Agricultural Debt Relief in Punjab: Moving Beyond Loan Waivers Towards Law

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There is a case of providing debt relief to indebted farmers in vulnerable times. But, whether this problem of agricultural indebtedness should be dealt with by token political measures like loan waivers or there should be a permanent debt relief mechanism in the form of bankruptcy needs attention. The Constitutional power to make laws on agricultural indebtedness lies with state governments as per entry 30 of List II in the Seventh Schedule. This paper explores institutional perspectives of providing debt relief to farmers by debt relief laws which continue to be on statute books in many states since colonial times but have rarely been applied to solve the issue of agricultural indebtedness. It examines the shortcomings of debt relief legislation in the Indian state of Punjab and how due to the absence of any permanent institutional mechanisms for debt relief, farmers are left on their own fate. Finally, the study also examines some of the relatively effective components of Kerala's farmers' debt relief law, the only state to have such provisions. In addition to this, it also draws insights from India's Insolvency and Bankruptcy Code (IBC). Based on such an examination, it proposes several model provisions for effective state-level debt relief legislation to make the institutional apparatus of agricultural debt relief more efficient.

Introduction

India witnessed a farmers' movement in the year 2020-2021 against the three farm reform laws[1] brought by the Union government which aimed to change the agricultural marketing and storage norms in the agricultural sector. While the farmers thought that the laws were undemocratically imposed on them without any prior consultation, the government kept explaining that these laws would benefit the farmers in the future. The movement culminated with the repeal of the laws in November 2021 with the farmers' protest coming to an end and also an assurance by the government to constitute a committee on MSP and other demands of farmers. Keeping aside the arguments put forward by the votaries and those against these farm laws, the important point to note is that there remains a status quo in terms of agricultural situation in the country. The lack of a coherent institutional structure means that the farmers continue to suffer from various structural problems and agricultural indebtedness is often the most widely discussed problem in this context. More so, the irregular cash flows which coincide with crop cycles make farmers vulnerable while planning their consumption which can further lead to a huge pile up in debt.

Farming continues to be the predominant mean of employment and income across the Indian countryside. About 42.6 per cent of the workforce is still dependent on agriculture as their primary source of livelihood (ILO, 2019). Although its share in the total workforce is on a gradual decline, it continues to be the largest sector in terms of employment in India. But a near-stagnation of agricultural productivity and low agricultural growth has led to widespread agrarian distress in the country in recent times.

Farmers have been demanding remunerative prices over the cost of their produce to secure their livelihood. This was another focal point of the farmers' protest of 2020-2021 where in addition to the repeal of three laws, farmers wanted a legal guarantee of MSP for their produce. Another demand of farmers in the last few years which has caught the attention of politicians, academics and policymakers is the demand for complete loan waivers. Such demands are not new as they have been widely entertained in the past. The largest such nationwide loan waiver was extended to Indian farmers in 2008, a year before general elections in the form of Agricultural Debt Waiver and Debt Relief Scheme (ADWDRS). It cost the then government Rs 72,000 crores. This was the largest bailout of indebted farmers in Indian history (Kanz, 2016). It waived off farmers' debt according to landholding status as the eligibility criteria. The question that arises is if loan waivers were a long-term solution as a corrective measure to the agricultural indebtedness problem, why would the farmers, instead of being prosperous nearly a decade and half after the of implementation of this scheme, be demanding loan waivers again? Since the 2010s, there has been a trend of loan waiver announcements by state governments. A total of 13 loan waivers have been announced by various states since 2012 in India (NABARD, 2022).

Gulati, Chatterjee and Hussain (2018) list two reasons for growing discontent within the Indian peasantry in the last couple of years - first, two successive droughts (2014-15 and 2015-16) and second, farm prices of many commodities ranging from oilseeds to pulses fell below their minimum support prices (MSPs) in 2016-17 and 2017-18. In 2016 and 2017, State Assembly election campaigns in Uttar Pradesh (UP) and Punjab became a hotbed of loan waiver promises by political parties. Many farmers' unions across the country rallied behind their common demands of loan waivers and implementation of the Swaminathan Commission Report during the years 2017 and 2018 and right up till the arrival of the COVID-19 pandemic and the farmers' protest of 2020-21.

This paper aims to discuss why there is a case for providing debt relief to distressed farmers and how, in the absence of any permanent institutional mechanisms, farmers become more vulnerable. It critically discusses the absence of a dedicated debt relief body in Punjab in conjunction with the announcement of loan waiver scheme for farmers. Punjab was a poll-bound state in early 2017. Political parties rallied with fancy catch lines to sell their loan waiver stratagem to the populace. The then elected government in March 2017 had promised a complete farm loan waiver and time had arrived to fulfil their manifesto promise of '*Karja kurki khatam, fasal di puri rakam'*.[2] The initial target beneficiaries were around 10 lac small and marginal farmers. Given the fiscal position of Punjab, loan waiver seemed like a monumental task and making such tall promises with little or no funds in the public treasury[3] reeked of policy myopia when it came to dealing with agitating citizens and their demands. The budget documents of the Punjab Government from the last few years have noted that the state's revenue was not even able to meet the salary, interest, pension and power subsidy payments and the situation was so bad that the Reserve Bank of India stopped the payments of the State Government for the first time in March 2017 due to an existing large overdraft (Government of Punjab, 2018).

