

**RIGHT TO REASONABLE ACCOMMODATION TO A TENANT:
LEGAL DISCOURSE WITH REFERENCE TO CHHATTISGARH
RENT CONTROL ACT 2011**

by

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ABSTRACT

The Chhattisgarh Rent Control Act 2011 has been enacted in order to protect the interests of landlord and tenant both in respect of the rent premises, to secure payment of rent, to ensure safe custody of the tenanted property and to protect the ownership rights of the landlord amongst other rights. It provides rights and obligations of the landlord and its tenants from its Schedule I to IV. This paper endeavours to contemplate the constitutionality of right of the landlord to evict a tenant on mere conviction for an offence and in order to ensure right to a reasonable accommodation to the tenant. This paper is purely doctrinal in nature. In my opinion, the provisions related to eviction of a tenant in case of conviction for an offence needs review in order to ensure protection of rights of tenant in the light of legal jurisprudence.

INTRODUCTION:

The Chhattisgarh Rent Control Act 2011 has been enacted in order to protect the interests of landlord and tenant both in respect of the rent premises, to secure payment of rent, to ensure safe custody of the tenanted property and to protect the ownership rights of the landlord amongst other rights. It provides rights and obligations of the landlord and its tenants from its Schedule I to IV. Schedule II of the Act provides certain rights to the landlords. Sub-paragraph (e) to paragraph 11 to schedule II specifically confers right to the landlord to evict the tenant on conviction for any offence. This right does not distinguish between cognizable and non-cognizable offences and confines itself to the offences provided in the Indian Penal Code. However, the authority of eviction of a tenant could cause unforeseen terrible consequences for the tenant and reduce him to a vagabond. Therefore, this paper endeavours to contemplate the constitutionality of right of the landlord to evict a tenant on mere conviction for an offence and in order to ensure right to a reasonable accommodation to the tenant. This paper is purely doctrinal in nature. In my opinion, the provisions related to eviction of a tenant in case of conviction for an offence needs review in order to ensure protection of rights of tenant in the light of legal jurisprudence.

RIGHTS OF LANDLORD TO EVICT A TENANT:

Schedule III to the Chhattisgarh Rent Control Act 2013 (hereinafter 'Rent Control Act') provides certain rights to the landlord. Paragraph 11 to Schedule II of the Rent Control Act specifically confers right to the landlord to evict a tenant on conviction for an offence provided in the Indian Penal Code 1860. This provision may be contemplated on following grounds:

1. The conviction of a tenant is in addition to the punishment provided to an offender due to the conviction for another offence in the Indian Penal Code 1860 and is consequential in nature;
2. it dispenses with the rule of *audi alteram partem* which is an essential component of the principles of natural justice;
3. it confers absolute authority to the landlord to evict without any requirement of notice, therefore, it virtually restrains other members of society to provide a reasonable place

for accommodation in any rented premise; Such a non-cooperation for providing the rent hold premises could take the form of mob lynching without any fault on the part of tenant or its family members in respect of the tenanted premises or their landlord;

4. the landlord's authority to evict interferes with the contemporary techniques of reformation¹, etc. of the accused (tenant) because such eviction is not in pursuance of the execution of a sentence in lieu of the commission of an offence related to rented premises or its landlord;
5. Instead, such eviction could reduce the tenant to a vagabond or a nomad who strives consistently for a reasonable tenanted accommodation but is legally restrained from such accommodation.
6. the eviction of tenant from the rented premises violates the right to life under Article 21 of the Constitution of India. Article 21 to the Constitution states: 'No person shall be deprived of his life or personal liberty except according to the procedure established by law'. The term 'life' in article 21 connotes life with integrity and does not mean mere animal existence.² Therefore, it is usual that the eviction of a tenant would unnecessarily cause the family members of tenant to strive for a reasonable accommodation and thus would violate article 21 to the Constitution.
7. India is a welfare State. The provisions on directive principles of state policy in Part IV of the Constitution requires the States to strive for implementation of measures that add to the quality of life provided in Article 21 of the constitution. Article 38 of the Constitution states:

Article 38(1): The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Article 38(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

¹ A reformatory system treats those subjected to it not as rational, self-determining agents, but as objects to be re-formed by whatever efficient (and humane) techniques we can find. see <https://plato.stanford.edu/entries/legal-punishment/> (last visited 16.05.2022).

