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# THE MODEL TENANCY ACT, 2021: ANALYSIS AND IMPLICATIONS

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## ABSTRACT

The contemporary rent control laws have distorted the rental market by placing a ceiling on rents, lowering rental yields, instigating the fear to property being perpetually occupied by tenants without any remedy and prolonging legal disputes. The Model Tenancy Act, 2021, which ensures that both the landlord and the tenant are treated equally and places a strong emphasis on the supremacy of the rent agreement and the inclusion of mutually agreed-upon terms regarding rent, period of tenancy, security deposit and so on. It has made it necessary to change the narrative of the prevailing rental housing market. In order to settle the disputes swiftly, rent authority is also established. The law advances the goal of removing uncertainty and fostering trust between the landlord and the tenant. The benefits of the Model Tenancy Act, however, may only be felt by the rental market if the state governments choose to put it into practise because it is simply a "model" law. This paper aims to analyse the recently implemented Model Tenancy Act, emphasising its key components. The paper also analyses the Act in light of the Indian Constitution and makes an attempt to analyse its relevance in the prevailing circumstances.

**Keywords:** Model Tenancy Act, Tenant, Landlord, Rent, Agreement

## INTRODUCTION

The Model Tenancy Act, 2021 was approved by the Union Cabinet in June 2021<sup>1</sup>, keeping in view the target of achieving ‘Housing for all by 2022’ under the Pradhan Mantri Awas Yojana – Urban (PMAY-U), a flagship Mission of Government of India being implemented by Ministry of Housing and Urban Affairs (MoHUA).<sup>2</sup> It was approved for adoption by all the States and Union territories after several years of deliberations.

Disputes over rental properties have persisted despite the fact that States regulate the rental market through state rent control laws, forcing parties to turn to alternative agreements like leave and licence agreements and informal lease arrangements. The necessity for rent act change to promote housing investment has been emphasised numerous times. A new tenancy law was therefore long required.<sup>3</sup>

The subject of land and the relationship between tenant and landlord falls under the exclusive legislative domain of the States as per the Schedule VII<sup>4</sup> and Article 246 of the Constitution of India<sup>5</sup>. Thus, this Act is a “model law”, which in other words is a proposed framework or a prototype of a law that States and Union Territories may adopt and alter; it however, is not binding.<sup>6</sup>

## NEED OF THE MODEL TENANCY ACT

Due to the fact that home ownership alone cannot address and resolve the nation's housing scarcity problem, particularly for low-income people, rental housing has emerged as an alternative solution<sup>7</sup>. The Indian housing schemes and policies have largely revolved around the construction of new home premises and have been excluding the rental housing market,

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<sup>1</sup> Model Tenancy Act: A mixed bag, Deccan Herald, (1<sup>st</sup> August 2022), <https://www.deccanherald.com/opinion/in-perspective/model-tenancy-act-a-mixed-bag-1131814.html>

<sup>2</sup> Pradhan Mantri Awas Yojana – Urban, Ministry of Housing and Urban Affairs, <https://pmaymis.gov.in/#:~:text=Pradhan%20Mantri%20Aawas%20Yojna&text=The%20Mission%20addresses%20urban%20housing,75%20years%20of%20its%20Independence.>

<sup>3</sup> Abhishek Gulatee, The Model Tenancy Act, 2021: A Step Forward, 2021 SCC OnLine Blog OpEd 156

<sup>4</sup> The Constitution of India, 1950, Sch.VII List II Entry 18.

