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Abstract

Poverty reduction is one of the public policy in our country whereas the highest interest rate is serious detriment on low income people in Myanmar alongside history and present time. Today, legal control of unregistered money lender is important and urgent function. The aims of the study are to understand the provisions related to money lender and penalties for default of registration of financial business and money lending process and to know the highest illegal interest rate for money borrowers. It focuses on the laws relating to money lender and financial institutions in Myanmar and collects the data from long practices of money lending functions and negative impacts on low income people in Myanmar. It can find that the legal requirements for establishment of money lending business and financial institutions and cause and effect of registered and unregistered financial business. This study can contribute to legal awareness for low income people and money borrowers and effectively control over illegal money lender in practically.

Key words: Money lender, Registration, Interest rate, Microfinance

Introduction

High money lending interest rates are exploitation and consequence of monopolistic competition on pricing power. They always focus on low income level and urgent financial difficulties in business. The most remarkable negative impact on money lending in colonial period of Myanmar that demonstrated the best exploit by *Chettiars* and reduced these financial crises by afford ability of co-operative society. After independent, illegal money lenders were controlled and punished under Money Lender Act and presently Microfinance Law. But, registration of money lending business is important issue in financial institution and individual lender. Moreover, it has still difficulties in court practice whether choice of Money Lender Act and Microfinance Law or Law of Contract. Thus, it has many issues and reason in small loan financial sector in Myanmar.

1. History of Money Lending in Colonial Period

Practices of Money lending had already existed in Myanmar and negative impacts on lowest income people. Under British Empire, Cooperative credit afforded with many purpose to answer the problems of rural poverty and indebtedness, usury, and land alienation. The first decade of the twentieth century, and in 1920 several thousand cooperative credit societies had mushroomed across the country. The provisions of the Money Lenders Act, 1945, were affected the recovery of interest on loans advanced are obligatory. The last operative law is Myanmar Microfinance Law, 2011 to control unregistered on individual money lender and organizations.

1.1 Money Lending under Control of Chettiars

The beginning of Myanmar's economy and money lending business had been interfered by the *Chettiars*. At that time, *Chettiars* community of money lenders operated throughout the Southeast Asian territories of the British Empire.

Chettiars were the primary money-lending 'community' in Myanmar brought the attention to finance into cultivation of new land in the delta known as 'rice bowl' of the

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British Empire. Of course, the *Chettiar*s were able to best exploit these circumstances and greater extent credit for agriculture. The end of the 19th century the Chettyar was the most important factor in the agricultural credit structure of lower Myanmar.²

In 1930 *Chettiar* employed in Myanmar in the form of loans outstanding and other investments and totaled an estimated (70) percent of all lending in Myanmar. These loans were disbursed from (1,650) *Chettiar* offices spread across the country, the overwhelming majority (87) percent concentrated in lower Myanmar and (343) offices were in Rangoon alone.³

Chettiar interest rates were usurious and determined by forces in conduct of informal finance. *Chettiar*s charged 'from (4) to (5) percent per month' around (70) percent per annum on small earning level without collateral.

Table 1. Indication of the Range of *Chettiar* Interest Rates, Type of Collateral % Per annum

No.	Grouped according to the quality of collateral pledged	interest rate
1.	Land and Immovable Property	9-15
2.	Precious Metals and Jewellery	12-15
3.	Promissory Notes backed by Collateral	12-15
4.	Unsecured Promissory Notes	15-24

Source: Statistics derived from Government of Burma, 1930

Above table shows that *Chettiar*s in Myanmar levied in the high interest rates they charged and they did to group of interest rate on type of collateral. *Chettiar* interest rates have often been put forward as a cause of land alienation in Myanmar. Higher estimates of *Chettiar* interest rates do not have approximate rates charged into the multiple hundreds of per cent, and were often levied per month rather than per annum. In this period, there was no effective legal control on money lending business and had appeared the greatest detriment on rural resident and lowest income society.

1.2 Money Lending of Co-operative Credit Societies

The imperial authorities of Cooperative credit society have seen situation of money lending business and establishment of formal rural credit markets to limit the role of Indian money-lenders in Myanmar. Thus, Co-operative credit movements grew as rapidly as a whole and in 1929 there were over (4,000) cooperative credit societies across the country.

The most prevalent type of cooperative credit society in Myanmar was based on the *Raiffeisen* model (Germany's cooperative credit system). The primary purpose of the movement was to provide credit to those who could not borrow from money lenders, and at the lowest possible interest rate. This included both the poor and without collateral. Significantly, *Raiffeisen* societies were established with *unlimited liability* for their members.⁴

² .Sean Turnell, Banks, Money Lenders and Microfinance in Burma, 2009, P.15

³ .Sean Turnell, Ibid, P.17

⁴ . Sean Tumell, Cooperative Credit in British Burma, P.10 (https://www.researchgate.net/publication/Cooperative_Credit_in_British_Burma)

Calvert (Co-operative Society) was headed by Hubert Calvert, Registrar of Co-operative Societies in the Punjab, and a member of Royal Commission on Agriculture in India. Calvert was a leading advocate of the cooperative movement in British India, and was joined on the Committee by E.P. Stocker of the Imperial Bank of India and H.O Reynolds of the ICS. Other three members of the Calvert Committee were Burmese - U E Pe, the Chairman of the Myanmar Urban Co-operative Federation, U Hla Bu, Chairman of the Yamèthin District Cooperative Association and U Ba Tib, Assistant Commissioner of the Co-operatives Department.⁵

Colonial Myanmar's co-operative credit system was organized in three tiers.

