

RENT CONTROL IN INDIA – OBSTACLES FOR URBAN REFORM

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Rent Control has been one of the foremost welfare measures that have survived in India. The governments of various countries have tried from time to time to make sure the laws are apt to meet the requirements. In the first decade of the 21st century, however, rent control has been seen as an obstacle to urban reforms. The paper takes a look at the extant legal regime and the proposed changes. It needs to be noted that the proposed reform was introduced in the form of the Model Rent Control Legislation in 1992, yet only five states have implemented the same. The only upside is that about ten states have proposed bills as of 2010. In the course of this paper we attempt to analyse as to what extent the proposed changes tackle the problems faced under the extant regime. Further, in light of the examples put forth by the existing states that have implemented new age laws, we seek to suggest improvements.

I. INTRODUCTION

As in several other countries, rent control has been used in India as a tool of welfare governance. Though legislations have existed since pre-independence times, the Jawaharlal Nehru National Urban Renewal Mission ('JNNURM')¹ has made rent control a contentious issue. JNNURM sees these legislations as an urban bottleneck that needs reform.²

Rent control in India was introduced to prevent pseudo-scarcity of rental housing post-World War II. The legislations allowed for requisitioning houses lying vacant in tenantable conditions. Although introduced as a temporary measure, rent control legislations have somehow continued as a policy decision. Conditions that demanded these legislations have changed.

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¹ Ministry of Urban Development, Government of India, JNNURM, Sub-Mission I (Urban Infrastructure & Governance), available at <http://jnnurm.nic.in/nurmudweb/defaultud.aspx>, (Last visited on August 29, 2010).

² Dr. Manmohan Singh, *JNNURM: A New Vision for the Future of Urban India, Economic Developments in India* (Raj & Uma Kapila, eds.), 18, Vol. 144, Academic Foundation, New Delhi, 2009.

The pace of amendments has not kept up with the change in socio-economic demographics. What seems eternal is that housing shortages still exist. The fact is that rent control has been critiqued on grounds of being economically and socially inefficient.³

Rent control comes under the states' legislative competence therefore, has to be reformed by the states themselves.⁴ Thus, the onus to implement reform lies on the states. For the sake of coherence, this paper delineates rent control laws in India into three distinct phases. The pre-independence legislations form the first generation laws. The post-independence legislation that protected tenancy rights (viz. protection against eviction) forms the second generation laws. The legislations implemented in the period post the circulation of the Model Rent Control Legislation, 1992 ('MRCL') marked the epoch of third generation laws on the subject.

A catena of judgments accepts that second generation rent control laws have been interpreted in favour of the tenant a lot more than was initially intended.⁵ Such is the gravity of the situation that 'biased' provisions in second generation laws have been declared to be void and ineffective.⁶ The accepted position of law remains that the legislations have to promote the complete intent behind the Act⁷ and not remain restricted to mere fulfilment of the object of the Act.⁸ In addition, the Model Rent Legislation that was to be the basis of reform of state laws, was adopted, albeit partly, in only four states.⁹ It has been accepted by the Law Commission of India in its 129th Report that the maximum number of disputes pending before courts is those relating to eviction.¹⁰

The hypothesis of this paper is that the present rent control regime in India forms a major impediment to the intended urban reform. This assumption is based on the criticism of international precedents.¹¹ The aim thus would be that even if the regime has to be continued, certain changes have to be brought forth.

³ Edgar O. Olsen, *Is Rent Control Good Social Policy?*, 67 CHI-KENT L. REV. 931 (1991).

⁴ See *Indu Bhushan Bose v. Rama Sundari Devi*, AIR 1970 SC 228.

⁵ See *Raichurmatham Prabhakar & Anr. v. Rawatmal Dugar*, (2004) 4 SCC 766.

⁶ See *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.

⁷ See *Rex v. Nain Sukh Das*, AIR 1949 All 345.

⁸ See *Mohammad Hassan Khan v. Narain*, AIR 1949 All 210.

