

WEAKNESSES IN THE PAWNBROKING  
LEGISLATION AND MALPRACTICES THAT ACCRUE

by

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The main purpose of this working paper is to study some weaknesses of the pawnbroking legislation and to examine carefully the malpractices which occur within the pawnbroking system in Malaysia. We will also try to focus on the rights of pawners which for so long has neither been fully recognised nor stressed upon by pawners as well as pawnbrokers and other concerned parties. In conforming with the theme and objective of this seminar, I shall highlight some aspects of our findings from a study that was conducted on pawnshop customers in five states in Peninsular Malaysia<sup>1</sup>. In this study, interviews were carried out on 1,587 pawnshop customers who visit the pawnshops either to pawn or to redeem their pledges. Up to late 1986, there were 185 pawnbroking shops in the country. These licensed pawnbroking shops or pawnshops as they are commonly called, have become an integral part to unorganised credit market in Malaysia. Unlike organised financial institutions they provide easy credit by giving advances of ready cash to persons who pledge goods in security off payment. The pledges which are mainly gold and jewellery are held as collateral until the period of redemption expires. When redeeming the pledges, the pawner is required to pay a two per cent monthly interest. However, the maximum loan is limited to \$5,000. For loans exceeding this amount, a moneylender's licence must be obtained.

The fundamental attractions in the informality of obtaining cash by pawning personal effects which are not acceptable as security in other forms of borrowing have made pawnbrokers indispensable as moneylenders especially to the poor. It is therefore not surprising that pawnshops in this country are regarded as the "poor man's bank". Borrowers who frequent them often have nowhere else to go for immediate financial help. The

24 per cent annual interest rate coupled with malpractices that are quite evident in the Malaysian pawnbroking trade do not seem to deter pawners, although this seems to be a costly form of credit especially for the unfortunate borrower who has to make ends meet.

Let us now reconnoitre the history of pawnbroking in this country and the legislation that have come into force. This would perhaps enable us to understand the weaknesses that are inherent within the pawnbroking legislation. Regrettably there is at present not much literature on the growth and development of the pawnbroking business in Malaysia. Tracing back the dates of the pawnbroking enactments in each state that have come into force I believe that pawnbrokers started to become important creditors since late 19th century. The Chinese who have migrated to Larut were reaping lucrative profits from tin mining and thus began to reinvest part of their savings by giving loans. Hence, pawnbroking operations began expanding and this required a system of rules to facilitate their running.

Presently, pawnbrokers in Malaysia are subjected to the Pawnbrokers Act 1972 (Revised) which repealed 9 previous enactment and ordinances. The development of legislation were however not uniform for the entire nation. This was because the component states in the beginning did not exist as a Federation but as separate states or states. The enactment and ordinances that were repealed by the Pawnbrokers Act 1972 were enactment for different states, namely, Johore, Kedah, Terengganu, Perlis, Kelantan and the Federated Malay States (Perak, Selangor, Negeri Sembilan).

and Pahang) and the ordinances were for the Straits Settlements (Pulau Pinang, Melaka and Singapore), Sabah and Sarawak.

Regulations and administrative procedures underlined in the 1972 Act were brought into effect on January 1973, bringing pawnbroking operations under tighter control in the interest of consumers. However to facilitate the enforcement of these regulations, this Act was amended 5 times within the period of 10 years since 1973. But even with this numerous amendments, there are still complaints from many people who were dissatisfied with the way in which the pawnbroking business was carried out. This was evident from the local newspapers and also complaints that were made to the government officers concerned from time to time. Formal action however, are not being taken against these errant pawnbrokers due to the lack of clear evidence. In the absence of clear measures and telling efforts towards improving the pawnbroking system in this country, malpractices are bound to continue. This problem cannot be dismissed lightly nor discarded as a minor problem, especially when many of the pawnshop clientele are composed of the poor and also the less educated as is evident in the outcome of our study (refer to Table 1 and 2).

The persons who are the backbone of profitability in the pawnbroking business are customers whose earning falls below \$500. As can be seen from Table 1, 82.4 per cent of the pawnshop clientele earns less than \$500. Apart from the low income level, the majority of pawners especially those from the rural areas have large families to support. A large percentage of pawners, however, are in the income range of \$251 - \$500.

This accounts for the fact that although pawners are generally poor (poverty line is estimated to be \$380<sup>2</sup>), their income must be sufficient enough to enable them to redeem their pledges, which may be the only few tangible assets kept in the family as a hedge for future unforeseen financial difficulties.