Primary Credit Societies

The first tier consisted individuals and households who were borrowers, savers or both. Rural Credit Societies could only lend to their (shareholder) members, and only for 'productive purposes' such as cultivation expenses, the purchase, improvement or redemption of land, the purchase of livestock or for the extinguishment of debts to moneylenders.

Unions

The second tier was occupied by the 'Unions' associations of geographically-proximate primary Credit Societies (ranging in number from five to about twelve).

Central Banks

The third tier consisted the District 'Central Banks' creation in 1909 was essentially an admission that individual Societies had been less than successful in attracting deposits sufficient to fund their lending.⁶

In this period, principles of Myanmar's cooperative credit system were sound, and their implementation was protection to low income level. In practice, this system has responsibility and accountability step by step. Although, established with the best of intentions, the experiment of cooperative credit has difficulties for creation of viable financial institutions in Myanmar.

2. Legal Control on Money Lender after Independence

Money Lenders Act was affected in the 3rd November, 1945 and repealed the Usurious Loans Act, 1918. It had four chapters and contained (20) Sections. The aim of this Act isto regulate and supervise on the business of unlicensed money lending and the protection of borrowers of the monies.

Nowadays, opportunities in the microfinance industry, the Myanmar Microfinance Law, 2011 were passed outlining the frame-work for the functions of microfinance performance in the country. It defines the scope of microfinance in the country's financial system and issues for the licensing and control of microfinance service supporters.

⁵ . Sean Turnell, Ibid .P.18

⁶ . Sean Turnell, Ibid, p.15

2.1 Transactional Terms in Money Lending

The following definitions should be read carefully as they provide important explanation and guidance on interpretation of the language used in Money transactional.

Principal concerns with a loan the sum in money or in kind actually lent to the borrower.⁷

Interest defines rate of interest and contains returned to money, in kind or over really lent, whether is charged or recovered specifically by method of interest or otherwise;⁸

Loan provides an advance in money or in kind, interest and takes part any transaction in substance a loan.⁹

Secured loan defines a loan that is available by mortgage, security or lien on any belongings, movable or immovable.¹⁰ Unsecured loan means any loan other than a secured loan.¹¹

Money-lender provides carrying on the business of advancing loans and includes his legal representatives and successors whether by inheritance, assignment or otherwise with all his rights and liabilities, if such person only winds up the assets of such money-lender and does not advance any fresh loans.¹²

Bishwa Nath Rai Vs Kashi Nath Rai¹³ to decide whether to carry on the business of money lender under Section 2 of the Money Lender Act, 1945. It was held that Money-lender means a person who carries on the business of advancing loans. A person who is lend money on two or three time occasions a year to his friend while doing so other business cannot regard as a money lender.

U Tun Shwe vs U Win¹⁴ According to Section 2 (6) of the Money Lender Act, 1945, Money Lender means a person who carries on the business of advancing loans as a professional business. Sometime advancing the money to friend did not assumptive the business for money lending. It shall be deemed a money lender from earning money professionally in business. For example, a person is carrying on business in trade while he carries on the business of advancing loans and he becomes money lender under this Act.

Microfinance defines lending micro-credit to the grass root people, receiving deposits from them, performing remittance, insurance business, borrowing money from local and overseas and other financial activities.¹⁵

Microfinance Institution provides local and overseas institutions, partnership firms, companies, co-operative societies, banks and nonbanking financial institutions, created and registered under the relevant law, which is funded with own assets, charity and grant, and get license to manage microfinance business in order to diminish the poverty of the grass root people and to get better their socio-economic life.¹⁶

⁷ . Section 2 (8) of the Money Lender Act, 1945

⁸ . Section 2 (4) , Ibid

⁹ . Section 2 (5) , Ibid

¹⁰ . Section 2 (10) , Ibid

¹¹ . Section 2 (13) , Ibid

¹² . Section 2 (6) , Ibid

¹³ . 1948, BLR, HC, p.449

¹⁴ . 1967, BLR, (CC) p.145

¹⁵ . Section 2(1)(a) of the Myanmar Microfinance Law, 2011

¹⁶ . Section 2(1)(b), I bid

Micro-credit expresses the loan lacking collateral to decrease the poverty of grass root people and to progress their socio-economic life.¹⁷

Grass root people mean the public including low-income farmers, labors and vendors who reside in rural and urban area.¹⁸

Money Lender Act, 1945 was repealed by Money Lender Law, 1962 but this law never enters into force at present day. In 1993, this law was revoked by No. 3/93 Laws relating to revoking (second time) and Money Lender Act, 1945 did not mention in this revoking Law still in entering into force. Moreover, this Act did not amend after 1954. President has power to exempt the Pawn Shop that taking the licence from Municipal Act and Village Act by Section 3 of the Money Lender Act, 1945¹⁹

Daw Tink vs Ma Than May and four²⁰ According to Section 1 (2) of the Money Lender Law, 1962 did not issue notification for entry into force thus Money Lender Act, 1945 shall prevail and valid.

