



LAW COMMISSION OF INDIA

FIFTY-FIFTH REPORT

**RATE OF INTEREST FOR THE PERIOD
AFTER DECREE AND INTEREST ON
COSTS UNDER SECTIONS, 34 AND 35,
CODE OF CIVIL PROCEDURE, 1908.**

May, 1973

**GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS**

P.B. GAJENDRAGADKAR

CHAIRMAN
LAW COMMISSION
GOVERNMENT OF INDIA
Shastri Bhavan,
New Delhi-110001

May 14, 1973

My dear Minister,

I have great pleasure in forwarding herewith the 55th Report of the Law Commission on the rate of interest after the decree and interest on costs under sections 34 and 35 of the Code of Civil Procedure, 1908.

The circumstances in which the subject was taken up by the Law Commission are stated in the opening paragraph of the Report. Since the subject matter of the Report relates to the Code of Civil Procedure, on which the Commission has recently made a Report (54th Report, in February 1973), the matter was dealt with on an urgent basis, so that Government may, while considering implementation of the Commission's Report on the Code, also take into account the Commission's recommendations on subject matter of the Report.

The matter being urgent for the reason stated above, it was not considered necessary to issue a Press communique for inviting views on the subject or to circulate the Commission's tentative proposals for comments.

A draft Report was prepared by the Member-Secretary for the purpose of discussion. This was considered at length, and revised after full discussion.

With warm personal regards,

Yours Sincerely,

(P. B. GAJENDRAGADKAR)

Hon'ble Shri H. R. Gokhale,
Minister of Law, Justice & Company Affairs,
Government of India,
New Delhi-110001

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**REPORT ON RATE OF INTEREST FOR THE PERIOD
AFTER DECREE AND INTEREST ON COSTS
UNDER SECTIONS 34 AND 35, CODE OF CIVIL
PROCEDURE, 1908**

1. This Report deals with three short points which we have taken up in the following circumstances :-

Genesis
of the
Report

In March, 1973, the Bombay Bar Association submitted before us, during our oral discussions with them¹ on the Structure and Jurisdiction of the Higher Judiciary, the need for amending *section 34 of the Code of Civil Procedure, on the point of rate of interest which the court can award for the period after the decree.*

2. As this point was brought to our notice after we made our Report on the Code of Civil procedure² we could not deal with it in that Report. As the point appeared to us to require serious consideration, we have considered it proper to deal with it in this Report. We have also considered it desirable to examine the connected question of interest on costs, and interest on the aggregate.

3. We shall first consider the present law on this subject, which is contained in the Code of Civil procedure.

Present law

4. Section 34 of the Code of Civil Procedure, 1908 is as follows:

Section 34,
Code of
Civil
Procedure.

“34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.”

1. Discussions with the Bombay Bar Association on the question of Structure and Jurisdiction of the Higher Judiciary (30th March, 1973).

2. 54th Report (Code of Civil Procedure, 1908) (February, 1973).

Interest prior to suit.

5. This section does not deal with interest prior to suit. That is a matter of substantive law. As the Privy Council observed,¹

“The crucial question, however, is whether the Court has authority to allow interest for the period prior to the institution of the suit ; and the solution of this question depends, not upon the Civil Procedure Code, but upon substantive law. Now, interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest, as for instance, under section 80, Negotiable Instruments Act, 1881, the Court may award interest at the rate of 6 per cent. per annum, when no rate of interest is specified in the promissory note or bill of exchange.”

Interest subsequent to suit.

6. Interest subsequent to the suit is exclusively a matter of statutory powers² under this section, and that shows the practical importance of the section. But for section 34, even a court could not award interest after the suit.

Summary of the present position.

7. To summarise the present position :—

For the pre-institution period, the rate of interest is the rate allowed by substantive law, (subject to the provisions of the various Acts passed by the Legislature limiting the rate of interest), and is outside the Code of Civil procedure. Interest *pendente lite* is in the absolute discretion of the court, by virtue of section 34 of the Code. Interest for the period after the date of the decree till realisation of the decretal amount is also in the discretion of the court under section 34, but it is subject to the over-all limitation that the court cannot award any interest on the principal sum adjudged for such period at a rate higher than 6 per cent.