² *Maneka Gandhi v. Union of India*, AIR 1978 SC

Thus, right to residence is a part of Directive Principles of state policy as well as the fundamental right under article 21 of the Constitution.³ So, it is necessary to give proper weight to the aspiration of clause (2) to article 38 to the Constitution which aims to eliminate inequalities in status, facilities and opportunities to individuals as well as groups of people residing in different areas. The ambit of inequalities in status, facilities and opportunities in respect of person/s residing in different areas envisage equal rights for both tenanted individual/s well as independent land owners because it does not classify the residence of individual/s or groups of individual/s on the basis of their income rather it includes person/s engaged in different vocations. The 'difference in vocations' itself purports difference in income. It is pertinent to note that a tenant holds the rented premises not because of his paucity of income rather due to this need to reside in a place far from his original place of residence wherein he need a reasonable accommodation for his profession, education, business, etc. Thus, article 38 to the constitution aims for equal rights in terms of status, facilities and opportunities to every citizen whether he is residing in a rented accommodation or the premises owned by him or his family. It is critical that such a construction of clause (2) to article 38 of the Constitution signifies that the operation of right to evict in case of conviction of the tenant would question the right to residence of the landlord itself in case of conviction for any offence?

8. the eviction of the tenant without prior notice is an essential violation of the term 'procedure established by law' in Article 21 of the Constitution. The term 'procedure established by law' has been interpreted to mean that procedure which is just, fair and reasonable⁴.
9. the eviction of a tenant due to conviction is of the nature of execution of 'sentence' to an accused (tenant) for the commission of an offence. Such eviction becomes part of the sentence pronounced by the Court of law as a result of conviction in another criminal case. Thus, such eviction is in the nature of *autrefois convict* which is barred by section 300 of the Code of Criminal Procedure 1973⁵ and Article 20(2) of the

³ In *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 (Pavement dwellers case), the Hon'ble Supreme Court observed: 'The right to live and the right to work are integrated and interdependent and, therefore, if a person is deprived of his job as a result of his eviction from a slum or a pavement, his very right to life is put in jeopardy. It is urged that the economic compulsions under which these persons are forced to live in slums or on pavements impart to their occupation the character of a fundamental right.'

⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC

⁵ Clause (1) to Section 300 of the Code of Criminal Procedure 1973 states on double jeopardy that:
Person once convicted or acquitted not to be tried for same offence.—

Constitution of India⁶. It is pertinent to note that section 54 of the Indian Penal Code 1860 does not envisage eviction of a tenant to be a type of sentence. So, the eviction of tenant cannot be a measure to execute a sentence for conviction pronounced by the Court of law.

10. the eviction of a tenant due to conviction is of the nature of execution of 'sentence' to an accused (tenant) for the commission of an offence. However, if the offence for which such eviction has been acted upon is adjudged on acquittal of the accused, on appeal, revision, etc, the period for which the accused (tenant) strived for a reasonable personal accommodation would become a statutory liability for the landlord to compensate the tenant. Also, it would be a matter to ponder whether the landlord ought to provide the tenanted premises to the tenant, who is now acquitted or discharged from the prosecution, in preference to other tenants.
11. it is pertinent to note that section 12(2) read with sub-paragraph (e) to paragraph 11 of the Schedule II of the Rent Control Act confers absolute authority to the landlord to evict a tenant on its conviction for an offence. Such an eviction:
 - (i) does not provide any foreseeable alternative for accommodation to the tenant;
 - (ii) does not require the landlord to ensure that the tenant, on filing of complaint or initiation of prosecution, is evicted during the reasonable time. However, it is necessary to note that the provisions for search and seizure of person or property in both Code of Civil Procedure 1908 and the Code of Criminal Procedure 1973 mandates 'reasonable time' for the entry of police official or the person appointed for search of the property in a civil case. Even in cases of search of residential premises for possession of narcotic and psychotropic substances like ganja, marijuana, cocaine, etc. the provisions of section 42 of Narcotic Drugs and Psychotropic Substances Act mandate entry and egress of the police officer only during the reasonable time;

Section 300(1): A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

⁶ Article 20(2) of the Constitution of India provides protection in respect of conviction of offences. It states: 'No person shall be prosecuted and punished for the same offence more than once.'