The term of loan shall not contain a deposit of money or other assets in a post office savings bank or any bank or a company or co-operative society or with an employer as security by his employee, any society or registered association accordance with any other laws concerned with public, religious objects; Government or by any local authority; insurance company; a trader to another trader in the ordinary course of business and usage; a land-lord to his tenant to assemble the operating cost of cultivation or cost of labourers for wages payable at harvest and providing of commodities on a contract of hire - purchase is not a loan.

2.2 Types and Services of Money Lending

Money lenders are conveniently located for people who need microcredit and live in the same or a nearby village, or in the nearest market town. Loan procedures are minimal, and cash is available quickly. Loan amounts, maturities, and payment schedules are flexible and different types and services.

Under the Money Lender Act, a sabape transaction for advanced money during or before a cultivating period and debtor agrees to return after harvest as stated amount of paddy or other product beyond in value the amount advanced; and a transaction of money, commodities, grain or other product is advanced and the debtor undertakes to convey on a subsequent date a amount of product exceeding in value the money, commodities or produce advanced.²¹

According to Microfinance Law, financial institutions can make available pecuniary services to its customers such as Credit, Savings deposits, Remittance services, Insurance services, Borrow locally and from foreign country and Other financial service.²²

The Microfinance Supervisory Committee may permit to employ the activities of (a) extending micro-credits; (b) receiving deposits; (c) carrying out remittances; (d) operating insurancebusiness; (e) borrowing from a local or foreign lender; (f) carrying out other financial

¹⁷ . Section 2(1)(c), of the Myanmar Microfinance Law, 2011

¹⁸ . Section 2(1)(d) , Ibid

¹⁹ . U Kyaw Sein Vol II , p.341(Vol X p.303)

²⁰ . 1966, BLR (CC), p. 1197

²¹ . Section 2 (5) of the Money Lender Act, 1945

²² . Section 29 of the Myanmar Microfinance Law, 2011

activities.²³

The above activities can perform with the permission of the Microfinance Supervisory Committee in the Regional or State Governments or the Nay Pyi Taw Council.²⁴

The pawn shop business is usually located in populated, poor areas and close to market places. Most of their customers live from hand to mouth and often get a pawn shop loan to bridge income short comes and ensure coverage of daily living expenses or emergency cases (illness, funeral, etc.). They must put gold, equipment and other consumer commodities such as watches, bike, and reconditioned clothes as collateral. The Yangon City Development Committee (YCDC) has fixed the repayment period for all pawn shop loans. Pawn shops have to register at the YCDC Revenue Department. Depending on location of pawn shop, the yearly license payment is between five and twenty million kyats and between (300,000) and (500,000) kyats for registration of rural areas has to be act with relevant local authorities²⁵

Authorized legal and formal financial institutions include a state-owned Myanmar Agricultural Development Bank (MADB), savings and credit cooperatives, public pawnshops, and private licensed pawnshops. The semi-formal sector is composed of local non-government organizations microfinance institutions (NGO-MFIs) including NGOs supported by UNDP under its welfare program. These institutions are not under the control of the central bank and are not operating under certain laws to control over their operating areas. The informal credit refers to activities not under the control of any authority and considered illegal in some cases.²⁶

Especially people living in rural areas rely on the informal sector when it comes to (urgent) money matters and accept to pay higher interest rates than they would with banks or MFIs. Today's casual money lending business models are vary greatly and connected to real estate or bank brokerage actions that contain the intermediation between customers and banks offering credit services.²⁷

Therefore, lending permits someone else to borrow something. Business of finance occurs in the context of taking out a loan. A lender pays a loan to an entity and expected to return their debt or another asset, which is eventually paid for in its entirety.

2.3 Interest Rate of Money Lending

The interest rate is the sum of charges for utilization of assets and stated as a percentage of the principal. Interest is basically a rental to the borrower for the employ of an asset. If the borrower measures high risk for their advanced money, the interest rate is going to be higher.

