

Rent Control Legislations- The Paradigm Shift

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The courts these days are flooded with litigations between landlords and tenants. The landlords fighting litigation for release of their own property is not a very uncommon sight. There are tenants who are in possession of properties at a rent of amount as meager as Rs. 2.50/- where the property could have fetched an amount of more than Rs.50, 000/- at the same location. It is the landlord who suffers most in this situation. Firstly it is his property which is trapped in unnecessary litigation without any fault of his. Just because he had rented his property out to someone in need for an accommodation seems to have taken away his right to enjoy his own property and he is thrown away at the mercy of the court to claim a right which has always been his own. This situation even worsens when the landlord is a widow, minor or an old aged person depending solely on the income received from the property in the form of rent. The Rent Control Legislations governing the same were enacted mainly for protecting the weak tenants from falling prey at the hands of greedy landlords. But with time the situation has very much changed. The tenants are no longer a weaker section of society that would need a legislative shell to protect them. Too much protection being provided by the legislations to the tenants had started resulting in getting the landlords in a somewhat disadvantaged position. The property of the landlord sometimes gets perpetually in the grab of the tenants without any hope for a return even in pecuniary form. The application of these rent control legislation need to be addressed with a new approach having regard to the changed scenario of the society.

WHY RENT CONTROL LEGISLATIONS WERE NEEDED?

The history of legislations relating to rent control in the country would show that rent control acts were enacted to regulate & control tenancies with the primary aim to protect the tenants. Because of the scarcity of accommodation which arose primarily due to the growth of industrialization and commercialization and inflow of population to the urban areas, demands for rental accommodation increased, consequently appreciating landlords' demand for rent. The landlords were found to be in a position to exploit the situation for their unjustified personal gains which

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were consequently detrimental to the helpless tenants who were subjected to uncalled for litigation against eviction. It thus became imperative for the legislation to intervene to protect the tenants against harassment and exploitation by the landlords. For this purpose appropriate legislations were passed by almost all the States in India with the paramount object of essentially safeguarding the interest of the tenants. The Rent control laws enacted by the States drastically curtailed the landlord's power of enhancing the rent and evicting the tenant. The question whether this curtailment of landlords' power was justified in law or not was raised in large number of cases. The challenges were turned down by the courts on the ground that these restrictions were necessary having regard to the economic condition of the country at that time. There are also umpteen pronouncements of the courts which clearly indicate that the tilt of the rent laws was more towards the tenants than it was intended by the legislations.

The strain of the last World War, Industrial Revolution, the large scale exodus of the working population to the urban areas and social and political changes brought in their wake social problems of considerable magnitude and complexity and their concomitant evils. The country was faced with spiraling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Rack renting and large scale eviction of tenants under the guise of ordinary law exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils, the legislatures of the States in India enacted rent control legislations.

LEGISLATIONS MAINLY FOR THE PROTECTION OF TENANTS

The Rent control Legislations were enacted to provide protection to tenants against the illegal and unscrupulous eviction by the landlords. The rights of the landlords in this regard were curtailed to a great extent. Prohibition of private letting and regulation of rent were a few examples. The courts also were inclined in favour of the tenants considering them a sufferer in the situation.

Nootan Kumar vs. Additional District Judge, Banda (1993) 22 ALR 437 (SC)

Having prohibited private letting of any building the legislature has imposed a ban on the occupation of such building either on behalf of the

tenant or the landlord vacating the same otherwise than in pursuance of an order of allotment or release U/S-16. Such a ban on occupation of a vacant building without an order of allotment or release was imperative in order to completely check the private letting thereof by the landlord. An analysis of the legal position makes it clear that the legislature has attempted to use all possible safety valves so that unscrupulous landlords cannot defeat the purpose of the Act by resorting to private letting.

The courts used to adopt a strict approach while interpreting the “bonafide need” as given in Sec 21 of U.P. Act 13 of 1972. The landlord has to prove his bonafide need in order to get his property released. Mere assertion that he needs his property back was not considered a proper cause to pass a release order.

