

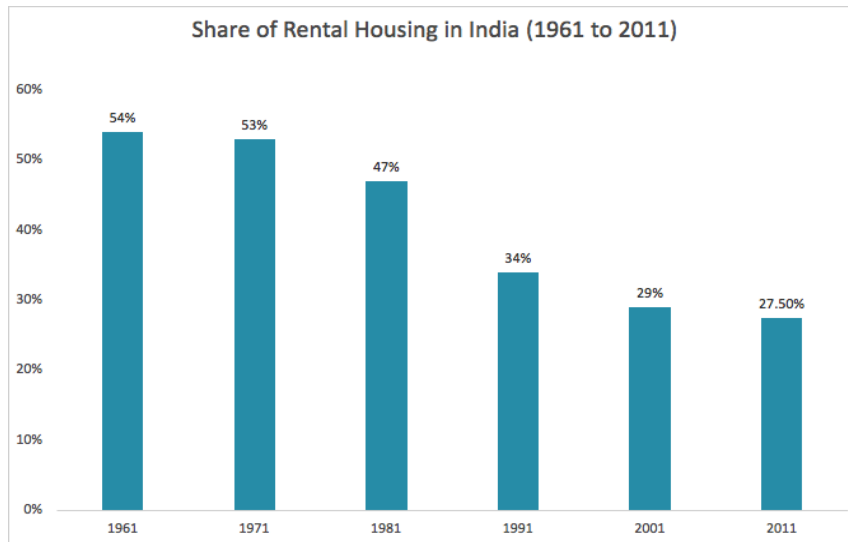


White Paper 9- Reforming Tenancy Regulation in India

According to the 2011 Census, there were 139 million internal migrants across and within Indian states in 2011. A more recent study by the Centre for the Study of Developing Societies and Azim Premji University in 2019 estimates 29% of the population in large cities in India are of daily wagers. The prevalence of migrant labour in Indian cities could not have been more starkly highlighted than during the lockdown-induced exoduses of millions of people walking back from cities to their villages on foot since the Covid-19 pandemic struck last year.

It has been widely documented that India has a large, young labour force that relies on migration from villages to small towns and large cities for jobs. Rental housing plays a crucial role in cities to give shelter to migrants and those who cannot afford home-ownership, especially in the formal sector. But while India's economy has grown over the last five decades, paradoxically, the urban rental market has stagnated. Rental housing in cities as a share of overall housing has declined from 54% in 1961 to 28% in 2011.¹ Such a decrease stands in stark contrast to the experiences of other countries where rental housing has grown along with increased urbanization and development.

¹ Census 1961, 2011.



Source: KPMG (2014)- *Decoding Housing for all by 2022*²

According to a World Bank global study, the percentage of people who rent their home is highest in the largest cities within each respective country, as high land and housing prices make it prohibitively expensive to own.³ For instance in Berlin and Geneva, home-ownership rates were as low as 17 percent⁴ and 18.1 percent, respectively in 2021.⁵ The ownership rates also vary considerably based on whether the properties are located in the city or closer to the suburbs. In New York, for instance, the share of rental housing was around 24 percent in 2018 in Manhattan and around 70 percent in Staten Island.⁶

