

THE RENT CONTROL LAWS IN INDIA: AN ANALYSIS

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The rent control laws were enacted in India in order to prevent the so called scarcity of rental housing. Initially they were introduced as a temporary measure but later on it continued as a policy decision. The situation in which these laws were enacted is changed but the legislations are not changed accordingly. Housing shortage still exists in spite of these laws. Moreover these laws are criticised on the ground of being economically and socially inadequate.²

Rent control is a state subject and falls within the legislative competence of the state. This imposes a burden of rent reforms on the state. This paper analyses the current status of rent laws in India and whether they have achieved any reforms. The author is of the view that the present rent control regime in India forms a major impediment to the intended urban reform as they are always interpreted in favour of the tenant a lot more than was initially intended.³ Sometimes the 'biased' provisions are also declared to be void and ineffective.⁴

Urban rent control- Present status

Firstly, the current legislation regime establishes a standard fair rent which is calculated on the basis of the cost of construction of the building and the market value of the land. The rents are frozen for a specified period of time. There being a clear difference between the market value when the rents are frozen and the period till which it remains frozen restricts productivity which a landlord seeks to achieve. Secondly, the laws provide for the prevention of the eviction of the tenants and rent freezing. This has two implications. One, there is hardly any incentive for the landlord to maintain the house. Currently, in the event of an accident, an important question that arises is on whom would the burden of negligence lie? Two, the fear of losing control over their houses permanently, leads to landlords reducing liquidity in the market for ownership housing. Lastly, rent control distorts incentives, leading to inefficient allocation of resources and the formation of black markets. Further, rents in these markets practically become higher than they would have been in absence of rent controls. Thus, rent controls will actually cause a majority of the people seeking rental accommodation to pay higher rents than they would have paid in absence of rent controls.

Background of rent legislations

The British introduced a catena of rent control legislations in India. These legislations clearly exhibited that they were intended to be only temporary in nature, in their object and purpose. Since these legislations were of the first generation, fixation of standard rent was based on the cost of construction and market value of the property.⁵ The cut-off date for the tenancies to be controlled was established from 1940.⁶

These Acts protected persons occupying a tenement, which upon their death was transferred to the members of their family living with them.⁷ Rent control has to be considered on the basis of the kind of property. Thus, qua tenancy of commercial premises, it went to the next of kin. The objective of the legislations was to establish parity between the landlord and tenant. A secured tenure of tenancy and a right to pay only the standard rent were steps in this regard. Tenants were statutorily prohibited from assigning the lease to another person or subletting the premises.⁸ The presence of a sunset clause that placed a specific period for which the act would apply contributed to its success.

Once the force of the specific legislations ended, however, tenants started subletting parts of the premises on labels such as paying guests, or the whole of the premises on fabulous payments on

the so called caretaker-arrangement.⁹ The cautious among them paid a share to the landlords from the money obtained for transfer of tenancy i.e. one surrendered the tenancy and the other took a fresh one in his favour. The State of Bombay passed the Bombay Land Requisition Act, 1948 to requisition the lands and houses which had fallen vacant for public purposes and forced the landlords to notify the vacancy of tenancy to the government and on the government refusing to occupy the vacant houses, the landlords could create a fresh tenancy.¹⁰ Thus, it led to the creation of a black market for rental housing market in India.

Objectives of rent laws

The rent control laws primarily had two aims:-

1. to prevent landlords from increasing rents above the maximum rents permitted by the new laws; and
2. to give tenants security of tenure by preventing landlords from evicting them without an order of the court, which could not be given except on certain specified grounds.