Rationale of interest.

8. The rationale of interest is that it is damages for wrongful retention of money. This was noticed in a Supreme Court case³. The facts (so far as relevant for the present purpose) were as follows :—

On the death of Arunachalam Chettiar (Senior), his estate in Ceylon was assessed for estate duty by the Estate Duty Authorities of Ceylon. The administrator of the deceased paid the estate duty under protest, and filed a suit questioning the validity of the assessment. In the meantime three widows, two widows of Arunachalam Chettiar and a widow

1. *B.N. Rly. v. Rulia Singh*, A.I.R. 1938 P.C. 67, 70.

2. *Thawardas v. Union of India*, A.I.R. 1955 S.C. 468, 478, para. 31.

3. *Ramanathan v. I.T. Commissioner, Madras* A.I.R. 1967 S.C. 657.

of his predeceased son adopted one child each. The claims of the administrator was ultimately upheld by the Supreme Court of Ceylon, which ordered refund of the estate duty along-with interest. This decision was confirmed by the Judicial Committee on appeal.

Ramanathan Chettiar, one of the adopted sons, received one-third share out of the money refunded by the Estate Duty Authorities of Ceylon. The money so received by him was assessed by the Income-tax authorities in India, and he was required to pay income-tax on the interest also. The assessee objected to the inclusion of interest in income-tax assessment. At the instance of the assessee, the Income-tax Appellate Tribunal referred the following questions of law to the High Court.

1. Whether the aforesaid interest receipt constitutes income ?
2. If so, whether it is exempted under section 4(3) (vii) of the Income-tax Act as a receipt of a casual and non-recurring nature ?

The High Court answered the reference against the assessee; hence, appeal was taken to the Supreme Court. Before the Supreme Court also, only the above mentioned questions were raised.

The contentions of the appellant were that the amount of interest received by him was not a revenue receipt assessable to income-tax and that in any event, the receipt was of a casual and non-recurring nature falling within the exemption under section 4(3) (vii) of the Income-tax Act, 1929. Therefore, the Supreme Court had to examine the exact nature of the money received by way of interest.

The Ceylon Civil Procedure Code¹ empowers the court to award interest, and provides as follows:—

“When the action is for a sum of money due to the plaintiff, the Court may in the decree order interest according to the rate agreed on between the parties by the instrument sued on, or in the absence of any such agreement at the rate of nine per cent per annum to be paid on the principal sum adjudged from the date of action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudged from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.”

1. Section 192, Ceylon Ordinance 2 of 1889.

The Supreme Court held that the word used is "interest" in contrast to "principal sum adjudged", hence the interest received by the appellant could not be considered a capital receipt, *being in the nature of damages for wrongful retention of money*. The court further said that the interest is also not exempted from tax under section 4(3)(vii) of the Income-tax Act; even the plea of the appellant that what he had received was not as an interest but as the estate of his deceased father, was not accepted, and the appeal was dismissed.

Other provisions as to interest.

9. Besides section 34, there are other statutory provisions as to interest. *By way of illustration, we may refer to a few of them.*

- (a) Section 1, Interest Act, 1839.
- (b) Section 80, Negotiable Instruments Act 1881.
- (c) Section 23, Trust Act, 1882.
- (d) Section 28, Land Acquisition Act, 1894.
- (e) Sections 352-353, Succession Act, 1925.
- (f) Section 61 (2), Sale of Goods Act, 1930.

History of section 34.

10. Section 34 has an interesting history. But we shall confine ourselves to the amendment of 1956, which is crucial to the question under consideration.

Before 1956, section 34(1), Code of Civil Procedure, was as follows:—

"34. *Interest*.—(1) Where and in so far as a decree is for the payment of money- the court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged, from the date of the decree, to the date of payment or, to such earlier date as the Court thinks fit."

History of section 35.