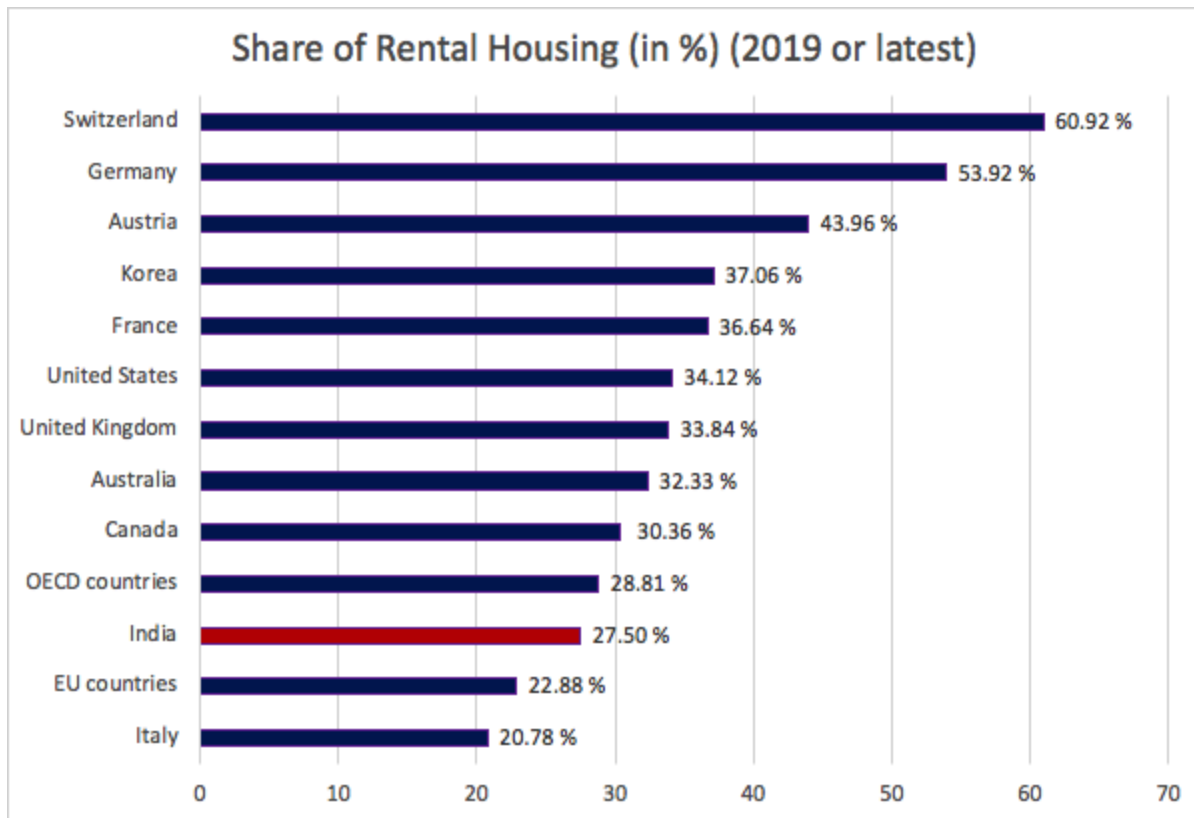
² [KPMG \(2014\)- Decoding Housing for all by 2022](#)

³ [World Bank \(2013\)- Rental Housing Lessons from International Experience and Policies for Emerging Markets](#)

⁴ [Brookings.edu \(2021\)- Strong tenant protections and subsidies support Germany's majority-renter housing market](#)

⁵ [Lenews.com \(2021\)- Only 36% of Swiss own their homes](#)

⁶ [Furmancentre.org \(2019\)- Snapshot of Homeownership in New York City](#)



Source: OECD- Housing Tenure Distribution (2019 or latest)⁷

There are several reasons attributed to the stagnation of rental markets in Indian cities, but the most compelling one seems to be the lack of adequate trust among landlords to rent out their premises to short-term tenants. For instance, the Supreme Court in its verdict on a case which had dragged on for 30 years, directed the plaintiff- the tenant- to vacate his landlord's property and pay him 11 years' worth of rent at the market rate in addition to INR 1 lakh in March, 2021. Despite the civil court ruling in favour of the landlord in 2005, the tenant refused to vacate the premises. The landlord consequently approached the High Court to enforce the tenant's eviction, however, it dismissed his plea in 2019. Finally, in 2021, after approaching the Supreme Court, he was able to enforce the tenant's eviction owing to its verdict.⁸

