

ALTERNATIVE DISPUTE RESOLUTION IN TENANCY DISPUTES – WALKING THE TIGHTROPE

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The question of arbitrability of tenancy disputes has been considered by the Supreme Court of India in various cases, and has been finally decided in the recent judgement of the Vidya Drolia case, as far as arbitrability of disputes under Transfer of Property Act, 1882 is concerned. This paper traces the evolution of the legal position regarding arbitrability of tenancy disputes and discusses the Vidya Drolia judgement. This paper further delves into tenancy disputes under various State Rent Control laws and debates whether alternative dispute resolution mechanisms should be made applicable to the disputes under the State Rent Control Acts, even though courts have taken contrary approach in various other judgments.

Keywords: Arbitration, tenancy, eviction, Vidya Drolia, rent control

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I. INTRODUCTION

The Covid-19 pandemic has disrupted regular functioning of courts across India, allowing only the extremely urgent matters to be taken up for hearing.¹ Ironically, tenancy disputes, which constitute the maximum number of pending disputes in Indian courts,² are also considered to be some of the least urgent matters to be heard, even in normal circumstances by a court of law. The onset and spread of the pandemic would only add to the large number of years it takes for disposal of civil suits related to tenancy.

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¹ Paras Joshi, 'India: Functioning of Courts in India and Abroad During COVID-19 Pandemic' (*Mondaq* 16 April 2020) <www.mondaq.com/india/litigation-contracts-and-force-majeure/918068/functioning-of-courts-in-india-and-abroad-during-covid-19-pandemic#:~:text=India%3A%20Functioning%20Of%20Courts%20In,Abroad%20During%20Covid%2D19%20Pandemic&text=With%20a%20view%20to%20ensure,conducting%20them%20through%20video%20confere ncing> accessed 19 September 2020.

² Law Commission of India, *Urban Litigation Mediation as Alternative to Adjudication* (Law Commission (There is no defined abbreviation for Commission in OSCOLA) No 129, 1988).

In this context, the relevance of the recent judgement of the Supreme Court of India in the case of *Vidya Drolia v. Durga Trading Corporation*³ (“**Vidya Drolia**”) cannot be overstated. In the concerned case, a three-judge bench of the Supreme Court has held arbitration to be applicable for resolution of tenancy disputes under the Transfer of Property Act, 1882 (“**TOPA**”)⁴. *Vidya Drolia*⁵ has also overruled the ratio laid down in *Himangni Enterprises v. Kamaljeet Singh Ahluwalia*⁶ (“**Himangni Enterprises**”) where a division bench of the apex court had laid down that TOPA does not allow arbitration of eviction/rent disputes.

However, this leads to another issue. Tenancy disputes under TOPA constitute only a part of the total number of pending tenancy disputes across the courts in India. A significant number of the tenancy disputes are pending under the Rent Control Acts, where exclusive jurisdiction has been conferred with designated authorities or courts.⁷

Therefore, even though arbitration has been allowed for the disputes under TOPA by means of the *Vidya Drolia*⁸, it still does not address the issue of current and prospective litigations under the various State-specific Rent Control Acts, which are and shall continue clogging the already burdened judicial system in India. Questions still remain as to whether any step can be taken to fast track the dispute resolution process in the tenancy or eviction suits. In this backdrop, this article seeks to address the following propositions:

First, whether the Supreme Court has rightly allowed arbitration in case of eviction/tenancy disputes under the Transfer of Property Act, 1882.

Second, whether an alternate dispute resolution mechanism should be considered for disputes under various State specific Rent Control legislations in India.

To address the propositions mentioned above, this article charts out the evolution of the concept of tenancy in India and that of the dispute resolution process under various State specific Rent Control / Tenancy legislations, contractual arrangements and TOPA. In particular, this article deals with Rent Control legislations in Maharashtra, Delhi and West Bengal and the manner in which tenancy related cases are dealt with by judicial and quasi-judicial authorities prescribed thereunder⁹. The article analyses the need of alternate dispute resolution mechanism in tenancy disputes, be it under special or general law. The article also considers the relevant dispute resolution provisions under the Draft Model Tenancy Act, 2019 recommended by the Ministry of Housing and Urban Affairs, Government of India.

