

**CCS Series
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**RENT CONTROL LAWS:
*BALANCING THE INTERESTS OF
LANDLORDS AND TENANTS***

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Rent Control

Balancing interests of landlords and tenants

Ali Mehdi and Makarand Bakore¹

JNNURM Reform: Reform of Rent Control Laws balancing the interests of landlords and tenants.

Rent control reforms have been made mandatory under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) by the Government of India. Originally legislated across the world for the exigencies of World Wars I and II, the first rent control legislation in India was introduced by the British in Bombay in 1918, followed by similar legislation for Calcutta in 1920. By the end of World War II, almost all major cities and towns in the country were covered by it. Later on, its transient character was transformed into a permanent provision to ensure affordable accommodation for the poor and elderly.

In Delhi, the first rent control law was enacted in 1939, under the Defense of India Rules, covering New Delhi and the Notified Area, Civil Station. In 1942, the provisions of 1941 Punjab Urban Rent Restriction Act were made applicable to the remaining areas of Delhi, supplemented by another order under the Defense of India Rules in 1944. Comprehensive legislation was passed for all parts of Delhi in 1947 by the name of The Delhi and Ajmer Marwara Rent Control Act, repealed by The Delhi and Ajmer Rent Control Act in 1952. In 1958, an attempt was made to plug certain loopholes in the former, and the Slum Areas (Improvement and Clearance) Act was passed to protect the interest of the slum-dwellers. The current legislation was passed in 1958, and enacted on February 9, 1959 (Dev 2006).

Now, with millions of tenants in rent-controlled accommodation, the issue of rent control has become socially and politically sensitive, involving a massive chunk of the vote bank. The public debate sparked by the JNNURM conditionality has put before us certain basic questions: is the reform of rent control laws a sensible thing to be undertaken by States? Would it harm or help the poor and needy? Economists almost consensually argue that rent

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control is eventually harmful for all. Assar Lindbeck, a Swedish socialist economist, said that the most efficient technique of destroying a city except bombing is rent control. Here, we will discuss some of the arguments related to rent control, consider international parallels, and propose certain solutions on how to achieve the ideal of rent control reform.

ADVANTAGES OF RENT CONTROL

1. Cheap housing for poor

Across the world, rent control has kept the rents low for tenants through decades. Tenants have had the security against arbitrary increase in rents as well as evictions. It has ensured housing to some of the most economically backward sections of the society, the elderly and the poor.

2. Housing as a fundamental right

One view is that housing is an inalienable human right. Rent control provides stability to school-going children and community organisations.

3. Benefits to Landlords

For landlords, rent controls inhibit sharp rent decrease in recessionary periods.

DISADVANTAGES OF RENT CONTROL

Although the objectives of rent control look noble at first sight, its long term implications need to be examined.

1. Rent control causes slums

Rent control kills the incentive to invest in new rental housing. This reduces supply in the market, leading to scarcity of rental homes. The price of uncontrolled rental housing goes up due to market distortion created by rent control. New immigrants find it difficult to have affordable housing, and end up squatting on government or private land. Almost 50 per cent or more of Mumbai's population lives in slums (figure rising), which Mr. Shirish Patel, an urban planner, attributes to rent control (Patel 2005).

The Planning Commission says: "The Working Group on Housing for the Tenth Plan has observed that around 90 per cent of housing shortage pertains to the weaker sections" (6.1.53, Tenth Five Year Plan 2002-07, Government

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of India). So, while self-professedly working in the name of the poor and elderly, rent control primarily affects their chances of arranging a decent housing. And, ironically, the slum-dwellers pay high prices for rent, electricity and water in such illegal dwellings, living under constant fear of demolitions.



Figure 1: A slum in Delhi

Source: <http://www.earthsky.com/shows/show.php?date=20060331>

2. Reduced quality of housing

Landlords show little eagerness to maintain and renovate their apartments due to low return on investment. Rent control reduces housing quality, and often living standards of the tenants.

During the nineteen twenties, Mumbai *chawls* (figure 2) provided for affordable housing to mill workers catering to cotton trade boom. In the absence of rent control, developers built affordable housing and immigrants did not have to live in slums. However, with the introduction of rent control for chawls, the landlords do not have the resources or the incentives to carry out their maintenance, leading to their dilapidated condition and eventually slumification.