Given the difficulty in obtaining credit from other organised financial institution, this group has become rather dependent on the loan facilities which are provided by pawnbrokers. It is unfortunate that some of the regulations outlined in the 1972 Pawnbrokers Act (Revised) were not fully implemented and little genuine effort are made towards minimising discrepancies between the law and what is actually in practice. To aggravate matters, the Pawnbrokers Act itself has its flaws and loopholes which invariably provide more opportunities for further deviations and malpractices to occur.

Table 1

INCOME LEVELS OF PAWNERS

Monthly Income (\$)	Percentage
<250	28.4
251-500	54.0
501-750	13.3
751-1000	2.4
1000-1500	1.4
>1500	0.5

Table 2

LEVEL OF EDUCATION OF PAWNERS

Education	Percentage
No education	14.8
Primary	46.5
Secondary	37.4
Tertiary	1.3

Some common deviations and malpractices occurring within the pawnbroking trades are discussed below.

1. Interest rate

The interest rate stipulated in the Pawnbrokers Act, 1972 (Revised) is 2% a month. For example, if a customer had pawned an item for the sum of \$100 then at the expiration of 6 months from the date of pawning, the total interest rate payable would be \$12. Therefore the pawner would have to pay a total sum of \$112 to redeem his pledge.

The results of our study showed that only 78.8% of the customers were charged an interest rate of 2% which implies that there are pawnbrokers who did not adhere to the regulation as stipulated in the Act.<sup>3</sup> Such exploitative interest rate is made possible partly due to lack of initiative on the part of pawners themselves to understand

their rights. From our interviews, we found customers who were actually ignorant of this fixed interest rate even though this is stated at the back of the receipts. Subsequently more often than not these unwary customers are the ones who become victims of exorbitant interest rates charged by their lenders. Hence, consumer attitude inadvertently encourages such deviations to occur.

Referring to the earlier example, suppose the pawnbroker now imposes a redemption fee of \$15 and not \$12. This would imply an effective interest rate of 2.5%, but for the customer who is in dire need of money, the extra \$3 would seem unimportant and something not to be disputed. However if one is to reflect carefully, the extra 0.5% would in fact constitute an increase of 25% of the fixed interest rate making it quite a significant amount.

From our study we found that interest are sometimes charged at exorbitant rates of 9%, 10% and 13%. Again many customers were caught unaware because in most cases these rates were charged for short pledges of one or two months.

The low education level ( Table 2 depicts 46.5% pawnshop customers receive only primary education ) has also made it difficult for many pawnshop customers to calculate the interest rates themselves and the rate of 3% or 3.5% seldom create suspicion on their part.

## 2. Damage and loss

63.7% of those interviewed stated that items which are redeemed were found to be damaged or abraded. The owners of the pledges, though

able to identify the damage could not measure the amount of damage done. This is because there are no provisions in the pawnbrokers regulation to clarify and state the weight/measure of articles pawned in the receipt which was provided. The legislation should in fact specify that standard weighing apparatus be used by these pawnbrokers besides enabling the customers themselves to see the weights being assessed. Futhermore there are some pawnbrokers who value the pawned items only by estimation, which in most cases is based on their long term experience as pawnbrokers.

In the case of any pledges damaged or destroyed except that which is caused by fire, there are no provisions in the Act for compensations. However should there be a loss, the pawnbroker would only be required to compensate one quarter more than the amount of the loan.<sup>4</sup> Therefore if the loan acquired was \$100 and the item is lost, the customer would only get an extra of \$25 as compensation. This obviously is an unfair deal since the items pawned had already been undervalued in the beginning.

### 3. Undervaluation of pledges

It was evident in our study that pawnbrokers value the pledges (the amount of loans given) according to certain percentages of the current real value. This percentage has not been standardised throughout the country but instead varies according to the various states, as shown below,

- |              |       |
|--------------|-------|
| i. Johore    | 47.7% |
| ii. Kelantan | 21.2% |

- iii. Perak 39.7%
- iv. Selangor 29.3%
- v. Wilayah Persekutuan 12.4%

For data taken as a whole, the average valuation of the pledge is found to be 30.5% of the current real value. Therefore, if the current real value of the article is \$300, the loan that can be acquired from the pledges would only be \$91.50.

Perchance if the item was found to be lost or damaged by fire the owner of the pawned article only gets \$114.38, thus the loss borne would be \$185.62. Therefore, in the interest of customer rights, the provision which has been made (that is a compensation of 25% above the total value of loan) should be increased to 100% or more.

