



THE MODEL TENANCY ACT, 2020: SCOPE, SALIENT FEATURES AND IMPLICATIONS

The Union Cabinet on Wednesday, 2nd June 2021, approved the Model Tenancy Act, 2020 (“**MTA**”), to be sent to the States and Union Territories to enact legislation or amend laws on rental properties.

Under the Memorandum of Understanding (“**MoU**”) signed under Pradhan Mantri Awas Yojana-Urban (PMAY), the states and union territories have an option of either legislating and passing a new law or of amending existing state rental laws on the lines of law under the Model Tenancy Act.

SCOPE AND APPLICABILITY OF MTA:

- ***No operation without adoption-*** Unless the State or Union Territory adopts the MTA, it will not become applicable in that particular State or Union Territory. As it stands, no State or Union Territory, including Karnataka, have adopted the MTA.
- ***No retrospective operation-*** MTA is not applicable to and will not affect the existing tenancies. MTA is only applicable prospectively, i.e., only upon a particular State adopting the MTA and notifying the effective operation of same in the Official State Gazette.
- ***Applicability of the MTA to different types of premises-*** The MTA is applicable to both urban and rural properties as well as residential and commercial properties.

➤ ***Non-Applicability of the MTA to certain premises-*** The MTA or any part thereof will not be applicable to the following premises, unless the owner and tenant both agree to be regulated under the provisions of the MTA:

- a) premises owned / promoted by any Government, Local Authority and Government enterprises;
- b) premises owned by a company, university or organisation given on rent to its employees as part of service contract;
- c) premises owned by religious or charitable institutions as may be specified, by express notification;
- d) premises owned by a registered Waqf or public trust; and
- e) any other building or category of buildings specifically exempted in public interest by notification.

HIGHLIGHTS OF THE MODEL TENANCY ACT:

➤ ***Tenancy agreement***

- Must be in writing,
- Must be in duplicate-2 originals, i.e. one with owner, other with tenant.
- Owner and tenant must jointly submit a form to Rent Authority within 2 months from entering the Tenancy Agreement. If the joint information does not happen, individual information can be given within the next 1 month (i.e., in the 3rd month).
- Form submission to be online- unique identification given to tenants and owners; all details including tenancy agreements will be uploaded.

- Authorisation of a property manager on behalf of the landlord, if any, should be agreed upon by the owner and the tenant in the Tenancy Agreement.
- If the form is not submitted, neither the owner nor tenant shall be entitled to any relief under the MTA.

➤ ***No ceiling on rent that can be collected from tenants-***

- No upper / lower monetary limit or ceiling for collection of rent and the owner is free to fix the same as per prevailing market rates.
- However, once the rate of rent is fixed, it cannot be increased during the pendency of the tenancy period unless, either:
 - i. the specific amount by which rent shall be increased, or;
 - ii. the exact method / rate / percentage at which the rent shall be increased;

is expressly set out in the written tenancy agreement.

- In case of any dispute between landlord and tenant regarding revision of rent, the Rent Authority may, on an application made by the landlord or tenant, determine the revised rent and other charges payable by the tenant and also fix the date from which such revised rent becomes payable.

➤ ***Duration of Tenancy***

- Duration to be fixed by mutual agreement in writing.

➤ ***Enhancement of rent after expiry of tenancy period***

- In case the tenant refused to vacate the premises even after the expiry of the Tenancy period, or in the event of termination of tenancy due to

any order or notice given under the provisions of MTA, the tenant will be liable to pay:

- (a) twice the monthly rent for the first two months; and
- (b) four times the monthly rent thereafter till the tenant continues to occupy the said premises.

➤ ***Sub-letting of premises by tenant not permitted***

- The tenant cannot sub-let a part of, or the whole of the property to anybody else during the pendency of tenancy.

➤ ***Ceiling on Security Deposit that can be collected from tenants-***

- In case of residential premises, a maximum of **two months** rent can be collected towards Security Deposit.
- In case of non-residential/ commercial premises, a maximum of **six months** rent can be collected towards Security Deposit.
- Security deposit to be refunded upon vacant possession being delivered back to owner, subject to necessary deductions.