Figure 2: Mumbai chawls under rent control

Source: <http://www.astro.caltech.edu/~kartik/India/bombay/bombay-Pages/Image22.html>

3. Rent control benefits the non-poor

Many of those who have lived in rent-controlled apartments for decades are quite well-off. Furthermore, low rents have discouraged them from buying their own apartments. They continue to stay, paying ridiculous rents at the cost of numerous poor immigrants who are unable to obtain decent, affordable housing. The very laws that were to provide housing for the poor are responsible for their plight today. The rate of income and rent increase has been disproportionate, with rents still belonging to a realm of ancient order.

Let us listen to an observer's experience in this regard: "I have been in Mumbai for about eight months. I can tell from a glance which buildings in any fancy neighbourhood are under rent control: those that appear shabby and about to

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fall down. I visited an apartment in one such building. The inside of the apartment was lavish to the hilt; the outside was crumbling. The rent being paid: about \$20 a month. Market rate: \$2000 a month. Who lived in there? Someone who could afford \$4000 a month in rent. How long were they living there? A short 30 years. Does the owner want the renter out? By god, yes. Can he get them out? No way in hell” (Dev 2004). The result: landlords are not inclined to rent their vacant property. Who suffers? The homeless and poor. Poor landlords, who have inherited their properties, or have invested in it as a source of income. Because of what? Rent control. The available housing space for the poor decreases as rent control discourages investment in new housing and owners prefer to keep their current vacant houses out of the rental market in fear of the tenants who will refuse to vacate.



Figure 3: Are poor people living in these rent-controlled apartments at the prime location of Nariman Point, Mumbai?

Source: <http://www.baldrige21.com/Baldrige%20INTERNATIONAL/Baldrige%20India.html>

4. Wasting valuable space

Sometimes, one or few people hold up much larger portions of accommodation than they need, preventing the extra property to come into the market, which could help those in the queue. Since they are paying low prices, they do not mind holding on to extra space. If they were paying for each and every inch, as in a free market, they would only avail and use an amount which they really require. In metropolitan cities especially, where every inch of land is so valuable, can we afford to let it be wasted while millions of poor people live in slums and streets?

5. Misappropriation by tenants

In a number of cases, due to tenancy over a long period of time, the landlord is forced to sell his/her property to the tenant at ridiculously low prices. Later, these tenants could sell the same property at market prices to others as owners.

6. Reducing chances of labour employment

In its report, 'Housing and Real Estate Development and Construction,' the task force of the Planning Commission on Employment opportunities, says: "Real Estate development, because of the construction activity it involves, is one of the most labour using sectors and can generate a large number of work opportunities. However, laws governing land development and rent control have pushed the market underground and restricted growth of this sector." Not only does rent control lead to housing scarcity for the poor, it also reduces their chances of employment in a big way.

7. Hampering urbanization

Rent control safeguards the interests of the existing tenants, the status-quo, while creating disincentives to provide for those poor needing tenancy. In a country like India where the majority of the population still lives in the villages, and urbanization is happening at a massive scale, serious thought has to be given for the new incoming people who require accommodation. Where do they go? Back to their villages? When they do not, they are pushed further down on the index of a dehumanized lifestyle which is so pathetically seen in and around Indian cities, something we feel bad about when pointed out by foreigners.

8. Affecting mobility in an age of globalization

Rent control, providing very cheap housing, creates a disincentive to be mobile, because people are afraid of losing out on their low rents, and are not willing due to old habits to get relatively expensive housing in areas with more economic opportunities. Mobility is a central feature in an era of globalization, and rent control is toward this end an obstacle. “In Europe, where many countries have had rent control since World War I, “labor immobility” is now regarded as a major barrier to economic progress” (Tucker 1991: 21), and to remedy this, UK, France and others, have undertaken serious rent control reforms.

9. Impact on foreign and domestic investments

The ADB identifies rent control laws as major disincentives for FDI (Asian Development Outlook 2004: India). Investors are not willing to invest in real estate and construction for the fear that their properties might be put under rent control. The extremely high prices of property outside rent control is a disincentive. Retail firms in the domestic sector in India feel that “the pro-tenancy Rent Control Acts have distorted the property markets in cities leading to exceptionally high prices.” This negatively impacts their chances of competing with foreign players.² So, rent control does not only adversely affect foreign but domestic businesses as well.