11. Before 1956, section 35(3) of the Code was as follows:—

"(3) The Court may give interest on costs at any rate not exceeding six per cent per annum, and such interest shall be added to the costs and shall be recoverable as such".

12. In 1956, both the sections were amended. The feature which distinguishes the present¹ position from the previous one² under section 34 can be thus summarised:—

Difference between present section and unamended section.

(i) Before the amendment³ of 1956, the section left the rate of interest, even for the post-decree stage, to the discretion of the court. After the amendment, the maximum rate of interest for the post-decree stage is six per cent.

(ii) Moreover, interest was previously permissible on the aggregate sum, and not merely on the principal, as is the position under the present section.

(iii) Section 35(3), which empowered the Court to award interest on costs, has been deleted by the amendment of 1956.

13. Subject to the above limits, of course, the question of interest after the decree till payment is within the discretion of the Court.

Discretion still retained.

14. Section 34 may be over-riden by special provisions. For example, it has been held that where instalments are ordered under Order 20, rule 11, of the Code of Civil Procedure, the restriction in section 34 does not apply⁴.

Position under O.20, rule 11, C.P.C.

15. It is, at this stage, necessary to go into the reason for the amendment made in the Code of Civil Procedure in 1956.

Reasons for the amendment of 1956.

In the statement of Objects and Reasons, annexed to the Bill of 1955, (which proposed this amendment), the following explanation⁵ was given in support of the relevant clauses⁶:—

“*Clause 2*:—Section 34, which enables courts to award interest, does not impose a maximum limit. This clause proposes to limit the rate of interest which a Court can award on the decretal amount to six per cent per annum.

Clause 3:—It is proposed to take away the power of the Court to give interest on costs.”

16. In the Lok Sabha Debates⁷, the Minister of Legal Affairs (Shri Pataskar) stated⁸ that in clauses 2 and 3, amendments more

Amendments made on the basis of social justice.

1. Paragraph 4, *Supra*.

2. Paragraph 10, *Supra*.

3. Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956).

4. *Gordhandas v. Valmji Khatsi*, A.I.R. 1967 Guj. 276 (Bhagwati and A.D. Desai JJ).

5. Code of Civil Procedure (Amendment) Bill No.25 of 1955 (Lok Sabha); Statement of Objects and reasons.

6. Clause 2 related to section 34 of the Code; Clause 3 related to section 35 of the Code.

7. Lok Sabha Debates, 2nd to 4th August, 1955.

8. Clause 2 related to section 34, clause 3 related to section 35.

in conformity with the modern ideas of social justice were introduced. He explained that they disallowed high rates of interest and also any interest on costs, awarded by the Court.

Change made by Joint Committee.

17. The Joint Committee on the Bill made a further change, observing as follows¹:—

“*Clause 2*:—Section 34 of the Code empowers a Court to award further interest from the date of the decree upto the date of payment on the ‘aggregate sum’ which comprises principal sum with interest accrued thereon. The Committee are of the opinion that interest should not be awarded on interest but only on the principal sum. Suitable amendment has accordingly been incorporated in this clause.”

Shri Raghavachari's dissenting note.

18. One of the dissenting notes in the Report of the Joint Committee, stated²:—

“*Clauses 2 and 3*:—The idea behind the principle of no interest on interest accrued prior to the date of suit and during its pendency and even after the decree as well even on the costs decreed is not in consonance with the actual prevalent practice in the world of trade and commerce. The argument that there is no agreement for payment of interest or that litigation is not to be a business does not impress me. This idea appears to be conceived in a spirit of denying a just right to the creditor to benefit a debtor. It is very likely to bring about a serious shrinkage of credit facilities now largely supplied by private agencies in the absence of adequate Government or other institutional agencies particularly in rural areas. It is also opposed to the principle that money found due and not paid should carry interest by way of damages.