<sup>5</sup> *Id.* Art. 245

<sup>6</sup> The Indian Express, Explained What is the Model Tenancy act, (03 June 2021), <https://indianexpress.com/article/explained/explained-what-is-the-model-tenancy-act-7342764/>

<sup>7</sup> National Urban Rental Housing Policy, 2015, [https://mohua.gov.in/upload/uploadfiles/files/National\\_Urban\\_Rental\\_Housing\\_Policy\\_Draft\\_2015.pdf](https://mohua.gov.in/upload/uploadfiles/files/National_Urban_Rental_Housing_Policy_Draft_2015.pdf)

which can be a significant solution to meet the housing demands.<sup>8</sup> It was stated that a comprehensive strategy is needed to manage the rental market, vacancy rates, standardisation of rent, and enforcement of rental contracts for fair and even distribution of demand and supply of rental properties.<sup>9</sup>

According to the census from 2011<sup>10</sup>, despite the fact that there are almost 110 lakh unoccupied homes in urban areas, landlords are not eager to rent out their properties. The existing rental laws were the main cause of it. Some state laws that favoured landlords were never put into effect, such as the 1994 amendment to the Delhi Rent Control Act. The amendment streamlined the process for landlords to evict tenants. The amendment received the presidential assent after being approved by the Parliament. It was not, however, put into effect<sup>11</sup>. A consistent framework was also urgently needed to assist formalise the rental market and swiftly settle disputes between landlords and tenants because the majority of States have their own rent control regulations.<sup>12</sup>

The new Act states that “The existing rent control laws are restricting the growth of the rental housing and discouraging owners from renting out their vacant houses due to the fear of repossession. One of the potential measures to unlock the vacant house is to bring transparency and accountability in the existing system of renting of premises and to balance the interest of both the property owner and tenant in a judicious manner”.<sup>13</sup>

The States can adopt the Act as it is with a fresh legislation, since it is a state subject or they can amend their existing rent act to factor in the new MTA. States and Union Territories have MoUs with the Centre under the Pradhan Mantri Awas Yojana- Urban which has this provision.<sup>14</sup>

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<sup>8</sup> Economic Survey (2017–18), Department of Economic Affairs, Ministry of Finance.  
<https://www.im4change.org/docs/751economic%20survey%202017-18%20-%20vol.%20II.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> Census of India, 2011, Ministry of Housing and Urban Affairs,  
<https://censusindia.gov.in/nada/index.php/catalog/42602/download/46252/Census%20of%20India%202011>

<sup>11</sup> India Today, Rent bill incurs wrath of Delhi's traders and tenants, (30 June, 1995)  
<https://www.indiatoday.in/magazine/indiascope/story/19950630-rent-bill-incurs-wrath-of-delhi-traders-and-tenants-807467-1995-06-30>

<sup>12</sup> Prabhakaran Nair, Etc vs State Of Tamil Nadu, 1988 SCR (1) 1

<sup>13</sup> Model Tenancy Act, 2021

<sup>14</sup> *Supra Note 6.*

## HIGHLIGHTS OF THE ACT

The Rent Acts are social welfare laws that serve the dual purposes of preventing tenants from being evicted without cause and paying excessive rent. The main goal of the new Act is to regulate the renting of both residential and commercial buildings. It owes to establish specific guidelines for rights and responsibilities of the landlord and tenant. The Act also promotes the swift and open resolution of disputes. The Act intends to formalise the informal rental housing sector, release unoccupied homes, raise rental returns, make exploitative activities less common, remove procedural obstacles to registration, and improve openness and discipline.<sup>15</sup>

The salient features of the Act are:

1. Tenancy Agreement: The Model Tenancy Act, 2021 makes it mandatory for the landlord and tenant to have a written agreement before entering into tenancy.<sup>16</sup> They have been made jointly responsible to inform the Rent Authority within a period of two months from the date of tenancy agreement. If however, they fail to jointly inform the Authority within two months, they should separately inform the authority within one month.<sup>17</sup>

The agreement must state:

- (i) The amount of rent due,
- (ii) the tenure of the tenancy
- (iii) the conditions and frequency of rent adjustments;
- (iv) the advance-payable security deposit
- (v) justifiable grounds for landlord entry into the property; and
- (vi) Premises maintenance obligations

The parties will be issued a unique identification number after the authority receives the agreement's information, and the rental agreement's details will be published together with other documents on the authority's website.<sup>18</sup>