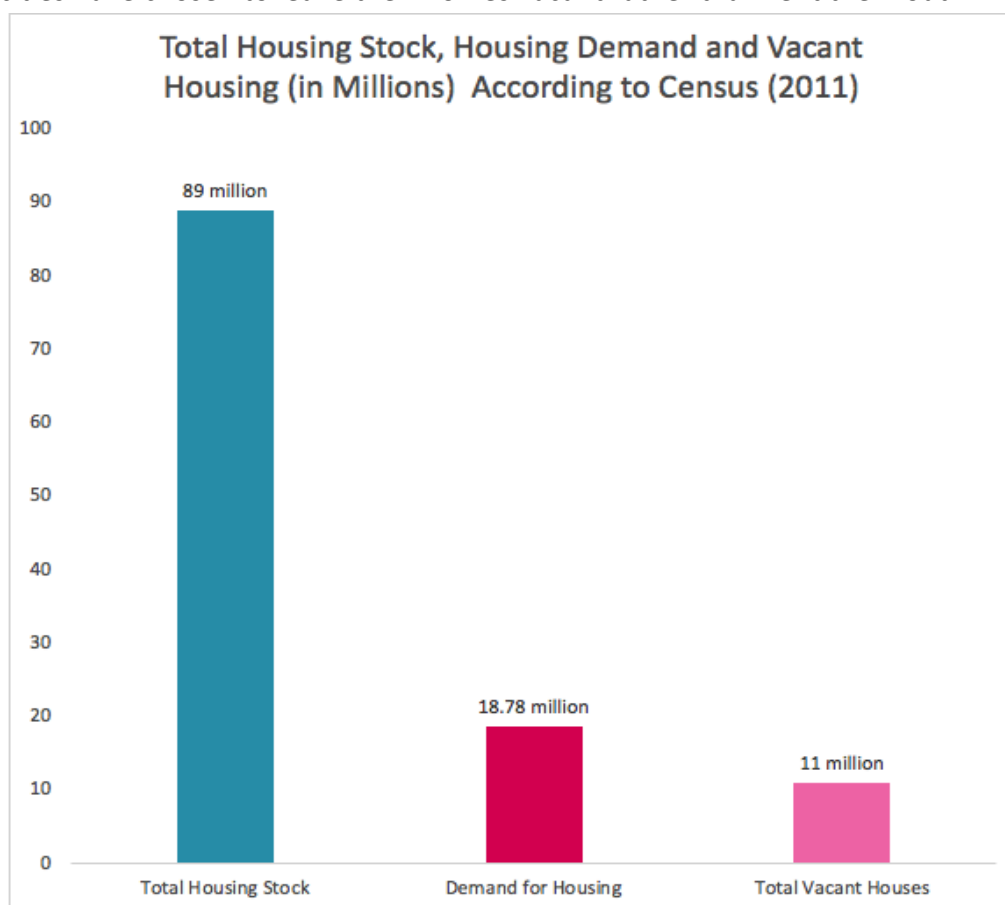
The unwillingness to rent out properties is most evident by looking at the number of houses left vacant in Indian cities, including in real estate markets with the highest rents in the country. The 2011 Census documented as many as 11 million homes left vacant across urban India, or 12.4% of the overall residential stock.⁹ To put this in perspective, the overall housing shortfall in

⁷ Source: OECD- Housing Tenure Distribution (2019 or latest)

⁸ Hindustan Times (2021)- Case dragged for 30 yrs: SC slaps ₹1L fine, orders tenant to pay 11-yr rent

⁹ IDFC Institute (2018)- India Infrastructure Report: Making Housing Affordable

Indian cities by the central Government was estimated to be 18 million units in 2017.¹⁰ Despite such a high shortage and unmet demand for affordable housing, millions of landlords across Indian cities have chosen to leave their homes vacant rather than rent them out.¹¹