³*Vidya Drolia And Others v Durga Trading Corporation* Civil Appeal No. 2402 Of 2019 (Citation, not diary number) with Special Leave Petition (Civil) Nos. 5605-5606 Of 2019 and Special Leave Petition No. 11877 Of 2020, As delivered by the Hon’ble Supreme Court of India on 14 December 2020 [*Vidya Drolia*].

⁴*Ibid.*

⁵*Ibid.*

⁶ *Himangni Enterprises v. Kamaljeet Singh Ahluwalia* (2017) 3 SCC 706 [22] – [24] [*Himangni Enterprises*].

⁷ *Ranjit Kumar Bose and Ors v Anannya Chowdhury and Ors* (2014) 11 SCC 446; *Coaster Shoe Company Pvt. Ltd. v Harpreet Kaur* 2019 (1) ArbLR 190 (Delhi); *Sudha S. Raju v. IFFCO Tokio General Insurance Company Ltd* 2018 (5) KarLJ 740; *Rani Suri v Swarantech Information Systems Pvt. Ltd.* 2019 (1) RCR (Rent) 101.

⁸*Vidya Drolia* (n 3).

⁹ The scope of empirical study in this article is very limited. The authors have considered publicly available data for approximately five years from one court each from Mumbai, Kolkata and New Delhi, which are also the cities which have had some of the oldest Rent Control legislations in India. The data is available on <https://ecourts.gov.in/ecourts_home/> accessed 10 August 2020.

Finally, the article draws conclusion on basis of the aforesaid propositions and provides suggestions for the way ahead.

II. EVOLUTION OF THE LAW IN INDIA

A. CONCEPT OF TENANCY

The term ‘tenancy’ is defined as “(1) *The possession or occupancy of land under a lease; a leasehold interest in real estate, (2) The period of such possession or occupancy, (3) The possession of real or personal property by right or title, esp. under a conveying instrument such as a deed or will.*”¹⁰

The concept of tenancy in common law has developed from contractual relations between the landlords and the tenants.¹¹ The creation of tenancy is described as a relationship that arises when one party confers on another, the right to the exclusive possession of land, mines or buildings, for a time which is either subject to a definite limit originally, as in the case of a lease for a term of years, or which, though originally indefinite, can be made subject to a definite limit by either party, as in the case of a tenancy from year to year¹². A contractual tenancy can be created orally or on the basis of any written agreement between the parties.¹³

In the course of development of property laws, statutes were enacted to recognise and/or create relationships between landlords and tenants, and lay down rules governing such relationships. The two foremost contractual forms of letting out and permissive use of property in India are lease and leave & license. TOPA defines the concept of ‘lease of immovable property’ as “*the transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*”¹⁴ The Easements Act, 1882, defines ‘license’ as a contractual relationship “*where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property*”¹⁵. While technically, a license is not the same as lease or tenancy and a licensee does not have the same legal rights as that of a lessee or tenant, we shall deal with the concepts of lease and license together for the purpose of this article. This is because the nature of disputes that arise out of both lease and license and their arbitrability have been similarly dealt with by the courts.

¹⁰ Henry Campbell Black, *Black's Law Dictionary* (9th edn, 2009).

¹¹ ‘Common Law Tenancies – Overview’ (*Lexis Nexis*) <www.lexisnexis.com/uk/lexispsl/propertydisputes/document/393788/5M49-PPW1-F18C-40XR-00000-00/Common_law_tenancies_overview> accessed 19 September 2020.

¹² *Halsbury's Laws of England* (3rd edn, 1958) vol 23, para 985.

¹³ ‘Guide to Contractual and statutory periodic tenancies’ (*National Residential Landlords Association*) <www.nrla.org.uk/resources/creating-your-tenancy/guide-to-contractual-and-periodic-tenancies> accessed 19 September 2020.

¹⁴ Transfer of Property Act 1882 s 105.

¹⁵ Easements Act 1882 s 52.

B. ARBITRABILITY OF TENANCY DISPUTES

In the context of dispute resolution, a modern lease deed or leave & license agreement shall, typically and more often than not, contain an arbitration clause which allows the dispute between the parties to be determined by an arbitrator.¹⁶ Notwithstanding such arbitration clause, TOPA is a general law that allows the landlord to initiate a suit for eviction of a tenant before a civil court, after serving a notice of eviction¹⁷. The issue of arbitrability of a tenancy dispute under TOPA will be dealt with in more detail later in this article.