⁹ At present, the states of Karnataka, Rajasthan, Maharashtra and West Bengal have formally adopted it.

¹⁰ Law Commission of India, *One Hundred and Twenty Ninth Report on 'Urban Litigation, Mediation as an Alternative to Adjudication'*, available at www.lawcommissionofindia.nic.in/101-169/Report129.pdf (Last visited on June 17, 2010).

¹¹ See generally Steven Cheung, *Rent Control and Housing Reconstruction: The Post War Experience of Pre War Premises in Hong Kong*, 22 J.L. & ECON. 27 (1979).

This paper has been structured in four phases which we have restricted to the analysis of the legislations of the states of Uttar Pradesh, Rajasthan and Maharashtra. In the first phase we chalk out the regime that is prevalent and highlight the issues with which the law has not dealt. In the second phase, we list the legal defects that plague the extant regime which is primarily governed by second generation laws. The third phase deals with the salient features of the MRCL and the adaptation of the same after 1992. This assessment will include the sources of the new legislation, and its drawbacks and failures as reported. In the fourth and the final phase, we conclude with constructive suggestions that third generation laws may incorporate.

At the outset, we would like to establish certain pointers for the analysis undertaken by the paper. Firstly, this 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.

II. BACKGROUND OF THE EXTANT REGIME

A. FIRST GENERATION LAWS

The influx of soldiers post-World War II saw the implementation of rent control globally. The British introduced a catena of rent control legislations which the paper addresses as *first generation laws*.¹² These legislations, in their object and purpose, clearly exhibited that they were intended to

¹² For our purpose, the following are the relevant legislations: The Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 ('Bombay Rent Act, 1947'), United Provinces (Temporary) Control of Rent & Eviction Act, 1947 ('U.P. Rent Act, 1947'), and Ajmer and Mewar Rent Control Act, 1947.

be only temporary in nature¹³ 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.¹⁴ The cut-off date for the tenancies to be controlled was established from 1940.¹⁵

These Acts protected persons occupying a tenement, which upon their death was transferred to the members of their family living with them.¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰ Thus, it led to the creation of a black market for rental housing market in India.

B. SECOND GENERAL 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; (2) to give tenants security of tenure by preventing landlords from

¹³ The U.P. Rent Act, 1947 clearly reflected this in its name. Further, The Bombay Rent Act, 1947 was amended from time to time to continue its application, the last being in 1987. In the case of Rajasthan, the Ajmer and Mewar Rent Control Act, 1947 was repealed by the Delhi and Ajmer Rent Control Act, 1957.

¹⁴ See Bombay Rent Act, 1947, §5.

¹⁵ See Bombay Rent Act, 1947, §11(1)(a).

¹⁶ See Bombay Rent Act, 1947, §5 (11) and Maharashtra Rent Act, 1999, §5 (11); see also Jaysen Jayant Rele v. Shantaram Ganpat Gujar, AIR 2002 Bom 462.

¹⁷ The Karnataka Rent Control Act, 1961, §§21, 21(1) and 22; B.H. Rangaswamy and B.H. Jalajaksi v. Mysore Arts and Woods Works, ILR 1992 KAR 3632, 1992(4) KAR LJ 521

¹⁸ See Amir Ahmed v. Yusuf, 1985 (1) WLN 550 [Raj].

¹⁹ *Id.*

²⁰ See Welfare Association A.R.P. Maharashtra and Anr. v. Ranjit P. Gohil and Ors., AIR 2003 SC 1266.

evicting them without an order of the court, which could not be given except on certain specified grounds.²¹

Since the implementation of the second generation acts, Indian states have seen a huge change in the socio-economic demographic. The moment one focuses his/her attention on litigation in the states, suits involving rent and property stare one belligerently in the face. The biggest problem that the judiciary faces today is the absence of stringent laws which are outweighed by a large supply of rent disputes.

