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Primer on Rent Control Law Reform JNNURM State-Level Reform

Final Report

Indo-USAID Financial Institutions Reform and Expansion Project—
Debt & Infrastructure Component (FIRE-D Project)

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Rent Control Reform

State Level Reform

1. The Reform

In India, as in most parts of the world, rent control acts were motivated by scarcity of rental housing during world wars. Wartime conditions, which led to binding constraints on the supply of materials for housing construction, no longer exist, but housing shortages have persisted. The rent control laws are widely believed to have contributed to this situation by discouraging investment in housing in general and in rental housing in particular.

Amendment of rent control laws is one of the mandatory reforms suggested in the Jawaharlal Nehru National Urban Renewal Mission (JNNURM or the Mission hereafter). States are expected to implement the reform within the Mission period. It is widely recognized that the existing rent control laws are biased in favor of the tenant. The objective of the reform of rent control act is to bring out amendments in existing provisions for balancing the interests of landlords and tenants. Reform in the rent control laws will go a long way in improving housing situations in urban areas, lessen distortions in the market, and have beneficial impact on urban finances.

2. Rationale for the reform

The rent control laws were initially enacted as temporary acts and a short-term measure to overcome transient problems emanating from unusual situations. In many states, these laws incorporated a sunset clause stating the period at which the law will terminate. The provisions in the laws were designed keeping in view the short-term nature of the enactments. Continuation of these acts over a long period without amending such provisions has had various adverse consequences like depletion in supply of rental housing, distortions in rental housing market and negative impact on urban finances.

The major provisions of rent laws, which need to be amended, are as follows:

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

Why is it important to reform the Rent Control Law?

The combination of the provisions listed above leads to the following consequences:

- Low or negative rate of return from investment in rental housing and decline in supply of rental housing due to:
 - Withdrawal of rental housing from existing stock.
 - Accelerated depreciation of the premises due to inadequate maintenance.
 - Disincentive to new investment in rental housing.
- Reduced supply of rental housing in the “controlled” market segment leads to increased rents in the uncontrolled market segment.
- Ineffective implementation of the rent laws leads to emergence of a black market in rental housing and of unlawful practices like payment of “key money” at the point of entry in tenancy.
- Exclusions of lower income groups from the rental housing market, due to inability to pay high rents in the uncontrolled market and huge deposits as key money in the controlled market.
- Inefficient and wasteful use of scarce resource (rental housing) in the controlled market due to low rents.
- Negative impact on the value of tenanted properties with repercussions on the salability and/or mortgagability of the premises.
- Contentious relationship between the landlord and the tenant.
- Increased litigation and resort to criminal practices for getting repossession of the house by the landlord and consequent increased administration cost for resolution of disputes.
- Stagnation of revenue from property taxes, which is the major source of revenue of urban local bodies (ULBs).

Benefits of reform in rent laws to states, ULBs and citizens.**States**

- Increased investment in housing will have positive multiplier impact on State Domestic Product (SDP) and will generate additional employment.
- Increased supply of rental housing will lead to reduced rent levels and a decline in number of slums.
- Improved housing situation will reduce the need to allocate government funds for housing and release additional resources for financing other social objectives.
- More efficient allocation of existing housing stock will lead to increased productivity with beneficial impact on economy of the state.
- Decline in number of court cases.
- Mitigation of social disharmony.

ULBs

- Increased revenue from property tax.
- Reduction in number of sub-standard housing units leading to improved quality of housing stock in the city.
- Reduced burden on municipal finances on account of diminished need to allocate funds for upgradation of dilapidated housing, etc.

Citizens

- Development of a healthy rental housing market.
- Increased accessibility and affordability of rental housing.
- Improved security of tenure.
- Reduction of black money deals on account of unlawful payments (e.g., key money) by landlords or tenants.
- Improved access to housing finance for owners of rented properties.