According to Money Lender Act, no Court shall proceed in any suit for respect of a loan advanced and pass a decree in respect of interest at rates beyond twelve percent per annum in the matter of a secured loan and eighteen percent per annum in the matter of an

²³ . Para 4 of the Ministry of Finance and Revenue Office Notification No. 277/2011

²⁴ . Para 7, of the Ministry of Finance and Revenue Office Notification No. 277/2011

²⁵ . Zusammenarbeit (GIZ), Myanmar's Financial Sector, A Challenging Environment for Banks, 2013, p.17

²⁶ . Tomoko Kaino , Rural Credit Markets in Myanmar: A Study of Formal and Non-Formal Lenders , Asian Journal of Agriculture and Development, Vol. 4, No. 1, p.2-3

²⁷ . Zusammenarbeit (GIZ), Opcit, p.18

unsecured loan.²⁸

An agreement for the payment of compound interest on loans advanced shall be void directly or indirectly. A copy of every verdict or order of a Court, compound interest is disallowed shall be transmitted to the Registrar by the Court.²⁹

No Court shall pass a decree for a sum greater than the principal of the original loan and arrears of interest together with any interest already paid, exceeds the amount of such principal.³⁰

U Shwe Kyu and Four Others v. Ma Tin U³¹, no decree can be passed for an amount, which together with interest paid is more than double the original sum borrowed.

Ma Ahmar Hpyu v. Ma E Khin,³² in preliminary decree if it is obtainable he has received as interest in amount equal to the principal. Held that recoverable total sum cannot be more than double the sum advanced. If the creditor has received by means of interest any sum which exceeds the principal, should be deducted from the principal. Further creditor in such case cannot get interest for any period after the termination of six months commencing the day of the preliminary decree.

S, Haque (a) Islam v. N. Ahmed,³³ It merely regulates procedure and directs Courts not to pass any decree for recovery of interest which together with interest already paid would exceed the amount of the respective principal. It requires creditors to sue for interest, if at all, before the amount thereof together with interest already paid exceeds the principal, although suits instituted later are to be dismissed in respect of surplus interest only. Held that the Section 12 does not limit or expropriate private property, the question of compensation under Section 23 (4) of the Constitution does not arise at all.

Dawsons Bank Ltd. v. C. Ein Shaung and three³⁴, Constitution of the Union of Myanmar, 1947 Section 23(4) 'Property' includes debts and chose in action under Section 12, Money Lenders Act is not taken. Held: a debt was regarded as a piece of property capable of being transferred by law and capable of being expropriated.

Held also; this principle does not exclude the application of Sec 12 of the Money Lenders Act on appeal. This section prohibits all Courts deliver a decree for an amount greater than principal of the original loan and arrears of interest which exceeds such principal taken in proper cases though the parties may not have raised the plea.

Nowadays, all microfinance institutions operating in Myanmar shall obey the Directive of the Microfinance Business Supervisory Committee (MBSC).

- The interest rate for microfinance loans shall be charged at a rate of (2.30%) per month but shall not exceed (28%) per year and would be calculated using an effective rate.
- The interest rate for compulsory savings shall be (1.20%) per month but shall not be lower than (14%) per year,

²⁸ . Section 10 of the Money Lender Act, 1945

²⁹ . Section 11, of the Money Lender Act, 1945

³⁰ . Section 12, Ibid

³¹ . 1948.B.L.R.606

³² . 1949.B.L.R.(H.C), p. 411

³³ . 1950, B.L.R. (S.C) 185,

³⁴ . 1951, B.L.R (H.C) 300

- The interest rate for voluntary savings shall be (0.8%) per month but shall not be lower than (10%) per year.

The MBSC has further stated that for collectables such as fees on loan services, banking services, digital financial services, social welfare, life insurance, membership fees, charges for books and documents, and prepayment service charges, the following shall apply:

- The total collectable fees and charges for loans having a term of (12) months shall not exceed (2%) of the loan amount; and
- The total collectable fees and charges for loans with any term less than or exceeding (12) months shall be calculated based on (2%) of the loan amount for one year as per the relevant loan period.³⁵

In Pawn shop business, the loan amount granted and interest rate charged depend on the type and market value of the collateral. For gold, the loan can amount to up to two-thirds of the market value, and the monthly interest is set at (2-3%) flat. For all other items, the loan amount granted will only be (50%) of the forced-sale value of the collateral item(s), and the monthly interest rate is (10%) flat.³⁶

In practices, *informal lending*, *interest* rates depend on the type of collateral placed and vary between (3%) and (8%) per month. Uncollateralized loans are an exemption. The usual repayment period is between three to six months and can often be extended. However, many informal borrowers cannot manage to repay the loan during period and have to sell out their property below market price to finally meet their obligations with informal money lenders.³⁷

Myanmar Agricultural Development Bank (MADB) loan is (1.25%) and the new rate of (1.42%). Delta Region Microfinance Organization (DRMO) are set at (20%) per annum (though they are levied monthly), whilst (5%) per annum is paid on deposits. Dry Zone Microfinance Organization (DZMO) is just (22.5%) per annum. Credit for Rural Development Institution (CRDI) is (3.75 %) per month. Save the Children (USA) - (DAWN) are levied (4 %) of the charge of loans granted, and the plan also collects voluntary reserves. World Vision interest rate of (48 %) per annum is charged on loans. Cooperative For Assistance and Relief Everywhere (CARE) and Saving Mobilizations and Income Generation Program' (SMIG) have ranged from between (4) and (6.25 %) per month (60) to (107) percent per annum) and interest rates are determined by its members.

