

The Model Tenancy Act 2021: A Complete Analytical Breakdown

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Model Tenancy Act 2021 - Given that the biggest challenge in the rental market across the country is to bridge the long-lasting trust deficit between landlords and tenants, a framework law for renting premises backed with an effective and efficient dispute resolution mechanism was the need of the hour. After almost two years of announcing it, the Union Cabinet, chaired by the Hon'ble Prime Minister of India, approved the Model Tenancy Act for circulation to all States and Union Territories for adaptation either by enacting fresh legislation or by way of amending the existing rental laws as the case may be.

Objectives Of The Act

The Model Tenancy Act, 2021^[2] ('MTA') expressly outlines the objectives of the Act as follows:

1. to establish Rent Authority to regulate renting of premises; and
2. to protect the interests of landlords and tenants; and
3. to provide a speedy adjudication mechanism for resolution of disputes and matters connected therewith or incidental thereto.

MTA: Explaining Definitions

The MTA provides various elaborative and inclusive definitions under Section 2 with respect to terms such as "landlord", "property manager", "rental agent", and "tenant". These definitions are reproduced hereunder for ready reference:

1. 2(a) "landlord", whether called landowner or lessor or by any other name, means a person who receives or is entitled to receive, the rent of any premises, on his own account, if the premises were let to a tenant, and shall include — (i) his successor-in-interest; and (ii) a trustee or guardian or receiver receiving rent for any premises or is entitled to so receive, on account of or on behalf of or for the benefit of, any other person such as minor or person of unsound mind who cannot enter into a contract;
2. 2(f) "property manager" means a person or any legal entity including rental agent who is authorised by the landlord to manage the premises and who represents the landlord in his dealings with the tenant;
3. 2(g) "rental agent" means any person, who negotiates or acts on behalf of landlord or tenant or both in a transaction of renting of any premises and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through

any medium, prospective landlord and tenant to each other for negotiation for renting of premises and includes property dealers, brokers, or middlemen, by whatever name called;

4. 2(n) "Tenant", whether called lessee or by any other name, means a person by whom or on whose account or on behalf of whom, the rent of any premises is payable to the landlord under a tenancy agreement and includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.

Key Highlights

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1. Mandatory Tenancy agreements- Implementation of the Model Tenancy Act is prospective and will not affect existing tenancies. Section 4 of the Act clearly provides that after commencement of this Act, no person shall let or take on rent any premises except by an agreement in writing. The same shall be further informed to the Rent Authority by the landlord and tenant jointly within 2 months from the date of the tenancy agreement. If they fail to inform authorities regarding the execution of the tenancy agreement, then the landlord and tenant shall separately inform the same after one month from the expiry of two (2) months' time period stated above.
2. Appointment of the Rent Authority- As per Section 30 of the Act, the District Collector/ District Magistrate, with prior approval of State Government/Union Territory Administration, shall appoint an officer not below the rank of Deputy Collector to be the Rent Authority within his jurisdiction.
3. Appointment of the Rent Court and Rent Tribunal- Appeal against the order of the Rent Authority shall be preferred before the Rent Court. Section 33 further provide that the District Collector/District Magistrate – with prior approval of the State Government/Union Territory Administration – shall appoint an Additional Collector, Additional District Magistrate or an officer of equivalent rank to be the Rent Court for the purposes of this Act within their jurisdiction.

Appeal against the order of the Rent Court shall be preferred before the Rent Tribunal. As per Section 34 of the Act, the State Government/Union Territory Administration may, in consultation with the jurisdictional High Court, appoint a District Judge or Additional District Judge as the Rent Tribunal in each district.

Section 35 of the MTA provides for procedures to be followed in the Rent Court and Rent Tribunal and it further lists out a time-bound dispute redressal mechanism not exceeding a period of sixty (60) days from the date of receipt of application or appeal.

4. Powers and Procedures of the Rent Authority- Within 3 months from the date of its appointment, the Rent Authority shall put in place a digital platform in the local vernacular language or the language of the State/Union territory for enabling submissions of the rental documents.

Rent Authority shall also provide a unique identification number to the parties after receiving information about the execution of the tenancy agreement and upload the rental documents on the official website within 7 working days from the date of receipt of such information along with the prescribed documents.

In case of dispute between landlord and the tenant regarding revision of

rent, the Rent Authority, on an application made by either of the parties, shall determine the revised rent and applicable charges and also fix the date from which such revised charges will be applicable.