Muthulal vs. Radheylal 1974 SC 1596

Mere assertion of the landlord that he requires the accommodation is not decisive. The word “required” signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show the same as the burden of proof is upon him that he genuinely requires the accommodation.

REFORMS IN THE LEGISLATIONS

Over the period, it was found that the owners preferred to keep their accommodations vacant & were not willing to let the same as because of such Rent control laws they were not getting return for their investments in constructions. Providing too much protection to the tenants under these rent control legislations was having an adverse effect on the interests of the landlords. Thus, various representations had been received by the govt. about the hardships and injustice caused by the provisions of the rent act. An Economic Administration Reform commission set up under the chairmanship of Mr. L.K. Jha went into this question and its report presented to the govt. in 1982, suggested a number of changes in the Rent control laws. The Commission pointed out that freezing of rentals at old historic levels, the excessive protection of tenancy rights and extreme difficulty in recovering possession even for the owner's own use had :-

- (a) Hit hard the house owner of modest means;
- (b) Depressed property values and affected adversely the revenues of municipal bodies and the State and Central govt;

- (c) Imposed onerous burdens on the administration and the judiciary and led to large number of pending cases;
- (d) Rendered investment in housing for rental unattractive, inhibited the letting out of available accommodation, brought about deterioration of the existing stock of housing through neglect of maintenance, and thus have aggravated the acute scarcity of accommodation for hire;
- (e) Encouraged various malpractices and abuses such as on-money (pugree), partial receipts of rent, capital consideration (in black money) for tenancy transfers etc.; and
- (f) In general tending to protect the haves against the have-nots, i.e., the tenant (even if affluent) as against the landlord (even if not so affluent) and the sitting tenant as against the prospective tenant who was looking for accommodation on rent.

The Commission in the background of aforesaid findings made inter alia the following recommendations:

- (i) There is a case for confining rent control to relatively modest premises occupied by the less affluent though it is difficult to draw a suitable dividing line for the purpose. We would urge the State Governments to consider this possibility.
- (ii) Considering the urgent need for the new housing and as an incentive for the construction of houses, there should be an exemption from rent control on all the new construction for a period of five years from the date of completion.

The National Commission on Urbanisation also made a report in which following points were made:

- (i) Housing has been recognized as a basic need, ranked next only to food and clothing. But resources allocated and policies pursued have not yielded the expected results. Forty million people (about one fourth of the population of India) live in slums and under conditions of multiple deprivation illegal land tenure, deficient environment and kutcha shelter. In addition a significant number live in inner city neighbourhood with decaying buildings and deficient services. The supply of new shelter units is not adequate to meet incremental needs leave

aside the backlog. Nearly sixty percent of the households cannot afford a conventional pucca house and the lowest 10-15 % cannot afford even a serviced site. Furthermore given the resources constraint it is not possible to provide new pucca houses for all in the near future. The emphasis of housing policies therefore has to be on increasing shelter supply, improving and upgrading slums and conserving the existing housing stock.

- (ii) There are always some households which are either not interested in owning a house or just cannot afford to own one. For such households rental housing is the only option. The main factors inhibiting investment in rental housing and in the maintenance of rental stock are the various rent control laws.

The Commission had made extensive recommendations regarding reforming rent laws in its interim report.

AMENDMENTS IN THE UPACT XIII OF 1972

Even the legislatures took cognizance of the fact about the change in circumstances in the society & amended the Rent Control Act to limit the same to economical weaker section by reducing its applicability

- (i) to the accommodations where the agreed rent is not more than Rs. 2000/- per month & exempted the accommodations agreeably fetching rent more than Rs. 2000/- per month from the ambit of Rent Control Act.
- (ii) With advent of global business in India, a provision for exemption was also included to exempt accommodation let out to MNCs from Rent Control Act for the benefit of the landlords.
- (iii) It was also observed the Rent Control laws were hampering the use of the properties of religious & charitable institutions as such exemption was also provided to the accommodations owned by religious & charitable institutions.
- (iv) Above all the age of accommodation which attracted Rent Control Act was increased by amendment from initial 10 years to 20 years & now it is 40 years in UP & Uttarakhand.