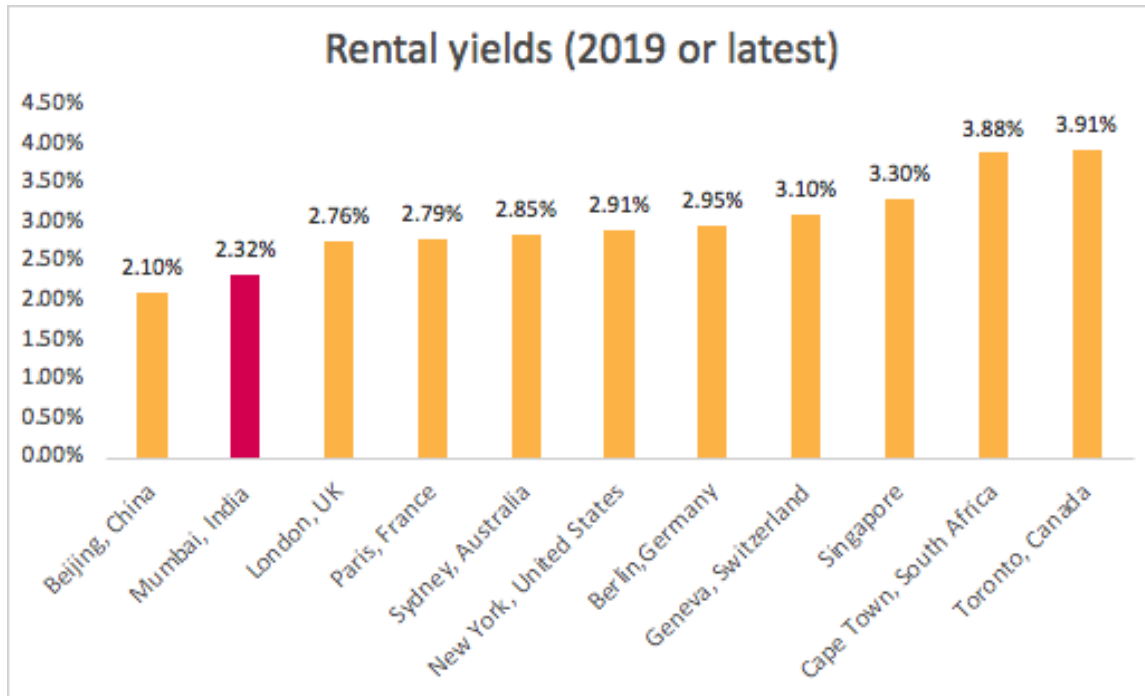


Source: IDFC Institute (2018)- India Infrastructure Report: Making Housing Affordable

The reason for such distrust stems from a history of pro-tenant regulations across Indian states that have increased the liabilities for renting out properties by landlords without a concomitant increase in rental yields in cities to make the risk worthwhile. The most extreme manifestation of these regulations has been the rent control acts of different states that froze rents at one period in time for decades to come and effectively stripped landlords of their property rights in one fell swoop.

¹⁰ Ibid

¹¹ Marginal Revolution (2018)- Rent Controls and Affordable Housing in Mumbai



Source: Global Property Guide- Rental Yields: Why are they important¹²

With an increasing affordable housing shortage in Indian cities, it has been becoming increasingly apparent that this trust deficit needs to be bridged to find a balance between respecting the rights of both landlords and tenants in India's unorganized rental markets. Motivated by this demand, the Central government recently released the Draft Model Tenancy Act (2021) ('the MTA') on 2nd June, 2021. The MTA, if adopted by state governments in India, will result in, among other things, the repeal of the prevailing rent control laws.

Background

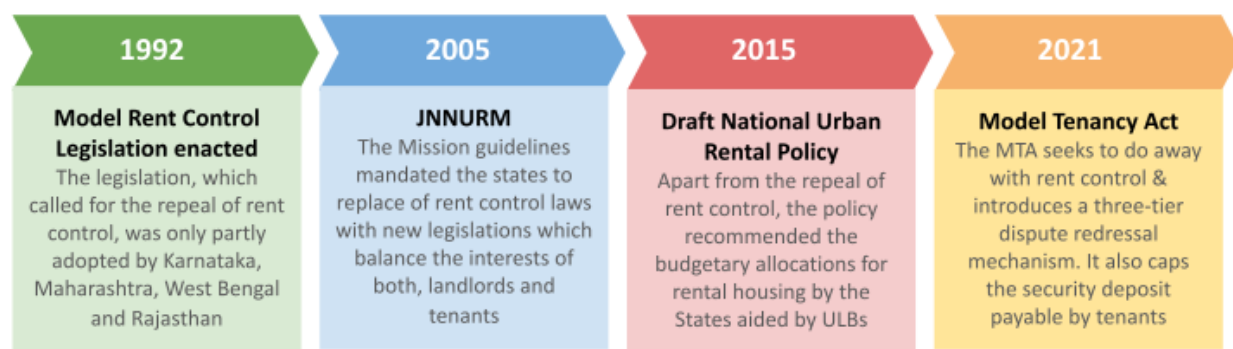
Historically, Indian housing policies have been directed towards home-ownership,¹³ focusing on providing finished housing to beneficiaries through government schemes.¹⁴ The rental housing sector has been regulated in a piecemeal manner, primarily through rent control legislation at the state level. An individual's rights over land, land tenure, land transfer and the collection of rents over land, being State subjects under the Indian Constitution, can be legislated upon only by state governments. Although attempts were made to formulate comprehensive nation-wide policies, they were rarely adopted by the states. For instance, the Model Rent Control Legislation enacted in 1992, which called for the repeal of the prevailing rent control regime,