In addition to the aforesaid, there are specific tenancy and rent control laws enacted by several states in India that deal with tenancy and offer certain protections to the tenants. Such legislations also specify the forum which is bestowed with exclusive jurisdiction over disputes involving tenancy. However, the enactment and existence of rent legislation is not unique to India. Rent Control or Rent Restriction Acts were enacted across the world in the early 20th century, especially after the 1st and 2nd World Wars, to address the sudden increase in demand for affordable urban housing and to prevent landlords from imposing exorbitant rent.¹⁸ The tenants under these Rent Control legislations were termed as statutory tenants and they received certain protections there under, *inter alia*, through the determination of fair rent and prevention of eviction except for defined reasons¹⁹. In India, the first rent control legislation was enacted in Bombay in 1918 immediately after the First World War, followed by a similar legislation in Calcutta in 1920²⁰. Over the next few decades, most of the Indian states enacted and modified such welfare legislations for the protection of the tenants.

The Supreme Court of India, while deciding a case under the Delhi Rent Control Act, 1958, observed that “*though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by affording protection to tenants against undue harassment and exploitation by landlords, providing at the same time for adequate safeguards of the legitimate interests of the landlords, the Rent Acts undoubtedly lean more in favour of the tenants for whose benefit the Rent Acts are essentially passed.*”²¹ This sums up the objective of the Rent Control legislations and the manner in which courts have typically interpreted them. While there are several tenancy-specific and/or rent control legislations in India, later in this article we would focus on such legislations in Mumbai, Delhi and Kolkata for the purpose of our analysis.

It would be convenient to enumerate the scope of arbitrability of tenancy disputes as per different forms of tenancy, based on our aforesaid discussion. For this purpose, we can categorise tenancies as follows:

- a. Tenancy governed by rent legislations.

¹⁶ Kingshuk Banerjee and Ritvik Kulkarni, ‘Reconsidering the Arbitrability of Tenancy Disputes in India’ (*Bar and Bench*, 16 April 2020) <<http://www.barandbench.com/news/reconsidering-the-arbitrability-of-tenancy-disputes-in-india>> accessed 19 September 2020.

¹⁷ Transfer of Property Act 1882 s 106 read with the Civil Procedure Code 1908 s 9.

¹⁸ John W Willis, ‘Short History of Rent Control Laws’, (1950) 36 Cornell L Rev 54..

¹⁹ UP State Law Commission, *Proposed Legislation on the on the Uttar Pradesh Regulation Rent and Eviction Act, 2010* (Law Commission No 6, 2010).

²⁰ Bombay Rent Act 1918; Calcutta Rent Act, 1920 .

²¹ *Smt. Gian Devi Anand v Jeevan Kumar and Ors* (1985) AIR SC 796 [23].

- b. Tenancy governed by contractual arrangements, with valid arbitration agreement.
- c. Tenancy governed by TOPA.

(a). Tenancy governed by Rent Legislations

State Rent Control legislations (viz. the Maharashtra Rent Control Act, 1999 (“**MRCA**”), the Delhi Rent Control Act, 1958 (“**DRCA**”), the West Bengal Premises Tenancy Act, 1997 (“**WBPTA**”)) not only define standard rents and their permitted increments, procedure for recovery of possession and procedure for recovery of rent, but also specify the judicial bodies which shall have jurisdiction over and shall be competent to determine any dispute arising out of such legislations. For example, MRCA designates the Court of Small Causes in Mumbai or the civil court (unless any Court of Small Causes is established under the Provincial Small Causes Courts Act 1887)²², and DRCA, 1958 refers to Rent Controllers established under the said Act²³.

The issue whether a tenancy dispute covered both under an agreement with an arbitration clause, as well as the Rent Control Act, is arbitrable, was decided by the Supreme Court of India in *Natraj Studios (P) Ltd. v. Navrang Studios and Anr.*²⁴ (“**Natraj Studios**”). This case was in context of the then Bombay Rents, Hotel and Lodging House Rates Control Act, 1947²⁵ (“**Bombay Rent Act**”) and especially, Section 28(1) thereof^{26,27}. The Court, while determining whether the dispute in question should be decided by arbitration between the parties or by the Court of Small Causes as per the Bombay Rent Act, elaborated on the intent and purpose of the Bombay Rent Act and observed that:

*“The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of law.”*²⁸

²² Maharashtra Rent Control Act 1999, s 33(1).