Such & other such incentives were thus extended to the landlord to lure them to throw their vacant properties for letting to meet the scarcity of urban accommodation.

This change in legislation not only woke up the society but also changed the views of the courts to become liberal towards landlords ironically against the tenants who become parasite & start considering themselves as owners on petty rent. With the brief exception under section 21(8) of UP Act XIII of 1972 there is no provision for any enhancement of rent. It is my ardent view that this subsidy of Rent Control Act should also be wiped as is there effort to finish of the other subsidies.

PRESENT DAY POSITION IN COURTS

With the passage of time the position of tenants in the society has undergone a sea change. The social scenario in the light of which the Rent Control Legislations were enacted does not exist anymore. The legislations and the courts' pronouncements have been providing too much protection to the tenants thus making the landlords getting trapped in a disadvantaged position with their properties not fetching the potential returns.

The courts are coming out of their comfort zone now in granting relief to the landlords thus breaking the stereotype of being the “tenant protectors”. For example, while deciding on the question of “bonafide need”, the courts are now adopting the view that the landlord is the best judge of his need and no one not even the court can dictate the landlord to use his property in any particular manner. The courts are now quite liberal in their approach making clear that even having an alternative accommodation is no ground for denying the bonafide need of the landlord.

KamlaTripathi vs. KanchanAggarwal&anr. 2007 (1) ALJ 352

Sec 21(1)(a) Expln 1 of UP Act 13, 1972 prescribes for the bonafide need of the landlord. Where the tenant purchased a plot, constructed flats on it and sold them later, it clearly shows that alternative accommodation was available to him. Therefore, it is not open for the tenant to challenge the bonafide need and comparative hardship of landlord by taking advantage of fact that landlord owns any other house besides premises in dispute.

Raghvendra Kumar vs. Firm Prem Machinery & Co. (2000) 1 SCC 679

M.P.Accommodation and Rent Control Act, 1961 as regards with bonafide requirement of landlord the settled position of law, held, is that landlord is the best judge of his requirement for residential or business purposes and has complete freedom in the matter.

Even the long period of tenancy is not considered a sufficient ground for denying any relief to the landlord. If the tenancy has existed for a long period of say more than 50 years that is not a ground for depriving the landlord from enjoying his right to his property.

Shamshad Ahmad and ors. vs. Tilak Raj Bajaj 2009 (1) UAD 64 (SC)

UP Act 13, 1972 comparative hardship of landlord and tenant when no attempt being made by tenant to find out alternative accommodation, it leads to an inference that the tenant did not make such attempt for the fact that he might have to pay more rent. Such consideration of hardship of tenant would not preclude the landlords from getting possession of the suit-shop once they have proved the genuine need of the property. If the requirement of the landlord is bonafide and reasonable even the longevity of tenancy of fifty years should not be a ground for depriving the landlord for doing business.

The courts even went to the extent of holding that not even courts can dictate the landlord as to how and in what manner the property is to be used. It is solely the prerogative of the landlord.

Prativa Devi v. T.V.Krishnan (1996) 5 SCC 353

Delhi Rent Control as regards bonafide requirement of landlord, the landlord is the best judge of his residential requirement. Whether an alternative accommodation was actually available would depend upon landlord's right to such accommodation.

“landlord is the best judge of his residential requirement. He has complete freedom in the matter. It is no concern of the courts to dictate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own. There is no law which deprives the landlord of the beneficial enjoyment of his property.”

The court emphasized the need for social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. *“The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society.”*

While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not

conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception & not a short sighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also result in constitutional invalidity (*Malpe Vishvanath Acharya vs. State of Maharashtra and anr (1998) 2 SCC 1*).