¹² [Global Property Guide- Rental Yields: Why are they important](#)

¹³ [Khaitan & Co.\(2019\)- Institutionalising The Rental Housing Market In India -20](#)

¹⁴ [TEAL White Paper \(2020\)- Evolution of Housing Finance in India](#)

was partly adopted only by Karnataka, Rajasthan, Maharashtra and West Bengal.¹⁵ The provisions of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) in 2005 and the Draft Rental Policy in 2015 too reiterated the importance of reforming the rent control system by adopting the Model Rent Control Legislation (1992).¹⁶ However, up to 2020, as many as twenty states continued to have their respective rent control legislations.^{17,18}



Need for dismantling the rent control regime

The rent control regime is widely held to be prohibitive, leading to the proliferation of informal rental housing. The National Sample Survey (2008-09) estimated that 25 percent of the total housing stock is used for informal rental housing, while only 5 percent of the total stock is used for formal rental housing.¹⁹

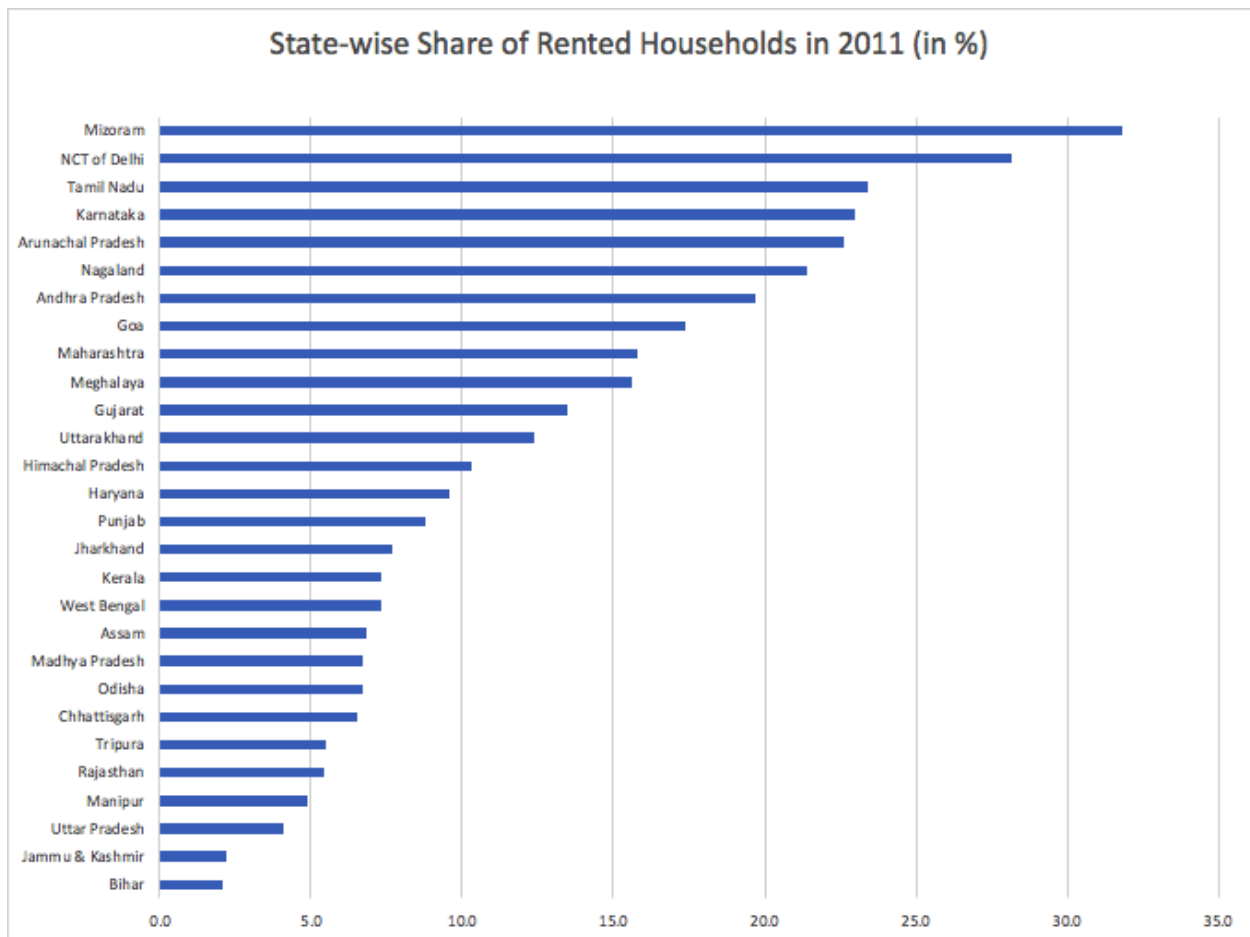
¹⁵ PRS Legislative Research (2021)- Examining the Model Tenancy Act, 2021 and regulation of rental property in India