Qua such a change, the second generation legislations have been a classic example of legislative oversight as they were not intended in continuum. The Law Commission of India has acknowledged the logistical flaws in the procedures established by these laws.²² 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.²³

As such the demand for housing became acute. The lessors (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 ejectment by decree of the court of law.²⁴ 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.²⁵

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.²⁶ 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 § 21(a), it may be witnessed that unscrupulous

²¹ *Viz.* – default in the payment of rent, sub-letting, making structural alterations, and the landlord's genuine need to occupy the premises and some more.

²² See the 129th Law Commission Report, *supra* note 10.

²³ U.P. Act, 1972, §24(2). See also *Lal Chand v. District Judge, Agra And Ors.*, AIR 2000 SC 141.

²⁴ See *Prithvichand Ramchand Sablok v. S.Y. Shinde*, AIR 1993 SC 1929.

²⁵ See The 1987 amendment to §12(3) Bombay Rent Act, 1947. See generally *Piroja M. Mehta v. Hambai Jamshedji Cama (Dr.) and Ors.*, (1988) 90 BOMLR 292.

²⁶ *Abdul Jalil S/O Late Habib Ullah v. Special Judge E.C. Act*, 2007 (69) ALR 318.

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.²⁷

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.²⁸ 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.²⁹ 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.³⁰ 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

²⁷ *Id.* [per Rakesh Tiwari J.] 188

²⁸ See Planning Commission of India, 10th Five Year Plan (2002 – 2007), Volume III, *State Plans: Trends, Concerns and Strategies*, available at http://www.planningcommission.gov.in/plans/planrel/fiveyr/10th/volume3/10th_vol3.pdf, (Last visited on September 25, 2010) – The Planning Commission has attributed rent control acts as one of the reasons for the proliferation of the slums at Dharavi, Mumbai which had to be regularised considering the magnitude of the illegal housing it provided.

²⁹ See Government of India, Ministry of Commerce, Department of Industrial Policy and Promotion, *Consolidated FDI Policy*, Circular 1 of 2010 – 100% FDI cap is allowed in real estate.

³⁰ “In the absence of getting the expected value on their investments distressed landlords sell their properties to land Mafia who purchase it at throw away prices. The tenant who was litigating for year is thrown out by these mafias and he vacates the house without a whimper. Neither the Authorities have any guts to deal with this situation nor they do anything in this regard but they side with the mafias and keep quiet.” See *Abdul Jalil case supra* note 26, 105.

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. However, the MRCL was, in effect, adopted by just four states³¹ JNNURM identified the major provisions of rent laws that needed amendment³² Firstly, 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. Secondly, 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. Thirdly, 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. Fourthly, the long judicial process, at times extending over ten to twenty years, denies 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 the aforementioned act.³³

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 Act³⁴ 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. Apart from the tenancies which existed at the time when the RCA came into being and in tenancies where the tenant applied to the rent controller for fixation of rent, the rents fixed would be higher than the standard 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.³⁵

³¹ *Supra* note 9.

³² JNNURM, *Rent Control: State Level Reform Primer*, available at http://jnnurm.nic.in/nurmudweb/Reforms/Primers/Mandatory/3-RCR.doc&rct=j&q=JNNURM%20rent%20control%20primer&ei=FqapTP_yI86XcZrU9eUN&usg=AFQjCNHnBfzuYRpdjKDIZYOCOOffYm4f-g&sig2=UiC-OXliTVqWkmXRH5_IKw, (Last visited on August 28, 2010).

³³ *Bal Kishen v. IV Additional District Judge, Etawah*, 2003 (53) ALR 441.

³⁴ See Chapter V, Transfer of Property Act, 1882.

³⁵ Kiran Wadhwa, *Maharashtra Rent Control Act 1999 – Unfinished Agenda*, 37(25) ECONOMIC & POLITICAL WEEKLY (2002), 2471.