India has witnessed a huge change in the socio-economic conditions. The biggest problem that the judiciary faces today is the absence of stringent laws which are outweighed by a large supply of rent disputes. The Law Commission of India has acknowledged the logistical flaws in the procedures established by the rent laws¹¹. For instance, a tenant is left at the mercy of the Controller. Prima facie, the second generation legislations had gaping loopholes that provided an imbalance in favour of the landlords. For example, the legislation of 1972 in U.P. Allows for the tenant to be re-inducted in case the building has to be demolished but there is no guarantee of a specified time frame within which the tenant would be let in.¹²

As such the demand for housing became acute. The landlords who normally renewed leases resorted to action for eviction and started charging heavy rents for fresh leases. The tenants who obtained this protection were required to be strictly regular in payment of rent and if they defaulted, they were penalized severely in forfeiture of tenancy and finally ejection by decree of the court of law.¹³ Later, some states like Maharashtra became rational by removing the sting from the law of forfeiture of tenancy by providing for payment of interest at the rate of 9 per cent per annum on the amount of the arrears of rent a defaulted payment.¹⁴

The list entailing grounds of eviction are such that have been mostly interpreted by the courts as exclusive rather than inclusive. This has led to an imbalance in the favour of the tenants.¹⁵ The legislative intent seems to be misguided and it seemed that an indication is to have a situation where two wrongs make one right. Any legislation has to aim at providing for a legislative parity between the parties it seeks to serve. In the instant case, there is a huge disparity in the way a case may be moulded to suit the landlords and the tenants. Similarly, under the grounds of Section 21(a), it may be witnessed that unscrupulous tenants may just hit a nail in the coffin of the landlords. The provisions may enable the former to acquire property and make their own construct without evicting the premises.¹⁶

The continuation of these Acts over a long period without amendment to such provisions has had various adverse consequences. Reduction in supply of rental housing, distortions in rental housing market and negative impact on urban finances are a few of them.¹⁷ Since the regime was brought into place, properties have changed hands many a time. As such newer owners are still burdened with the presence of rent control, thereby dis-incentivising investment in housing. Old commercial property,

for example, shops built in the early 20th century were either leased on a premium or on high rents which now appear to be low. In such class of premises as well, the tenancy has been transferred a number of times.

The monetary benefits of liberalisation in the real estate sector have not stayed only in the metros but have trickled down to cities such as Varanasi, Lucknow, Jaipur and Pune. The present day tenant is not a kin of the original title holders. The number of tenants that would have occupied the premises over the years is such that it is difficult to trace them. In such a scenario, even if the landlord has had his hefty share of illegal premiums from each tenant, the entire purpose of a rent control law would be vitiated. It is the landlord who can tell the tale. The present tenant who came in five or ten years ago may be paying a seemingly paltry amount as rent but who can deny that he and the tenants before him had successively paid a share of premium which will sustain the landlord and his family for generations to come.

The liberalisation of the economic regime in 1991 and the subsequent economic advances have allowed massive influx of money.¹⁸ Land prices have reached exorbitant rates and the second generation legislations seem to be incapable of dealing with the vices that have crept alongside with the money. With the influx of money, there is a possibility that anti-social elements may be used by both landlords as well as tenants to resolve their disputes. There is a huge backlog in the disposal of cases. The duration of cases related to rent control last anywhere between ten to fifteen years, by when the purpose of the dispute is lost. In light of these omissions in the legislations, the government realised that there was a need for another generational shift.

Changes in Model Rent Control Laws (MRCL)

In the Model Rent Control Law, which was adopted by four states,¹⁹ JNNURM identified the following provisions of rent laws that needed amendment:-

- Control of rents: Under most rent laws, rent is fixed at much below the market or economic rent and there is no provision for its revision over time.
- Obligations of landlords and tenants: The landlord is obliged under law to keep the premises in good condition and pay all taxes relating to the property. The tenant is obliged to pay rent in time, but has no obligation regarding even day-to-day maintenance.
- Repossession of the premises by the landlord is permissible only on grounds specified in the law. Main grounds include non-payment of rent, misuse or non-use of premises, requirement of premises by the landlord for repair or for self-use, non-requirement of premises by the tenant, and sub-letting of premises without the permission of the landlord.
- The long judicial process, at times extending over ten to twenty years, denied quick repossession of the property to the landlord. Tenancy rights are inheritable under most state (rent) laws. Thus, once a house is let, getting repossession is nearly impossible.

