

MAHARASHTRA RENT CONTROL ACT, 1999 VIS- À-VIS MODEL TENANCY ACT, 2021: A CONTEMPORARY APPRAISAL

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INTRODUCTION-

'In many cases, rent control appears to be the most efficient technique presently known to destroy a city except for bombing.' -Assar Lindbeck²

There was discussion going on for years and years over the pros and cons of rent control. The supporters of rent control laws suggest that the laws prevent landlords from charging excessive rents and evicting tenant at will but the opponents suggest that rent control laws distorts incentives which lead to weakening of existing housing supply and increased addition of apartments from the rental housing market and therefore results into the overall reduced supply.

Rent control has been one of the prime welfare measures that has sustained in India. Each state government introduces its own rent control act. The basic purpose of rent control act is to settle the dispute between landlord and tenant. It helps the tenant to provide rental accommodation and ensure that tenant cannot be evicted from the premises without sufficient cause.

The governments of various countries have tried from time to time to ensure that the laws are suitable to meet the requirements. India has followed the same suit. However, instead of confirmation for complete deregulation of rents, India needs to modify its Rent Control laws first and bring them up to respectable standards. With the motive of opening up the rental housing market of India, the Union Government has recently passed the 'Model tenancy Act' 2021. The Model Tenancy Act aims to enforce a transparent ecosystem for renting premises, minimize litigations and reduce tenant-landlord disputes³.

In the light of these contemporary changes, the author has attempted to do comparative analysis of the old Maharashtra Rent Control Act, 1999 and the newly introduced Model Tenancy Act on some counts. This comparative analysis has led the author to reach to the sound conclusion that the introduction of Model Tenancy Act and its infusion in the current exiting law will revamp the rent control legislation to achieve the fruitful outcomes.

Overview of the Maharashtra Rent Control Act, 1999-

India enacted its first rent legislation in Bombay in the year 1918. This was immediately after the First World War. The said Act was reformed in the year 1948. Again, it finally got the amendments and the existing Act came into implementation in the year 1999.

Sec.8 is a key section of Maharashtra Rent Control Act, 1999. This section empowers the court to fix the standard rent and permitted increase. Sec.8 lays down circumstances in which the standard rent and permitted increase be fixed and determined. A very wide power is conferred on the

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² Sven Rydenfelt, *The Rise, Fall and Revival of Swedish Rent Control*, 213, 230 in *Rent Control: Myths and Realities* (1981) (Walter Block and Edger Olsen, 1st Ed., 1981) available at <http://www.walterblock.com/wp-content/uploads/publications/RentControlMythsRealities.pdf>, last seen on 10/01/2022

³ Anuj Goel, *Model Tenancy Act: Here's how this Act will affect the rental real estate scenario in Maharashtra*, *The Financial Express* (7 August 2021) available at <https://www.financialexpress.com/industry/model-tenancy-act-heres-how-this-act-will-affect-the-rental-real-estate-scenario-in-maharashtra/2305745/>, last seen on 10/01/2022

court. The main object of sec.8 is to provide remedy to tenant. The court can fix the standard rent and permitted increase either based upon application made to it or in any pending suit; or proceeding. However, a court shall not fix standard rent or permitted increase if the rent has been already fixed by a competent court on the merits of the court and there are no structural alterations or change in the amenities or any change in any other factors that are relevant to the fixation of standard rent.

The said Act protects the tenant from eviction on the ground of default. Tenant can seek the remedy by filing an application for fixing standard rent within prescribed period. However, if there is irregularity in making a payment then decree for eviction on the ground of default can be passed and tenant cannot be protected. Thus, the analysis of Sec.8 in the light of various High Court and Supreme Court judgment provides protection only to tenant considering them being weaker section of community. However, in recent few years, it can be very well seen that the so called weaker section of community has taken undue advantage of Sec.8