3. Registration of Money Lending Business

The money lending business is performed by individuals or associations. Commercial money lending activities are needed to register for licensing. Registration is restrictions on interest rates money lending operators can charge in their transactions.

All money-lender shall register in the given form and shall be stamped for the defined fee within 3 months from the beginning of Money Lender Act in any local area, and shall state –

- (a) the name and resident of the applicant;
- (b) the name and conduct to perform business as a money-lender;

³⁵ . Directive 1/2019 of the Microfinance Business Supervisory Committee (“MBSC”)

³⁶ . Zusammenarbeit (GIZ), Op.cit, p.17

³⁷ . Zusammenarbeit (GIZ), Op.cit, p.18

- (c) the address of his head quarter of business and the branches
- (d) such other facts as may be prescribed.

On the ending of the certificate under Section 6, or on the money-lender ending to carry on business, or deletion from the register of the name of the money-lender under Section 18, the money-lender shall send to his certificate to the Registrar, who shall cancel the same.³⁸

A registration made and certificate issued under the enactments of Section 5 shall continue in period of (3) years from the day of registration. On the termination of the period, the registration is deleted by the register and the money-lender shall cease to hold on business, unless money-lender has applied for renewal of registration. At any time within 30 former day of registration will expire, if he intends to maintain in business, shall apply to make fresh entries on the renewal of the registration. The period of renewed registration shall maintain for (3) years from the day of expiration of the previous registration.³⁹

The following institutions formed under the Myanmar Company Law, the Cooperative Society Law and any other Laws can apply for License to carry out business,

- (a) Local or international institutions,
- (b) Partnership Firms,
- (c) Companies,
- (d) Cooperative Society,
- (e) Bank and Non-banking Financial Institutions.⁴⁰

No person shall carry out business of the microfinance institution without a license to operate.⁴¹ The license to operate shall be granted without limit duration.⁴²

It is therefore important to obtain the permission for commencement of money lending business. In addition, corporate entities of money lending business should take from relevant regulatory agencies for setting up such business.

4. Administrative and Judicial Actions

Money Lenders Act has no administrative action for illegal money lender but current Microfinance Law provided the administrative action for unregistered financial business and it is not barred the measurement of civil and criminal action. Court jurisdiction is complementary form of social protection and well-designed can be support in functioning credit system. Traditionally, access to credit in Myanmar is extremely unlimited liability especially in rural areas that are not well repayment system.

According to Microfinance Law, the Supervisory Committee shall decide administrative penalty on the microfinance association, its members, shareholders, administrators, managers and personnel if they violate any enactments of this Law; such as warnings, orders to restrict the operations of microfinance institution, fines, temporary or

³⁸ . Section 5 of the Money Lender Act, 1945

³⁹ . Section 6 of the Myanmar Microfinance Law, 2011

⁴⁰ . Regulation 25 of the Microfinance Law Regulation for Microfinance Institutions, 2011

⁴¹ . Section 54 of the Myanmar Microfinance Law, 2011

⁴² . Section 21(b), Ibid

permanent termination of microfinance institution and cancel to license for operate the business.⁴³

The person who is being decided punishment under Section (44) shall pay damages at once to the microfinance institution or to other persons for any damages caused.⁴⁴

The administrative penalties decided under this Law shall not exclude taking criminal or civil action. Any person violates the Section 15 of prohibition shall be punished fine or imprisonment for not exceeding five years term or with both.⁴⁵

Microfinance institutions are providing little loans to low income self-employment and proving to the sustainable business against poverty. Microfinance has gradually developed to control over the subject matter of microfinance practitioners.

In the matter of jurisdiction, notwithstanding anything enclosed in any other existing law, no Court shall pass a decree on a suit for a money-lender to recover of advanced money, or to enforce of any security taken relating to unpaid loan, or to order on an request in money-lender for the implementation of a decree for concerned loan or to any security relating to a loan, unless the money-lender is registered under this Act and the registration is in force.⁴⁶

Jagaroup v. Jeet Singh and another⁴⁷ a money lender could file a suit before getting himself registered as a money lender and the registration need not precede the filing of such a suit. Section 9 of the Money Lenders Act enacts that no Court shall pass a decree on registered under the Act and the registration is in force. It does not say that no court shall entertain a suit by the money lender unless the money lender had registered himself under the Act.