III. MODEL RENT CONTROL LEGISLATION, 1992: USHERING THIRD GENERATION RENT CONTROL

As stated above, the Law Commission has observed that the maximum number of litigations existing before courts are those pertaining to rent control.³⁶ Rent control is a state subject and as such the State Governments have the exclusive jurisdiction to legislate on it. Owing to our quasi-federal administrative setup, the Central Government may guide the states. Thus, it is open to the Central Government to prepare model legislation for adoption by the states and they may adopt it with such suitable modification to suit the local condition, as may be necessary.

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.³⁷ The policy paper was considered in the Chief Ministers Conference, where the broad frame work of the Model Rent Control Legislation was endorsed.³⁸

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.³⁹

In light of the aforementioned background of the rent control regime under the first two generations of laws, certain appraisals of the MRCL have to be made in light of the legal provisions that were critiqued. At the outset it has to be considered that the MRCL is not a statute and merely provides a broad framework based on which state laws may be modelled.

A. 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

³⁶ *Supra* note 10.

³⁷ Ministry of Urban Development, Annual Report 2000-2001, available at http://www.urban-india.nic.in/quickaccess/ann_report/2000-2001/English/5.pdf, (Last visited on September 28, 2010).

³⁸ *Id.*

³⁹ ROBERT JAN BAKEN, PLOTTING, SQUATTING, PUBLIC PURPOSE, AND POLITICS: LAND MARKET DEVELOPMENT, LOW INCOME HOUSING, AND PUBLIC INTERVENTION IN INDIA (2003).

control in urban areas up to a population of 3 lakh.⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵ Thus, in a competitive market, the liquidity of rental housing would go down.

B. STANDARD RENT

Appraisal must be made of provisions pertaining to the Fixation of Standard Rent and Revision. MRCL provides that Standard Rent is to be fixed on the basis of 10 per cent or such percentage return as State Government may decide on total cost consisting of two components viz., market value of land in the year of commencement of construction, enhanced in the manner specified in (b) below, and cost of construction, plus, where applicable, the cost of renovations or major repairs.

⁴⁰ See Feature A (a) – Exemptions, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁴¹ *Id.*

⁴² See Model Draft Report on Uttar Pradesh Rent Control Bill, 2010, available at <http://www.upscl.org/reports/rent%20control%20act%202010%20pdf1.pdf>, (Last visited, September 29, 2010).

⁴³ See Feature A (d) – Exemptions, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁴⁴ Richard Epstein, *Rent Control and the theory of Efficient Regulation*, 54 BROOKLYN L. REV. 741 (1988).

⁴⁵ This has been seen as contributory to the frustration of the landlords as pointed out in the *Abdul Jalil case*, *supra* note 26.

The standard rent so derived is increased by a certain specified percentage to arrive at standard rent for a given year. This percentage may be higher for non-residential premises. The percentage can vary from state to state. In case of Delhi, the suggested rates of increase are 4 per cent (1950-60); 6 per cent (1960-70) and 8 per cent (1970 onwards), though the inflation rate is higher.⁴⁶ To this standard rent, charges relating to maintenance and amenities and taxes payable on pro-rata basis are added to derive the total amount payable by the tenant. The new standard rent is to be applicable to all existing tenancies, and rents of these tenancies are to be raised gradually over a specified period according to a specified schedule.⁴⁷ Any new tenancy created during this period will bear the same rent as in specified in the adjustment schedule.

C. STREAMLINED 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.⁴⁸ The MRCL further allowed for pre-trial conciliation/compromise between landlord and tenant at any stage of litigation.⁴⁹ This is in consonance with the provisions of §89 of the CPC.⁵⁰ 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.⁵¹

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.

⁴⁶ See Feature B (b) – Fixation of Standard Rent and Revision, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁴⁷ See Feature B (d) – Fixation of Standard Rent and Revision, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁴⁸ See Article 323B, Constitution of India which deals with the establishment of tribunals other than administrative tribunals.

⁴⁹ See Feature H (b) – Streamlining Judicial Procedure under Law, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁵⁰ Provision for Resolution by Alternative Dispute Resolution.

⁵¹ ROBERT COOTER & THOMAS ULEN, LAW & ECONOMICS (2004).