²³ Delhi Rent Act, 1958, s14.

²⁴ *Natraj Studios (P) Ltd v Navrang Studios and Anr* 1981(1) SCC 523 [*Natraj Studios*].

²⁵ Bombay Rents, Hotel and Lodging House Rates Control Act 1947 has now been repealed by the Maharashtra Rent Control Act 1999 which has a similar provision conferring exclusive jurisdiction upon judicial authorities under s 33(1).

²⁶ *Natraj Studios* (n 24).

²⁷ Bombay Rents, Hotel and Lodging House Rates Control Act 1947 s 28(1) conferred jurisdiction on the Court of Small Causes to entertain and try any suit or proceeding between a landlord and tenant relating to the recovery of rent or possession of any premises or between a licensor and a licensee relating to the recovery of licence fee or charge and to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its provisions, and negatively it excluded the jurisdiction of any other Court from entertaining any such suit, proceeding or application or dealing with such claim or question.

²⁸ *Natraj Studios* (n 24) 17.

Thus, the Apex Court laid down the principle that a Special Rent Control legislation, which assigns exclusive jurisdiction to a judicial authority, shall override any arbitration agreement between the parties²⁹.

After weighing the arguments of both the sides and the judicial precedents³⁰ available before it, the Supreme Court of India decided that:

*“..both by reason of S. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and by reason of the broader considerations of public policy mentioned by us earlier and also in Deccan Merchants Co-operative Bank Ltd. v. M/s Dalichand Jugraj Jain (AIR 1969 SC 1320), the Court of Small Causes has and the Arbitrator has not the jurisdiction to decide the question whether the respondent-licensor-landlord is entitled to seek possession of the two studios and other premises together with machinery and equipment from the appellant-licensee-tenant.”*³¹[Emphasis added]

The Court declared the arbitration clause in the concerned tenancy agreement to be inoperative and dismissed the application for reference to arbitration³².

The Supreme Court of India, in the case of *Ranjit Kumar Bose and Ors. v. Anannya Chowdhury and Ors.*³³, decided that the relief claimed by the landlord being mainly for eviction, could only be granted by the “Civil Judge having jurisdiction”³⁴. The Supreme Court further went on to hold that a suit filed by the landlord under Section 6 of the West Bengal Premises Tenancy Act, 1997 cannot be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 even if there is an arbitration clause in the tenancy agreement³⁵. The Court concluded that:

*“....the expression "Civil Judge having jurisdiction" will obviously mean the Civil Judge who has jurisdiction to grant the other reliefs: decree for arrears of rent, decree for recovery of arrears of proportionate and enhanced municipal taxes, a decree for mesne profits and a decree for permanent injunction claimed in the suit.”*³⁶

It has been held in multiple cases that disputes that fall under a Rent Control Act and are hit by a statutory provision conferring exclusive jurisdiction upon a specific judicial authority, cannot be referred to arbitration. The position was also confirmed by the Apex

²⁹Ibid.

³⁰*Babulal Bhuramal & Anr v Nandram Shivram & Ors* [1959] SCR 367; *Raizada Topandas & Anr v M/s Gorakhram Gokalchand* [1964] 3 SCR 214; *Vasudev Gopalkrishna Tamwekar v The Board of Liquidators, Happy Home Cooperative Housing Society* [1964] 3 SCR 964; *Deccan Merchants Cooperative Bank Ltd v M/s Dalichand Jugraj Jain & Ors* [1969] 1 SCR 887.

³¹*Natraj Studios* (n 24) 24.

³²*Natraj Studios* (n 24) 28.

³³ *Ranjit Kumar Bose and Ors. v. Anannya Chowdhury and Ors* (2014) 11 SCC 446 [20] [*Ranjit Kumar Bose*].

³⁴ West Bengal Premises Tenancy Act 1997 s 6: ‘Protection of tenant against eviction.--(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant, except on a suit being instituted by such landlord on one or more of the following grounds....’.