POLITICS OF RENT CONTROL

Tenants living in rent-control housing form a larger vote-bank than landlords. Since rent control is appealing intuitively, it does not make it to the election manifesto. Slum-dwellers expect the government to provide housing and are naïvely in favour of rent control, oblivious to the fact that the roots of their woes can be traced back to the rent control laws. It is worth considering whom rent control actually helps: the poor or rich?

CAN MARKETS PLAY A ROLE IN HOUSING?

1. Markets can create housing

Very little of actual housing in the country is government built. From hamlets to villages to cities, residential space is largely privately built by individuals,

² The Financial Express: June 20, 2006. ‘Industry says yes to 49 per cent FDI in retail’.

communities, and contractors. In the absence of rent control laws and restrictive building bye-laws, supply of rental housing can be increased through private developers.

In spite of Nepal having a per capita income half that of India, Kathmandu has no slums. According to Rakesh Wadhwa, this is because there is no rent control in Kathmandu. The free market has created housing for all types of requirements, from palatial bungalows to single-rooms. The poor are the biggest beneficiaries (Wadhwa 2002).

2. Markets can provide for affordable housing

With many houses available for rent, prices will automatically stabilise as per market demand. The poor do not expect anything free. They want it to be affordable. Flexible housing options (such as cheap per night stay) are not inconceivable. This is not to say that this housing will come up immediately after the rent control laws are reformed or repealed. But it is a sustainable long-term solution. Was it the government or the private players (property-owners) who created today's rent-controlled housing in the first place?

INTERNATIONAL PARALLELS

In Berkeley (California), rent prices actually went down as the housing supply went up after rent control laws were removed (Dev 2004). Talking of Hong Kong, Steven Cheung says: "The immediate result of the 1955 relaxations in both the rent control and the building ordinances was to facilitate urban renewal" (Cheung 1980: 36). And, "without successive amendments [in rent control laws, Hong Kong could never have become what it is now – one of the world's most modern cities" (Cheung 1980: 40). Enough lesson for Indian cities.

Table 1: Major Reforms of Rent Regulations since 1980

Country	Reforms
Belgium	1984: Rent increases linked to Consumer Price Index.1985-1987: Indexation temporarily suspended.1991: Freely negotiated new rental fixed term contracts introduced.1997: Limits set to new short-term agreements.
Denmark	1990: Condominiums built after 1991 exempt from rent control.
Greece	1997: Freely negotiated rents in new contracts. Minimum duration of contracts of 3 years.
Spain	1985: Freely negotiated rents in new agreements.1995: Minimum lease of five years (at tenant’s option); CPI indexation; One-off updating of existing contracts (to be implemented over ten years).
France	1997: New contracts liberalized.
Ireland	No significant controls/regulation on rent contracts.
Italy	1992: Freely negotiated new fixed-term contracts introduced.1998: Two types of “free” contracts: freely negotiated at the individual level at the startand contracts where yearly rent increases are collectively negotiated by landlords andtenants.
Finland	1990-1992: Gradual liberalization of rent controls.After 1995: Rents are practically free from public control, they should not be “excessive” (in a legal sense).

Sweden	No major reforms that could improve the efficiency of allocation in the rental sector have been undertaken.
United Kingdom	1988: Assured tenancy – eviction easier and initial rent and indexation negotiated.
United States	1994: Boston, Cambridge, Brookline (Massachusetts) rent control ordinances repealed; units decontrolled when existing tenants leave. 1995: Santa Monica, Berkeley (California) also institute decontrol upon vacancy.
Canada	1992: Most rent controls were removed, with the exception of Ontario that kept a system of rent increase guidelines and a rent review system in Quebec and British Columbia.

Source: Turner & Malpezzi 2003

THE WAY AHEAD THROUGH JNNURM

Since reform of rent control laws is a mandatory reform under JNNURM, the government should seize the opportunity to reform the Act in a phased manner. The Government of India has formulated a Model Rent Control legislation in 1992 and state governments were requested to amend their rent control laws on the lines of the Model legislation.

