



GRAVITAS LEGAL

## **Model Tenancy Act, 2021 gets approved by the Cabinet – Key Features**

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The Union Cabinet chaired by Prime Minister Narendra Modi approved the Model Tenancy Act (MTA) on June 02, 2021, a move that is likely to refurbish the legal framework concerning rental housing across the country. Under MTA, both the States as well as the Union Territories can adopt the law either by enacting fresh legislation or by amending the existing laws already prevailing as per their needs and requirements. Under the seventh schedule of the state list of the Constitution of India, it is provided that land rights, land tenures including the relation of landlord and tenant, collection of rents, and land improvement are subjects regulated by states.<sup>1</sup> According to the government “The MTA aims at creating a vibrant, sustainable and inclusive rental housing market in the country. It will enable creation of adequate rental housing stock for all the income groups thereby addressing the issue of homelessness. MTA will enable institutionalisation of rental housing by gradually shifting it towards the formal market.”<sup>2</sup>

MTA seeks to cover both urban and rural areas and will apply to premises let out for residential, commercial, or educational use but not for industrial use. Rental accommodation is predominantly a need of urban settlements as more of migration is towards urban areas of the country.<sup>3</sup> The draft National Urban Rental Housing Policy, 2015 noted that the housing shortage in urban areas will not be solved by home ownership, and suggested promoting rental housing. It recommended repeal of existing rent-control laws and adoption of a new rental framework based on the draft Model Tenancy Act, 2015.<sup>4</sup> It has been observed that the existing rent control laws of various states lack an efficient and time bound dispute adjudication framework and are biased towards the tenant’s thus making rental housing being unattractive, leading to creation of an informal market. The MTA tries to address such shortcomings of the current legislations.

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<sup>1</sup> [https://legislative.gov.in/sites/default/files/COI\\_1.pdf](https://legislative.gov.in/sites/default/files/COI_1.pdf)

<sup>2</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1723637>

<sup>3</sup> [http://mohua.gov.in/upload/uploadfiles/files/Housing\\_in\\_India\\_Compendium\\_English\\_Version2.pdf](http://mohua.gov.in/upload/uploadfiles/files/Housing_in_India_Compendium_English_Version2.pdf)

<sup>4</sup> [http://mohua.gov.in/upload/uploadfiles/files/National\\_Urban\\_Rental\\_Housing\\_Policy\\_Draft\\_2015.pdf](http://mohua.gov.in/upload/uploadfiles/files/National_Urban_Rental_Housing_Policy_Draft_2015.pdf)

MTA aims to achieve the following objectives:

- Institutionalise the existing rent control and tenancy legislation across the country
- Protect and balance the rights and interests of both tenants and landowners to promote rental housing
- Bridge the trust deficit between tenants and landowners by clearly demarcating their rights and obligations
- Facilitate in creation of adequate rental housing facilities for all income groups and encourage private participation in rental housing as a business model to address the huge housing shortage and the issue of homelessness
- Setup speedy dispute redressal mechanism.

MTA also seeks to ensure affordability, formalisation and increase private investment in the rental housing market. The Centre has claimed that the MTA act will balance the interest and rights of both the owner and tenant in an accountable and transparent manner.

### **Key Features**

#### **Applicability**

MTA is applicable to premises (including vacant land) for residential and commercial use only, and excludes from its purview, all hotels, lodging houses, dharamshalas, inns and premises for industrial use. Further, MTA is also not applicable to (i) premises owned or promoted by the Government or local authority, (ii) premises owned by a company, university or organisation given on rent to its employees as part of service contract, (iii) premises owned by religious or charitable institutions, premises owned by auqaf registered under the Waqf Act, 1995 or by any trust registered under the public trust law, other building or category of buildings specifically exempted in public interest by notification by the appropriate government. It is important to note that applicability of MTA is prospective in nature and will not apply to existing tenancies, retrospectively.

#### **Written Agreement**

MTA makes it compulsory for the landlord and tenant to enter into a written agreement which must specify: (i) the rent, (ii) the time period for the tenancy, (iii) terms and period for revision of rent, (iv) the security deposit to be paid in advance, (v) reasonable causes for entry of landlord into the premises, and (vi) responsibilities to maintain premises in the prescribed format which is required to be submitted through e-filing with rent authority along with other relevant documentation. Post submitting the relevant documents, the Rent Authority will allocate a unique identification number to the parties. The Rent Authority must be intimated about the agreement within two months from the date of the agreement.

#### **Security Deposit, Duration of Tenancy, Eviction and Sub-letting**

Tenants under MTA are required to pay security deposit subject to a cap of such deposit being equivalent to maximum 2 month's rent in case of residential premises and maximum 6 month's rent in case of non-residential/commercial premises. The security deposit will be refunded by the landlord to the tenant after completion of tenancy period subject to genuine deductions, if any.

