

## ANDHRA PRADESH RESIDENTIAL AND NON-RESIDENTIAL PREMISES TENANCY ACT, 2017

*Is it really a social welfare legislation and safeguarding the interests of weaker sections of tenants  
from unreasonable eviction and from unfair rent?*

By

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### **Introduction:**

The Government of India has launched Jawaharlal Nehru National Urban Renewal Mission (JNNURM) in the year 2005-2006 at an estimated cost of Rs.50,000 crores extending to 7 years to bring improvement in the existing services in financially sustainable manner. JNNURM is a reform driven, fast track programme for integrated development of infrastructural services and provision of basic services, particularly to urban poor in urban local bodies. JNNURM requires the State Governments to undertake 7 mandatory reforms and 10 optional reforms at State level for a period of 7 years to have access for financial assistance from Government of India. Establishing a new rent control legislation is one of the mandatory reforms to be implemented by the State Government under JNNURM. The State Government has committed to complete the process of establishing a new rent control legislation by March, 2008 and later on extended to complete the process of establishing a new rent control legislation by March, 2011 as per the MOA entered with Government of India.

Keeping in view of the said reform of Government of India, the State Legislature has passed A.P. Rent Control Bill (L.A. Bill No.17 of 2011) on 3.12.2011 and 4.12.2011, the same has been reserved by the Governor of A.P. on 27.12.2011 for consideration and assent of the President of India.

Ministry of Housing and Urban Poverty Alleviation (HUPA), Government of India does not agree with Chapter-II (Regulation of Rent) of the principal enunciated under National Urban Housing and Habitat Policy, 2007 namely, “that rent of a housing unit should be fixed by mutual agreement between the land lord and the tenant for a stipulated lease period, prior to which the tenant will not be allowed to evict and after the expiry of the said lease period, the tenant will not be permitted to continue in the said housing unit”. Accordingly ministry of HUPA, Government of India in it's letter dated 30.4.2015 has forwarded draft Model Tenancy Act, 2015 and suggested that the State Governments may modify their rental laws based on the Model Tenancy Act, 2015 by incorporating the local requirements.

Accordingly the Andhra Pradesh Residential and Non-Residential Premises Tenancy Bill, 2017 is prepared as per the draft Model Tenancy Act, 2015 circulated by Ministry of HUPA, Government of India duly withdrawing the A.P. Rent Control Bill, 2011 passed by A.P. State Legislature on 3.12.2011 and 4.12.2011 and repealing the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

Simultaneously, the LA Bill No.17 of 2011 *i.e.*, The Andhra Pradesh Rent Control Bill, 2011 as passed by the State Legislature on 3.12.2011 and 4.12.2011 has been withdrawn from the Government of India

and a fresh bill as stated above has been prepared incorporating the suggestions given by Union Ministry of HUPA, Law and Justice and Law Affairs.

The broad principles of A.P. Residential and Non-Residential Premises Tenancy Act, 2017 are as follows:

(i) Rent of a housing unit should be fixed by mutual agreement between the land lord and the tenant for a stipulated lease period without any provision for any standard rent, (ii) The law should provide for a fast track quasi judicial process for adjudication of disputes between the land lord and the tenant by constituting Rent Courts, Rent Tribunals, (iii) The State Government may by notification, constitute such number of Rent Courts in as many urban areas as may be deemed necessary by it.

Other salient features of the Act: (i) it extends to all Municipal Corporations, Municipalities and Nagar Panchayats and Head Quarters of Mandal Praja Parishad, (ii) The Act should not be limited in applicability to properties below monetary threshold but should be applicable for all tenancies, (iii) It doesn't apply to any premises owned by the Government, Company, University, Religious/Charitable Institutions, or Wakfs.

Section 10-Rent Authority to fix or revise rent, the provision empowers the Rent Authority to fix, revise, as the case may be, the rent or other charges payable by the tenant and also fix the date from which the revised rent becomes payable.

What is the Rent Authority? – According to Section 37, the District Collector shall with the previous approval of the State Government, appoint an officer, not below the rank of Deputy Collector to be the Rent Authority for the area within his jurisdiction which the Act applies.

Rent Authority to be the officer not below the Rank of a Deputy Collector-How far it is justifiable?

In this regard three perspectives are to be considered-(i) Whether the Deputy Collectors have proficiency/competency to adjudicate the *lis*/dispute? -they have no legal knowledge and they are not well equipped with law since they did not possess any basic law degree and they have no practical knowledge in the field of law,

(ii) Whether fair hearing/trial will be conducted before the Deputy Collectors? No because there is every feasibility of political intervention/influence and

(iii) Is there possibility for speedy disposal of the dispute, before the Deputy Collectors? answer for the same is no because they are busy with administrative work and they have no much time to conduct the proceedings/hear the matters.

Section 11 of the Act says that it shall be lawful to charge a security deposit three times the monthly rent.—It means the land lord can ask for deposit of three times the monthly rent, then what about the poor/weaker sections of tenants, they are in financially affordable position? Ultimately the weaker sections are defeating their right to life, then how can the Act, term as a social welfare legislation.