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<sup>15</sup> <https://www.deccanherald.com/opinion/in-perspective/model-tenancy-act-a-mixed-bag-1131814.html>

<sup>16</sup> The Model tenancy Act, 2021 § 4

<sup>17</sup> *Id.* § 4(2)

<sup>18</sup> *Id.* § 4(4)

2. Security Deposit: For residential properties, the security deposit cannot be more than two months' rent; and six months' rent for non-residential properties. At the event of taking over vacant possession of the property, the landlord will return the security deposit to the renter after making the necessary deductions.<sup>19</sup>
3. Tenancy Period: The duration of tenancy will be determined by the agreement between the landlord and tenant. The landlord may grant a tenant's request for a renewal or extension of the tenancy. If a tenancy period has finished and has not been renewed, or the tenant does not evacuate the premises at the conclusion of such tenancy, the tenant will be required to pay increased rent. The tenant shall be responsible for paying (i) twice the monthly rent for the first two months and (ii) four times the monthly rent continuing forward until he occupies the premises if he fails to evacuate the property at the end of the tenancy or upon termination of tenancy by an order.<sup>20</sup>
4. Property Manager: The Model Act also recognises "property managers" and sets down rules for their conduct. A property manager has obligations that, if not met, could result in his dismissal or the imposition of fees to compensate up for any losses suffered by the landlord or tenant, by the rent authority.<sup>21</sup>
5. Eviction: Tenancies entered after the Model Act comes into effect would be for a limited time only, extending for the duration of the agreement between the landlord and tenant. A landlord is authorised to take control of the property ipso facto after the tenancy has ended without having to provide any reasons.<sup>22</sup>

However, to evict the tenant before the termination of tenancy, the landlord must apply to the Rent Authority seeking such eviction. The Authority may make an order for eviction on certain grounds including: (i) refusal to pay the agreed rent; (ii) failure to pay rent for more than two months; (iii) parting of possession of part or whole of premises without written consent of landlord; (iv) misuse of premises even after receiving written notices to desist from such misuse; and (v) structural change by tenant without written consent.<sup>23</sup>
6. Sub-letting: Under the Model Act, sub-letting is prohibited unless allowed through a supplementary agreement. The landlord and tenant must jointly inform the Rent

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<sup>19</sup> *Id.* § 11

<sup>20</sup> *Id.* § 5

<sup>21</sup> *Id.* § 19

<sup>22</sup> *Id.* § 5

<sup>23</sup> *Id.* §22

Authority about the sub-tenancy within two months from the date of execution of such agreement.<sup>24</sup>

7. Division of Duties of Landlord and Tenant: The Part A and Part B of the Schedule II of the Act provides for the clear division of duties between the landlord and tenant. This is an endeavour to reduce the disputes of maintenance between them.<sup>25</sup>

**THREE- TIER DISPUTE RESOLUTION SYSTEM:**

A three-tier quasi-judicial structure for dispute resolution is proposed under the Model Act. The District Collector shall appoint Rent Authorities and Rent Courts with the permission of the state government. In each district, the state government may create a Rent Tribunal after consultation with the jurisdictional High Court. No civil court will have the authority to adjudicate cases involving the matters provided in Model Act provisions. The Model Act specifies the procedure for examination of cases and judicial conduct by Rent Courts and Rent Tribunals. It also specifies timelines for adjudication of certain cases by all three authorities. The jurisdiction of the various disputes has been tabled below:

Authority	Headed by	Functions
Rent Authority	Deputy Collector	<ol style="list-style-type: none"> <li>1. Put up a digital platform to enable submission of tenancy related documents as specified.</li> <li>2. Provide a unique identification number to the parties to the tenancy agreement, and upload</li> </ol>