¹⁶ JNNURM Mission Overview (2005)

¹⁷ PRS Legislative Research (2021)- Examining the Model Tenancy Act, 2021 and regulation of rental property in India

¹⁸ Karnataka, Maharashtra, Rajasthan, and West Bengal implemented part of the Model Rent Legislation (1992)

¹⁹ NSSO (2008-09)- 65th Round Report on Housing Conditions and Amenities in India



Source: Census of India (2011)

Rental housing is more prevalent in urban areas²⁰. As per the 2011 census, 95 percent of the rural households were self-owned. In contrast, 28 percent of the urban households lived in rented dwellings. The 28 percent share of urban rental housing in 2011 is a sharp drop from 54 percent in 1961.²¹

The overall low rate of rental housing is primarily attributed to the distortions caused by the rent control legislations. For instance, the Maharashtra Rent Control Act (1999) imposed a ceiling on the rent payable by tenants. It was capped at a 12.5 percent return on cost of construction plus cost of land at the time of construction on certain protected properties. It allowed an annual increase at a fixed rate which was well below the prevailing inflation rate.²² This freezing of rents disincentivized landlords from investing in the improvement of their

²⁰ Ministry of Housing and Urban Affairs (2013)- State of Housing in India

²¹ Ibid

²² Marron Institute (2014)- Decline of Rental Housing in India: A Case Study of Mumbai

properties. Consequently, there has been a steady dilapidation of the existing rent-controlled residential properties.²³

Another fallout of the imposition of rent caps in Maharashtra was the proliferation of 'leave and license' agreements or short-term rental agreements which did not come under the rent control regime, allowing for the imposition of rents at the prevailing market rates. However, in 1973, leave and license agreements too were brought under the ambit of the Maharashtra Rent Control Act.²⁴

The rent control legislations also made the eviction of tenants very difficult. The National Urban Rental Policy (2015) noted that the rent control legislations were heavily skewed towards tenant protection²⁵. Very few landlords have successfully proved in court that they need the premises for their own use, enabling them to evict tenants enjoying rent control. As things stand, a large number of renters continue to occupy their rented premises since the time they were built²⁶. Lastly, the adjudication of tenancy-related disputes by civil courts as mandated in the rent control legislations has been very time-consuming, creating a need for a mechanism which would allow for the efficient redressal of disputes. There is thus an urgent need for dismantling the prevailing rent control regime and replacing it with a rationalized one.