In any suit or proceeding or appeal or revision, the court may exercise any of the following powers, namely: -

(a) *re-open the transaction*, taken action between the parties, and relieved the debtor's liability in respect of any interest in excess of (12%) per annum in the matter of a secured loan and (18%) per annum in the matter of an unsecured loan;

(b) *to create a new obligation*, re-open any action taken between the parties and relieve the debtor of all liability in respect of any interest in excess of (12%) per annum in the matter of a secured loan and 18 percent per annum in the matter of an unsecured loan;

(c) set aside, either wholly or partly, or amend or alter any security or agreement concerned with any loan;

Court shall not exercise of these powers-

(i) re-open any agreement of previous transactions and to conduct a new obligation between the parties, or persons claim, more than 6 years before the institution of such suit; or

(ii) do anything affects any decree of a Court in a previous suit: If anything has been paid or allowed concerned with any liability for interest in excess of(12 %) per annum in the matter of a secured loan and (18 %) per annum in

⁴³ . Section 44, Ibid

⁴⁴ . Section 48, of the Myanmar Microfinance Law, 2011

⁴⁵ . Section 57 , Ibid

⁴⁶ . Section 9 of the Money Lander Act, 1945

⁴⁷ . 1955.B.L.R (H.C) 164

the matter of an unsecured loan; shall be deemed to require the creditor to repay any sum so paid or allowed in excess or to reduce the sum of the original loan.

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Ma E Khin v. Ma Ahmar Hpyu⁴⁹ Held: that under Section 12 of the Money Lenders Act prevention is against a decree for the total of the principal of the original loan and such sum towards arrears of interest which collectively any interest already paid exceeds the sum of the principal. If the interest already paid exceeds the limits all that the court can do is to refuse a decree for interest without affecting however the claim for repayment of the original loan. Under that Section Court has no power to reduce the amount of principal, but court may re-open the transaction and grant relief to debtor relating to interest payable prior to the suit under Section 13 of the Act.

Ko San Mya and One v. A.R.S.A Firm⁵⁰Held: That British subjects in India did not become alien enemies of the people in Burma was occupied by the Japanese. Section 13(a) of the Money-lenders' Act, 1945, provides that in an appeal arising out of a final decree in a mortgage suit whether filed before or after the commencement of the Act, the Court may reopen the transaction; in so doing the court can reopen the preliminary decree also.

Held further that in respect of the two transactions, dated 30th October 1929 and 12thDecember 1930, had been settled on 14th June 1936 and the appellant agreed to pay in annual installments, it would not be fair to reopen the same as appellant cannot be permitted to advantage by his own wrong. In reopening the transaction, the Accrual of Interest (War-Time Adjustment) Act, 1947, could not be considered as disallowing interest after 8th December 1941, as the said Act does not apply to a decree.

No creditor shall take from a debtor or intending debtor any note, bond, security or promise to pay, which does not state the actual amount in words of the loan, the terms of the loan, the date of execution of the document, 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; nor shall any creditor take from any debtor or intending debtor any instrument in which any of the above particulars is left blank to be filled up at a subsequent date.

Notwithstanding anything restricted in any law in force, any note, bond, security, promise, or document shall be void.⁵¹

Lal Bihari Jado v. Rabidutt Panday⁵², Held: Section 15 of the Money Lenders' Act, 1945 is explicit that a promissory note on which the date of execution is stated incorrectly shall be void.

Whoever molests or abets to a defaulter with intention to recover or attempt to recover a debt, shall be liable to punish with three months imprisonment or five hundred rupees fine or with both. The offence is cognizable and bailable and on a warrant issued by a Magistrate.⁵³

⁴⁸ . Section 13 of the Money Lender Act, 1945

⁴⁹ . 1951.B.L.R.(S.C) 248

⁵⁰ . 1948 B.L.R.390

⁵¹ . Section 15(2) of the Money Lender Act, 1945

⁵² . 1955 B.L.R (H.C) 81

⁵³ . Section 16 of the Money Lender Act, 1945

Whoever contrary to the enactments of sub-sec (1) or sub-sec (6) of Section 5, or of sub-sec (2) of Section 6, or of sub-sec (1) or sub-sec (3) of Section 7, or of Section 8, or of sub-sec(1) of Section 15 or abets of any of the aforementioned enactments, shall be liable to punish in offence of -

- (i) a first offence, with two hundred rupees fine,
- (ii) a second offence, with five hundred rupees fine and
- (iii) a third or subsequent offence, with three months imprisonment or with one thousand rupees fine or with both.⁵⁴

Court of first instance has power to re-open the accounts between the parties, go back to the original loan, and decide how much of any subsequent moneys that passed or allowances that have been made share be treated as interest, and relieve the debtor of all liability in respect of any interest so calculated as may exceed stipulated interest. And also the court has power to decide Appeal and Revision from money transaction. Limitation of suit provided not more than six years has elapsed between such consolidation and the institution of the suit, and provided that the reopening of the accounts does not affect the decree of a Court in a previous suit.

To sum up the Money Lenders Act is more precise the maximum rates of interest legally recoverable on loans are (12 %) per annum on secured loans and (18%) per annum on unsecured loans but agreements to pay compound interest are void, and the total interest recoverable shall not exceed the original loan.