D. 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.⁵²

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.⁵³ In response to the problems that had been considered under §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.⁵⁴

E. MAINTENANCE PROVISIONS: INCENTIVES FOR 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.⁵⁵ Criticism in India has not been any different.⁵⁶ 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

⁵² *Supra* note 26.

⁵³ See Feature D (2) – Eviction, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁵⁴ See Maharashtra Rent Control Act, 1999, §18 and §53. The Rajasthan Rent Control Act, though, does not penalise the landlord as sternly but provides for compensation to the tenant on a conjoint reading of §10 and §12.

⁵⁵ J Gyourko & P Linneman, *Equity and Efficiency Aspects of Rent Control: An Empirical Study of New York City*, 26 JOURNAL OF URBAN ECONOMICS, 54 (1989).

⁵⁶ Basu, Kaushik and Emerson, Patrick Munro, *Efficiency Pricing, Tenancy Rental Control and Monopolistic Landlords*, October 2001, Massachusetts Institute of Technology, Department of Economics Working Paper No. 01-40, available at <http://ssrn.com/abstract=290831>, (Last visited on September 19, 2010)

landlord to carry out repairs. The landlord can apply for revision of rent on account of expenditure on special repairs to the house.⁵⁷

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.⁵⁸ Further, 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.⁵⁹ 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.⁶⁰ 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.

F. MISCELLANEOUS PROVISIONS

The MRCL suggests that rent control statutes should be made permanent. This is something that will create a persisting problem. Since rent control legislations are considered to be temporary enactments and they need to be rationalized in due course of time, their permanence would result in the laxity on the part of the government to do away with them. Further, the MRCL, while accepting the drawbacks of the extant regime requires the old Acts to be repealed rather than amended as the drastic amendments required may lead to confusion and make the Acts very complicated.⁶¹

The provisions for limited period of tenancy on the basis of renting being limited to a period of 5 years are a welcome change.⁶² This would create a definite status of tenancy which has been one of the root causes of criticism of the regime in India. Further the inheritability of tenancy becomes limited to all the direct legal heirs including spouse, parents, children *et al.*⁶³

The provisions that rendered charging of premium from the tenant to move in or out of the premises as being illegal have been suggested to

⁵⁷ See Feature E (b) – Maintenance Provision, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁵⁸ *Id.* See Feature E (c).

⁵⁹ *Id.*

⁶⁰ See Basu, Kaushik and Emerson, Patrick Munro, *The Economics and Law of Rent Control*, (World Bank Policy Research Working Paper Series, Paper No. 1968, 1998), available at <http://ssrn.com/abstract=121272> (Last visited on August 22, 2010).

⁶¹ See Feature G (9) – Other Provisions, Model Rent Control Legislation, 1992, Government of India, Ministry of Urban Development, July 1992.

⁶² *Id.* See Feature G (2).

⁶³ *Id.* See Feature G (3). The list also includes the daughter-in-law living with a dependent, through marriage to a son who has deceased.

be deleted from the Act.⁶⁴ This, however, seems to have been done in haste as the legislature does not provide for any legislative cap as to what would be the limit on the legitimate premium to be paid by the tenant.

IV. WHAT THIRD GENERATION RENT CONTROL LEGISLATIONS NEED TO CHANGE

All over the world, critics of the RCA have recommended abolishing the entire concept of rent controls. Any criticism to rent control has to be considered from both, a social and an economic angle. From a social point of view, it is argued that RCA will improve the supply of rental housing and eventually lead to decrease in the rents.⁶⁵ Economically, rent control is an out and out bad law as it should have been enforced only in response to a temporary emergency. Economists such as Epstein while offering a solution for replacing rent control stated that an increase in unregulated rents would produce more rental units and reduce tenant demand.⁶⁶ 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.⁶⁷ Market rents, especially in Maharashtra and areas of Uttar Pradesh neighbouring Delhi, move with the value of houses. In fact, given that commercial rents in Mumbai have become twice that of Manhattan⁶⁸, removing rent control altogether is not a good idea. 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.⁶⁹ The present Indian economic scenario demands that rent control laws which are economically inefficient may be done away or rationalized.

