

A Description of Public Policy Towards Credit and Credit Institutions in Medieval Nepal

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The purpose of this article is to describe the public policies in the sphere of credit activities in the medieval Nepal. An attempt also has been made to describe the nature and functions of credit institutions. This paper has been written in three sections. First section deals with the credit activities in the medieval period with reference to the ancient Hindu period. The second section, deals with the rules set by the rulers during their period and the final section, concentrates on deriving certain conclusions about issues described in the first and second sections.

1. Introduction

Before we deal with the credit policy of the state in Nepal, let us try to understand the ancient Hindu concept of credit and credit institutions. Dr. N.R. Chalise has presented some concepts and institutions regarding credit, in his "Outline of the Ancient Hindu Economics."¹

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1. Nava Raj Chalise: "Outline of the Ancient Hindu Economics Ned, I Kathmandu Madan Purushkar Guthi 2021 PP. 228.

In the ancient Hindu period, the lending and borrowing was a recognised trade. The trade was prescribed specially for Vaisyas, though the Brahmins and kshatriyas were, of course, not encouraged in this trade. Though, it was considered not the well honorable occupation, but, however, appropriation of interest was considered not immoral or improper. The ancient Hindu preachers have, rather, prescribed a very high rate of interest, a fact unusual in the western ancient concept.

Brihaspati, one important Acharya of the ancient Hindu period, has condemned the act of realising interest four or eight times of the principal. But Vasistha, another important Acharya, has tolerated the act of realising interest even seven times of the principal in some cases. In this respect, Kautilya and Manu may be referred to as representatives for the common concept prevalent in those ancient days.

According to Kautilya, the general rate of interest per month should be 1.25%. But the monthly rate may be 5% for the common merchants, 10% for those trading in the forests and 20% for those trading over the seas, and thus the annual rate of interest ranging from 15% to 24%. (Dr. Chalise—pp. 171). According to Manu, the monthly rate of interest should be 2% for the Brahmins, 3% for the Kshatriyas, 4% for the Vaisyas and 5% for the Sudras, and thus the annual rate of interest ranging from 24% to 60% (Dr. Chalise pp. 171). The important feature of the prescription is that the rate is various for various purposes for different customers. Such variation mostly depended upon the status of the customers on the one hand and on the other upon the risk involved in the business.

According to the ancient Hindu system, the claim over the loan made by the lender did not stand valid if it was not realised within a tenure of ten years except in cases where the lender is minor, old, ill, suffered, and one gone out of the country. Some Acharyas have suggested that the debt should be deemed to have been redeemed in cases where the amount of interest double of the principal had already been realised from the debtor by the creditor,

In our society, we find the impact of the ancient Hindu concepts and customs. That is why, it is logical to infer that important economic concepts and institutions prevailed in our society in the ancient and medieval ages of our history. Since then, they have been coming down to the modern stage in one or the other form. In this paper, I have tried to peep into the medieval period in order to review the credit policy of the state and the relation between the

debtors and the creditors. The public policy prior to the age of Ram Shah was scattered throughout the whole range of ancient and medieval period embodied in the history of the Lichchhivis, the Baisis and the chaubicies. To review the whole range of history is not the objective of this paper, either. That is why, the paper starts with the famous code of king Ram Shah, and ends with the great Revolution of 2007.

2 Description:

The credit policy of the state is seen formulated clearly in the famous Rules promulgated by king Ram Shah of the Gorkha dynasty. The famous code included rules regulating the rate and the amount of interest as well as the time bar for the loan.²

The fourth rule was concerned with the regulation of loan in kind, and the fifth Rule was with that of loan in cash. According to the relevant rule, the maximum rate of interest was limited to 1/5 of the principal in kind, and total of the principal in cash. The maximum period bearing interest on any loan, was limited to 10 years beyond which the loan did not bear any interest at all.

The Rule also prescribed the maximum amount of total interest to be realised by the creditor at one stretch. In cases of credit in kind, the maximum amount of interest might be double of the principal, and thus the total receipt must not be exceeding treble of the original principal (Dhan Tebar). In cases of credit in cash, the maximum amount of interest might be equal to the principal, and thus the total receipt must not be exceeding double of the original principal (Dam Dobar).

The relevant Rule of the code runs as follows:

The fourth Rule:— In cases of credit in kind, at the rate of interest 1/5 of the principal (Bisaud: 20% per annum) the borrowed quantity trebles itself in 10 years. Therefore, the creditor must not realise the interest in kind (a) at the rate more than 1/5 of the psiniple (b) for the peiod more than 10 years from the date of the deed, and thus must not accumulate the total arrear quantity in kind amounting to more than treble of the principal.