Speaking in the context of reasonable requirement of landlord as a ground of eviction, the court guarded against any artificial extension entailing of language so as to make it impossible or extremely difficult for landlord to get a decree for eviction. The court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord.

The Rent Control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and landlords both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble. (*Bega Begum vs. Abdul Ahad Khan 1979 AIR SC 272*)

MODEL RENT CONTROL LAW

The National Housing Policy, 1992 ('NHP') of the Central Government envisages amendment of the State Rent Control Laws for

bringing uniformity in their application throughout the country. The Central Government has formulated a suitable Model Rent Control Law incorporating the features outlined in the policy paper. On the basis of series of consultations with State Governments and various experts, the Ministry of Urban Development had prepared a paper suggesting the basic features of a model rent control law. The policy paper was considered in the Chief Ministers Conference, where the broad frame work of the Model Rent Control Legislation was endorsed.

DRAFT MODEL TENANCY ACT 2015- A BALANCED APPROACH

- (i)* The Draft Model Tenancy Act, 2015, is an improvement on its obsolete predecessor; it will make things much easier for landlords who were short-changed by the previous law. Property owners have been skeptical about renting out their houses as they fear that their tenants may refuse to vacate on time.
- (ii)* The new Draft seeks to balance the needs of both tenants and landlords. For instance, as per the provisions of the Rent Control Act, rent of properties were capped and landlords could not raise rents despite the jump in property rates. Thus, many tenants ended up paying a paltry rent of about Rs 100 despite living in prime locations. The Draft proposes reforms that will enable landlords to charge market rates and make it easier for landlords to evict tenants who default on rent without getting into long drawn out legal proceedings.
- (iii)* The Draft also has provisions to protect the interests of the tenants. Currently, the security deposit paid by tenants is an ad-hoc amount. As per the draft, the security deposit cannot exceed three times the monthly rent. Besides, tenants can claim a reduction in rent if the quality of services deteriorates.
- (iv)* Among the many reforms included in the Draft are the proposal for an independent authority for registration of all tenancy agreements and a separate court for rent related disputes and litigation cases. The rent agreements need to be registered with the Rent Authority. Further, the Draft has proposed that all disputes will be heard at the Rent Courts set up by the states. The Civil Courts will no longer hear rent related cases

- (v) The new draft on the other hand will ensure that landlords are able to charge market rates for their residential or commercial properties, get the rents revised periodically, and also get their premises vacated easily without getting into long-drawn legal proceedings. With these changes, a large number of properties lying vacant can be used to not only generate additional income for home-owners, but also solve the housing problem in the country.
- (vi) Another plus point for tenants is that they can claim a reduction in rent if the quality of services available to them deteriorates in any way.

But an increased willingness on the part of property owners to rent out their properties might not happen overnight. A lot will depend on the execution of the rules mentioned in the Act to help landlords raise the rent and get trouble-making tenants evicted.

ALONG WAY TO GO

As compared to the Rent Control Enactments around the world, the Rent Control legislations in India have a long road to travel ahead. To be at par with the developments in this area internationally there is a dire need to bring uniformity in the rent control legislations of different states and bring about a common infrastructure for implementation of the same. Below are some suggestions that can be brought into practice to fulfill the main objective of the rent Control Legislations:

- Online registration and search facility for those who want to register their houses for rental purpose and those who are in need for an accommodation.
- Cap on the tax on rental earning can be introduced to encourage the landlords to rent out the properties.
- Unpaid rent can be insured like proposed in new Rent Control Legislation in France. Both tenants and landlords will pay into a government run insurance fund against unpaid rent. If a tenant defaults, landlords will no longer have to chase them through the courts, but simply apply to the fund for reimbursement. This fund will pay the landlord upfront, and then investigate the claim

themselves. If the tenant has defaulted due to unemployment, illness or low income, they'll receive rent relief (a system already in place in France). If they're just negligent or taking advantage, however, they'll get sued.