Debt is often reported as the major reasons for the mental stress and suicides by Punjab farmers. Malcolm Darling (1928) concludes in his book *The Punjab Peasant in Debt and Prosperity* that the Punjab peasant is 'born in debt, lives in debt and dies in debt'. While he reports the condition of Punjab peasant in the colonial period, the Punjab peasant has come a long way by seeing a highly prosperous heyday of agriculture during the Green Revolution period. The Peasant had rather become a farmer and was no longer a peasant (Ladejinsky, 1969). But the days of prosperity did not last for long. After nearly a decade of separatist and insurgency movement in the decade following the Green Revolution in the 1980s and post 1991 liberalisation reforms, Punjab has lost its glory of being the most prosperous region in the country. Though the agricultural techniques, output, and irrigation are still the most advanced in the country, this prosperity is marred by the menace of rural indebtedness and farmers' suicides. A door-to-door survey by three universities in Punjab had recorded 16,600 farmer suicides in the state from the year 2001 to 2017[4] which comes out to be a dismal average of 1000 farmer suicides every year. Indebtedness has featured as the primary cause of suicide by farmers in various studies (Iyer & Manick, 2000; Singh, 2014). This, even though Punjab has both institutional and non-institutional sources of finance available for farmers.

One feature of the non-institutional credit market in Punjab is that it is interlinked with the output market (Gill, 2004). The *arhtiya* or commission agent charges exorbitant interest rates and takes crops as collateral which is procedurally easy for farmers when compared with the complex procedures of getting institutional credit. This is not to say that an increase in institutional credit can miraculously help in solving the debt crisis. In the 2017 farm loan waiver scheme, it was the institutional debt of farmers which was waived off by the Government. It has also been found that the ceremonial expenditure and other forms of conspicuous consumption aggravates the debt crisis of farmers in Punjab.

The lack of innovative interventions by the state and the market and is a discussion for elsewhere but in this paper, there is an attempt to diagnose the problem of rural indebtedness, treat it as a given problem and explore different institutions which can possibly help in solving this problem. Politics as a conduit has always been employed in India to treat the indebtedness issue via loan waivers. This method charges up emotions of the countryside and brings about some temporary help at the cost of many other things. It will be seen that law has rarely been invoked to solve the indebtedness problem of distressed farmers in Punjab as well as India. The lack of institutional mechanisms like bankruptcy and debt relief laws gives way to the ‘politics of debt’ which is, in turn, bridges the gap left by institutional failure in the agricultural sector of the country. The reference here is to agricultural policies which have neglected agriculture to the point where now the only shortcut remains is stopgaps like debt waiver schemes. As a large proportion of the population is still involved in the agriculture sector, loan waivers become a good bargain with politicians, but they only come once or twice in form of electoral promises. The will for permanent legal institutions for bankruptcy is absent in rural India and because of this there continues to be a steep rise in the number of farmers’ suicides.

Can law work as a better institution concerning the debt problem of farmers in the country? It is this question that this paper would explore further. The paper is organised in the following manner: the first section explores why ‘debt relief’ is a must in situations of acute economic distress. In the next section, the paper tries to evaluate what has been the early impact of the 2017 loan waiver in Punjab followed by the constitutional provisions surrounding agricultural debt relief in India and the Punjab’s statute on debt relief. The rest of the paper then delves into the issue of how law can be made more effective in dealing with agricultural debt. Finally, the paper concludes on a normative note by trying to build a case for a model agricultural bankruptcy law by suggesting some of the provisions that need to be included in such a law.

Debt Overhang and Case for Providing ‘Fresh Start’ to Distressed Borrowers

The problem of debt overhang was first discussed by Myers (1977) in corporate finance and in the context of international debt by Sachs (1989). Further extensions have been made in the case of sovereign debt by Krugman (1988) and Bulow and Rogoff (1988). The central point that runs through these studies involves striking an agreement between creditors and debtors which minimises the loss for both parties when the debtors become incapable of repayment. If the debt is unreasonably high, debt reduction becomes necessary to lift households out of the debt trap. It is deterioration in economic performance which usually leads to indebtedness. In addition to the problem of debt overhang, the literature also connects debt with poverty. The poverty trap model of credit market by Banerjee (2004) claims that a high level of household debt increases the debt servicing burden and if income net of debt service is insufficient to cover investment in physical and human capital will cause indebted households to remain underproductive. The theory of debt overhang (Myers, 1977; Ghosh, Mookherjee and Ray, 2000) emphasises the disincentives caused by indebtedness and low level of investment as the debt burden is too high and proceeds that could go in for investment are largely transferred towards debt service. The twin problem of low productivity and investment leaves the household in a perpetual debt and poverty trap.