Further, the costs decreed are often only a part of what is actually incurred by a party. Greater part of it is paid as court fees at the time of the institution of the suit. The other part consists of stamp and process fees and cash batta paid as well as other taxable sums. The decree that comes long after, only makes it payable. There is enormous time that further intervenes before its realisation, the law itself providing a period of twelve years for such realisation. Again, most of the plaintiffs are not professional money lenders. These creditors are themselves often compelled to borrow elsewhere on interest to meet the initial costs of filing the suit.

Under these circumstances, I feel these provisions are not only unjust but will work serious hardship both on the creditors and debtors.

I would have the discretion vested in the Courts to grant interest in appropriate cases rather than deny it altogether.”

1. Report of the Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1955 (13th December, 1955), page (iv), under clause 2.

2. Dissenting note of Shri K.S. Raghavachari; Report of the Joint Committee on the C.P.C. Amendment Bill, 1955, Page x-xi.

19. The Minister of Legal Affairs (Shri Pataskar) explained the change made by the Joint Committee, in these terms¹:—

Explanation of change by Minister of Legal Affairs.

“Clause 2 of the Bill relates to an amendment of section 34 of the Code of Civil procedure. That section empowers a court to award further interest from the date of the decree upto the date of payment on the aggregate sum which comprises of the principal sum, with interest. Clause 2 was provided to limit the rate of interest which a Court can award on the decretal amount to six per cent, per annum. The Joint Committee went further and decided that interest not exceeding six per cent should be allowed only on the principle sum and not on the aggregate sum which does include some amount of interest. This is based on the equitable principle that interest ought not to be allowed on the amount of interest itself; in other words, to prevent compound interest.”

20. It is clear, however, that the arguments were not all one way. Thus, in the course of the discussion on the Bill, several points were put forth by way of objections to the Bill.

Arguments on opposite side.

One State Government observed that the proposed amendment² may serve as an incentive to the desire of the judgment debtor for non-payment of the costs.

21. One High Court Judge, in his comment on the Bill stated, that the power, unless it is abused by courts, should not be restricted in this manner³.

Restriction opposed.

22. In the Debate on the Bill, there was considerable discussion as to the amendment deleting the power to award interest on costs. One of the Members of the Lok Sabha (who was a retired High Court Judge), observed⁴:—

View of Shri Tek Chand as to interest on costs.

“In this connection, a reference has been made to section 35, sub-section (3), which according to clause 3 of the Bill, is to be omitted. Not that I have usurious propensities, but I do not like this provision. It is true that there should not be any profiteering by the people; I concede that, but there are instances when the costs amount to five figures or more, and there is no reason why, when an unsuccessful party is subjecting the successful party not only to a long dilatory and unending dispute, but also to frivolous and vexatious litigation whereby he is out of pocket to the tune of several thousands, the law or the legislature should be so solicitous that such person should not pay interest- if he does not propose to pay or if he intends to delay the payment of the costs.

1. Lok Sabha Debates, 14th November, 1956.

2. Comments on the Bill of 1955.

3. A Judge of the Allahabad High Court.

4. Shri Tek Chand, Lok Sabha Debates, 14th November, 1956.

One unfortunate and unhappy feature of administration of civil law in our land, is, apart from delays and objections of frivolous and vexatious nature, justice is made available, if at all, at a very high and exorbitant price."

Apprehension as to likelihood of delay.

23. Apprehension¹ as to the likelihood of delay was expressed in one of the comments on the Bill. It was stated that reduction in the rate of current interest may encourage judgment debtors "to postpone payment of the decree amounts even more than now."

Discretion under old section supported.

24. Another comment on the Bill opposed the amendment of section 34, for these reasons²—

"The present section 34 which enables the Civil Courts to award interest does not impose a maximum limit. The amendment proposes to limit the rate of interest which the Court can award on the decretal amount at 4% per annum³. The proposed amendment usurps the discretion vested in the Court, in so far as the award of interest is concerned. There are no reasonable grounds for supposing that Courts have been harsh upon litigants in the matter of saddling them with interest, and there is no reason to think that the wise discretion given to the Court in the award of interest has been misused. There is no valid reason to fetter the discretion of the Court in such matter. Moreover, the rate of interest would vary at different times, also according to the local conditions prevailing in different districts. The proposed amendment would fossilize the discretion of the Court and prevent it from modulating interest so as to meet the needs of the time or to suit local conditions. I submit that the proposed amendment is not proper."