In addition to this, the courts have time and again tried to draw the attention of the state governments in order to provide for the periodical enhancement of rent regarding tenancies governed by these laws.

In the absence of people going to the Controller, the landlords have become wiser and have devised various methods of avoiding and evading the law. Thus, renting of house is done under the Transfer of Property Act²⁰ and a lease is drawn. The period may range from eleven to thirty-three

months. The lease when renewed would be at a higher rent. Since there is nothing in the Act that makes rent charged higher than the standard rent, certain pockets where new tenancies have been let out have been at prevalent market rates.²¹

Exemptions granted under the MRCL

While analysing the paradigm shift under the MRCL, impetus must be given to exemptions made for properties over which rent control would apply have to be considered. These exemptions create an uncontrolled rental housing market. The MRCL as a legislation lifts the imposition of rent-control in urban areas up to a population of 3 lakh.²² According to the MRCL overview, in 1992, rent control laws would have then become applicable to ninety-two towns which had a population above three Lakhs as per 1991 Census.²³

The State Governments may, however, cover cities with population of one Lakh to three Lakhs or even less than one Lakh, according to local circumstances. The U.P. Bill put a cap of three Lakhs in its provisions as per the 2001 census.²⁴ The biggest lacuna in the law is that there is no provision for the review of the areas on the basis of exemptions in light of future censuses that may be conducted. Further, there is no implied interpretation that the data sought may be changed if, for example, it is applied in the year 2012 after the 2011 census.

Exemption to premises for a period of 15 years, whether newly constructed or otherwise, where the premises have not been under tenancy for 7 years or more after the last tenancy would be exempted from rent control.²⁵ The economic implication of this would be that the landlord could recover a larger part of his investment in that period according to the rules of demand and supply.²⁶ Such a suggestion, however, does not consider the distinction between older and newer constructions as the landlord would have to remove the property altogether from the market for a period of seven years to earn a profit as new constructions earn. Therefore, the property would be a dead asset with zero returns upon the investment made. Thus, in a competitive market, the liquidity of rental housing would go down.

Judicial procedure

In light of the criticism made by the Law Commission, a streamlined judicial procedure has to be placed so that litigation may be reduced. The MRCL, in an unprecedented move, enabled States to establish Rent Tribunals by a constitutional amendment to include tenancy matters. The MRCL further allowed for pre-trial conciliation/compromise between landlord and tenant at any stage of litigation. This is in consonance with the provisions of Section 89 of the CPC. This will curtail the volume of pleadings and restrict the proceedings to only the real issues. Economists argue that such a move would save information and administrative costs incurred during litigation. The savings in the cost of a trial would become a cooperative surplus which could have been divided between the parties, therefore, making them better off. Thus, the presence of a rent controller, itself vitiates the efficiency of the rent control laws.²⁷

It is open to State Governments to extend the jurisdiction of tenancies to cover tenancy and other disputes with regard to properties not coming under rent control law if they can undertake to strengthen the set-up suitably without affecting the main objective of speedy disposal of cases relating to controlled premises.

Eviction of tenants

The MRCL does not bring any substantial change to the grounds for eviction. These include: non-payment of rent for a period exceeding 3 months; unauthorised use, misuse, non-use or unauthorized

subletting of premises; failure of tenant to deliver possession after giving notice to quit; Denial by the tenant of title of landlord; bona fide requirement by the landlord for self-use for residential or non-residential purposes. In case the tenant decides not to pay revised standard rent, the landlord can move for eviction. As has been pointed out above, however, since this list has been considered as exclusive and not inclusive, therefore the scope of judicial scrutiny has been considerably reduced.²⁸

The MRCL provides for a summary procedure for eviction for bona fide requirement of residential premises for special and general categories of landlords, and for repairs where essential amenities like water supply has been withheld by landlord or tenant. In response to the problems that had been considered under Section 24(2) of the U.P. Act of 1972, the MRCL recommends that landlords be heavily penalized for not occupying or for again letting out the premises within three years of getting possession on the ground of bona fide need. In light of this, the Maharashtra Rent Control Act, 1999 has declared this action to be a cognizable offence punishable with imprisonment or fine or both.²⁹

Maintenance provisions: Do they give incentives to the landlord?