Bulow and Rogoff (1989) suggest that bad luck and other exogenous shock factors result in debt contracts going dishonoured. Bolton and Rosenthal (2002) have developed a dynamic general equilibrium model of an agricultural economy where poor farmers borrow from the rich. After allowing for aggregate shocks, an ex-post default is probable. They compare equilibria with and without political intervention in the form of the moratorium. They conclude that when bad economic shocks are highly likely, state-contingent moratoria on debt always improves ex-post efficiency. While analysing political institutions, the authors also state the limitations of moratoria. Moratoria have adverse selection problems because a farmer's level of production is a piece of private information, and even farmers who are not in financial distress may not choose to repay during a moratorium. Institutions that reduce adverse selection problems are required. Individual debtors should apply to an independent authority, say a bankruptcy court. The bankruptcy court would be able to learn with cost, the type of debtor and the macroeconomic shock. Repayments can thus be adjusted to accommodate macroeconomic shocks. On the other hand, a blanket waiver or a bailout cannot screen out genuine defaults. What also makes bankruptcy or arbitration superior to bailouts in providing debt relief is that the law is permanent, and bailouts are temporary. The only issue with making bankruptcy procedures effective and efficient is the transaction cost. Especially, when talking about small and marginal farmers, the state should develop such debt relief institutions which minimise the cost of going through the bankruptcy procedure as they can be burdensome and elaborate, requiring specialised knowledge and expertise entailing not only transaction cost but also information costs as small and marginal farmers find it difficult to know about such mechanisms. Even if they have some knowledge, it is difficult for them to start such a formal procedure.

On the issue of debt relief by political intervention, historical evidence reveals that when the number of defaults is large, political pressure builds to introduce some form of relief for the unfortunate. This relief can be in the form of subsidies, government guarantees on new loans, new government loans, bailouts and finally a debt moratorium. There seems ample evidence for relief coming from government intervention in debt contracts but at the same time, ineffective targeting of such interventions may distort the market in the long run. Especially, in the case of developing countries, where there is enough evidence of political capture of state-owned banks (Dinc, 2005). Bell (1990) warns about the treatment of agricultural credit as government grants in the Indian countryside, as politicians promise to forgive the loans once voted to power. Thus, there is a possibility of politically motivated government interventions in credit markets with no regard for economic prudence. In all, ex-post transfers of resources like debt forgiveness, and moratoria from creditors to debtors may improve welfare in certain cases but these are highly subject to mediation in the political processes (Mian, Sufi and Trebbi, 2014). There is a case for providing debt relief to distressed borrowers and in a modern welfare state like India, it becomes imperative on part of the government to provide safety nets to the marginalised. Such safeguard policies need to be freed from political cycles and be made permanent in the form of law. There is a need for giving a 'fresh start' to the genuinely distressed borrower. Sachs (2002) states the fresh start principle as the motivation for individual bankruptcy laws. The instrumentality of fresh start discharges the debt, which frees the debtor with some exempt assets and with a future income stream. Fresh start offers both, equity and efficiency as the creditors' claims are superseded by interest and autonomy of an individual debtor vis-à-vis the creditor. Under any circumstances, the debtor is not reduced to servitude. Flint (1991) states the importance of discharge in American Bankruptcy Law. Discharge of existing debts places the consumer on an economic treadmill again and helps restore his or her social esteem. The need to forgive the debtor and discharge him of crushing debt garners moral justification in the law which dates back to merciful debt relief norms in ancient Hebrew and Roman law (Kilborn, 2003). In the 1980s, the U.S. passed a specific bankruptcy bill for farmers facing acute indebtedness which is called Chapter 12th bankruptcy. India also came up with its first comprehensive bankruptcy law-the Insolvency and Bankruptcy Code in 2016 but which only deals with corporate debt. However, its provisions for individual bankruptcy will take a long time to become popular, especially among farmers.

While discussing the debt overhang problem and methods to provide debt relief, it is also important to look at the severity of agricultural indebtedness in Punjab. In April 2017, Punjab Government instituted a four-member panel headed by Economist T Haque to estimate the agricultural debt of Punjab farmers and suggest ways and means to implement the loan waiver. It estimated the total debt of Punjab farmers to be INR 1209 billion of which about INR 738 billion belonged to institutional sources and the rest, INR 471 billion, belonged to non-institutional sources of finance. The NSSO's 77th Round Situation Assessment Survey of Agricultural Households (2019) shows that Punjab had the third-highest average amount of outstanding loan amongst all states in India after Andhra Pradesh and Kerala. It estimated 54.4% of the total 1.467 million agricultural households in the state were indebted with an average amount of outstanding loans standing at around INR 200 thousand. In their study of agricultural indebtedness in Punjab, Singh, Bhogal and Singh (2014) find severe levels of debt and find the amount of debt per hectare to be inversely related to farm size. It was found that 89% of the marginal and 91% of the small farmers were in debt. The debt of marginal and small farmers is much more than their annual income. Overall, about 88 per cent of the farmers in the state are estimated to be indebted and out of this the most vulnerable are the marginal farmers who have negative debt service capacity relative to their income. In such a scenario, a one-time bailout or loan waiver may be unable to offer anything in the long run. In the next section, a summary of the 2017 loan waiver and its performance so far has been discussed.