Due to undue advantage taken by the tenant, Mumbai's landlord challenged the constitutional validity of the said Act on the ground that fixing of standard rent under Sec.8 violates Art. 14 for being arbitrary and unreasonable under Art.19 (1) (g) for violating the landlord's freedom of business and Art.21 for violating the landlord's right to livelihood provided by the Constitution of India, 1950. Landlords lost the challenge before the Bombay High Court. After a protracted legal battle, the Act was finally phased out in 1999 after the Supreme Court deemed the fixing of standard rent without any provision for adjustment due to inflation to be arbitrary, unreasonable and violative to Art.14 of the Constitution of India 1950. In a robustly worded judgement the Supreme Court speaking through Justice Kirpal, held that if an enactment "results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary". But Maharashtra government has not been followed the verdict of above case while drafting the Maharashtra Rent Control Act, 1999. A challenge to the Act is currently pending before the nine-judge bench of Supreme Court.

It leads us to the conclusion that while deciding the standard rent by the court the market value of property must be taken in to consideration, otherwise it creates negative effect on investment in housing for rental purposes. Investing public is scared of renting out properties for fear of long drawn litigation even in case of contractual tenancy. Therefore, rent control legislations requires removal of totally illogical, unfair and unacceptable provisions favoring only one section of the society and also unreasonable and unrealistic yardsticks while fixing standard rents and must be made more realistic and market friendly.

Further, Sec.16 of the same Act provides for various grounds for eviction of tenant by landlords. These grounds are available for residential and commercial purposes equally. However, it can be very well seen that circumstances existing in the society demands for reasonable classification between residential and commercial purpose. The same social phenomenon on which is unreasonable and arbitrary must be analyzed from constitutional perspective as this leads to violation of Art.14 of the Indian Constitution which guarantees equality with reasonable classification. Further, these same provisions prove to be contradictory of Art.21 as it is violating right to livelihood of landlord in arbitrary manner and Art. 300A as it indirectly deprives landlord from enjoying his right to property.

*Supra 2

Thus Sec. 16 states same grounds of eviction for Residential and Commercial tenancy which leads to unreasonable and arbitrary discrimination among the two stakeholders in the housing industry- the tenant and the landlord. These existing discrepancies necessitates that the Maharashtra Rent Control Act 1999 must introduce different provisions for Residential and Commercial tenancy so that the interest of landlord and tenant can be balanced.

To put in nutshell, the main issue is that Sec. 8 and Sec.16 of the said Act has two sides. Therefore, for them to go hand in hand with the society's likes and dislikes, the law must be amended in the light of contemporary demands and developments for it to function properly.

Historical Background of the Model Tenancy Act, 2021

Due to contemporary developments and changing demands of the society and housing needs, rent laws have become inadequate over the period of time. Consideration these realities, the Central Government announced the National Housing Policy in May 1988 and which is reformed recently in 2020⁵ and which recommends the suitable amendments in rent control laws for creating successful involvement of all stakeholders in and enabling development of housing activity. The existing rent control legislation has resulted in freezing of rent, very low returns in investment and difficulty in securing possession of property and has adversely affected investment in rental housing and has resulted in deterioration of rental housing stock. Expert bodies such as Economic Administration Reforms Commission and National Commission on Urbanization have recommended a reform of the existing rent control legislation in a way that balances the interest of both Landlord and Tenant and also stimulates further construction in the housing sector.

Following the Judgment of the Supreme Court,⁶ the Government has formulated Model Residential Tenancy Act, 2011. The model Act has been drafted to balance the rights and responsibilities of landlords and tenants and to provide for fast adjudication process for resolution of disputes. The Model Rent Control legislation formulated by central government primarily focused on:

- Limiting the jurisdiction of the rent control Act to large cities;
- Exemption for 15 years to new construction and substantially renovated houses;
- Exemption of residential and non-residential premises carrying more than a prescribed rent;
- Fixation of standard based on market value of the land and cost of construction and revision of rent of existing tenancies on graduated basis;
- Periodic revision of rent based on current price index;
- Obligation of landlord and tenant to be defined and penalties provided for their violation;
- Provisions for eviction of tenant under limited or long-term tenancy to enable resumption of possession by the landlord in stipulated circumstances, with summary procedure for certain vulnerable groups;
- Setting up a two-tier system of adjudication with rent controller and tribunals, by ousting the jurisdiction of the courts and installing speedy and simplified procedures for settling disputes within a year.