Shri Mathur's objection to the amendment.

25. Opposing the amendment as to interest on costs, one Member⁴ of the Lok Sabha said :—

"What is your change in social ideas which sends you in all sympathy with that man? I would like to know what is the change in social ideas that makes you go in sympathy with a person who, though the amount is due from him, does not pay up the amount but forces the man to go to a court of law, who forces that man to take certain loans and engage a counsel and pay the court fees. And you do not want any interest to be paid on that account. What is this change in social law which asks you to do that? I should certainly like to know as to why you do that?"

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1. Comment of a High Court Judge.
 2. Comment of a District Judge (later High Court Judge).
 3. The original proposal was for a maximum of 4 per cent.
 4. Shri H.C. Mathur, Lok Sabha Debates, 14th November, 1956.

26. Another Member¹ of the Lok Sabha expressed his disagreement with the amendment as to interest on costs :

Objections to interest on costs being disallowed.

"I have not found myself in full agreement with the abolition of interest on costs. My opinion is that in cases where the defendants have succeeded in protracting the proceedings and putting the decree-holder to heavy costs, there does not seem to be any justification for depriving the decree-holder of the interest on the costs. Probably, the Government had in view the case of professional money-lenders only and then in order to penalise them, and also to save the judgment-debtors, they have done so. It is not always that professional money-lenders get decrees against poor and indigent persons. There are other persons also who occasionally lend money and are harassed by debtors by protracting their proceedings by false and frivolous pleas. I feel that the Hon. Minister may think over this matter and, if possible, the law should be suitably amended."

27. Dealing with the various points, the Minister of Legal Affairs² said:—

Minister's reply.

"Now, take, for instance, clause 2. I thought it was a very simple provision and I never expected that there would be anybody in this House who would very seriously object to making a change in the year 1955, that when costs are awarded, the courts should not also award interest on the amount of costs. Some of my friends, very vehemently argued on that point. There was Shri S.V. Ramaswamy, a barrister, who said 'why should he not get interest on that?' Incurring costs and giving a loan are too distinct matters. I can understand that interest is given primarily when there is an agreement to give interest, because it is something in the nature of a thing which should carry interest. But to say that because a man goes to a court and succeeds, therefore, the other side should be vindictively dealt with, that it should incur not only the costs—which may be heavy—but also, add to that the interest on it, is something which I, for one, fail to understand, as to how it can be consistent with whatever ideas we have got. That people should be expected to pay costs is reasonable; if the party succeeds, the other side should pay costs. (Shri S.V. Ramaswamy rose).

Shri Pataskar: I know there are some people—there are one or two other hon. Members also—who think that way, but I for one do not think that anybody should be allowed to make out of this cost of litigation something as if it was a loan which he gave to the other side. If it is not viewed from that aspect, I think it would not be proper, from the point of view of the ideas of justice, at any rate.

1. Shri Mul Chand Dubey, Lok Sabha Debates, 14th November, 1956.

2. Minister of Legal Affairs (Shri Patas Kar) Lok Sabha debates, 2nd August, 1956.

Shri S.V. Ramaswamy: If the money was invested in a Bank, would it not have carried interest?

Shri Pataskar: I would not enter into an argument, because this is not a discussion about the social phenomena underlying these processes.

Shri S.S. Vora: Can you avoid that?

Shri Pataskar: I would rather avoid it and I think the majority will agree that this is not the right thing to do.

Points for consideration,

28. This, then, is in brief the material indicating the reasons which led to the amendment of 1956, and the reactions thereto.

On the above material, three points require consideration:—

- (i) Rate of interest for the period after decree;
- (ii) Admissibility of interest on the aggregate of principal and interest;
- (iii) Interest on costs.