➤ ***Payment of rent during eviction proceedings***

- If the tenant contests the eviction proceedings, the owner can apply to the Rent Control Court to direct the tenant to pay him the rent payable, and the Rent Court may order the tenant to make such payment and all other charges due from the tenant along with penal charges.

➤ ***Withholding essential supply or service is prohibited***

- Owner cannot withhold supply of essential services (electricity, water supply etc.), and will be liable to pay up to 2 months rent as compensation to the Tenant, if found guilty by the Rent Authority.

➤ ***Dispute Resolution Mechanism***

- Time-bound and robust grievance redressal mechanism comprising the rent authority, the rent court, and the rent tribunal to provide fast-track resolution.
- Disposal of complaint/appeal by the rent court and the tribunal within 60 days.
- The tenant will continue to pay the rent even during the pendency of a dispute.
- Jurisdiction of civil courts is barred.

OUR PRELIMINARY ANALYSIS

Implications for owners

| Advantages |
|--|
| <ul style="list-style-type: none"> • Freedom to fix rent since unlike earlier Rent Control Laws there is no ceiling limit. • Swift eviction- 60 day resolution process mandated; no onerous and time-consuming litigation. • No loss of rent during eviction proceedings/litigation- tenant obliged to continue making payments. • Tenant to provide compulsory prior notice before vacation of premises. • Property managers recognised- owners who are abroad or in other stations or busy with other commitments, can formally manage their tenants through property managers. |

- During renewal, rents to be fixed at same appreciation levels as previous rental agreements.

Disadvantages

- Statutorily stipulated clauses on security deposit ceiling, rent receipts, landlord obligations as to repairs, registration of tenancy.
- Continued lenience to tenants in the event of *force majeure* events- no forced vacation/eviction during the event, and upto one month subsequent to such event.
- Legal requirement of a prior notice to entire the tenanted premises, and no entry after sunset and before sunrise.

Implications for tenants

Advantages

- Fixed security deposit.
- Provision for rent receipts- ensures that tenants cannot be evicted on false grounds of non-payment of rents.
- Formalisation of tenancy extension, role of property managers, the mode of eviction.
- Compensation in the case of stoppage of essential services by owner or his agents (electricity, water supply, etc.).
- No unauthorised or sudden eviction, and protection from eviction during *force majeure* events.

Disadvantages

- No liberty for tenants to negotiate rental amounts- complete discretion to owner.
- Compulsory payment of rental amounts (even if, it is to Rent Authority) during the entire period of dispute resolution.
- Multiple fold increase in rent in the event of non-vacation upon expiry of rent period, in the event of renewal not having been concluded.

PRACTICAL CONCERNS

- **No clarity about overriding effect of MTA:** No harmonious rendition of how tenancy agreements will be applicable in the face of alternatives such as lease agreements under the Transfer of Property Act, 1882 or leave & licence agreement under the Easements Act, 1882, which can be used by owners or tenants with stronger leverage to evade the formalities of MTA. Stronger circumvention of the MTA would lead to lesser acceptance of the same, and thereby defeat the purpose of the legislation.
- **Limited scope:** Lodging houses, hotels, shared workspaces and industrial establishments are kept outside the scope of MTA. Therefore, application of the MTA to paying guest (PG), co-living, co-working, or industrial shed facilities which are increasingly becoming the norm is not clear. There are no dynamic provisions allowing modifications according to evolving trends.

- **Non-uniformity:** The success of MTA would largely depend on the uniform adoption across States and Union Territories, failing which there will yet again be disparities across the various regions.

- **Casual approach to enforcement:** Apart from the fact that the owner-tenant cannot avail the benefits of MTA in the event of non-registration of the tenancy with the Rent Authority, there are no punitive clauses which would ensure wide acceptance and formalisation of the rent sector.

CONCLUDING REMARKS

On the whole, while the efforts of the Central Government in bringing a uniform tenancy legislation, and formalisation of the same are commendable, the haste or rather the half-baked manner in which the entire legislation has been approved is certainly not helpful to achieve the aims of the legislation. States should undertake stakeholder consultations and make sufficient additions and modifications before adopting the MTA and enforcing it.



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