Section 8 of the Act speaks that the rent payable in relation to a premises shall be, in case of new tenancies entered into after the commencement of this Act, the rent agreed to between the land lord and the tenant, at the commencement of the tenancy, which means no standard rent rules are fixed/devised by the Government. The Government/State has to fix/frame the standard rents for the premises, taking into consideration of the locality, where the premises is situated *i.e.*, metro city, 2nd class city or town, and the amenities/qualities of the premises and other factors. So far no such rent fixing rules are framed by the Government and left to the land lord and tenant by directing them to fix the same by mutual agreement. But practically,

the rent is fixed at the choice of the land lord and the tenant is consenting for the same in an unavoidable circumstances and no rent is fixing by the mutual consent by the land lord and the tenant, and it is always fixing by the land lords only. Thus the poor tenants are exploiting by the land lords. Even the premises/structure in dilapidated condition is let out for higher amount, taking in to advantage of the situation *i.e.*, the most of the people from rural areas are coming to nearer towns/cities for the education of the children and for employment. As the large number of people are coming to towns/cities for various purposes/reasons, the land lords are looting the poor tenants' pocket, taking into advantage of the situation. Further as per Section 15 and second schedule, the tenant shall be responsible for the following repairs of the premises *i.e.*, (1) Change of tap washers and taps, (2) Drain cleaning, (3) Water closet repairs, (4) Bath tub repairs, (5) Geysar repairs, (6) Circuit breaker repairs, (7) Wash basin repairs, (8) Switches and socket repairs, (9) Repairs and replacement of electrical equipment except major internal and external wiring changes, (10) Kitchen fixtures repairs, (11) Replacement of knobs and locks of doors, cup boards, windows *etc.*, (12) Replacement of flynets, (13) Replacement of glass panels in windows, doors *etc.*, (14) Maintenance of gardens and open spaces let out to or used by the tenant. These repairs as per II Schedule shall be carried out by the tenant and deduct the amount from the monthly rent payable by him to the land lord, but the same can not be accepted by the land lords ultimately the sufferers/victims are the poor tenants.

The State Government may by notification, constitute such number of Rent Courts in as many urban areas as may be deemed necessary by it. So far no rent Courts are constituted. As per Section 21(2), the Rent Courts shall on an application made to it in the manner prescribed, make an order for the recovery of possession of the premises on the grounds provided under Section 21(2)(a) to (h).

As per Section 32 and Section 40, the Civil Courts are prevented from entertaining the matters/suits, relating to disputes between land lord and tenant.

So far no Rent Authorities, Rent Courts, Rent Tribunals are constituted yet and on the other hand Civil Courts are expressly barred, to entertain the suits, pertains to the rent disputes. Then which forum, the litigant public have to approach?

Procedure to be followed by the Rent Courts: As per the proviso to Section 33, the Rent Court shall give due regard to the provisions of the Transfer of Property Act, 1882 and the Indian Contract Act, 1872 and other substantive law, in deciding applications relating to tenancies. What are the relevant provisions of the Transfer of Property Act, 1882 in this regard.

Section 107, Transfer of Property Act, 1882 deals with how lease can be made:

A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Provided that the State Government may, from time to time, by notification in Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year or reserving a yearly rent, or any class of such leases may be made by unregistered instrument or by oral agreement without delivery of possession. As per the above said provision other than lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, may be made either by a registered instrument or by oral agreement and there is no legal mandate for compulsorily registration of the instrument. But whereas Section 4 of the

A.P. Residential and Non Residential Premises Tenancy Act, 2017 mandates that lease agreement shall be in writing and it must be registered or notarized with the Notary Public, notwithstanding anything contained in this Act or any other law, for the time being in force, irrespective of lease tenure. Now the point for consideration is which Act, prevails, whether the Transfer of Property Act or the A.P. Residential and Non-Residential Premises Tenancy Act?

As per Sections 32 and 33 of the A.P. Residential and Non Residential Premises Tenancy Act, the Rent Court, Rent Tribunal and the Rent Authority shall give due regard to the provisions of the Transfer of Property Act, in deciding the applications relating to tenancies.

### **Conclusion:**

It seems that the State Government has

made the A.P. Residential and Non-Residential Premises Tenancy Act, by mere borrowing the copy of Model Tenancy Act, 2015, forwarded by the Ministry of Housing and Urban Poverty Alleviation (HUPA), Government of India to have financial access from the Government of India, without taking into consideration of the interest/ fate/ rights of the financially weaker sections of the tenants. No doubt financial access from Government is required/desirable but at the same time rights/welfare of the weaker sections of the tenants, also be taken into consideration, as it is a social welfare legislation. Further I humbly appeal to the State Government to take immediate steps to constitute Rent Authorities, Rent Courts, Rent Tribunals, enabling the litigant public to have access for the justice.

(This article is contributed out of, mere academic interest).

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## **FRAMING OF CHARGES**

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The word trial is not defined under Criminal Procedure Code 1973 or in Old Cr.P.C. But authoritative precedents clarify that trial begins soon after framing of charge around which the evidence will be recorded to decide a case. Hence framing of charge, is a vital step in all criminal cases and no prejudice is expected to be caused either to accused or victim to guarantee their fundamental freedom under Constitution of India.

A free and fair trial is the concept of Indian Constitution. Hence framing of charge has got much significance in the eye of criminal jurisprudence. Framing of charge

under Cr.P.C. is to be done while giving an opportunity to both victim and accused in a case is the purport and true intendment of Legislature.

It is the duty of the Investigating Officer and Public Prosecutor to bring all the relevant material into the knowledge of the Court to frame an effective charge. Any sort of dereliction of duty will defeat the ends of justice of the trial. In addition to this a significant responsibility is cast upon Trial Courts while framing of charge. The definition of charge in Cr.P.C. defines that any head of charge when a charge contains