Global examples have critiqued that due to rent control, landlords are not incentivised to maintain their premises in the absence of fair returns on their property. Criticism in India has not been any different.³⁰ The MRCL provides for better maintenance and repair of houses by including maintenance cost as part of payables by the tenant, thus making it viable for the landlord to carry out repairs. The landlord can apply for revision of rent on account of expenditure on special repairs to the house.

The MRCL tries to channelize incentives for the landlord to maintain the property. Any renovation which has to be undertaken has to be in agreement with the tenant. Also, the standard rent will increase in line with the cost of renovation while keeping the value of land based upon the indexation of original land price. There lies a fundamental flaw in such a provision. The rent control laws place the tenants in what economists' call a sub-pareto optimal lock in. In such an arrangement, once a benefit is bestowed upon the tenants, they are no longer willing to forward any amount towards maintaining the premises which adds to the woes of the landlord. The need of the hour is to compel the tenant to forward certain amounts for the renovation of the premises.

Way Ahead and Conclusion

People, throughout the world, are criticising the rent control laws and asking for abolition of this concept. Such criticisms to rent control are to be considered from a social as well as an economic angle. Assuming that the market is left without rent control and that market forces determine the fate of rents across the board, then it would lead to anarchy as rents would become higher than what they are at present. Market rents, especially in Maharashtra and areas of Uttar Pradesh neighbouring Delhi, move with the value of houses. Even though economically this would not have resulted in a loss to anyone as those tenants unable to pay the rising market rents attributable to the shortage would have been forced into crowded and substandard housing, thereby enhancing a social burden indirectly as has been seen in Dharavi in Mumbai. The present Indian economic scenario demands that rent control laws which are economically inefficient may be done away or rationalized.

(Endnotes)

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- 3 RaichurmathamPrabhakar&Anr. v. RawatmalDugar, (2004) 4 SCC 766
- 4 Milap Chandra Jain v. State of Uttar Pradesh, 2001 (2) ARC-88. The Court stated that the U.P. Act, 1972 had outlived its application and virtually obliterated the entire chapter II of the Act pertaining to.
- 5 Section 5, TheBombay Rent Act, 1947.
- 6 Section 11(1)(a), The Bombay Rent Act, 1947.
- 7 Section 5(11), The Maharashtra Rent Control Act, 1999.
- 8 Section 20, 21 and 22, The Karnataka Rent Control Act, 1961.
- 9 Amir Ahmed v. Yusuf, 1985 (1) WLN 550 [Raj]
- 10 Welfare Association A.R.P. Maharashtra and Anr. v. Ranjit P. Gohil and Ors., AIR 2003 SC 1266
- 11 One Hundred and Twenty Ninth Report on 'Urban Litigation, Mediation as an Alternative to Adjudication'.
- 12 Lal Chand v. District Judge, Agra And Ors., AIR 2000 SC 141
- 13 PrithvichandRamchandSablok v. S.Y. Shinde, AIR 1993 SC 1929
- 14 Piroja M. Mehta v. HambaiJamshedjiCama (Dr.) and Ors., (1988) 90 BOMLR 292
- 15 Abdul Jalil S/O Late HabibUllah v. Special Judge E.C. Act, 2007 (69) ALR 318
- 16 Ibid.
- 17 Available at, http://www.planningcommission.gov.in/plans/planrel/fiveyr/10th/volume3/10th_vol3.pdf
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- 21 KiranWadhva, Maharashtra Rent Control Act 1999 – Unfinished Agenda, 37(25) Economic & Political Weekkly (2002), 2471.
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- 23 Ibid.
- 24 Model Draft Report on Uttar Pradesh Rent Control Bill, 2010.
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- 28 Margaret J. Radin, Residential Rent Control, 15 Phil. & Pub. Aff.350 (1986).
- 29 Section 18 and 53, TheMaharashtra Rent Control Act, 1999.
- 30 Available at, <http://ssrn.com/abstract=290831>