The different phases in reforming rent control laws could be as follows:

1. All new constructions from this point on should be exempted from rent control.
2. A time-line could be drawn up to increase rents of rent-controlled apartments upto market levels over a period of say six to ten years.
3. Affirmative action may be considered for those below the poverty line, living in rent-controlled apartments. Their rent can be brought to market rate over a five to fifteen year period.

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4. Rents can be subsidised for elders, disabled and the needy by providing them housing vouchers that could be encashed by the landlords from the government.
5. Pro-poor schemes may be introduced:³
 - Properties freed up must contribute x% of the rental value into a housing for the poor fund on the lines of Madhya Pradesh where private developers contribute in cash/or land into the Ashraya Nidhi for pro-poor housing.
 - For effective targeting for the poor, people reporting incomes over the poverty line-income tax payees may be taken out of under the rent control.
 - Fixed timelines should be mandated for the use of the Ashraya Nidhis by the government for constructing housing for the poor
 - The schemes should be linked with the on-site slum upgrading policy. Ashraya Nidhi funds can be used for slum reconstruction.

The government can take steps to encourage the following:

1. Reforming current laws to ensure a fair relationship between landlords and tenants. Standard lease agreements can have safeguards against unreasonable evictions.
2. Set-up special tribunals to ensure speedy disposal of tenant-landlord related litigation.
3. Dissemination of information regarding availability of rental housing and their rents. Third party rating agencies can rate rental housing units.
4. Reforming building bye-laws and zoning and sub-division regulations to create space for flexible housing that can be more responsive to peoples' needs.

³ Our thanks to Dr. Renu Khosla for suggesting these schemes

If rent control has to exist for some time, the income levels of the tenant and the landlords have to be taken into due consideration before a property is declared or continues to be a rent control property. This is because in many cases, the income of the tenants is higher than that of the landlord, so it is the landlord rather than the tenant who is in need of help. After all, the aim is to help the poor, does not matter if it is the landlord or the tenant.

TO SUM UP

Rent control reduces the quantity and quality of housing. This has a direct impact on immigrants who are forced to live in slums due to lack of affordable housing. Freeing up the housing market from the shackles of rent control will create sufficient housing in the long-term for all.

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CENTRE FOR CIVIL SOCIETY

The Power of Ideas

The Centre for Civil Society is an independent, non-profit, research and educational organisation devoted to improving the quality of life for all citizens of India by reviving and reinvigorating civil society.

India got her political independence in 1947 from the British state, but we still do not have complete social, cultural and economic independence from the Indian state. We aim to limit the domain of the state and make more space for civil society.

We champion limited government, rule of law, free trade, and individual rights. We are an ideas organisation, a think tank that develops ideas to better the world. We want to usher in an intellectual revolution that encourages people to look beyond the obvious, think beyond good intentions, and act beyond activism.

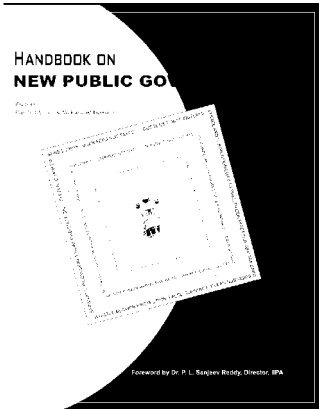
We are driven by the dream of a free society, where political, social, and economic freedom reigns. We are soldiers for a Second Freedom Movement.

The Centre's *Livelihood Freedom Test* calls to test all existing and new rules and regulations for their impact on the freedom to earn an honest living. Does any law of the city restrict opportunities of any person to earn an honest living, particularly the one that requires little capital or skills? If so, then Review, Revise, or Remove.

The *School Choice Campaign* is aimed at policy change in order to give education subsidies directly to the students, who would be able to choose the school they would like to attend. This will increase competition among schools and lead to better educational services. Fund Students, Not Schools. Join the Education Choice Campaign at <http://schoolchoice.in>!

CCS is creating awareness about *Ward Level Management*, where many of the current services, provided by the state and the Municipal Corporation, can be more effectively delivered by Ward Committees to their respective Ward. Decentralisation of services would bring transparency and accountability into the system.