Rent control in other countries

Several countries such as the United States and Singapore prioritize home-ownership over rental housing. However, such a policy may not be suited for low-income countries like India where there is considerable rural-to-urban migration²⁷ taking place. Owning an illiquid, undiversifiable asset such as a house would impose constraints on low-income families with volatile incomes.²⁸

In the case of rented properties, irrespective of the actual stock of rental housing in Australia, Austria, Canada, Denmark, France, Germany, Ireland, Japan, Mexico, the Netherlands, Sweden and the United States, rent controls are applied only to a portion of the housing stock²⁹. In Germany for instance, rent controls are imposed only on those properties which are located in

²³ IDFC Institute (2018)- India Infrastructure Report: Making Housing Affordable

²⁴ Marron Institute (2014)- Decline of Rental Housing in India: A Case Study of Mumbai

²⁵ Ministry of Housing and Urban Affairs (2015)- National Urban Rental Housing Policy

²⁶ Marron Institute (2014)- Decline of Rental Housing in India: A Case Study of Mumbai

²⁷ The Economic Survey (2016-17) estimates an annual average flow of close to 9 million people between states between 2011 and 2016 owing to work-related reasons.

²⁸ IDFC Institute (2018)- India Infrastructure Report: Making Housing Affordable

²⁹ OECD (2021)- Rental Regulation

areas where there is pressure on the housing market. In the Netherlands too, rent controls are applied to those 'affordable' properties on which the rent charged is below a certain rate³⁰.

Key takeaways of the new Draft Model Tenancy Act

The 'MTA' of 2021 proposes a three-tier quasi-judicial mechanism to govern tenancy agreements in residential and commercial premises and undertake dispute resolution by instituting district-level Rent Authorities and Rent Courts along with state-level Rent Tribunals. The MTA also moves away from the mechanism of imposing a ceiling on rent, and allows landlords to charge the rent based on the market value of the property.

Tenancy conditions

- It is mandatory for the transacting parties to intimate the Rent Authority within two months of entering into a tenancy agreement.
- The security deposit payable by the tenant must not exceed two months' worth of rent in the case of residential premises and six months' worth of rent in commercial premises.

Recognition of the role of the property manager

The MTA outlines the duties and responsibilities of 'property managers' and empowers them to act on behalf of the landlord.

Conditions for eviction

The landlord (or the property manager) is empowered to evict the tenant if-

- He refuses to pay the rent
- He fails to pay the rent for more than two months
- He occupies the premises or a part of the premises without the permission from the landlord
- He misuses the property even after being served a written notice

Role of Rent Authority

- Under the Model Tenancy Act (MTA), the Rent Authority will become the registering authority of all tenancy and sub-tenancy agreements in residential and commercial premises.

³⁰ Ibid

- It is mandatory for the Rent Authority to issue a unique identification number to the transacting parties and upload the details of the tenancy agreement on a dedicated web portal within 7 days of its registration of the agreement.
- The Rent Authority is empowered to revise and decide a new rent in the event of a dispute over the fixing of the rent payable between the parties.
- The Rent Authority is entitled to enforce the eviction of a tenant if he violates the terms of the tenancy agreement.

Dispute Resolution

- Both, The Rent Courts and Rent Tribunals, are empowered to hear appeals against the decision of the Rent Authority. The Rent Tribunal is empowered to hear appeals against the decision of the Rent Court.
- Both the bodies are entitled to enforce the eviction of a tenant if he violates the terms of the tenancy agreement.

The Rent Authorities, Courts and Tribunals thus replace civil courts in the adjudication of tenancy-related disputes.

Advantages of the MTA

The adoption of the MTA, by dismantling rent control, has the potential to rationalize the rental housing sector. It is expected that the sector will receive a boost by unlocking vacant houses for renting purposes and promoting private participation in addressing the housing shortage³¹; since the MTA proposes to establish a separate mechanism for the efficient redressal of disputes it is expected to generate confidence among home-owners and especially among Non-Resident Indians (NRIs) to rent out their properties who were skeptical that tenants may not vacate their premises on time. The MTA will also benefit tenants staying in large metropolitan cities such as Mumbai, Bengaluru and Chennai wherein landlords often ask for a security deposit worth up to 10 months' rent. Since the MTA imposes a ceiling on the amount of security deposit which can be demanded by the landlord, at 2 months' worth of rent for residential properties and 6 months; worth of rent for commercial properties, its adoption is expected to increase affordability in the rental housing sector.

Challenges and recommendations

- **Potential delay in the adoption of the MTA-** The previous rental housing policies did not come to fruition because state governments were slow to adopt their provisions.