The 2017 Farm Loan Waiver in Punjab: Intent and Issues

The then elected government after March 2017 Assembly Polls came riding on its poll promise of entire crop loan waiver of small and marginal farmers (up to 5 hectares of ownership) having loans up to INR 200 thousand and also a relief of INR 200 thousand to the remaining marginal farmers irrespective of the amount of loan. In totality, the scheme was supposed to benefit 1.025 million farmers with a total cost of INR 100 billion to the state government. This scheme was launched first in Mansa district in January 2018 and till August 2019, in four phases a total of 0.562 million farmers had been provided relief of INR 47 billion. In December 2022, right before Assembly elections in the state, the same government now headed by a different Chief Minister announced an additional INR 12 billion under the existing debt waiver scheme to benefit more small and marginal farmers.[5] This confirms how the intended debt relief often moves with political cycles.

In a comprehensive study by NABARD and Bharat Krishak Samaj (2022) that covers three thousand farmers from Punjab, Maharashtra and Uttar Pradesh, the efficacy of loan waivers has been studied. In Punjab's case, the study shows that farmers take loans from both institutional and non-institutional sources where the proportion of loans taken from the former exceed the latter. The interest rates on non-institutional loans are often in double digits and twice as high as those of the institutional sources. Predictably, there is also an inevitable diversion of crop credit to consumption and non-agricultural purposes due to the cyclic nature of agricultural income. However, the most important finding of the study is that in Punjab, where more than sixty per cent of the distressed small and marginal farmers did not receive farm loan waiver benefits of the 2017 scheme. With these preliminary findings ex-post, the loan waiver implementation becomes an example of an adverse selection problem where a large number of beneficiaries might have been missed from obtaining debt relief.

Apart from this, the perception amongst the farmers about farm loan waivers is not very positive as they feel it only benefits a few and leaves the rest. They view unstable incomes and crop damage due to climate change as reasons for distress other than indebtedness. The loan waivers as a long-term solution for indebtedness have also not been able to reduce the menace of farmers' suicides amongst marginal and landless tenant farmers.[6] Farmers also feel that government should find a way to waive off or clear non-institutional loans as well. The study also finds that there is reduced capital expenditure by governments and reduced lending by financial institutions in the year the farm loan waiver was implemented. More so, it worsens the credit discipline in the medium to long run for the debtors. Broadly summarising, loan waivers as a one-time solution to a persistent problem of indebtedness, have hardly had any meaningful impact on distressed borrowers. There is a need to deal with distressed borrowers, especially vulnerable marginal and small farmers with objective and targeted laws and policies so that the intent of debt relief reaches the people who are most in need. In the next section, we shall see the existing legal framework around agricultural indebtedness in India and particularly in Punjab.

Constitutional and Legal framework for Agricultural Indebtedness in India, and the Punjab Settlement of Agricultural Indebtedness Act, 2016

The power to promulgate laws on moneylending, moneylenders and agricultural indebtedness lies with the state government as per entry 30 of List II in the

Seventh Schedule of the Constitution, whereas Banking is entry 45 of the list I and comes under the purview of Central Government. There have been many laws from the British colonial period which regulate interest rates like the Usurious Loans Act, 1918. There are also many debt relief laws in states from the pre-independence era but their implementation has largely remained unpopular. Moreover, there had been a bone of contention between the central government and state governments over section 21A of the Banking Regulation Act, 1949 which prohibits courts to reopen the cases of excessive interest rates being charged from borrowers by the banks. In February 2018, the Supreme Court upheld Section 21A but with a condition that it will not apply to states where state specific debt relief laws are in force. This harmonisation of entry 30 of the state list and entry 45 of the union list was much required to let the states regulate the excesses of institutional credit. However, as we shall see, the pre-independence era laws of debt relief have hardly been evoked to provide relief to distressed farmers.

In our example of Punjab, the current debt relief law which deals with non-institutional credit is The Punjab Settlement of Agricultural Indebtedness Act, 2016. It repealed the pre-independence The Punjab Relief from Indebtedness Act, 1934. The Punjab Relief from Indebtedness Act, 1934 along with The Punjab Debtors Protection Act, 1936, The Punjab Registration of Money Lenders' Act, 1938 and The Punjab Restitution of Mortgaged Lands Act, 1938 were popularly known as Chhotu Ram's Laws. Sir Chhotu Ram was a farmers' leader and later a Minister in the Unionist government of Punjab Province who worked tirelessly to overhaul the regressive and usurious practices of money lending in pre-partition Punjab.