The tenant may request the landlord for renewal or extension of the tenancy period. The tenant will be liable to pay enhanced rent if: (i) a tenancy period has ended and not been renewed, or (ii) the tenant fails to vacate the premises at the end of such tenancy. If the tenant fails to vacate

the premises at the end of tenancy, or on termination of tenancy by an order, he will be liable to pay: (i) twice the monthly rent for the first two months and, (ii) four times the monthly rent subsequently till he occupies the premises. To evict a tenant, the landlord must apply to the Rent Authority seeking such eviction. The Authority may make an order for eviction on certain grounds.

Under the MTA, sub-letting is prohibited unless allowed through a supplementary agreement. The landlord and tenant must jointly inform the Rent Authority about the sub-tenancy within two months from the date of execution of such agreement.

### **Dispute Redressal Mechanism**

MTA provides a three-tier quasi-judicial dispute resolution mechanism consisting of: (i) Rent Authority; (ii) Rent Court; and (iii) Rent Tribunal.

Rent Authority will be headed by an officer, not below the rank of Deputy Collector and appointed by the District Collector or District Magistrate with the prior approval of the State. Appeals against the orders passed by the Rent Authority may be made before the Rent Court, which will be headed by an officer, not below the rank of Additional Collector/Additional District Magistrate and appointed by the District Collector or District Magistrate with the prior approval of the State. The orders passed by the Rent Court can be appealed before the Rent Tribunal, which will be headed by an officer not below the rank of District Judge or Additional District Judge and appointed by the State in consultation with the jurisdictional High Court. No civil court will have jurisdiction over matters pertaining to provisions under the MTA. The order of the Rent Tribunal is final, and no appeal or revision lies over the Rent Tribunal.

Under the MTA there are specific timelines provided to adjudicate disputes between the parties for swift dispute redressal towards which, the Rent Court/Rent Tribunal shall endeavour to settle disputes within 60 days (90 days for certain specific disputes) from the date of receipt of application/appeal and shall not allow more than three adjournments at the request of a party throughout the proceedings, without a reasonable and sufficient cause to do so.

### **Issues related to MTA**

While the MTA appears to be a well-conceived and a timely legislation for the rental housing sector, it is silent on certain practical aspects and it remains to be seen as to how the Government will work to fill these gaps. For instance, the MTA is completely silent on the treatment of leave and license agreements, which could be seen as a significant exclusion. Also, the definition of 'force majeure' in the present form, for the purposes of the MTA, does not expressly include 'pandemic', 'epidemic' and 'lockdown' or a similar situation, which can be looked at by the government while adapting to the MTA especially in view of the current global scenario.

Further, MTA requires all landlords and tenants to intimate the Rent Authority about their rental agreements in a prescribed form. The form requires both the tenant and the landlord to submit their Aadhaar numbers and attach self-attested copies of the card with the form. This may violate a 2018 Supreme Court judgement<sup>5</sup>, which states that requiring Aadhaar card or number can be made mandatory only for expenditure on a subsidy, benefit or service incurred from the Consolidated Fund of India. MTA also states that on registration with the Rent Authority, the parties will be provided a unique identification number, and details of the rental

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<sup>5</sup> Writ Petition (Civil) 494 of 2012, September 26, 2018 (Justice K.S. Puttaswamy Vs. Union of India)

agreement (along with other documents) will be uploaded on the Authority's website. It is unclear if personal details of the parties such as PAN number, Aadhaar number, among others, which must be submitted along with the agreement, will also be made available publicly. If these are shared on the website, this may violate the right to privacy of the involved parties. The Supreme Court has included the right to privacy as a fundamental right. This right may be infringed only if three conditions are met: (i) there is a law, (ii) the law achieves a public purpose, and (iii) the public purpose is proportionate to the violation of privacy.<sup>6</sup>

MTA also goes into minute details of a rental agreement. Some examples include: (i) the landlord must carry out structural repairs and whitewashing of walls and doors, (ii) tenants must be responsible for drain cleaning, geyser repairs, repairing kitchen fixtures, and (iii) the maximum amount of security deposit. While providing these details in a legislation may drastically restrict the ability of the parties to negotiate with each other based on their specific situation, by such prescription the instances which typically give rise to disputes are themselves reduced.

The provisions of MTA emphasise on supremacy of rent agreement executed between the parties on mutually agreed terms (with several of them already prescribed as a mandate of law), which will minimize the possibility of disputes and in case of any dispute, same shall be resolved quickly through the speedy dispute redressal mechanism prescribed in the proposed model legislation. In India, where large part of the population is still looks at entering into written agreements reluctantly or landlord-tenant disputes (which are quite common often) lead to lengthy litigation, the MTA would help in ensuring the speedy redressal of tenancy disputes and transparency in the system.

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