Recognizing the negative impact and social tensions created by the rent control laws, the Government of India (GoI) came out with a Model Rent Legislation (MRL) in 1992. (Salient features of the Model Rent Legislation are at Annexure 1). Following the formulation of the model rent legislation, many states have repealed their old acts and formulated new acts. These states include Karnataka, Rajasthan, Maharashtra and West Bengal. Several other states are in the process of reforming their acts.

Reforms Carried Out in Rent Control Acts in West Bengal, Maharashtra, Karnataka and Rajasthan

West Bengal brought out its new rent act in 1997, Maharashtra and Karnataka in 1999, and Rajasthan in 2001. All the four states exempt some category of premises – prominent being properties owned or rented by government, high rent properties, newly constructed or newly let properties, and premises rented to foreign missions and high net worth companies. In all cases, the formula for fixation of standard rent under the rent control act has been revised and periodical increases permitted. Some states (like Rajasthan) provide for an agreed rent. The acts also provide for payment of pro-rata property taxes by the tenant. The Maharashtra rent act provides for Leave-and-License, which enables the landlord quick recovery of possession. The Rajasthan rent act permits Limited Period Tenancy. Fast judicial process or summary disposals of cases are a part of all new acts.

The reforms are seen to be having some positive impact on the rental housing market. Exemption of high rent/high net worth entities from the purview of the rent act has had a salutary impact in terms of more efficient use of scarce land. Thus, in Maharashtra an increase in rent of space held by the General Insurance Corporation from Rs. 51,000 per month to Rs. 6.8 lakhs per month has led the corporation to look for rental space in other areas to store its old records and release the prime property for more productive uses (as reported in Business Standard, July 2, 2001, page 8). Permitting Leave-and-License has improved the availability of rental housing especially in cities like Mumbai.

3. Reform components

Reform in the rent control laws is needed to meet the following objectives:

- promoting supply of rental housing.
- establishing a better balance between the interests of landlords and tenants.
- reducing litigation under the rent control act.
- making rent control act more effective to protect the legitimate interests of tenants.
- reducing complexity of the act.

In pursuance of these objectives, the required reform of rent control acts has to be directed towards:

- i. Liberating the rental housing market through exemptions of premises and tenancies from the purview of the rent control act. The guiding principles for exemptions could be:
 - a. restricting protection of the act to deserving (low income) tenants;
 - b. removing protection of the act where not required (like government owned properties, smaller urban areas, properties of charitable trusts, high rent properties);
 - c. encouraging new investment in and increased flow of supply of rental housing (by exempting new tenancies from the purview of rent control act altogether).

The MRL provides an illustrative list of exemptions (see Annexure 1).
- ii. Reducing the stringency of controls by providing for:
 - a. fixation of rent either as agreed between the landlord and the tenant or at a level which gives a remunerative rate of return to the landlord;
 - b. increase in rent in existing tenancies;
 - c. periodic revision in rents;
 - d. setting a timeframe for to bring the rent in old/existing tenancies to market level ;
 - e. clear division of maintenance responsibilities between the landlord and the tenant;
 - f. semi-contractual tenancies (like Limited Period Tenancy) or Leave-and-License within the framework of the Rent Control Act;
 - g. explicit provision relating to inheritability of tenancy limiting inheritability to specified heirs and for a limited period; and
 - h. Introduction of sunset provisions regarding inheritability of premises in the older areas of cities.
 - i. speedy repossession of the premises to the landlord in genuine cases.
- iii. Plugging loopholes in the existing rent control acts to make them more effective and protecting the legitimate interests of the tenants by including provisions for:
 - a. restoration of possession of illegally dispossessed tenants or when the dispossession was for a temporary period; and
 - b. the landlord to give receipt for rent; and stringent penalties for withholding supply of essential amenities.
- iv. Amending provisions relating to judicial processes to facilitate expeditious disposal of cases by:

- a. setting up special courts to adjudicate cases under the rent acts and giving them extensive powers to decide cases efficiently;
- b. defining fast track procedure for resolution of cases;
- c. providing for compulsory registration/notification of tenancy giving all the details about the tenancy and the tenanted premises; and
- d. providing for time limits for resolution of cases.