The 2016 Act was passed by the then Government in response to rising farmers' protests across the state after the whitefly attack on cotton in late 2015. This Act was further amended by the next then Government in August 2018. The Punjab Relief from Indebtedness Act, 1934 had not only placed a ceiling on the rate of interest for secured and unsecured loans but also provided for the setting up of Debt Conciliation Boards. The Punjab Settlement of Agricultural Indebtedness Act, 2016 was passed to carry out the provisions of its predecessor and sought to establish District Debt Settlement Forums in all the 22 districts of the state. The Forum was supposed to have three members. The Chairman of the forum was supposed to be a retired district or sessions judge. The other two members included one representing the farming community and the other from creditors who provide agricultural loans. This law has been amended again in August 2018 and the District Forums have now been replaced by Divisional Debt Settlement Forums by reducing their number from 22 to 5. In the Indian administrative set up, about 4 to 5 districts constitute one division. So, the earlier law which provided a more decentralised mode of relief at district level has been replaced with a more hierarchical institution at the division level Thus the Punjab Settlement of Agricultural Indebtedness 2016, had 22 forums and the same act has been amended in 2018 to reduce the forums to 5. The Chairman of the new forum will be the Divisional Commissioner. There will be two ex-officio members from the agriculture and revenue departments. It is believed that due to salary constraints of the Commission Chairman, the government did not receive many applications from retired judges and hence had to move these amendments. On 7th October 2018, the Punjab Government finally notified the provisions of The Punjab Settlement of Agricultural Indebtedness (Amendment) Act, 2018.

The colonial laws passed on the insistence of farmer leader Chhotu Ram in the 1930s have hardly been evoked and remained unused in the post-1947 Punjab and what the 2016 legislation does is just reproduce the same language of the predecessor laws (Kaur, 2016). What is even more surprising is that the Forums are nothing but a way to implement the provisions of the Debt Conciliation Board which has been there for around 84 years now. There is evidence of the boards working regularly in pre-independence time especially during the rule of Unionist government as Sir Chhotu Ram was himself the Revenue Minister from 1937 till his death in 1945, on whose insistence this law was passed. However, there is little evidence to show their efficient working in post-independence times, especially in last few decades. The state has been practically existing without any debt settlement forum for the farmers yet the debt relief laws continue to be placed on the statute books. Non-implementation of law as a topic for study has also acquired traction in recent times, especially in the field of law and economics where the question on why some laws are better implemented than others has been addressed by Basu (2018) by ‘focal point’ approach to law in which law commands or recommends individuals to coordinate around a particular solution to make one equilibrium ‘focal’. The failure to create such a focal point in the case of Punjab’s debt relief legislation can be attributed to reasons like lack of political and bureaucratic will, lack of resources and institutional structure, lack of expertise to implement a law at grassroot level, overburdened state apparatus, lack of awareness amongst the beneficiaries of law and many other politico-legal and socio-economic challenges.

As per the provisions of The Punjab Settlement of Agricultural Indebtedness Act, 2016, the debtors or the creditors can apply to the Forum within whose jurisdiction, the debtor lives and holds land to determine and settle the debt between the debtors and his creditor(s). The upper limit for the debts that can be presented for settlement in front of the Forum is fixed at INR 15 lakhs. The debtors need to present the following in his application - the place where he holds land, particulars of claims against him together with names and residences of his creditors, a statement on grounds for application and relief claimed, a statement that his debt does not exceed INR 15 lakhs and also a statement whether he has previously filed an application in respect of the same debt before the Forum and its outcome. The creditors need to file details of the debtor’s place of residence and land, particulars of claim against the debtor and a statement on grounds for application and relief claimed. The Forum was bound to decide on every application within three months from the date of application. If the debtor is found to have paid the creditor and amount equal to or exceeding double the principal amount, the Forum shall declare the debt as fully discharged and the property that was pledged or mortgaged by him/her shall stand released. The

Forum needs to keep in view the outstanding amount of principal and interest and the paying capacity of the debtor and pass an order regarding repayment of the amount of debt by settlements or instalments as it may deem fit. This Act provides for the establishment of the Punjab Agricultural Debt Settlement Tribunal as the next authority for appeal whose members include a retired Judge of the High Court as the Chairman and two other eminent persons having experience in the field of social sciences, finance, agriculture, banking and civil service. A person aggrieved by an order of the Forum may file an appeal with the Tribunal within sixty days from the date of receipt of the copy of the order. Any person who is aggrieved by the order of the Tribunal may file an appeal in the High Court within sixty days from the date of receipt of the copy of the order from the Tribunal. The law exclusively deals with non-institutional sources of finance and excludes banks and cooperative societies from its purview. The law puts no ceiling on the interest rate charged by the moneylender but states that the interest rate will be decided each year as per Section 4, based on the interest rate charged by banks at that time. On September 6, 2016, the state government notified the interest rate as the sum of the extant base lending rate of the State Bank of India plus the lending rate to NABRAD to the cooperative societies (Sidhu, 2021). The law also decides the maximum amount of credit that can be disbursed by the creditors to farmers on a per-acre basis.