2. HMG/N, The Common Law Act, 1910, Ned I, (Kathmandu: Konoon Kitab Vyabasha Samiti, Ministry of Law and Justice, 2022), PP. 695—696.

The fifth Rule:- In cases of credit in cash, at the rate of interest $1/10$ of the principal (Dasaud: 10% per annum) the borrowed quantity doubles itself in 10 years. Therefore, the creditor must not realise the interest in cash (a) at the rate more than $1/10$ of the principal, (b) for the period more than 10 years from the date of the deed, and thus must not accumulate the total arrear quantity in cash amounting to more than double of the principal.

The Rules quoted above classified the loans, and treated cash and kind separately and differently in matters of (a) annual rate, and (b) the total amount of interest. In matters of the maturity and time bar of loan, the Rule treated both cash and kind uniformly and indifferently. The Rules also included the reason for and the urgency of the regulation. According to the relevant Rules, where the borrower was unable to pay back the loan, the liability of interest went on accumulating infinitely for years, making it increasingly impossible in future for the borrower to be free from the loan. That is why, the Rule prescribed the maximum limit of the rate, amount and period of interest.

Such a practical approach to the credit policy seems to have been deeply rooted in the then society scattered in various political territories of Baisi, Chaubisi etc. The proof of evidence may be summarised in a proverb—where the learning is lost, go to kasi; where the justice is lost, go to Gorkha.

Thus the policy was handed down from generation to generation, and passed into the newly unified kingdom through the celestial advice (Divya Upades) of the great king Prithivi Narayan Shah. The Divya Upades (B.S. 1831) recognised the historical importance of the policy of Ram Shah, in the following words.³

“I have already looked into the rules established by king Ram Shah, king Jayasthiti Malla and king Mahendra Malla. By the grace of god, I also have desire for establishing such rules for the twelve thousand (people of Nepal).”

The first code of common law (Muluki Ain) promulgated in B. S. 1910 during the reign of H. M. king Surendra, inherited the above credit policy of king Ram Shah, and made a

3. Ibid, P. 3.

legal provision in this respect. The code not only regulated the irregular rate and unlimited amount of interest, but also provided legal protection against all irregularities. The relevant part of the code is as follows.

Where the loans are transacted between the creditors and the borrowers on terms in the written bond, if a period of ten years has elapsed since the inception of the debt without any payment of interest, then only the double of the principal will be restored, and not more. Any amount excess of the due interest computed upto date at the rate of 10% per annum, paid by the debtor to the creditor is to be adjusted to the principal. In case of loan in kind, if a period of ten years has elapsed without any payment of interest, treble of the principal will be restored, and not more.⁴

The further provisions of the said Muluki Ain, are as follows—

Where the debtor being unable to pay, the due interest must not be consolidated into the principal. Any amount realised or attempted through the fresh bond thereto, as interest on the due interest, shall be deducted from the principal, and the creditor so doing shall be fined by the amount so realised or attempted to realise.⁵

Where the promise to pay is in kind for the credit taken in cash, any dispute between the creditor and the debtor, and the consequent judicial proceeding will restore the amount only in cash with interest at the rate of 10%, but not in kind, nor in price at the market-rate of the so promised quantity in kind.⁶

The credit policy originated in the custom was enherited by legislation as reflected in the first code of common law. The tradition was enherited by all the other successive enactments in respects of the credit policy. Consequently, the successive code of the common law included more or less the same or similar provisions in this respect. The later editions of the code as published in B.S. 1942 and in B.S. 1992, are not available, and as such it is not easy to refer to the relevant provisions. But the code published in B.S. 2009 is said to be more or less similar to that of B.S. 1992. The Muluki Ain (2009) reads the relevant provision of the law as follows—

4. HMG/N, of Lender and Borrower Section 6 & 13, The Common Law Act, 1910, op. cit. P. 92.

5. HMG/N, Ibid, Section 14, P. 92:

6. HMG/N, of the Repayment of the Loan, Section 6, Ibid, P. 94.

In cases where neither any amount of interest has been recovered, nor due date has been renewed, nor any judicial proceeding has been instituted in this respect during the whole tenure of the ten years since the loan-document was first executed, the loan bond shall lose its legal validity. During the tenure of the ten years, realisation of some amount as interest or renewal of some tenure by the new promise of the debtor shall extend the due date and legal validity of the original-document for a tenure of further ten years from the date of such realisation or of such renewal.⁷

