Nos.25891, 25894, 25999 of 2010 and 3823 of 2012 between *M/s SKS Microfinance Limited and The State of Andhra Pradesh* (decided on 11.02.2013) unreported and available at [http://tshcstatus.nic.in/hcorders/2012/wp/wp\\_3823\\_2012.pdf](http://tshcstatus.nic.in/hcorders/2012/wp/wp_3823_2012.pdf)

<sup>29</sup> CIVIL APPEAL NO. 4244 OF 2019 with CIVIL APPEAL NO. 4245 OF 2019 CIVIL APPEAL NO. 4246 OF 2019 CIVIL APPEAL NO. 4247 OF 2019 CIVIL APPEAL NO. 4248 OF 2019 CIVIL APPEAL NO. 4249 OF 2019 between *M/S. BHARAT FINANCIAL INCLUSION LIMITED (FORMERLY KNOWN AS M/s. SKS MICRO FINANCE LTD.)* and *STATE OF ANDHRA PRADESH & ORS.* (decided on 25.11.2019) unreported, available on the Supreme Court website, available at [https://main.sci.gov.in/supremecourt/2013/7476/7476\\_2013\\_4\\_31\\_18467\\_Order\\_25-Nov-2019.pdf](https://main.sci.gov.in/supremecourt/2013/7476/7476_2013_4_31_18467_Order_25-Nov-2019.pdf)

<sup>30</sup> Case status available at [http://tshcstatus.nic.in/judgmnt\\_ts\\_new/](http://tshcstatus.nic.in/judgmnt_ts_new/)

parties. This is a development that needs to be monitored, since the Telangana High Court is now required to adjudicate the constitutional validity of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011.

According to District Authorities in West Bengal, the Bengal Money Lenders Act, 1940 is ‘irrelevant’ because of the penetration by banks across the state. Applications for licences were pending for consideration with SDOs/Collectors for over 3 to 5 years according to a study carried out by a Technical Group, set up by the Reserve Bank of India, to review the efficacy of the legislative framework governing money lending (RBI, 2007). According to the study that interviewed the Registrar of Moneylenders (RML) in West Bengal, money lending legislation did not get proper attention from the SDOs/Collectors because they had “other pressing matters to attend to” (RBI, 2007). Extremely high informal interest rates were said to be charged by the moneylenders (RBI, 2007). The study interestingly took into account the experiences of money lenders in the system. They stated that applications for renewal of licences remained pending with licensing authorities for long periods, resulting in loss of business for them. Overall, money lenders in West Bengal were of the opinion that they were doing “a service to the people”, seeking issue of one-time licences (RBI, 2007).

### **CONCLUDING OBSERVATIONS**

The legislative frameworks around money lending in the States show that there is significant scope for legal reform. Out of the three States, Andhra Pradesh seems to be most in flux, given that at present there is no consolidated state law regulating private money lending outside MFIs and by extension, no law protecting borrowers who are not members of SHGs. The structure of the Tamil Nadu legislation is interesting, with one law (the Tamil Nadu Money Lenders Act, 1957) governing money lending on an overall basis, supplemented by the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, which focuses specifically on the issue of usurious money lending, taking into account local names for exorbitant interest. The value of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 lies in its relevance to exploitative practices within money lending that are prevalent in Tamil Nadu today, as well as the penalty and redressal mechanism set up under the Act for borrowers to be able to complain about usurious money lending.

It is well known that usurious money lending is ubiquitous across the country, affecting poorer and marginalised populations who do not have access to formal credit mechanisms. In spite of this fact, it is surprising to see that in the States, other than Tamil Nadu, Andhra Pradesh does not have any dedicated state-wide punishment for usurious money lending, nor does West Bengal. From a reading of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 and Bengal Money Lenders Act, 1940, even though usurious lending with interest above the rate mandated by the State Government is technically punishable under General Penalties, the quantum of punishment is relatively low and accordingly, investigating such offences may not be a priority for law enforcement.

The effectiveness of a welfare legislation depends on the implications of the legislation for the people it seeks to protect (in this case, borrowers or debtors), the robustness of protective mechanisms that are set up to prevent or mitigate exploitation, the ease of seeking redressal by those who are to be protected by the law, as well as the quantum and scope of penalties, which will act as a deterrent against the commission of offences. We see that currently, in spite of the relatively debtor-friendly legal framework in Tamil Nadu, as well as the expansion of scope of the Bengal Money Lenders Act, 1940 to include commercial loans, levels of indebtedness remain high in these states.

The Researcher has included provisions of the Andhra Pradesh Money Lenders Bill, 2017 to show the direction in which the law is heading, to aim to regulate usurious money lending. The provisions of the new law are promising, drawing from both the Tamil Nadu and West Bengal laws in some places, but the lapse of almost 4 years since the Bill was passed by the Andhra Pradesh Legislative Assembly and Legislative Council is telling of state apathy in this subject. Further, the impending adjudication on the constitutionality of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 will definitely have implications for State will to effectively implement the law until the petitions are decided by the High Court.



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