Neither the MRCL, nor third generation laws have clearly defined a long-term and short-term policy. In the short-term policy, one can have a limited kind of rent control which should gradually give way to market forces. This should be supplemented by the long-term policy of the government directed towards increasing the supply of housing at a reasonable cost.

⁶⁴ *Id.* See Feature G (5).

⁶⁵ Margaret J. Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350 (1986).

⁶⁶ See Epstein, *Theory of Efficient Regulation*, *supra* note 42.

⁶⁷ Kiran Wadhwa, *Delhi Rent Control Act: Facts and Fallacies*, ECONOMIC AND POLITICAL WEEKLY, 25 May 1991, 1351.

⁶⁸ See Times News Network, *Mumbai Office Rents twice of Manhattan*, Times of India, February 23, 2010 available at <http://timesofindia.indiatimes.com/city/mumbai/Mumbai-office-rents-twice-of-Manhattan/articleshow/5604940.cms> (Last visited on September 28, 2010).

⁶⁹ Dennis Keating, *Commentary on Rent Control and the theory of Efficient Regulation*, 54 BROOKLYN L. REV. 1223 (1988).

A. IS STANDARD RENT FAIR?

An important issue which the government has not tackled is what the definition of fair rent is. Fair rent can be defined either as market rent or a rent which besides giving a 'reasonable rate of return' to the landlord also covers the variable costs of renting. Reasonable return sounds like a nebulous concept. The economic variables would be: (1) Base on which the rate of return is to be calculated- should the base be actual cost of the house, or replacement cost of the house or its current market value?; (2) The definition of reasonable rate of return- should it be equal to return on long term government securities or on equity of blue chip companies or average rate of return from other long term investments etc.?

For instance, the U.P. Bill has not affected in any manner the status or tenure of tenancies acquired under the earlier acts of 1947 and 1972. There is a relationship between the revision of rent and the status of tenancies which has to be cordially maintained with each new amendment or a new legislation. A failure to synchronise the two belies the logic of present economic conditions the standard rent which has been made revisable at five per cent.⁷⁰ This could have been made revisable at a uniform licence fee charged in case of premises given on leave and licence and can be said to be reasonable in the current inflationary trends.⁷¹ The bill needs to establish the status of tenancies in sync with the present conditions.

A major problem faced by the tenant is uncertainty regarding duration of tenancy and future level of rent. There may be no objection to paying the market rent if the tenant can be certain of the stability of this rent or the security of the tenure at least for a few years. The landlord again may not be looking for a return on the investment that he may get in the stock market but with inflation soaring currently at roughly eight and half per cent would a rental increase of merely 5 per cent continue? With the MRCL allowing for a rental increase of a maximum of 10 per cent, probably a policy argument may be that average rates of increase may be kept at an average of 5 years rather than a blanket number.

Registration of tenancies has been made mandatory. With tenancies being made under the regime of the Transfer of Property Act, a legislative framework that would allow for free contracts that may be legally registered⁷² would do away with transaction costs of determining rents by rent controllers.

⁷⁰ Rajasthan Rent Control Act, 2001, §6.

⁷¹ Karam Chand v. L.R.s of Labh Chand, RLW 2008 (2) Raj 1685.

⁷² *Supra* note 32.

The provisions of standard rent should not be inclusive of the maintenance costs. Practically, in India, due to the non-stringent interpretation of the laws, the liabilities of payment for continued maintenance of a building is not clearly demarcated. With no incentives for the landlord to make continued investments on his property, a rational landlord would like to preserve the amount spent. With a clear determination of liabilities in the legislation itself, transaction costs for dispute resolution would be reduced, thereby efficiently allocating the rights, making neither the tenant nor the landlord worse off.