³⁵ *Ranjit Kumar Bose* (n. 33) 12.

³⁶ *Ranjit Kumar Bose* (n. 33) 20.

Court in the case of *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. and Ors.*³⁷ (“**Booze Allen**”) as follows:

“*The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.*”

The court went on to point out that the instances mentioned above are actions *in rem*, i.e., rights exercisable against the world at large, and not rights *in personam* which are interests protected against specific individuals³⁸. While noting that it is not a rigid or inflexible rule, it was still observed that all disputes relating to rights *in personam* are considered to be amenable to arbitration, whereas all disputes relating to rights *in rem* are unsuitable for arbitration, and require to be adjudicated by courts and public tribunals.³⁹

This view taken by *Booz Allen*⁴⁰ and *Natraj Studios*⁴¹ has now been confirmed by *Vidya Drolia*⁴².

Thus, multiple judgements have clarified over time that disputes under Rent Control legislations cannot be subjected to arbitration.

(b). Tenancy governed by contractual arrangements, with valid arbitration agreements

Arrangements of lease or leave & license, on basis of a written agreement, would constitute this category. In such arrangements, the rights, extent of possession, as well as duties and obligations of the parties are specifically defined in the concerned agreement. The time period for which the agreement subsists is also predetermined and may or may not have a renewal or extension clause. Disputes under such agreements may be governed by designated courts as may be prescribed by the general law like TOPA, easements or contracts or, as some courts have held, by a dispute resolution mechanism provided under the agreement itself.

If there is an arbitration clause in an agreement of the type mentioned above, certain courts have held that any dispute between the parties, arising out of such an agreement, would be arbitrable even if the agreement has been terminated for default or otherwise. While not in respect to tenancy dispute, the Supreme Court of India, in the case of *The Branch Manager, Magma Leasing and Finance Limited & Ors. v. Potluri Madhavilata & Ors.*,⁴³ had held that even if the contract containing the arbitration clause is terminated, it does not

³⁷ *Booz Allen & Hamilton Inc v SBI Home Finance Ltd. and Ors* (2011) 5 SCC 532 [36] [*Booz Allen*].

³⁸ *Ibid* [37].

³⁹ *Ibid* [37] – [39].

⁴⁰ *Ibid* [36]– [39].

⁴¹ *Natraj Studios* (n 24).

⁴² *Vidya Drolia* (n 3) 49.

⁴³ *The Branch Manager, Magma Leasing and Finance Limited & Ors v Potluri Madhavilata & Ors* (2009) 10 SCC 103 [14].

automatically render the arbitration clause invalid and such survives such termination⁴⁴. The Court noted:

“...Merely because the contract has come to an end by its termination due to breach, the arbitration clause does not get perished nor rendered inoperative; rather it survives for resolution of disputes arising "in respect of" or "with regard to" or "under" the contract.”

This is, more or less, the settled position of law and there are multiple judgments which have upheld this position in context of tenancy disputes.

A single judge bench of the Delhi High Court in *Rani Suri v. Swarantech Information Systems Pvt. Ltd.*⁴⁵ distinguished the judgments delivered by the Supreme Court of India in cases like *Himangni Enterprise*⁴⁶, *Natraj Studios*⁴⁷, *Booze Allen*⁴⁸, and others, and concluded that:

“As the Lease Deed, existence of the Arbitration Agreement and the due invocation thereof are not denied by the respondent and it is also not the case of the respondent that the tenancy in question would fall under the provisions of the Delhi Rent Control Act, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Lease Deed dated 2nd August, 2010.”

In the case of *Coaster Shoe Company Pvt. Ltd. v. Harpreet Kaur*⁴⁹, an arbitration petition under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) challenged the award passed by a sole arbitrator in a dispute involving eviction of tenant and claim of mesne profit⁵⁰. The court distinguished the instant case from other precedents including *Himangni Enterprises*⁵¹, where the lease deed had expired by efflux of time or had been determined by notice. The court concluded that the arbitrator had jurisdiction to conclude that the lease was properly terminated and the petitioner was an unauthorized occupant of the leased property⁵².