5. Current Issues on Practices of Money Lending in Myanmar

Various financial institutions in Myanmar are allowed to issue collateralized and uncollateralized loan by taking license. In practically, there are of two kinds; formal and informal lending and many problems in low income community in urban and rural. Illegal money lenders have levied with the usurious rates and made unfair contract or agreement.

The following table is indication to the range of current interest rates in Myanmar.

Table2.Current Interest Rates (%)

Sr. no	Particulars	Interest Rate (Monthly)	Interest Rate (Annually)	Remarks
1.	Money Lander Act	1	12	Secured loan
		1.5	18	Unsecured loan
2.	Microfinance Law	2.30	28	Unsecured loan
3.	Pawn shop	2-3	36	Secured loan
4.	MyanmarAgriculture Bank	1.42	17.04	Unsecured loan
5.	DRMO	1.67	20	
6.	DZMO	1.9	22.5	
7.	CRID	3.75	45	
8.	DAWN	4	48	
9.	World Vision	4	48	
10.	CARE	4 - 6.25	48-75	
11.	Informal lending	3-8	36-84	Collateral
		15-20	180-240	Uncollateral

⁵⁴ . Section 17, of the Money Lander Act, 1945

Source: Owned Compilation

Above table states the current indication of various interest rates in government, private and INGOs and NGOs of lending money in formally and informally. Most of the lending interest rates are around about nearly between (2%) and (2.5%) in government sector and government control business.

Some of INGOs and NGOs of lending money groups levying on interest rates are nearly between (3 %) and (6 %). It is contrary to Microfinance Law and notifications but they decide their interest independently. In the area of informal lending, interest rates are very high and rising issues in civil society and these interest rates are contrary to Money Lender Act, Microfinance Law and judicial practices.

The rural financial market is composed of several distinct sub-sectors consisting of a formal sector, and various segments of a non-formal sector. In rural Myanmar, the financial market may be categorized into three divisions, namely: a formal sector; a semiformal sector; and various segments of an informal sector. Formal financial institutions are defined as legally authorized institutions. The semiformal sector is composed of local NGO-MFIs and international NGO-MFIs, under welfare program called the Human Development Initiative. This last sector would include the following activities: (a) the use of illegal pawnshops; (b) borrowing from money lenders who charge usurious rates; (c) the use of advanced payment contracts for agricultural crops between traders and farmers; and (d) lending and borrowing, usually at no interest among relatives.⁵⁵

The following cases are decided by court practices in currently that applied the Contract Act instead of application on Money Lender Act.

U Lin Thet Lone vs Daw Thwe Thwe Khine⁵⁶ facts of the case are Daw Thwe Thwe Khine, was a head of the savings and beauty business. The defendants came to the plaintiff's house on 10 May 2012 to draw the saving money and in 11 May 2012 they borrowed (100) lakh kyats without any interest to expand the restaurant business under trust agreement at the present of witnesses.

After that (26.1.2013), On March 5, 2013 and April 2013, a total of (900,000) kyats was repaid in three time by each (300,000) kyats accordingly and rest amount was not paid. The plaintiff of first instance, Daw Thwe Thwe Khine, has filed a lawsuit against the original defendants, U Lin Thet Lone and Daw Elpo, for a loan of (91) lakh kyats.

The original court held that Daw Thwe Thwe Khine, had given oral testimony at the time of submission of the affidavit, the defendants did not fulfill their obligation to prove that U Lin Thet Lone, was involved in the saving bidding process and had signed a trust agreement dated (11.5.2012) as a guarantee for the saving bidding auction.

Daw Elpo was found not to be liable for the loan of (100) lakh kyats. Daw Thwe Thwe Khaing was entitled to favour decree, and U Lin Thet Lone has to pay (91) lakh kyats along with the court costs.

Therefore, it is not wrong for the original court to rule in favor of the plaintiff and order of the district court upholding the judgment. The appellate court should not intervene

⁵⁵ . Tomoko Kaino, Op.cit,p.2

⁵⁶ . 2009, No 490, Civil Revision, Supreme Court of the Union

and amend the order unanimously of two lower courts. Therefore, it was decided to dismiss this second appeal with costs.

*Daw Kyi Kyi Lwin vs Daw Thin Thin Khaing*⁵⁷ the plaintiff and the defendant are close friends. On November 1, 2008, the plaintiff signed loan agreement and the plaintiff lent (200) lakh kyats for the exchange of a new excavator operated by the plaintiff's husband. They agreed to repay in June 30, 2009, and to pay (25) lakh kyats in compensation if they could not repay within (8) months. The plaintiff sent a letter stating that she had not been able to repay by the due date.

In this case, the Mandalay Division Court ruled in favor of the plaintiff with a loan of (200) lakh kyats and compensation of (25) lakh kyats, a total of (225) lakh kyats. Appellant defended that (25) lakh kyats, is interest of (200) lakh kyats and respondent made a contract. Respondent intended and evaded the Section 10 of Money Lender Act and contract is void and illegal.