The new law which was finally implemented in the state for setting up of Divisional Debt Settlement Forums deals only with non-institutional debts, but it is the institutional debt which was waived off by the loan waiver. The government's official spokesperson says that there are other laws which regulate institutional credit. Had that been the case, why did the debt problem balloon into what the farmers were currently witnessing? By transferring the power of arbitration to the Executive, which is already burdened with administrative functions, the provisions of Punjab's debt relief law make the Forum appear weak. Moreover, there is no farmer representation on the Forum and by reducing the number of Forums from 22 to 5, the transaction cost of arbitration has also increased in terms of geographical distance, time, money, and other adjudicating costs. The only silver lining was that after almost eight decades of the passage of the state's debt relief law, Punjab saw a debt relief body for farmers. But this expectation proved to be over-optimistic as there is no data so far in the public domain as to how many cases have been decided by the Divisional Forums. A close estimate of decisions would be in double digits as the non-institutional lender (*arhtiya)* rarely allows the loan to go bad (Sidhu, 2021) because he can deduct the principal and interest rate from the payment of farmers' produce due to the interlocked nature of credit and output markets.

In the next section, a comparison has been done with other jurisdictions where debt relief laws have shown positive results and also what necessary provisions a model agricultural debt relief legislation should carry.

The Way Forward for Farmers' Debt Treatment

It is pertinent to look at the debt relief law of Kerala and worth considering what lessons can be learned from the Kerala legislation. The Kerala Farmers' Debt Relief Commission Act, 2006 proved to be an efficient debt relief remedy for farmers in the State (Mohan, 2018). This law provided for constituting a Commission under the name "Kerala State Farmers' Debt Relief Commission". The Commission includes seven members with a retired High Court Judge as the Chairman, a cooperative societies expert, an agricultural expert and four farmer representatives. The Commission deals with debts payable to institutional creditors or to the cooperative society and also any sum borrowed by the farmer from informal creditors and hence like the Punjab law, does not omit the institutional debt from its ambit. The Commission also has the power to declare an area as 'distress affected area' or 'distress affected crop'. This Act was a result of rising farmers' suicides in the state in the late 1990s and early 2000s. The preamble of the Act first admits the problem of farmer indebtedness and due to this financial distress, many farmers' lives were ruined which in some cases forced them to commit suicide. It further says that it is expedient to provide relief to indebted farmers by constituting a Commission with the power to pass awards after adjudication and also recommends measures to solve grievances of farmers through conciliation and negotiations. In the case of non-institutional creditors, the Commission can fix a fair interest and an appropriate level of debt to be payable by a farmer in a distressed affected area or crop declared as distress affected by the Commission. It can undertake conciliation for the settlement of disputes between indebted farmers and non-institutional creditors. It can also negotiate with the same category of creditors for a loan waiver, interest rate relief, loan rescheduling or loan moratorium to farmers and also recommend to the government regarding the extent and how the debt relief is to be granted to the farmers. In this manner, the Commission assumes significant powers and as a statutory body can negotiate with various creditors at a better scale. The Commission can also reschedule the loans taken by a farmer from financial institutions if the area is categorised as distressed. The Commission can waive off the debt up to seventy-five per cent in case the total amount of debt is less than INR 50,000, and up to 50 per cent if the total debt is between INR 50,000 and INR 1 lakh. The debts are deemed to be fully repaid if a farmer has repaid the principal amount taken as a loan by him and an amount equal to it to the creditor other than the institutional creditors. The law however applies to loans taken before the year 2007 and keeping in mind the agrarian distress, the cut-off date has been revised for particular districts. The Commission was set up in January 2007 with an initial budget of INR 1.3 billion and began hearing 2000 cases a month since then. It received 4,40,801 applications up until January 2018 and is said to have curbed the menace of farmers' suicides in the state. Despite its success, the Commission has so far restricted its dealings with cooperative banks and societies. Even though the Act provides for powers to deal with the informal moneylenders it has not described the detailed procedure for dealing with them. Also, the time taken and often delay in settling the disputes is sometimes termed as one of the drawbacks of the Commission. However, the positives outweigh the shortcomings in the overall working of the Commission.

If a comparison is to be done between the Punjab debt relief law and the Kerala debt relief law, undoubtedly Kerala has provisions worth emulating in other states. Recently, the Rajasthan government has also studied the Kerala debt relief model and has gone ahead to pass a similar legislation in August 2023[7]. Broadly, there are several provisions which make the Kerala debt relief remedy superior to say a law like in Punjab. Firstly, the Commission is a dedicated body with vast powers to deal with farmer indebtedness in the state. It has the power to declare an area as distress affected or a crop as distress affected. Acknowledging the problem honestly in the early stages can help in solving the problem more efficiently. Secondly, the Commission has the mandate to deal with both institutional and non-institutional debts. Finally, in the case of Kerala, the farmer body is adequately represented with four members out of seven. It is only appropriate that parties whose interest is at stake need broader representation in such forums.