<sup>24</sup> *Id.* § 7

<sup>25</sup> *Id.* Sch. II

		<p>details of the agreement within a week of receiving details</p> <ol style="list-style-type: none"> <li>3. Resolve disputes with regard to revision of rent, and determine revised rates in such cases</li> <li>4. Accept rent for up to two months when rent is not accepted by landlord, or if the tenant cannot decide whom the rent is payable to; also conduct enquiries in such cases.</li> <li>5. Remove or penalise property manager if he acts in contravention of the Act or against the instructions of the landlord.</li> <li>6. Pass interim orders to restore supply of essential services and award compensation.</li> </ol>
Rent Court	Additional Collector, or Additional District Magistrate	<ol style="list-style-type: none"> <li>1. Adjudicate appeals against the order of the Rent Authority.</li> <li>2. Order for eviction and recovery of possession of premises</li> </ol>
Rent Tribunal	District Judge, or Additional District Judge	<ol style="list-style-type: none"> <li>1. Adjudicate appeals against order of the Rent Court.</li> </ol>

**KEY ISSUES LINKED WITH THE MODEL ACT:**

- **The Privacy Issue:** According to the Model Act, a rental agreement must be disclosed to the Rent Authority within two months after the agreement date. A form specified in a Schedule to the Act must be used to provide information about the agreement. Both the tenant and the landlord must provide their Aadhaar numbers, together with self-attested copies of the card.<sup>26</sup>

This may violate the judgement of the Supreme Court in the case of Justice K.S. Puttaswamy (Retd). vs Union Of India And Ors.<sup>27</sup>, in which the Court held that only expenses for benefits, services, or subsidies paid for out of the Consolidated Fund of India may necessitate an Aadhaar card or number. Making an Aadhaar number necessary for registering a tenancy may go against the judgment because doing so has no benefits or services from the state.

The Model Act further stipulates that the parties will receive a unique identification number upon registration with the Rent Authority, and that information regarding the rental agreement (along with other documents) would be placed on the Authority's website. It is unknown if the parties' private information, which must be included with the agreement and includes their PAN and Aadhaar numbers among others, will also be made public. The interested parties' right to privacy may be violated if these are shared on the website.

The Supreme Court has held the right to privacy as a fundamental right. It has further provided that:

“This right may be infringed only if three conditions are met: (i) there is a law, (ii) the law achieves a public purpose, and (iii) the public purpose is proportionate to the violation of privacy.”<sup>28</sup>

For the purpose of developing policies and comprehending the evolution of the real estate market, information like the quantity of rental properties available and their rental yield may be helpful. However, disclosing personal information might not be in the public interest and so be a violation of an individual's right to privacy.

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<sup>26</sup> The Model tenancy Act, § 4, Sch. I

<sup>27</sup> (2017) 10 SCC 1

<sup>28</sup> *Id.*



- **Ambiguity for existing tenancies:** The Model Act controls tenancies when it comes into effect, but it also repeals the existing rent laws in the States and Union Territories under Section 47(1)<sup>29</sup>. A limited saving clause in Section 47(2)<sup>30</sup> states that cases and proceedings already pending under these Acts will be considered as if the present Act had not been enacted. As a result of the deeming fiction produced by the savings clause, any on-going legal actions taken by the landlord or tenant about eviction or the fixation of "standard rent" or "fair rent" would continue.

It is important to consider the landlords and tenants who have not yet filed a claim under the Rent Acts, including whether the Rent Acts' protection would still be accessible to them and if new claims would still need to be filed under the Rent Acts after its repeal. It is well established that a statute is entirely obliterated after it is repealed. Repeal destroys all inchoate rights and all cause of actions that may have arisen under the repealed statute.<sup>31</sup> If however, the right created by a statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it has expired.<sup>32</sup>

In Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co<sup>33</sup> According to the Delhi Rent Control Act, 1958, the respondent landlord had filed an eviction suit for a property with a monthly rent of Rs 8625. The Delhi Rent Control Act, 1958 was amended to add Section 3 (c), which rendered the Act inapplicable to properties with monthly rents of more than Rs 3500, while the petition was still pending. The issue of whether the amendment had an impact on ongoing eviction proceedings arose. First, the Supreme Court observed that a tenant's interest under the Rent Act might best be described as a protective right and cannot be construed as a vested right. The rights and remedies that a landlord would otherwise have access to under general law are currently suspended as a result of the passage of the Rent Act, but if that protection is lifted, the landlord's usual vested rights will once again become operative and may be enforced by him. Second, if the petition is pending, the landlord has a "acquired" or "accrued" right rather than a "vested" right under Section 14 of the Act. The Court established that courts must

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<sup>29</sup> The Model tenancy Act, 2021 § 47(1)

<sup>30</sup> *Id.* § 47(2)

<sup>31</sup> *Keshavan Mahadeva Menon v. State of Bombay*, 1951 SCR 228.

<sup>32</sup> *M.S. Shivananda v. Karnataka SRTC*, (1980) 1 SCC 149, para 12

<sup>33</sup> (2001) 8 SCC 397

consider whether a person under a repealed act had any vested rights in situations where Section 6 of the General Clauses Act, 1897 is applicable. But in situations where Section 6 does not apply, it is not a vested right; rather, all rights under the various sub-clauses of Section 6 from (a) to (e) are "acquired" and "accrued." In these situations, ongoing legal processes must proceed as if the statute had not been repealed.

- **Lack of flexibility in duties of tenant and landlord:** The 2021 Model Act delves into the specifics of a rental agreement. Examples include (i) the tenant must be liable for drain cleaning, geyser repairs, and repairing kitchen fixtures; (ii) the maximum security deposit; and (iii) the landlord must perform structural repairs and whitewashing of walls and doors.<sup>34</sup> According to current state laws, such as those for Maharashtra, Karnataka, and West Bengal, such specifics are typically included in rental agreements. A model central legislation might not need to have these specifics. To include these specifics in the legislation, one may also limit the modifications that contracting parties might want to make in light of their unique circumstances.
- **Restrictive definition of Force majeure:** The Act provides that if the term of the tenancy expires at a time when the surroundings of the property are affected by any natural calamity or by any event of disastrous event of force majeure, then the landlord is under obligation to allow the tenant to reside in the rented property on the same terms and conditions of the tenancy agreement till a period of one month after the subsiding of the calamity. The explanation further provides the definition of the term "force majeure" and includes situation of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature. However, the definition is limited and fails to include pandemics such as the COVID-19 which affects the individuals on a very large extends.<sup>35</sup>

## CONCLUSION AND SUGGESTIONS

The Model Law is an essential legislation to eliminate the discrepancy between the Indian rental market and the prevailing rent control laws. By having uniform terms and conditions throughout all states, it hopes to encourage transparency between landlords and tenants and eventually stabilise the rental market. It levels the playing field by requiring registrations,

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<sup>34</sup> Model Tenancy Act, Sch. II

<sup>35</sup> Model Tenancy Act, 2021 §5

giving landlords and tenants the flexibility to raise rent on mutually agreeable terms, capping security deposit amounts, and expediting the resolution of landlord-tenant disputes.

It is undeniable that the Tenancy Act is attempting to bring coherence to the landlord-tenant disputes that frequently drag on for years, if not decades, in court. The sixty-day deadline for application and appeal adjudication by the rent court and tribunal is stipulated with the intention of creating a sense of urgency for the prompt resolution of cases. The mandated reporting of all tenancy agreements and the administration of such relationships is also meant to provide discipline to the nation's otherwise chaotic rental housing industry.

The timely execution of this Act in accordance with its genuine spirit is essential to attaining its goal. It is on the prerogative and will of the States to regulate its implementation. The States also have a huge amount of responsibility for addressing both the practical issues and the deficiencies that are not covered by the Act. So far, only four States i.e. Andhra Pradesh, Tamil Nadu, Uttar Pradesh and Assam have revised their tenancy Acts on the lines of the Model Act, while the State of Madhya Pradesh has announced to adopt it. The rental market may undergo a game-changing overhaul if this Act is implemented precisely by all the States.