5. Penalty for Squatting- As per Section 23, when the tenant fails to vacate or refuses to vacate the premises let out on rent in accordance with the tenancy agreement on expiration/termination of the tenancy by an order or notice, then such a tenant shall be liable to pay the landlord twice the monthly rent for the first 2 months and four times the monthly rent thereafter till the tenant continues to occupy the said premises.
6. Fixed upper limit for security deposit- As per Section 11 of the Act, the security deposit paid by the tenant in advance shall:
 - a. Not exceed two (2) months' rent, in case of residential premises;
 - b. Not exceed six (6) months' rent, in case of non-residential premises.Furthermore, the security deposit shall be refunded to the tenant on the date of taking over vacant possession of the premises from the tenant, after making due deduction of any liability of the tenant.
7. Limits placed on the entry of landlord or property manager into the premises- Section 17 further places limits on the entry of the landlord or property manager into the premises before sunrise and after sunset. The said entry is only permitted after serving notice to the tenant at least twenty-four (24) hours before the time of entry for the following circumstances which are mentioned as hereunder:
 - a. to carry out repairs or replacement or to do or to get work done in the premises; or
 - b. to carry out an inspection of the premises for the purpose of determining whether the premises are in a habitable state; or
 - c. for any other reasonable cause for an entry specified in the tenancy agreement.Further, the landlord shall enter the premises without prior notice to the tenant in case of emergent situations like war, flood, fire, cyclone, earthquake or any other natural calamity, which may affect the premises.
8. Penalty for withholding essential supply or service- An application can be preferred by the tenant before the Rent Authority in case of withdrawal of any essential supply or service (essential services includes the supply of water, electricity, piped cooking gas supply, lights in passages, lifts and on staircase, conservancy, parking, communication links, sanitary services and security fixtures and features). The Rent authority, on such application, may pass an interim order directing restoration of such essential supply or service immediately on service of such order upon the landlord or property manager, pending the inquiry.
9. Grounds for eviction and recovery of premises- The grounds for eviction of the tenant and recovery of premises have been listed out in Section 21 (2) of the Act. The same are as hereunder:
 - a. When the tenant does not pay the agreed rent;
 - b. When the tenant has not paid the arrears of rent and all other applicable charges in full for two consecutive months
 - c. When the tenant has parted with whole or part of the premises without obtaining the written consent of the landlord
 - d. When the tenant has continued to misuse the premises even after receipt of notice from the landlord to desist from such misuse
 - e. Where any repair or construction or rebuilding or addition or alteration

or demolition in respect of the premises or any part thereof needs to be carried out by the landlord which is not possible without premises being vacated;

f. When premises or any part thereof is required by the landlord for carrying out any repairs, construction, rebuilding, additions, alterations, or demolition, for change of its use as a consequence of the change of land use by the competent authority.

g. When the tenant has given written notice to vacate the premises and on basis of which the landlord has contracted to sell the premises or has taken any other step, as a result of which it is essential to put the premises in his possession failing which the landlord's interest would seriously suffer;

h. the tenant has carried out any structural change or erected any permanent structure in the premises without the written consent of the landlord.

10. Powers of State Government/Union Territory Administration- Section 44, 45 and 46 of the Act provides the State Government/Union Territory Administration with powers to make rules and power to remove difficulties not inconsistent with the provisions of this Act.

Main Issues and Challenges

1. Prospective operation of the Act: The Model Tenancy Act is prospective and will not impact any existing tenancies. In simple words, it means that the existing rental agreements shall remain outside the purview of the Model Tenancy Act, 2021.
2. Dilution of provisions by the States/Union Territories: It is vital to note that the Model Tenancy Act 2021 is merely a model law that is not binding. The same has to first be adopted - for which each State/Union Territory will have to then enact fresh legislation or amend the existing rental laws as per their suitable requirements. The biggest challenge in the implementation of the Model Act is that the States/UT(s) may choose not to adhere to the provisions. Earlier the same situation arose in respect of the Real Estate (Regulation and Development) Act, 2016. The Central Act was notified and it was left to States to make rules in accordance with the Act, for effective implementation. However, when specific Rules were notified by the States, it observed that States had either diluted several crucial provisions or chose not to give effect to the mandatory requirements of the Central Act. Therefore, the Act is only as effective as the States/UT(s) adhere allow it to be.
3. Uploading and publication of the tenancy details and documents vis-à-vis Right to Privacy: Another grey area which Model Tenancy Act, 2021 has failed to address is the protection of the right to privacy of the parties to the tenancy agreement. Uploading or publication of the details of the tenancy along with the submitted documents such as PAN Card, Aadhar Card and other personal documents shall lead to the issues of violation of the privacy of individuals in light of the Supreme Court's Judgment in *K. S. Puttaswamy and Others v. Union of India and Others*.^[3]
4. Informal rental housing: As per a 2011 Census, over 27% of urban residents of the country are living on rent and most of them are informal in nature. The report further states that this is because all States in India are governed by their respective housing legislation which is skewed towards tenant protections, a fixed rent with limited options to increase rentals, etc. The Model Tenancy Act has left the issue regarding the informal rental housing sector unaddressed.