A single judge bench of the Karnataka High Court in *Sudha S. Raju v. IFFCO Tokio General Insurance Company Ltd.*⁵³ observed that an arbitration agreement existed between the parties and the dispute in question was not within exclusive jurisdiction of the Special Court or Tribunal created under the Karnataka Rent Act, 1999⁵⁴. Therefore, the court held that the dispute could be referred to an arbitrator under Section 8 of the Arbitration and Conciliation Act, 1996⁵⁵.

As such and from an overview of the cases mentioned above, it would seem that various High Courts across India have supported the applicability and reference to arbitration

⁴⁴Ibid.

⁴⁵ *Rani Suri v Swarantech Information Systems Pvt Ltd* 2018 SCC Online Del 11470 [14].

⁴⁶*Himangni Enterprises* (n 6).

⁴⁷*Natraj Studios* (n 24).

⁴⁸*Booze Allen* (n 37).

⁴⁹ *Coaster Shoe Company Pvt Ltd v Harpreet Kaur* 2018 SCC OnLine Del 13106 [10] [11][16] [*Coaster Shoe Company*].

⁵⁰Ibid [1] [2] [3] [4].

⁵¹*Himangni Enterprises* (n 6).

⁵²*Coaster Shoe Company* (n 49) [29] [30].

⁵³ *Sudha S Raju v IFFCO Tokio General Insurance Company Ltd* 2018 (5) KarLJ 740 [9] – [10].

⁵⁴Ibid [9].

⁵⁵Ibid [11] [12].

of tenancy disputes in circumstances where *first*, an arbitration agreement is entered into by the parties and *second*, the dispute did not require exclusive adjudication by a court or tribunal designated under a special act.

(c). Tenancies under Transfer of Property Act, 1882: Position as per Himangni Enterprises and Vidya Drolia

In spite of being more than a century old, TOPA is the most important piece of property legislation in India in the twenty-first century. TOPA would govern any at-will contractual or month-to-month tenancy which is neither protected under any specific Rent Control legislation nor has any arbitration agreement between the parties. The issue of arbitrability of this kind of tenancy has been now set to rest with by the decision of the Supreme Court in *Vidya Drolia*⁵⁶. The judgement is discussed herein below.

A division bench of the Supreme Court of India had considered this issue in *Himangni Enterprises*⁵⁷. In the concerned case, the landlord had filed a civil suit for the eviction of the tenant from a shop premises and for recovery of unpaid arrears of rent.⁵⁸ The tenant filed an application under Section 8 of the Arbitration Act, for the matter to be referred for arbitration⁵⁹. The trial court dismissed the application of the tenant, and upon appeal to the High Court, the High Court upheld the decision of the trial court⁶⁰. While considering the special leave petition, the Supreme Court considered *inter alia* the position of law laid down in the *Natraj Studio*⁶¹ and the *Booze Allen*⁶². The court held that even though the Delhi Rent Act is not applicable to the nature of the premises, it does not mean that the Arbitration Act would be applicable to the same, conferring jurisdiction on the arbitrator to decide the eviction / rent disputes⁶³. The court concluded:

*“In such a situation, the rights of the parties and the demised premises would be governed by the Transfer of Property Act and the civil suit would be triable by the Civil Court and not by the arbitrator. In other words, though by virtue of Section 3 of the Act, the provisions of the Act are not applicable to certain premises but no sooner the exemption is withdrawn or ceased to have its application to a particular premises, the Act becomes applicable to such premises. In this view of the matter, it cannot be contended that the provisions of the Arbitration Act would, therefore, apply to such premises.”*⁶⁴

The Apex Court accordingly, dismissed the special leave petition and directed the trial court to proceed with the trial of the suit⁶⁵.

This issue, however, again came up before the Supreme Court in *Vidya Drolia*⁶⁶. In this case, a tenancy agreement was entered into between the landlord’s predecessor-in-

⁵⁶*Vidya Drolia* (n 3).

⁵⁷*Himangni Enterprises* (n 6) [24].

⁵⁸*Ibid* [4]-[7].

⁵⁹*Ibid*.

⁶⁰*Ibid*.

⁶¹*Natraj Studios* (n 24).

⁶²*Booze Allen* (n 37).

⁶³*Himangni Enterprises* (n 6) [23] [24].