The Model Residential Tenancy Act, 2011 has been further reformed in the year 2015 by Ministry of Housing and Urban Development (MoHUD). The main objective of the draft was to

⁵ The National Housing Policy 2020-2024, available at <https://www.mhpd.gov.in/download/policies/NATIONAL-HOUSING-POLICY-2020-2024.pdf>, last seen on 10/01/2022

⁶ Mohd Ahmad V. Atma Ram Chauhan 2011(6) SCALE 265

⁷ Sunil Dighe, *The Maharashtra Rent Control Act, 1999*, 2,3 (Snow White, 2015 year, 2015)

establish a framework for the regulation of rent and balance the right and responsibilities of landlord and tenant. The Draft Model Tenancy Act, 2015 was a welcome move by the government as it has attempted to bring the landlord and tenant at par with each other when it comes to rent regulation. This draft is only proposed and not binding on the state. It is the discretion of the state whether to accept or not.

As per the 2015 draft National Urban Rental Housing Policy, cities i.e. urban areas face a significant accommodation shortage and this cannot be addressed by home ownership solely. The Economic Survey (2017-18) by Ministry of Finance, Department of Economic Affairs noted that India's housing policies have been mostly focused on building more homes and on home ownership, however the key to address informality and shortage of accommodation is rental housing. The Economic Survey suggested that a more holistic approach is required that takes into account rental market and vacancy rates. Rental housing is also the answer to affordability for the low-income segments, who may not be in the position to purchase homes and therefore, a more focused approach was needed to standardise rent contract enforcement and rent control laws, for spatial distribution of housing supply versus its demand⁸.

Although the States regulate the rental market through State rent control laws, disputes regarding rental properties have continued to persist and have also led to parties resorting to alternate arrangements such as leave and license agreements and informal leases arrangements. Owing to the shortcomings of the existing legal framework and as a step towards achieving Prime Minister Narendra Modi's 'Housing for All' by 2022 vision, the Model Tenancy Act, 2021 was approved⁹.

Rental housing being predominantly an urban phenomenon, has been in the need of a uniform regulation for long. The Union Cabinet on June 2, 2021 approved the Model Tenancy Act, 2021 ('Act') for adoption by all the States and Union Territories, after several years of deliberation. The primary objective of the Act is to regulate the rental housing market i.e. residential and commercial premises, by establishing guidelines for tenancy, rights and obligations for landlords and tenants and adjudication mechanism for disputes arising out of tenancy¹⁰.

Hitherto, in the absence of sound rental and leasing laws and complexities involved in the eviction of unscrupulous tenants, the sophisticated Non-Resident Indians (NRIs) investors stayed away from this sector. However, the Model Tenancy Act will not only control the tenants stay but also empower the landlord with robust laws to govern the terms of tenancy. In the Model act, issues such as subletting, transfer of rent agreement and property damages are dealt with efficiently. It will encourage NRI investors of Maharashtra to convert their properties into productive rent generating assets¹¹.

Overview of the Model Tenancy Act, 2021

1. Applicability-

This Act is applicable to residential and commercial premises including vacant land, and excludes certain specific categories of premises such as hotels, lodging houses, charamshalas, inns, industrial premises, premises owned by the Central/State Government, premises rented to employees as part of their service contract, premises owned by charitable/religious institutions, wqaf registered

⁸ Shrutikirti Kumar & Karuna Sharma, India: Model Tenancy Act, 2021: A Mixed Bag, 10 August 2022, available at <https://www.mondaq.com/india/landlord-tenant-leases/1100524/model-tenancy-act-2021-a-mixed-bag>, last seen on 10/01/2022

⁹ ibid

¹⁰ ibid

¹¹ Supra at 2

under the Waqf Act, 1995 or by any trust registered under the public trust law, and any buildings exempted for public interest. The Act is prospective in nature and does not apply to existing tenancies¹².