CCS PUBLICATIONS



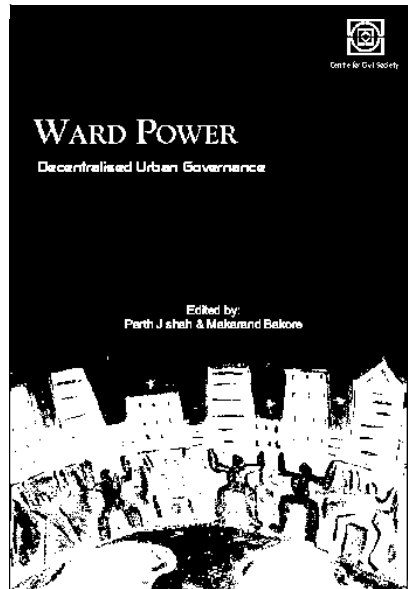
Handbook on New Public Governance *Parth J Shah and Makarand Bakore*

The handbook offers a spectrum of choicest of articles that capture the essence of good governance. The rich menu has insightful contributions on New Public Management, decentralisation, participation, accountability and e-governance. Illustrative case studies on public-private partnerships exemplify sustainable service delivery models worldwide. This digest is a swift route to grasping the fundamentals of governance for politicians, administrators, civil society members and students.

Ward Power: Decentralized Urban Governance

Parth J Shah & Makarand Bakore

The book focuses on the functioning of urban municipalities. It attempts to provide answers to very pertinent questions-'How can an ordinary citizen demand accountability from the mighty Municipality in whose hands are vital services like water, electricity supply, garbage removal, roads and primary education? Where does the person go to have a say in the decisions that affect the neighbourhood?' The book, which is targeted at policy makers, urban planners and citizens associations, suggests creating a local self-governance unit at a level of a Ward for decentralized management.



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(continued from back cover)

Optional Reforms (Common to state and local bodies)

1. Revision of bye-laws to streamline the approval process for construction of buildings, development of sites, etc
2. Simplification of legal and procedural frameworks for conversion of agricultural land for non-agricultural purposes
3. Introduction of Property Title Certification System in ULBs
4. Earmarking at least 20-25% of developed land in all housing projects (both Public and Private Agencies) for EWS/LIG category with a system of cross subsidization
5. Introduction of computerized process of registration of land and property
6. Revision of bye-laws to make rain water harvesting mandatory in all buildings to come up in future and for adoption of water conservation measures
7. Bye-laws on reuse of recycled water
8. Administrative reforms, i.e., reduction in establishment by bringing out voluntary retirement schemes, non-filling up of posts falling vacant due to retirement etc., and achieving specified milestones in this regard*
9. Structural reforms
10. Encouraging public-private partnership*

The National Urban Renewal Mission (NURM) is a project of the central government. Through this project, the central government will fund 63 cities for developing urban infrastructure and services. The cities will have to carry out mandated reforms in return. The mission will last for a period of seven years starting December 2005. The total central government funding will be Rs. 50,000 crores. Adding the contribution of states and municipalities, the amount will go up to Rs. 1,25,000 crores over the seven year period.

REFORMS UNDER NURM

CCS research papers are available for the starred reforms.

State Level Mandatory Reforms

1. Effective implementation of decentralization initiatives as envisaged in the Constitution (Seventy-fourth) Amendment Act, 1992 *
2. Repeal of Urban Land (Ceiling and Regulation) Act, 1976 *
3. Reform of Rent Control laws, by balancing the interests of landlords and tenants *
4. Rationalisation of stamp duty to bring it down to no more than 5 per cent within seven years
5. Enactment of public disclosure law *
6. Enactment of a community participation law, so as to institutionalise citizens' participation in local decision making *
7. Association of elected municipalities with the city planning function

Municipal Level Mandatory Reforms

1. Adoption of a modern, accrual-based, double entry system of accounting*
2. Introduction of a system of e-governance using IT applications, GIS and MIS for various urban services
3. Reform of property with GIS, and arrangements for its effective implementation so as raise collection efficiency to 85 per cent
4. Levy of reasonable user charges, with the objective that full cost of operation and maintenance is collected within seven years *
5. Internal earmarking of budgets for basic services to the urban poor
6. Provision of basic services to the urban poor, including security of tenure at affordable prices

(continued on back page)



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