According to the Ain, the Maximum rate of interest and also of profit shall not exceed more than 10%, or less than 10% where so promised in the bond. Any interest or profit more than 10% and or any other informal levy shall not be promised or realised. Any excess interest or profit already realised by the creditor shall not be restored to the debtor, as the payment is deemed in agreement of the parties.⁸ Any restoration of interest or profit through the judicial proceeding, shall be made at one stretch up to the amount only equal to (a) the principal where no part of the principal has been realised and (b) the remaining principal where a part of the principal has been realised, both in cash or in kind, and not more even in cases of more than 10 years.⁹

In the above provisions of the Ain, there seems no distinction between the loans in cash and in kind in matters of the total maximum interest. At the same time, some important rights for the protection of the debtors, have been created as follows—

Any restoration of loan from debtor to the creditor through the judicial proceeding shall not be made to the inclusion of one pair of bullocks, one set of agro-equipments and domestic utensils, one set of beddings and dressing and fooding of the family for the coming six months. To the exclusion of these thing in favour of the borrower the loan may be recovered for the lender out of all other movables and immovables of the debtor.¹⁰

7. HMG/N, of Lender and Borrower, Section 2. The Common Law Act, 2009.

8. HMG/N, Ibid, Sec. 5.

9. HMG/N, Ibid, Sec. 5 (a).

10 HMG/N, Ibid, Sec. 18.

3. Conclusion :

In the Medieval Hindu period, the lending and borrowing was a recognised trade, though not a well honorable one. Appropriation of interest was considered not only moral but also essential. The rate of interest as prescribed by the ancient Hindu Acharyas was, rather, higher, unusual to the western ancient concept.

The ancient Hindu concepts and customs have a great impact upon the various aspects of Nepalese society. As such, the important economic customs and institutional concepts of the ancient Hindus might have prevailed in the ancient and medieval Nepalese society.

The credit policy of the state in Nepal is seen formulated clearly in the famous Rules promulgated by King Ram Shah of the Gorkha dynasty. The famous Rules included provisions regulating the rate of interest, limiting the amount of interest and prescribing the time-bar for validity of loan.

The credit policy as appeared in the medieval period was general in nature, and not special to any specific trade. It was the reflection of the then social structure and stage of development, when the society itself was specialised not in any specific crafts. That is why, all credits and credit institutions of those days were common to all crafts, and as such the public policy was also common to all irrespective of and indifferent to agriculture or non agriculture. In reality, all loans and credits in those days were more or less concerned with agriculture, and the credit institution itself was originated from land and agricultural relations. That is why, the public policy towards credit and credit institutions in those days, though not specific to agriculture, may be logically considered to be the predecessor of the modern agricultural credit policy.

The credit policy as embodied in the famous rules of King Ram Shah as quoted above, classified loans in cash and in kind, and treated them separately and differently in matters of (a) annual rate, and (b) total amount of interest. But in matters of maturity-date and time-bar for the validity of the loan, the quoted rules treated both cash loan and kind loan uniformly and indifferently.

The next best embodiment of public policy in respect of credit and credit institutions, was the first code of the Common Law Act promulgated in 1910 B.S (1853 A.D.) during the reign of King Surendra Vikram Shah. The credit policy as originally embodied in the famous

code of King Ram Shah was customarily and traditionally coming down and finally came to be enacted in the said Common Law Act of King Surendra Vikram Shah. The Act included the main provisions of the famous rules of Ram Shah in addition to other details about the credit and credit institutions. The tradition was continued by all other successive enactments during the whole period of Ranacracy upto the great Revolution of 2007.

During the priod in review, credit was supplied by private agencies, such as money lenders and landlords. As such, the credit policy of the state was primarily concerned with the regulation of the behaviour of money lenders and their relation with the borrowers. So, the most important objective of the public policy in those days, was to limit the amount of interest realised by the creditor from the debtor. In order to achieve this objective, the policy tried to regulate the rate of interest on the one hand, and on the other to prescribe the time-bar for the tenure of loan. Thus the total amount of interest was limited to by the regulated rate of interest and the prescribed period of tenure. The role of the policy was Judicially regulative rather than practically self operative.

This was the main trend and the traditional stream of the public policy during the whole period in review. But, however, some small attempt, as an exception, was made to modernise the credit and credit institutions by the introduction of 'Jejarath' first, and then by the establishment of the 'Nepal Bank Ltd.' The establishment of the Nepal Bank Ltd. in 1938 A.D. as a corporated institution was a great land mark diversion from the main trend and traditional stream of the public policy. However, it was not until the Great Revolution was successful in 2007, the philosophy of the state policy changed from the least intervention with the existing institutions to the maximum participation for the transformation of the credit and credit institutions.