4. Notification

Notification is issued by the pawnbrokers when the expiry period of 6 months have ended. For articles (items) which are pawned at \$100 or less this notice is conditional. However, for articles pawned above \$100 notification becomes obligatory. From the data obtained, it was found that 75.8% of customers interviewed did not receive any notification. This means unwary customers who had pawned an item for a sum not exceeding one hundred dollars face a distinct possibility of their items becoming the property of the pawnbroker. Although notifications were addressed to customers whose pledges exceed \$100, they were sent to old addresses which

are recorded from identification cards which in many instances have not been renewed. Thus in many situations unwary customers would find their pledges being auctioned off. At present there are no provision within the pawnbrokers Act requiring pawnbrokers to ask for the latest postal address.

Another irregularity which is not viewed seriously is the structural built of pawnshop counters. Usually these iron barred counters are higher than the eyelevel of the customers. this means that even if the pawner is not illiterate, there is a great possibility that he will not be able to view what is being recorded by the pawnbrokers.

5. Pawn tickets

When a customer pawns his article, the pawnbroker would issue a ticket. According to the Fourth Schedule - Regulation 6(2), all pawn tickets must be printed in Bahasa Malaysia and another approved language. It must contain 5 sections that specify various details,

- (A) Detailed particulars of the pawner.
- (B) Detailed particulars of the owner if the pawner is not the owner.
- (C) Detailed description of the articles pawned.
- (D) Particulars of pawning.
- (E) Particulars of extended period/s.

Through the interviews conducted, it was evident that there were pawnbrokers who were still unaware of this regulation. With reference to section C vis-a-vis description of articles pawned, details such as weight, length/circumference and type of gold, have been removed from

the pawn ticket which was enforced in 1982. Presently, it only states type of item, name of item and sale receipt number. This situation gives rise to opportunities for deviations in the articles weight/measure. The outcome of the interviews proved that there were pawned items which have been tampered with, for instance, engravings on rings became worn out and length of bracelets being shortened.

6. Receipt

Receipt is issued whenever the pawner redeems his pledge. According to the fixed regulation format, details concerning interest rates and the amount of loans to be repaid had to be stated. However many customers who were interviewed stated they did not receive any receipt when they redeemed their items. This means that if higher interest rates were charged on them, there would be no definite proof to support their complaints. According to section 18, the pawner can ask for a receipt whenever he redeems his pledge and pawnbrokers are obligated to issue them a receipt. Those who frequent pawnshops for loans should know about such matters and should take the initiative to protect their rights as customers of pawnshops.

Opinion	Percentage
Affirmative	2.2
Non-affirmative	78.9
Indifferent	18.9

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Concluding remarks

Irregularities and deviations in pawnshop operations which have been discussed above, in truth can be overcome if the pawnshop customers are careful and take the initiative to know their rights. Enforcement authorities should also ensure that pawnbrokers carry out their operations according to regulations that are laid down and take action against errant pawnbrokers.

Eventhough 62.4 of the pawnshop customers are not highly educated (see table 2) and are sometimes illiterate, this should not hinder them from knowing their rights. They should be made aware of the irregularities of the pawnbroking trade through local mass media especially through radio and television.

Better counter services should be encouraged through the provision of information centres, conducive waiting places, clear and informative signs and satisfactory services. Pawnbrokers should also use modern and suitable equipment in assessing the articles pledged.

Table 3

SHOULD PAWNSHOPS BE DISPENSED WITH?

Opinion	Percentage
Affirmative	9.2
Non-affirmative	76.9
indifferent	13.9

Finally, but most strikingly ironical is the tremendous positive response towards credit facilities offered by pawnshops. A quick glean at the above Table 3 shows that 76.9 per cent of the pawners share the opinion that pawnbroking facilities should not be dispensed with. If pawnshops are here to stay it is all the more necessary that the pawnbroking trade be monitored by an organized central financial body akin to that of a central bank to check upon its credit - giving operations.

As it stands, the pawnbroking trade is only monitored to a small extent by the Ministry of Housing and Local Government with emphasis mainly on the implementation of its legislations. Imperatively therefore control and licensing of the pawnbroking trade should be carried out more stringently to ensure a genuine attempt to prevent malpractices in a sector where the customer is peculiarly susceptible to exploitation by virtue of his ignorance.

1. Rugayah Mohamed, The role of Pawnbrokers as non institutional creditors in Malaysia, Kajian Ekonomi Malaysia, December 1986
2. Jomo K. Sundram, Malaysia's New Economic Policies, Evaluation of the Mid Term Review of the Fourth Malaysia Plan, PEM, Kuala Lumpur, 1985
3. Malaysia, Pawnbrokers Act 1972, Regulation 12
4. Maalaysia, Pawnbrokers Act 1972, Subsection 3 of Section (22)