2. Tenancy Arrangements-

The Act clearly defines the responsibilities of a landlord and a tenant in a tenancy arrangement. It provides for requirement of tenancy agreement to be in writing and to be informed to the Rent Authority within the specified timeline. The Act has also caps the limit of security deposit to not exceed –

- (i) 2 month's rent for residential properties; and
- (ii) 6 month's rent for commercial properties,

However, the Act does not regulate fixation of rent and revision of rent. The landlord and tenant are free to agree on the term of tenancy, rent amount and revision of rent. The rented premises can be sub-let only by executing a supplementary agreement to the existing rent agreement and the landlord and tenant shall jointly inform the Rent Authority of the said sub-tenancy within the specified timeline. These detailed terms and conditions provided under the Act will help in regulating all kinds of leases, which were earlier only captured under more sophisticated commercial leases.

3. Grievance Redressal Mechanism-

The Act provides that the States shall set up a grievance redressal mechanism comprising of Rent Authority, Rent Court and Rent Tribunal to provide fast-track resolution of disputes relating to tenancy and it will be mandatory for the Rent Court and the Rent Tribunal to dispose of the complaint/appeal within 60 days.

4. Maintenance-

The Act lists the kinds of maintenance and repairs in the rented premises that each party shall be responsible for and that cost for repairs can be deducted from the security deposit or rent, as applicable, if a party refuses to carry out their share of the maintenance.

5. Eviction of tenants-

The provisions of the Act provide that during the term of the tenancy, a tenant cannot be evicted arbitrarily unless otherwise agreed to in writing. However, the Rent Court may, on an application made to it by the landlord, make an order for eviction and recovery of possession of the premises on certain grounds including but not limited to misuse of premises, failure to pay rent, parting with possession by the tenant, carrying out structural changes without prior permission of landlord, among others. If the tenant fails to vacate the premises on expiry of the term of the rent agreement, they need to pay twice the amount of monthly rent for 2 months and four times the monthly rent thereafter.

While sophisticated commercial leases have terms which address the aspects mentioned above, these provisions of the Act will go a long way in regulating leases which do not provide for these terms in detail and safeguarding the interests of both, the tenant and the landlord.

Comparative Analysis

A. Execution of the Act is left to States and Union Territories-

The execution of this Act is left on the States and Union Territories, considering the Act cannot be imposed on States and Union Territories as 'land' is the State subject under the

¹² Supra at 7

Constitution of India. Considering the Act is for States to implement, alter and enact the legislation on the prototype provided under this Act, there is a possibility that the provisions of this Act may be diluted by the States, similar to dilution brought about by rules notified by certain States pursuant to enforcement of the central legislation Real Estate (Regulation and Development) Act, 2016. The intent and objective of this Act may not be fulfilled if State Governments alter the framework provided under the Act. Additionally, as all States have different rent control laws, it may take considerable amount of time for States to transition from the existing rent control laws to implementation of a new tenancy legislation¹³. Thus, unless and until political will is strong, the implementation of the new draft Act will meet the same fate as that of Maharashtra Rent Control Act, 1999 in the state of Maharashtra.

B. Limited applicability-

This Act is applicable to the lease arrangements that are executed in the manner as prescribed under the Act and does not take into account the existing rental arrangements. The limited scope of the Act excludes the plethora of old pending landlord-tenant disputes and existing tenancies. Thus, the existing tenancies will continue to operate with no uniform regulatory rules and authority to govern them¹⁴. Thus, though the new Act is a contemporary one, it is having limited application making the space for the old Act to survive with all its loopholes and challenges.

C. Digitalization of Rental Agreement-

The Act provides for a mandatory "digital platform in the local vernacular language" in order to facilitate the prescribed procedure for execution of rental agreements, however it is difficult to envisage its success given the limited extent of digital literacy and unavailability of digital platform to majority of low strata group, especially in the unorganized rental sector. This may place a huge regulatory burden on both landlords and tenants in low-rent housing, markets, and those who are not digitally conversant. The mandate of digital platform in vernacular language may also cause language constraints for the migrant tenants¹⁵. This new adaptive feature is missing from the old Act of 1999. Thus, the new Model Act is superior in adapting the contemporary digital revolution. However, as discussed, the implementation will be tedious one considering the limitations of digital infrastructure scenario in India.