- (iii) would, therefore, imperil the family of the tenant to search for another reasonable accommodation without any fault on their part;

In fact, the damage to the landlord due to conviction of tenant would signify by *injuria sine damnum* rather than *damnum sine injuria*. Therefore, the legal injury without damage must not be extended to violate the right to reasonable accommodation of the tenant and his family members.

12. It would be pertinent to ponder if the tenant-in-succession allows a convicted person to get accommodated in the rented premises, whether the landlord has authority to bar such entry, association or other activities of such convicted person?
13. Further, it is significant that Schedule II to the Rent Control Act that confers right to the landlord to evict on conviction confines itself to the provisions of Indian Penal Code and does not extend to other penal statutes.⁷ Also, it did not distinguish between the cognizable and non-cognizable offences and offences punishable with fine only.
14. It is significant to note that, in cases of conviction for an offence, the consequential dismissal or suspension from service is the punishment generally in practice in Government and other institutions. This could be due to its consequential nature of impact upon the work efficiency, etc. But such consequential punishments cannot be made applicable in cases of mere accommodation of premises on rent because the landlord and tenant are not governed by master-servant or principal-agent relationships. It is apposite to note that a rent holder cannot discriminate a tenant on the basis of its profession, income, race, caste, etc.

Therefore, in my opinion, section 12(2) and sub-paragraph (e) to paragraph 11 of Schedule II of the Rent control Act that states right to seek from the rent controller eviction of a tenant on the ground of conviction for an offence in the Indian Penal Code needs to be revised in order to ensure that the rights of the tenant are protected in accordance with the procedure established by law and is not jeopardised twice for the

⁷ Therefore, if an offender (tenant) is convicted for an offence in any other penal statute, the eviction would be hit by the legality principle. The “legality principle” is really an umbrella concept for a collection of doctrines, some constitutional, some statutory, and some judge made. In its original Latin dress, the legality principle was expressed as “nullum crimen sine lege, nulla poena sine lege,” meaning roughly “no crime without law, nor punishment without law.” see Paul H. Robinson, Criminal Law's Core Principles 206 (Washington University Jurisprudence Review, Volume 14.1, 2021), available at: <file:///C:/Users/hp/Downloads/SSRN-id3783326.pdf> (last visited 16.05.2022).

same offence. Such an amendment to the Rent Control Act would protect the fundamental rights of the tenant under Article 20(2) of the Constitution of India.

CONCLUSION:

Chhattisgarh Rent Control Act is a beneficial legislation that intends to balance the interests of both landlord and tenant in respect of the rented premises. It provides a method for adjudication of issues related to premises on rent and to ensure peaceful possession and maintenance of the premises. Section 12(2) of the Rent Control Act read with its sub-paragraph (e) to paragraph 11 of Schedule II confers right of eviction to the landlord for conviction for an offence of the Indian Penal Code.

This paper concludes that this right of landlord to evict the tenant on mere conviction of an offence, which is dissociated with any of the issues related to rented premises, is arbitrary in light of Article 38(2) to the Constitution of India. It violates the right against double jeopardy provided in Article 20(2) of the Constitution of India and Section 300 of the Code of Criminal Procedure 1973. This right of the landlord is consequential to the punishment of conviction in another offence. It authorises eviction of the tenant without any notice and does not legally prescribe reasonable time to vacate the leasehold premises. This provision cannot be equated with the consequential nature of punishments inflicted in cases of the disciplinary inquiry because the rent agreement does not envisage any principal-agent or employer-employee relationship. The Rent Control Act seeks to co-ordinate the interests of landlord and tenant with the aim of peaceful existence and safe upkeep of the rented premises.

'Law is the product of human reason and is intimately related to the notion of purpose...'⁸ An analysis of the judicial method shows that law is not a body of rules, but an organic body of principles with an inherent power of growth.⁹ Therefore, in my opinion, sub-paragraph (e) to paragraph 11 of the Schedule II to Rent Control Act should be amended in order to protect the fundamental rights of the tenant. Such an amendment is necessary in order to ensure safe accommodation to a convicted tenant. It would be pertinent to note that, in contemporary era, the reformatory theory of punishment is in vogue and practice by the Courts of law. Therefore, any such eviction of a tenant would be a hindrance in proper reformation of the tenant and could produce harsh consequences.

⁸ G.W. Paton, *A Text-book of Jurisprudence* 4 (3rd ed. 1964, English Language Book Society and Oxford University Press)

⁹ *Id* at 9.



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