Supreme Court of Region held that the original district court had ruled in favor of the appellant and this is not to say that the decree was wrong. Because Respondent has occupied and earned from tea and snack shop and she paid money by natural love in occasionally and her business was not professional in money lending.

Therefore, the judgment and decree of the Mandalay Division Court were upheld and the first appeal was dismissed with costs.

*Daw Saw Kyi and Daw San Wai*⁵⁸, the plaintiff, Daw Saw Kyi, sued the defendant, Daw San Wai, for Ks (1200000) and the favour decree was issued on (8.8.2014).The original defendant, Daw San Wai, was dissatisfied the decree and filed the appeal.

It appears that the defendant has signed the land lease agreement.The defendant had already paid interest at the rate of (300000) Ks on principal (760,000) / Ks that there was no reason to sign the loan agreement once the interest and principal had been paid.

According to the testimony, it is true that the defendant's husband U Aung Tun took (12) lakh kyats from the plaintiff after signing the contract.It is clear that Ya was not allowed to work.Therefore, according to the contract of evidence, the defendant borrowed (12) lakh kyats from the plaintiff and signed a contract to lease the land for (3) years.

According to the original township court, the defendant's order to repay the loan of (12) lakhs was not illegal.Therefore, the judgment and decree dated (8.8.2014) was confirmed and the appeal was dismissed with costs.

*Daw Aye Aye Khaing vs Daw Tu Tu Mar*⁵⁹ in this case Daw Aye Aye Khaing filed a lawsuit against Daw Tu Tu Mar claiming to have paid the remaining (730) lakhs kyats out of the (750) lakhs. The plaintiff lent (120) lakhs on June 10, 2010, (430) lakhs on July 20, 2010, and (100) lakhs kyats on April 10, 2012 and On September 10, 2012, the loan was made with (100) lakh kyats.

On 21.11.2013, (Witness-A) signed an agreement and it appears defendant reimbursed (2) million kyats.The order of the original district court shall not be entitled to the (120) lakh kyats mentioned in paragraph (3), paragraph (1) of the plaint within the three years

⁵⁷ . 2010, No,41 Civil First Appeal, Supreme Court of Mandalay Region

⁵⁸ . 2013, Suit No. 72/2013, Kyaukpadaung Township Court

⁵⁹ . 2014, No.278, First Civil Appeal, Supreme Court of Mandalay Region

mentioned in Schedule (57) of the Schedule (1) of the Limitation Law. It is decided that the The Appellate Court order that, according to Section 62 of the Contract Act, contract may enter into replace the other contract with a new one, to cancel or to change if agree, the original contract is not required.

The original plaintiff and the defendant entered into an oral contract of (75) million kyats in four installments borrowed but did not repay the loan. It should be considered that a new covenant was made on Witness-A Loan Agreement was re-signed on (21.11.2013) in the presence of Ward Administrator U Kyaw Myint Oo (Exhibit 3), so the plaintiff and the defendant must be considered to have entered into a new agreement on (21.11.2013). It appears that the defendant paid (2) million kyats to the plaintiff.

Therefore, the Court of Appeal overturned the order of the district court and ordered to Daw Tu Tu Mar, to pay back (730) lakh kyats with costs.

Conclusion

The role and control of money lending in Myanmar existed in traditionally to present day. The first transaction was Chettiers as a money-lender who played thenegative role in Myanmar economy under the British colonial and made foreclosed on mortgages and turned into absentee landlords. Secondly, to combat these situations, Cooperative Credit Society decided to limit the role of Indian money-lenders and to establish the formal rural credit markets. But it had many difficulties to implement and settle in rooted problem of high interest rate and poverty reduction in old day.

Third attempt in colonial period, Usurious Loans Act, 1918 had only to make short-term loans and to do combat this indebtedness for perspective of protecting farmers that was repealed by Money Lenders Act, 1945. It aimed to regulate and control of the business of unlicensed money lending and the protection of poor borrowers. But it had practically affected on high interest rate issues in grass root level.

The last opportunities occurred in Myanmar Microfinance Law, 2011 was passed to frame-work functioning and guidelines of microfinance activities in the scope of the country's financial system and issues for the license and supervises the microfinance service providers. However, it has different interest rate in financial transaction.

Therefore, it has difficulties of pricing in court proceeding to collect the strong documentary evidence to decide the case with Money Lenders Act that provided to punish on processional business in money lending without registration. In this fact processional business in money lending or lending by friendly are difficult to show in reality. Currently, the Court decides that most of the case based on Contract or Agreement because these are documented and certain interpretation for judge and balance of probability in civil suit. In this situation, unlicensed and illegal money lenders are taking opportunity to made contract for loan without interest and compoundable interest add to the aggregate of the principal of the original loan which together with any interest already paid exceeds the amount of the principal. Therefore, Money Lenders Act does not affect in money lending business and it happen negative impact and complex situation in society.

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