The passage of the Insolvency and Bankruptcy Code (IBC), 2016 by the Central Government was hailed as one of the most significant economic reforms as it devises the first comprehensive law for bankruptcy in India. Though it is largely seen in the context of solving corporate bankruptcies, the fresh start principle stated in Part III of the code for individual bankruptcies can become a game-changer if all the sectors of the Indian economy get properly integrated with the new bankruptcy regime. The individual bankruptcy provisions of IBC can be used by farmers and small shopkeepers. The provisions for individual bankruptcy under the IBC have not been notified yet and also some asset and income thresholds need to be revised for its successful implementation. The code in part III introduces the concept of *the fresh start* principle in Indian Bankruptcy law. However, the individual bankruptcy chapter in the IBC seems to have many impractical clauses and thresholds for an individual to obtain relief under IBC. The fresh start process under Chapter II of Part III of IBC lays down eligibility criteria for debtors to file an application. Section 80(2) lays down INR 60000 as the limit for gross income of the debtor and INR 35000 as the aggregate value of the qualifying debts for the insolvency mechanism under fresh start. The code provides for an interim moratorium from the date of the application to the debtor. The interim moratorium period stays any legal proceedings pending in the debtor's respect and also restricts the creditor's initiation of legal proceedings against the debtor. As per section 92 of the code, the Adjudicating Authority shall pass a discharge order at the end of the moratorium period for the discharge of the debtor from the qualifying debts as prepared by the resolution professional. However, the contention is that threshold limits which might need a revision to make it a Pan-India individual bankruptcy law.

However, since the passage of IBC in 2016, its performance so far has been adjudged as mixed. In some cases, banks are giving discounts and accepting a reduction in the amount of the loans owed to them as high as 94 per cent of the original amount (Dalal, 2021). At the same time in certain cases, the recovery as well as resolution of stressed corporates have also been successful compared to the pre-IBC regime. Banks have written off INR 1.53 trillion worth of loans in FY21 and INR 1.45 trillion in FY2020 (ibid.). The One Time Settlement

(OTS) provision is supposedly letting the defaulters to force banks in reducing the amount payable to banks in the first place. A parliamentary panel in 2021 also cautioned the government over these humongous write-offs which are ultimately borne by taxpayers' money in the form of recapitalisation. As per Insolvency and Bankruptcy Board of India, in 363 major National Company Law Tribunal (NCLT) resolutions since 2017, banks have taken a cut of 80 per cent. Now, the question is, even after providing working institutions and a legal framework to provide corporate debt resolution, there are still huge losses that the banks are eventually bearing. This answer to this situation can be located in the philosophy of a bankruptcy law like the IBC. The aim of the IBC, as also interpreted by the Supreme Court of India in a 2022 judgement[8] is to bring corporate debtors back on to their feet. Its objective is resolution of sustainability of businesses and not the recovery of money for banks. Now, when the objective of a law is debtor's welfare, the question of honouring debt contracts with the banks takes a back seat. If such a philosophy can be integrated into state-specific agricultural indebtedness laws which mostly lie inoperative, the question of farm debt relief can be freed from electoral quagmires. The important question of who will bear the cost of such resolutions and reliefs is bound to come up if the bankruptcy laws keep debtor's welfare at heart. Yet, if the question of farm debt relief is to be addressed, such a procedure will comparatively cost lesser than the temporary farm loan waivers which put elaborate fiscal pressures on the government. The issue of farm debt relief is often conflated by the issue of jurisdiction over laws, as agriculture and rural indebtedness is a State subject, whereas insolvency and bankruptcy comes under the Concurrent list and banking comes under the Union list under the Seventh Schedule of the Indian Constitution. This there is an urgent need to rethink the institutional set up around agricultural debt relief and to make it work in a manner that there is fast and effective debt relief to genuinely distressed borrowers.

In the case of Punjab, it is observed that there has not been a properly functioning debt relief body in place since independence even after 8 decades of Chhotu Ram's laws. The process of agricultural debt settlement is yet to start in a formalised manner. More so, the amended law of 2018 to institute Divisional Debt Relief Forums does not promise a bright future for agricultural bankruptcy in the state. The Forums should identify the distressed areas and crops on the lines of Kerala Debt Relief law and incorporate the fresh start principle as per IBC to provide relief to the distressed farmers. The NITI Aayog's report on the situation of agriculture in Punjab (NITI Aayog, 2016) also stresses the need for legal support through legislative measures for debt determination and settlements of farmers' debts in the state. In this respect, *a model law* with the following provisions can make the debt relief process more comprehensive in the state:

I. The State Government should set up a permanent, dedicated and adequately funded Debt Relief Commission or Forum at the district levels.

II. The Debt Relief Forum should have an adequate representation of farmers.

III. The Debt Relief Forum should deal with both institutional and non-institutional debts.

IV. The Commission should have the power to declare a particular area or crop under distress, depending on weather conditions, pest or disease attacks and other *force majeure* events.