⁶⁴*Ibid* [24].

⁶⁵*Ibid* [27] [28].

⁶⁶*Vidya Drolia & Ors. v. Durga Trading Corporation* AIR2019SC3498 (Already defined in footnote 3 but there might be two judgements so not changing).

interest and the tenant with respect to a property, for a maximum period of ten years⁶⁷. Upon the expiry of ten years, the landlord issued a letter to the tenant to deliver peaceful and vacant possession of the property⁶⁸. As the tenant did not vacate the premises, arbitration was invoked by the landlord as per the terms of the tenancy agreement, and an application for appointment of an arbitrator was filed before the Calcutta High Court⁶⁹. The High Court, after rejecting the tenant's objection on the arbitrability of the dispute, appointed an arbitrator and the arbitration proceedings commenced⁷⁰. However, before the arbitration proceedings could conclude, the judgment in the *Himangni Enterprises*⁷¹ was delivered⁷². Relying on the ratio of *Himangni Enterprises*⁷³, the tenant preferred a review/recall application before the High Court which was subsequently dismissed⁷⁴. Therefore, the parties approached the apex court by way of a special leave petition⁷⁵.

A Division Bench of the Supreme Court⁷⁶ considered the contentions of the parties and the legal position, including the decision in the *Himangni Enterprises*⁷⁷. The bench distinguished the cases cited in *Himangni Enterprises*⁷⁸ (such as *Natraj Studios*⁷⁹ and *Booze Allen*⁸⁰) on the ground that those cases referred specifically to statutory tenants and did not apply to the dispute that had come under the purview of the TOPA⁸¹. The bench also observed that:

*“It may be noticed that none of the provisions of the Transfer of Property Act have been noticed by this judgment. In fact, none of the aforesaid provisions would indicate that disputes under the said Act are triable only by the civil court and not by arbitration, as has been held in this paragraph. It is clear that the Transfer of Property Act is silent on arbitrability, and does not negate arbitrability.”*⁸²

Further, the reasoning in *Himangni Enterprises*⁸³ that an exemption availed under the Delhi Rent Act does not render the dispute arbitrable was also negated by the bench by drawing parallel to a position under the Indian Trusts Act, 1882, which excluded arbitration by necessary implication⁸⁴. It was held by the Supreme Court that the TOPA had no provision for exclusion of arbitration in express terms or by necessary implication⁸⁵.

⁶⁷Ibid [2].

⁶⁸Ibid.

⁶⁹Ibid [In this context kindly refer to *Durga Trading Corporation v. Vidya Drolia and Ors* 2016 SCC Online Cal 12076]

⁷⁰Ibid.

⁷¹*Himangni Enterprises* (n 6).

⁷²*Vidya Drolia* (n 66) [2].

⁷³*Himangni Enterprises* (n 6).

⁷⁴*Vidya Drolia* (n 66) [2].

⁷⁵Ibid.

⁷⁶*Vidya Drolia* (n 66).

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹*Natraj Studios* (n 24).

⁸⁰*Booze Allen* (n 37).

⁸¹*Vidya Drolia* (n 66) [21] [23] [24].

⁸²*Vidya Drolia* (n 66)[21].

⁸³*Himangni Enterprises* (n 6) [23], [24].

⁸⁴*Vidya Drolia* (n 66) [29].

⁸⁵Ibid [26].

However, being a bench co-ordinate with the bench that passed the judgment in *Himangni Enterprises*⁸⁶, the Division Bench in *Vidya Drolia*⁸⁷ could not overrule *Himangni Enterprises*⁸⁸ and thus, the matter was referred to a three-judge bench for consideration⁸⁹.

The three-judge bench of the Supreme Court heard the matter and reserved its judgement on 4th February 2020⁹⁰. Thereafter, on 14th December, 2020, the three-judge bench of the Supreme Court passed its final judgment, wherein the Court set out to resolve two distinct but interconnected issues:

“(i) meaning of non-arbitrability and when the subject matter of the dispute is not capable of being resolved through arbitration; and

(ii) the conundrum – “who decides” – whether the court at the reference stage or the arbitral tribunal in the arbitration proceedings would decide the question of non-arbitrability.”⁹¹

To deal with the first issue and determine which disputes, the apex court delved into a plethora of judgements and developed a four-fold test:

“(1) when cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

(2) when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;

(3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and

(4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).”⁹²

The court clarified the ‘four-fold test’ is not watertight and ought to be applied pragmatically. By applying this ‘four-fold’ test, the Supreme Court overruled the *Himangni Enterprise* judgement, and observed⁹³:

“Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally would not affect third-party rights or have erga omnes affect or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of

⁸⁶*Himangni Enterprises* (n 6).