Rate of interest after decree—Justification for reverting to old position, in case of Commercial transactions

29. On the first point,¹ it can be said in favour of the present section that the tendency of modern legislation is to discourage, rather than to encourage, high rates of interest, and no doubt, the amendment was made after taking into account that tendency.

It appears to us, however, that the practical working of the section requires a special provision for commercial transactions for a high amount. In the first place, judgment-debtors² entering into such transactions have exploited the amended law, by investing moneys at a much higher rate of interest than 6 per cent, knowing that they themselves do not have to pay more than 6 per cent interest; and this is hardly just or fair. The law may, as a matter of abstract policy, regulate the maximum rate of interest and impose legal restrictions in that regard. But it ought not to allow a person to take advantage of the legal restriction, and make profit thereby. After all, the judgment-debt belongs to the decree-holder, and the fruits thereof ought also to belong to him. In the second place, whatever be the current rate of interest around 1956, it is well known that the rate of interest now obtainable in the market is much higher than 6 per cent—at least in commercial transactions, and judgment-debtors, one can presume, must be taking advantage of that higher rate.

1. Para. 28(i), *supra*.

2. See oral suggestion of the Bombay Bar Association, para. 1, *supra*.

30. It is true that the decree-holder has a security in the shape of a decree, and, for that reason, theoretically, one can distinguish the period after the decree from the period before the decree. But there are practical considerations, mentioned above, which are to be borne in mind, and which overbalance this theoretical distinction in special situations.

Argument
of security.

31. It may be noted in this connection that a recent provision as to interest¹ (interest on compensation for injury caused by a motor vehicle) gives a wide discretion to the court. It is as follows :—

“110-CC. Where any Court or Claims Tribunal allows a claims for compensation made under this Chapter, such Court or tribunal may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

Special considerations, thus satisfy a wider discretion.

32. We have in mind commercial transactions, i.e. transactions connected with industry, trade or business. Monetary liabilities arising out of such transactions stand on a special footing, because the activities concerned are carried on with a view to profit. The debtor and the creditor do not stand in situations of disparity. If, for example, it is a case of loan, then the money would have been borrowed for carrying on or improving the business of the borrower. It is far removed from a debt incurred by a poor agriculturist or a needy urban resident to make his two ends meet.

Desirability
of amend-
ment.

33. We are, therefore, of the view that :

- (a) Where the principal sum adjudged exceeds five thousand rupees, and
- (b) the liability in respect of which the decree is passed arose out of a commercial transaction,

Guidelines
proposed

the court should have a discretion to order that the rate of further interest may exceed six per cent per annum.

For this purpose, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

The possibility of exploitation of the debtor by the creditor would be non-existent in such cases. The monetary liability being connected with the industry, trade or business of the debtor, and the principal amount being high enough, one can reasonably assume that the parties would be dealing with each other on an

1. Section 110-CC, Motor Vehicles Act, 1939 (As amended by Act 56 of 1969).

equal footing, and that independent advice would have been within easy reach of the person liable.

The minimum monetary limit which we propose will also eliminate the possibility that petty debtors will be exploited. In the particular situation which we have referred to, considerations of economic justice require rather that a higher rate of interest should be permissible, than that the discretion of the Court should be rigidly controlled.

Article 38
considered

34. The Directive principle contained in article 38 of the Constitution, which lays emphasis on social, economic and political justice will be furthered,¹ rather than impaired, by our proposal. No doubt, the debtor is some times in an inferior position, and stands at a disadvantage in relation to the creditor. For such cases, there are Acts regulating the rates of interest on loans advanced, as well as the total amount which can be recovered on each such loan. The rule of Hindu Law known as the rule of Damduput (under which a creditor cannot recover more than double the principal sum), is well-known. These regulatory measures were necessary to protect debtors. But the case of Commercial debts stands on an entirely different footing.

The amendment which we are recommending is intended to expedite the execution of money decrees. By taking note of the increase in the rates of interest in the market, the amendment seeks to bring the law in line with conditions which exist in reality and which, if not attended to, may constitute an obstacle to speedy justice. It will not only prevent commercial credit from drying up by reason of the dishonesty of judgment-debtors, but also advance economic justice by creating a legal frame-work which will permit the court to take into account the peculiar nature of these transactions.