4. Steps to implementing the reform

As suggested in the MRL, the old act should be repealed rather than amended as extensive amendments required to reform the act could lead to confusion and make the act more complicated.

In order to frame the new rent control legislation, the following steps may be taken by the state government:

Process	Years			
	1	2	3	4
• Resolution to be passed in the state assembly indicating state’s intent to frame the new rent control act.				
• Setting up an inter-ministerial committee involving relevant ministries and departments of the state government. This committee would review the existing act, consider the reforms suggested in the model rent legislation, and already carried out in other state rent acts, and initiate the process of reformulation of the new act. If needed, a consultant may be appointed for formulation of the new act.				
• Draft act to be prepared and vetted by the committee/legislative department of Law Ministry.				
• The bill to be circulated widely for eliciting views of general public and all stakeholders.				
• Launch an awareness campaign about pros and cons of rent control law, need for reform and likely impact on various stakeholders.				
• Discussions in open fora involving tenant associations, landlord associations, resident welfare associations, NGOs, and political parties.				
• Invite comments/suggestions from stakeholders and put them up for discussion in the committee.				
• Send the draft to legislative assembly.				
• Incorporate suggestions, if any, in the draft bill and resubmit to the legislative assembly for adoption.				
• Issue notification.				
• Wider dissemination of the new act.				

5. Measuring Achievement/Outcomes

- Has the state government passed a resolution in the state assembly to the rent control act within a specified period (in the forthcoming assembly session)?
- Has the committee involving relevant ministries/departments been set up within two months of passing the resolution?
- Has the ministry-in-charge engaged a consultant to frame the new law and submit it to the ministry-in-charge within six months?
- Has the draft bill prepared by the ministry-in-charge submitted to the legislative department of the Law Ministry for checking and final drafting of the bill (within one month)?
- Has the bill been submitted to the cabinet for approval (within one month)?
- Has the bill been passed by the cabinet (within two months)?
- Has the bill been introduced in the legislative assembly (forthcoming session)?
- Has the bill been brought to the assembly for consideration and passing?
- Has the bill been passed by the legislative assembly?
- Has the bill been sent to the governor for his assent?
- Has the government notified the bill and given the date on which the bill comes into effect?

ANNEXURE 1**Salient Features of Model Rent Legislation**

- Exemption from the purview of rent control act to properties owned by governments and religious and charitable trusts; to newly constructed and newly let properties for a period of 15 years; to properties with a high rent value; to properties rented to foreign missions and international agencies.
- Fixation of standard rent (SR) at a specified percent of cost of construction and the value of land in the year of construction. This rent to be the SR in the year of construction and be increasable by a certain percentage every year thereafter to arrive at the SR for a particular year.
- Rent payable to include maintenance charges and taxes on pro-rata basis.
- Landlords and tenants to share maintenance responsibilities.
- Compulsory registration of all tenancies falling under the Rent Control Act.
- Withholding of essential amenities either by landlord or tenant subject to heavy penalties.
- Eviction of tenant from the premises only on grounds specified in the act namely on account of: non-payment of rent; misuse or non-use of premises; unauthorized subletting of the premises by the tenant; bona fide requirement of the premises by the landlord for self-use for residential or non-residential purposes or for essential repair; non-requirement of the premises by the tenant on acquiring his own house or being allotted premises for his use; failure of tenant to deliver possession after giving notice to quit.
- In the case of "eviction" on the ground that the premises were required for carrying out repairs, provision for readmitting the tenant after completion of repair work.
- Provision for contractual or semi-contractual tenancy within the framework of rent control act.
- Limiting inheritability of tenancy to specified heirs and for a limited period.
- Streamlining judicial procedure to expedite the process of law.
- Old/existing rent control acts to be repealed.