B. EXEMPTION IN THE THIRD GENERATION LAWS

Qua, exemptions made by the third generation legislations, the most important instance would be the withdrawal of the application of the Act to companies.⁷³ This provision has been made in light of the recommendations made by the Law Commission in its 129th Report. It was stated that companies paying high salaries to its directors and officers along with all the conceivable perquisites, rich dividend to its shareholders and with its capability to spend away the funds on any obscure heads while at the same time claiming the protection of the rent acts. A company takes premises on lease for a fixed period and then refuses to vacate it on expiry of the stipulated period, taking a stand that the lease is protected under the rent act or that the premises given on leave and licence comes within the protection of the amendment of 1973.⁷⁴

There are two arguments against such an exemption being made.⁷⁵ It has been contended that the legislation due to such a provision stands ultra vires Art. 14 of the Constitution. The basis of the contention is that such a provision seeks to make an invidious distinction between companies having paid capital of one crore rupees and other commercial ventures. The classification of the companies on the basis of paid-up share capital of a company is not a reasonable classification and that the same bears no nexus with the object of the legislation. Secondly, in any case, it would be discriminatory to single out only corporate tenants whilst other categories of tenants who are similarly situated, like partnership firms, HUFs, and proprietary concerns continue to receive the protection of the Act. Critics of this provision have already approached the Bombay High Court with a challenge to this but to no avail. The case however, if on appeal before the Hon'ble Supreme Court which has allowed it on appeal and by an interim order has put the question of law on hold.

⁷³ § 3(1)(j), U.P. Rent Control Bill, 2010 – The new rent control act of 1999 has withdrawn the application of the act from the banks, public sector undertakings, or any corporation established by or under any central or state act, or foreign missions, or international agencies, multinational companies and limited companies having a paid up share capital of more than rupees one crore.

⁷⁴ *Supra* note 10.

⁷⁵ *Crompton Greaves Ltd. v. State of Maharashtra*, AIR 2002 Bom 65.

It is a general principle of interpretation that in the absence of specific law, general law prevails.⁷⁶ The distinction between the Rajasthan Act and its counterpart from Maharashtra and the Uttar Pradesh Bill is that it specifically mentions the applicability of the Transfer of Property Act as the general law in their extent and application. This would ensure that litigants do not extend litigations over trivial matters as to what law may apply and would waste the precious time of the court.⁷⁷

The application of provisions of standardization of rent from the premises, whether old or newly constructed, which have been let or given on licence for a continuous period of one year has been withdrawn.⁷⁸ The 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. The provisions relating to standard rent have been withdrawn from the premises given on tenancy or license in buildings whether old or newly constructed where they have not been let or given on licence for a continuous period of one year. It would have been abreast of the times if the tenancies created after the commandment of the Act had been exempted altogether from the operation of the Act, that is not only from the provisions of the standardization of rent but also from the protection of tenure under the Act.

C. PROVISIONS FOR A STREAMLINED JUDICIAL PROCEDURE

The earlier Acts had given maximum rights to tenants.⁷⁹ The second generation laws provided that if a tenant remained in arrears of rent for more than six months and if he failed to pay them within one month next after the month in which he received the notice, the tenancy stood forfeited and on suit being filed, the court had no choice but to pass the decree of eviction. The stopcock in this was that the forfeiture was not to take effect if the defaulter deposited in court, the arrears of rent with simple interest on the first day of the hearing of the suit and complied with other conditions including the payment of the cost of suit.⁸⁰

The third generation bill in U.P. for example carries this concept forward. Relief against forfeiture can be availed of every time the defaulter complies with the requirements under Chapter IV which are more or less similar that is if, within a period of ninety days from the date of the service of the

⁷⁶ I.T.C. v. Agricultural Produce Market Committee, (2002) 9 SCC 232; Iswari Khetan Mills v. State of Uttar Pradesh, AIR 1980 SC 1955; State of West Bengal v. Kesoram Industries, (2004) 10 SCC 201.

⁷⁷ See Rajasthan Rent Control Act, 2001, §18.