V. The Commission can admit applications from borrowers who have borrowed up to INR 2 lakh or less (2017 loan waiver scheme threshold amount) with landholding eligibility criteria for marginal and small farmers. The law should also accommodate landless tenant farmers who are more susceptible to uncertain vagaries of agriculture with some limits defined for debt thresholds.

VI. Upon assessment of the application, the commission may declare a moratorium on debt for one or two seasons and ask the applicant to pay when his cash flows turn positive.

VII. The Forum must have the power to check usury and try to keep informal credit interest rates at par with formal credit and declare debts as usurious if found upon assessment of the application.

VIII. In case of acute distress, the forum may waive off a percentage of the loan, say to the tune of 25%-50% and provide a moratorium for rest. In this case, it is important to put effective screening mechanisms in place.

IX. In case provision V is not met by the farmer, still allow the farmer to file for bankruptcy upon scrutiny of application and provide settlement of debt by a resolution between borrower and creditor. But there needs to be an assurance that some reasonable upper limit is set so that willful defaulters do not take advantage of this provision.

X. Set up a compensation board for families of farmers who have committed suicide due to agricultural indebtedness and provide rehabilitation mechanisms for the distressed families by working with civil society, NGOs and other local support institutions. The commission can also set up debt counselling helplines to guide the farmers.

These are some broad suggestions which can make the already existing debt relief law in Punjab meaningful in providing debt relief to farmers. However, this needs dedicated funding and manpower to solve indebtedness at a large scale in its nascent stages. Even if the debt relief Forum begins with a quarter of the budget of the loan waiver scheme which works out to be INR 25 billion, it can solve many problems plaguing the farmers with respect to indebtedness. The problem of adverse selection that arises with a blanket debt waiver can be solved by scrutiny of individual applications as the debt relief agency can differentiate between genuine defaulters and wilful defaulters. This kind of intervention in debt contracts makes the process of debt relief permanent for farmers. The transaction cost of getting relief by law should be made minimum for the farmers as it should not involve too many bureaucratic hurdles. Farmers should be able to file applications on their own and the sittings of debt relief Forums should be made regular so that backlogs do not emerge. It is only with the effective will of the government that debt relief mechanisms with legal backing can be provided to vulnerable farmers. Along with the debt relief mechanism, there is a long queue of structural issues in agriculture waiting to be solved. Small landholdings, declining productivity, environmental degradation, and the need for crop diversification are some issues in Punjab that need to be thoroughly addressed. The culture of extravagance and high expenditure on marriages and ceremonies also needs to be discouraged if the farmers are to be stopped from falling into debt trap. This requires the engagement of citizens, civil society, farmers' unions, religious institutions, and government at every level.

Conclusion

Dealing with agricultural indebtedness through political measures like loan waivers is a costly affair as demonstrated by Punjab's case. Almost all agricultural experts echo the view that farming needs a complete overhaul and needs to play a more productive role in the country. But this change must be accompanied by developing institutions which provide safeguards to farmers and makes the profession more secure. A sense of permanence will only prevail with creation of a legal institutional mechanism for debt relief when it comes to agricultural indebtedness. This would also avert many suicides which have already been wreaking havoc on many families in the state. Agricultural debt resolution should be quick and cheap, and it is only with government's endeavours that we can expect the agricultural debt relief landscape in Punjab and in India as a whole to change.

Notes

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[1] The now repealed three farm laws are namely, The Farmers' Produce Trade and Commerce (Promotion and Facilitation Act, 2020; The Farmers' (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020 and The Essential Commodities (Amendment) Act. They intended to change the agricultural marketing landscape to allow them to sell outside APMCs, provide for contract farming and remove restrictions on storage of essential food commodities like pulses, food grains, edible oils etc.
[2] This means end of farm debt and confiscation of land along with remunerative prices for agricultural produce.
[3] The revenue and fiscal position of Punjab have been deteriorating over the years. Punjab's *Economic Survey* (2016-17) admitted that Punjab is facing its worst financial crisis as a result of poor fiscal management by the previous State Government. The industrial sector is growing at a slower rate when compared with the national economy and other states. The agriculture sector is also facing its worst crisis due to a near-stagnation in productivity and growth and heavy indebtedness.
[4] Clash of stats over Punjab farm suicides. (2018, 22nd March). *The Times of India*. Retrieved from www.thetimesofindia.indiatimes.com

[5] Punjab Government to release Rs 1200 crore to clear loans of farmers under debt waiver scheme (2021, December 23rd). *The Economic Times.* Retrieved from https://economictimes.indiatimes.com/
[6] 14 Farmers' Suicides in April: Farmers Up in Arms Against AAP Govt. (2022, April 25th). *The Pioneer.* Retrieved from www.thedailypioneer.com
[7] Bill Passed to Help Farmers with Debt Relief.(2023, August 3rd). The Times of India. www.timesofindia.indiatimes.com
[8] Insolvency and Bankruptcy Code is Not for Money Recovery Proceedings: Supreme Court Reiterates (April 22nd, 2023). Retrieved from www.livelaw.in

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