5. No overriding effect: The Model Tenancy Act is markedly silent on the overriding effect of this Act on the existing tenancy laws. It could create chaos in the implementation of the MTA in States/Union Territories which have their own legislation covering issues of tenancies, rent control, leases, licenses. States where elaborate legislation already exists, such as West Bengal, may witness a disharmonious rollout of the Act. Furthermore, states which have already enacted previous housing legislation such as Tamil Nadu will then again have to either repeal it and enact fresh legislation or amend their existing laws in accordance with the MTA, which shall be complicated.
6. Impact on the real estate sector: The pandemic severely affected the housing sector; more specifically the rental housing sector. The reverse migration of the working population to their hometowns, cities due to the pandemic, resulting in vacated houses all over the nation as the realtors and landlords were unable to find tenants for their respective premises. The Model Tenancy Act aims to transform the current scenario by making it affordable and safe for the tenants and landlords. This should help the Indian real estate market recover as things swing back to normal.
7. Exclusion of pandemic from definition of '*force majeure*': The Model Tenancy Act clearly defines the term '*force majeure*' which means a situation of war, flood, drought, fire, cyclone, earthquake, or any other calamity caused by nature affecting the habitation of the tenant in the premises let out on rent. The MTA further provides that in an event of force majeure when the premises become uninhabitable, the landlord shall not charge rent from the tenant until the same premises is restored by the landlord to be inhabitable. However, the said definition does not specifically mention a pandemic and lockdown restrictions under the ambit of '*force majeure event*' – which may be disadvantageous for the tenants.

Comments

The absence of a strong legal framework and rental policies have always been disruptive of the rental housing market in India. The existing dispute resolution mechanism for rental disputes between the landlords and the tenants has proven to be inefficient, which is reflective of the contemporary rental housing market scenario as a highly complex and disarrayed sector. As per 2011 Housing Census[4], in India, the number of vacant houses in urban areas is 1.1 Crores and 1.4 Crores in the rural areas which contributes to a significant vacant housing stock in India. The National Urban Rental Housing Policy (Draft)[5] dated October 2015, also states that the possible reason for these vacant properties could be low rental yield, fear of repossession, lack of incentives, etc.

Uniformity of rental laws and policies and deliberation on issues relating to faster dispute resolution is required for a systematic growth of the rental housing sector. The Model Tenancy Act, 2021 seeks to bridge that very gap of trust between the landlord and the tenant regarding their duties and obligations with respect to the tenancy agreement. It further ensures a more efficient and faster resolution mechanism to settle any dispute which may arise during the period of tenancy.

On the other hand, it is critical to re-emphasize that since Land and Urban Development remains a subject of the State List, the proposals of the Model Tenancy Act, 2021 are not binding on States or Union Territories and the same remains a matter of choice, which leaves the issue of implementation highly uncertain.

The number of houses lying vacant across the cities in India could be reduced to a great extent if the States/Union Territories adhere to the craftily inserted provisions of the Model Tenancy Act, 2021 without diluting its essence. The Model Tenancy Act, 2021 is definitely a step in the right direction which can prove to be a milestone development because it provides a direly needed boost to the rental housing market that has remained under-developed due to lack of legal safeguards.

- [1] <https://pib.gov.in/PressReleseDetailm.aspx?PRID=1723636>
 - [2] http://mohua.gov.in/upload/uploadfiles/files/Model-Tenancy-Act-English-02_06_2021.pdf
 - [3] (2017) 10 SCC 1.
 - [4] https://censusindia.gov.in/2011-Common/NSDI/Houses_Household.pdf
 - [5] http://mohua.gov.in/upload/uploadfiles/files/National_Urban_Rental_Housing_Policy_Draft_2015.pdf
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