⁷⁸ U.P. Rent Control Bill, 2010 §8.

⁷⁹ Abdul Jalil case, *supra* note 26.

⁸⁰ *Id.*

summons of the suit, the tenant pays the standard rent and permitted increases then due together with simple interest on the amount of arrears of rent at fifteen per cent per annum and thereafter continues to pay regularly such standard rent and permitted increases till the suit is finally decided and also pays the cost of the suit as directed by the court. Thus the payment for the arrears of rent are equated, as it were, with the collection of bill each time for payment of services rendered or goods sold with the compound interest customarily charged on delayed payments, the compound interest here being the cost of the suit. The penalty of simple interest at the rate of fifteen per cent per annum and the cost of the suit which in these days is back breaking is a sufficient deterrence to making default in payment of rent. How good would this be against anti-social elements, however, is yet to be seen.

Payment of premium or 'Paghri' as consideration for the grant or relinquishment of tenancy which was made illegal in England and India with civil and criminal consequences has been expressly permitted to encourage dealings in black and white which were hitherto in black only. This has been done with a view to generate money for circulation in the market as well as tax for the exchequer. There is, however no explicit limit on what would be the amount of premium. It has to be put on record that this is a dangerous provision which may allow exorbitant harassment to a tenant. This is especially predominant in urban areas such as Noida and Ghaziabad where the cost-benefit ratio of hiring *goondas* for evicting tenants is better than legal recourse under Rent Control Acts.

The legislature while legitimising the payment of premiums for grant of tenancy does not put a cap upon the maximum amount that may be paid. This may have two implications. *Firstly* it vitiates the purpose of rent control legislation. *Secondly*, this leads to a situation of market failure because resources will be allocated inefficiently as low-income tenants are either rendered homeless or have to move into sub-standard housing. The slums in Mumbai are a classic example of this. Thus, a cap must be placed on the payment of premiums as legitimising it would enhance the private cost of the landlord without allowing for a near auctioning process. The rider to such a suggestion would be that legitimisation of premium should be done only if a free contract regime has not been accepted.

V. CONCLUSION

Rent control laws in India were initially introduced as a welfare mechanism with the aim of allowing requisitioning of houses. As has been illustrated in this paper, however, these laws have created more problems than they have solved. The present paper has attempted to scrutinize in detail, the evolution of these laws, classifying them into first, second and third generation

laws and analysing the hurdles and challenges faced by each. While the main lacuna posed by the first generation laws was their provisions regarding forfeiture of tenancy and arbitrary eviction of tenants, the second generation laws entailed graver shortcomings as the tenant was usually at the mercy of the Controller. The paper then addresses third generation laws that are largely influenced by the Model Rent Legislation, 1992. The third generation legislations primarily consider exemptions that can be made for properties on which rent control would apply. Though, they also give a much needed overhaul to the assessment and fixation of standard rent and revision. Also, to prevent frivolous litigation, a judicial procedure has to be established. These laws have been criticised due to their eviction procedures and the fact that there is no incentive for landlords to maintain the premises in absence of good returns.

The paper proposes certain suggestions to improve the present regime in order to make rent control laws a more successful mechanism. For this purpose, the paper analyses rent control laws from economic, social and legal perspectives. What has been suggested above is a set of development measures by which all the concerned parties would receive benefit through a fair distribution of tenancy rights. Thus, a balance would be struck between costs incurred on transactions made and the information pertaining to building rights and liabilities. This is important as any legislation is always intended to balance the rights of all the concerned parties.

Rent control laws have stood the test of time even though they have not undergone requisite changes from the time they were introduced in the post-World War-II era. Although a guiding policy exists in the form of the MRCL, it is yet to be adopted. These laws, primarily under the legislative competence of the State Government, need to be considerably evaluated and modified to suit the present circumstances. Hopefully, the importance of these laws will be recognised and enough attention should be rendered to them by the legislature and judiciary so as to make the system of rent control a successful mechanism.