³¹ [The Economic Times \(June, 2021\)- Model Tenancy Act: Implications and benefits for India's rental housing](#)

Currently, news articles report that only Karnataka and Chandigarh are formulating their tenancy regulations along the lines of the MTA, whereas the status of its adoption in certain other states is uncertain. For instance, in Tamil Nadu, there is no clarity on whether the state government will formulate a new Act adopting the provisions of the MTA or choose to continue with the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act (2017) which was notified in 2019.

- **Potential dilution of the provisions of the MTA-** Some variance in the adoption and implementation of the MTA by a state is to be expected. For instance, in Uttar Pradesh, the Regulation of Urban Premises Tenancy Ordinance, 2021, which if approved by the cabinet of the state government, will cap the annual rental hike permissible for residential properties at 5 percent compared to the 4 percent hike proposed by the MTA. While governments must enact tenancy regulations which are suited to the needs of their states, it is important that they do not end up diluting the key provisions of the original Act, which may result in defeating the objective of rationalizing the rental housing sector. For instance, in Mumbai, where more than 0.7 million properties³² have been rented out on the basis of the *pagdi* system,³³ a regulation to replace it is generating considerable opposition. Here, failing to remove the rent control regime while adopting the MTA would prove to be harmful to the rental housing market. News articles report that political parties are claiming that the MTA is inimical to the interests of tenants. In a situation wherein tenants residing in several rent-controlled properties are typically paying less than INR 500 to 600 per month, landlords are complaining that even the 4 percent annual hike in rent which the MTA permits is still well below the inflation rate. The other grievance on the part of the landlords is that the MTA, being prospective in nature, will not be applied to the properties currently being regulated by the *pagdi* system.
- **Failure to digitize the notification process to the Rent Authority-** While the MTA makes it mandatory for the Rent Authority to upload the details of the tenancy agreement and transacting parties, it does not push for the digitization of the process of notifying the Rent Authority itself. Introducing the use of digital mechanisms for the undertaking of tenancy-related transactions, but not making it mandatory would certainly make the process more efficient.
- **Possibility of over-regulation-** The MTA specifies provisions covering minute procedural details such as the the action to be undertaken by the tenant in case of damage to the

³² [NAREDCO \(2021\)- What is the pagdi system in India?](#)

³³ Under the *pagdi* system which was legalised by the Maharashtra Rent Control Act (1999), tenants rented a property by initially paying a certain principal amount. They subsequently kept paying a monthly rent which was considerably lower than the market rate. This system effectively bestowed upon tenants co-ownership and inheritance rights, allowing them to sell their share of the rented property and also sub-lease it.

rented property and the cap on the security deposit payable by the tenant. It is important that the new tenancy regime does not over-regulate the sector like the previous rent control regime.

- **Failure to mention penalty for non-compliance-** While the Model Tenancy Act ('the MTA') specifies a penalty for submitting a tenancy agreement application which misrepresents the facts of the tenancy, it does not mention a penalty for not undertaking a timely submission of the application at all.
- **Mandatory submitting of Aadhar violates prevailing Supreme Court ruling-** The MTA requires the landlord and tenant to submit their Aadhaar numbers in their application forms. The Supreme Court in 2018 had ruled that the submitting of one's Aadhaar number can be made mandatory only for availing state government subsidies. The mandatory submission of Aadhaar for the registration of tenancy agreements thus will violate this ruling³⁴.
- **No clarity on certain timelines-** The Model Tenancy Act specifies the timelines for the resolution of only certain kinds of cases. For instance, the cases related to the filing of appeals to the Rent Courts against the decision of the Rent Authority must be disposed of by the Rent Court within thirty days of the filing of the appeal. It also imposes deadlines on the adjudication of disputes related to eviction and the non-payment of rent. However, in the case of certain other disputes such as one related to the withholding of essential supplies or services by the landlord or the revision of rent, it does not specify timelines for their resolution.³⁵

³⁴ [Justice K.S. Puttaswamy Vs. Union of India \(2018\)](#)

³⁵ [PRS Legislative Research \(2021\)- Examining the Model Tenancy Act, 2021 and regulation of rental property in India](#)