D. Force Majeure definition

The Act defines 'force majeure' as a situation of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the habitation of the tenant in the premises let out on rent. However, it does not specifically cover pandemics and lockdown-like restrictions, which may be disadvantageous for tenants in commercial premises who may be unable to carry out business from their leased premises due to government restrictions. In wake of the effects of COVID-19 pandemic and lockdown across of the country, it is crucial to address this aspect under the Act to streamline the rental markets. It remains to be seen if the Government will bring in an amendment to this effect to broaden the definition of 'force majeure' under the Act or the Courts will take up this issue for interpretation of this term.

E. Scope limited to registered agreements

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

The provisions of Act clearly provide that the protection provided in the Act is for landlord and tenants who have executed the rental agreements as prescribed under the Act. This prescribed procedure for execution of the rental agreement is unlikely to appeal to the rental market comprising of lower-income groups, migrant workers, labour etc. The scope of the Act appears to be limited and only focuses on more conventional rental market and may not address the woes of the informal rental housing which largely comprises of the urban poor¹⁶. This is the retention of old provisions of the old Act of 1999 and hence, the new Act fails to accommodate the flexible spirit of the changed demographics.

F. Violation of right to privacy

The form prescribed under the Model Tenancy Act, which is required to be submitted by all landlord and tenants to the Rent Authority, requires both the tenant and the landlord to submit their Aadhaar numbers and attach self-attested copies of the Aadhaar card with the form. Further, the details of rental agreement along with other documents will be uploaded on the Rent Authority's website. In case personal details of parties such Aadhaar card and other personal details are also uploaded on the public domain, this may be a concern from the perspective of the right to privacy of the parties involved¹⁷. These are the alignments mailed according to newly emerging digital technologies. Hence, it is welcome gesture. However, these provisions need to adhere to the guidelines protecting fundamental right to privacy.

Apart from above listed challenges, the Model Act is also silent on leave and license arrangements. The said Act does not provide for any money ceiling for fixation of rent. The landlords whose properties have been subjected to rent ceiling due to existing rent control laws, will continue to be governed by their provisions¹⁸. Thus, the structure of the old Act has to be maintained in terms of Section 8 of the Maharashtra Rent Control Act, 1999.

Conclusion & Recommendation

In today's modern era the present rent control laws have become archaic or outdated and therefore there is a need to revisit it. The update has been attempted by the Government but the attempt is half hearted. The basic issue with all rent control legislations is that "Land" is the state subject and each State implements the Model Law as per its own convenience and local policies. These adoptions dilute the vigour of the law and new innovative provisions also meet the same fate as the old ones. The newly introduced Model Act fails to address the issue of fixation of standard rent and hence, the changes are needed in the existing Act of 1999 itself.

In the light of the above conclusion, the author suggests that –

1. Rent must be fixed on the basis of market value of the property.
2. The court should fix the rent taking in to consideration what is Normal and Usual returns on the building.
3. Residential tenancy and commercial tenancy must treat differently for the purpose of fixation of rent and eviction.
4. Act must introduce the mode in which the court should fix the rent.
5. Interim rent must be decided on the prevalent market value of the property
6. While making interim order for rent court must consider the difference between commercial and residential tenancies.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

7. Municipal record for assessment of rent is updated as per changing market rate. Hence, while considering the fixation of standard rent the Municipal assessment record must be taken into consideration.
8. Section 15 of the Maharashtra Rent Control Act 1999 must provide the different grounds of eviction for Residential and Commercial tenancy.
9. For the purpose of this act commercial and residential tenancy must be treated differently.
10. Introducing the grounds for recovery of possession the ownership right of landlord along with balancing the possessory right of tenant must be protected.
11. Commercial interest of landlord must be protected.
12. The grounds for eviction shall be remodelled and widened.
13. The parties shall be at liberty to get the rental fixed by the official valuer.
14. The rent so fixed should be just, proper and adequate, keeping in mind location, type of construction, accessibility with the main road, parking space and other facilities etc.

Thus, instead of providing piecemeal remedies, state of Maharashtra needs to reform its Rent Control laws first and cure the anomaly for all times to come in the light of the above-mentioned conclusions and suggestions.