Position of
agricultural
debtors.

35. We should now consider the effect of the proposed amendment on special laws. So far as the relief of agricultural indebtedness is concerned, there is in most States, self-contained legislation for the scaling down of debts, and such legislation will not be affected by any amendment of the procedural law. Even where such legislation itself contains a provision referring back to section 34 of the Code, the court can be expected to exercise its discretion fairly and after bearing in mind the special features of the case. The last-mentioned reasoning applies equally to situations where the judgment-debtor, though not an agriculturist, belongs to a section of the society which is more often exploited than not, or where the circumstances in which the monetary liability was incurred, make it desirable that the court should not award a high rate of interest. It should be pointed out that even after the amendment which we propose, the rate will be in the discretion

1. See also paragraph 33, *supra*.

of the court. And, it is well established that such discretion must be exercised on sound judicial considerations,¹⁻².

Reference may also be made in this context to a provision in the Kerala Act³ for the relief of agricultural debtors.

“5. Interest payable on debts and rents :—

(1) (a) For determining the amount of a debt other than a debt due to a banking company as defined in the Banking Companies Act, 1949, for the purpose of payment under this Act, *notwithstanding anything contained in any law*,⁴ contract or decree or order of court,—

(i) Interest shall be calculated at the rate applicable to the debt under the law, custom, contract or decree or order of court under which it arises or at five per cent per annum simple interest, whichever, is less, and credit shall be given for all sums paid or credited towards interest and only such amount as is found outstanding, if any, as interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due ; and

(ii) notwithstanding anything in clause (i) not more than one-half of the principal shall be deemed payable or to have been payable towards interest which accrued due till the commencement of this Act.

If the amount paid or credited towards interest exceeds the amount payable under clause (i) or clause (ii), such excess shall be credited towards the principle and the balance, if any, and future interest alone shall be recoverable.”

36. On the question of legislation dealing with indebtedness in general, we may, by way of illustration state that it has been held that section 30 of the Bengal Money-lenders Act controls the discretion⁵ under section 34, because of the wide overriding words “Notwithstanding anything contained in any law for the time being” which occur in the section.

Provision
in Money-
lenders Ac

37. As regards the amendment proposed in section 34, we may repeat that even under the amended section, the discretion will be exercised after due regard to the circumstances. Every

Discretion
dependent
on circum-
stances.

1. *Amar Chand v. Union of India*, A.I.R. 1964 S.C. 1658, 1963. para 17.

2. *Sarajubala v. Saradanath*, A.I.R. 1919 Cal.144, 150

3. Kerala Agricultural Debtors Relief Act, 1958

4. Emphasis supplied.

5. *Probhahali v. Anil Kumar*, A.I.R. 1943 Cal. 629, 633.

“debt is not necessarily a loan,¹ and the circumstances in which a claim for interest may come up for consideration vary from case to case. This variation is, in most cases, attributable to the difference as regards one or more of the following circumstances:—

(a) Financial capacity of the judgment-debtor (e.g. the judgment-debtor may have the means to pay and yet fails to pay);

(b) Financial position of the decree-holder;

(c) Comparison between (a) and (b) above;

(d) Conduct of the parties, e.g. dishonest transfer of property by the judgment-debtor after or in anticipation of the litigation, or inordinate delay in taking steps necessary for progress of the litigation;²⁻³

(e) Relationship which gave rise to the liability sued upon, e.g. the judgment-debtor standing in a fiduciary capacity towards the decree-holder;

(f) Nature of the monetary liability.⁴

Varieties of
monetary
liabilities

38. The nature of the monetary liability⁵ itself offers scope for numerous variations. For example:—

(i) it may be a pure and simple transaction of loan, between parties between whom there is not much disparity; or

(ii) it may be a transaction between parties of whom one is able to exploit the other; or

(iii) the monetary liability may arise out of a claim for maintenance; or

(iv) it may be for the wages of whole-time employment; or

(v) it may be a contractual liability, for a specific sum, —e.g. a claim against a publisher for arrears of royalties; or in respect of leasing out of certain right to fell trees,⁶ or

(vi) it may be for accounts of custody of joint family property;⁷

1. See (a) *Sujan Singh v. Ramachandrarao*, A.I.R. 1949 Nag. 104, 106, para. 6 (reviews cases);

(b) *Saradindu v. Lalit Mohan*, A.I.R. 1941 Cal. 538.

2. *Bhagwant v. Gangabesain*, A.I.R. 1940 Bom. 369, 377.

3. The cases cited do not necessarily relate to interest for the post-decreo period. They are referred to only to show the variety of situations met with in real life.

4. Paragraph 38, *infra*.

5. Paragraph 37, *supra*.

6. (a) *Sarajubala v. Surendranath*, A.I.R. 1919 Cal. 144, 150;

(b) *Bhagwant v. Gangabesain*, A.I.R. 1940 Bom. 369, 370, 377, 378 (Interest on unliquidated damages).

7. *Parruzu v. Subharayudu*, A.I.R. 1922 P.C. 71, 72.

(vii) it may be liability in damages for breach of contract,¹—e.g. against a manufacturer for breach of warranty or against a supplier for non-delivery of goods;

(viii) it may be liability based on use of partnership money;²

(ix) It may be in the nature of compensation for tort, —e.g. against the owner of a motor-vehicle or his insurer, for loss caused by an accident.³

39. So much as regards the first point.⁴ As to the second point—interest on the aggregate of the principal and interest—we would not, in the absence of any suggestion for reverting to the old position, disturb the amended law.

Interest on aggregate.

40. On the last point—interest on costs—there is much to be said on both sides.⁵ While it is true that no man ought to make a profit out of litigation and that costs are meant only to reimburse the successful litigant, and not to be a source of fresh income, it should not be forgotten that a person is awarded costs to cover expenses which he has rightfully incurred, towards litigation rightfully initiated. Until he is able to recover the amount from the party against whom he has been awarded costs, he loses interest on money which he has rightfully spent and which (if it had not been required for litigation) he would have invested. At the time, we have to take note of the fact that Parliament, having considered these aspects, nevertheless removed the relevant provisions. In this position and in the absence of compelling reasons disclosing the need for modification, we are not inclined to disturb the law on this point.

Interest on costs.

41. In the light of the above discussion, we recommend that section 34(1) of the Code of Civil Procedure, 1908, should be amended by inserting the following proviso and Explanation:—

Recommendation for amendment of section 34.

“Provided that:—

(a) where the principal sum adjudged exceeds five thousand rupees, and

(b) the liability in respect of which the decree is passed arose out of a commercial transaction,

the rate at which such further interest may be ordered may exceed six per cent per annum.

1. *Anandram v. Bholaram*, A.I.R. 1946 Bom. 1, 7.

2. *Udhavji v. Bapudas*, A.I.R. 1950 Bom. 94, 101. of Section 37, Partnership Act.

3. See also paragraph 31, *supra*.

4. Paragraph 28(i), *supra*.

5. See, for example, Shri Tek Chand's view, para. 22, *supra* and the dissenting note of Shri K. S. Raghvachari, para. 16, *supra*.

“Explanation:—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.”

We should, before we part with this Report, place on record our warm appreciation of the assistance we have received from Shri Bakshi, Member-Secretary of the Commission, in dealing with the problem covered by the Report. As usual, Shri Bakshi first prepared a draft which was treated as a Working Paper. The draft was considered by the Commission point by point, and, in the light of the decisions taken tentatively by the Commission, Shri Bakshi prepared a final draft for consideration which was after elaborate discussion approved by the Commission. Throughout the study of this problem, Shri Bakshi took an active part in our deliberations, and has rendered very valuable assistance to the Commission.

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| V. R. Krishna Iyer | <i>Member</i> |
| P. K. Tripathi | <i>Member</i> |
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New Delhi,
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