⁸⁷*Vidya Drolia* (n 66).

⁸⁸*Himangni Enterprises* (n 6).

⁸⁹*Vidya Drolia* (n 66) [36].

⁹⁰ Official Website of the Hon’ble Supreme Court of India <main.sci.gov.in/supremecourt/2018/26779/26779_2018_2_101_20227_Order_04-Feb-2020.pdf> accessed 26 September 2020.

⁹¹ *Vidya Drolia* (n 3) [2].

⁹²*Ibid* [45].

⁹³*Ibid* [48] [49].

the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.

In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration...”

Thus, Supreme Court allowed arbitration for landlord-tenant disputes under the TOPA. The judgment in *Vidya Drolia*⁹⁴ is the need of the hour, as allowing arbitration in tenancy matters under TOPA will prove to be extremely beneficial for both the landlords and tenants, where the parties have chosen to be bound by an arbitration agreement. This is because, it would lead to a faster resolution of disputes as compared to adjudication by a traditional civil court.

As a matter of fact, the three-judge Bench in *Vidya Drolia* observed⁹⁵,

“Arbitration has considerable advantages as it gives freedom to the parties to choose an arbitrator of their choice, and it is informal, flexible and quick. Simplicity, informality and expedition are hallmarks of arbitration. Arbitrators are required to be impartial and independent, adhere to natural justice, and follow a fair and just procedure. Arbitrators are normally experts in the subject and perform their tasks by referring to facts, evidence, and relevant case law.”

In this context, it would be pertinent to remember that the amendment acts of 2015⁹⁶ and 2019⁹⁷ have brought key changes to the Arbitration Act, in terms of, *inter alia*, ease, access and speed to the existing dispute resolution process. Section 29-A of the Arbitration Act⁹⁸ mandates that in matters other than international commercial arbitration, an arbitral award shall be made within a period of twelve months from the date of completion of pleadings under Section 23(4)⁹⁹. This period of twelve months for making an arbitral award is extendable for a further period, not exceeding six months¹⁰⁰. In case the award is not made within the period of twelve months prescribed or even within the extended period of six months, the mandate of the arbitrator(s) shall terminate unless the court has, prior to or after the expiry of the period specified, extended the period¹⁰¹. Such an extension is to be granted by the court on sufficient cause shown by the applying party and on such terms and conditions as may be imposed by the court¹⁰². An application filed for extension has to be

⁹⁴*Vidya Drolia* (n3).

⁹⁵*Ibid* [41].

⁹⁶The Arbitration and Conciliation (Amendment) Act 2015 Act No. 3 of 2016, deemed to have come into force on 23 October 2015.

⁹⁷Arbitration and Conciliation (Amendment) Act 2019 Act No. 3 of 2019, notified by S.O. No. 3154(E), published in the Gazette of India: Extraordinary, with effect from 30 August 2019.

⁹⁸As inserted by The Arbitration and Conciliation (Amendment) Act, 2015, s15 and thereafter amended by The Arbitration and Conciliation (Amendment) Act, 2019, No. 3 of 2019, notified by S.O. No. 3154(E), published in the Gazette of India: Extraordinary, with effect from 30 August 2019.

⁹⁹ The Arbitration and Conciliation Act, 1996 as amended up to date, s23(4) which provides for the statement of claim and defence under s23 to be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.

¹⁰⁰ Arbitration and Conciliation Act 1996 as amended up to date s 29-A(3).

¹⁰¹ Arbitration and Conciliation Act 1996 as amended up to date s 29-A(4).

¹⁰² Arbitration and Conciliation Act 1996 as amended up to date s 29-A(5).

adjudicated by the court expeditiously and preferably within sixty days from the date of service of notice on the opposite party¹⁰³. The court has also been empowered to reduce the fee(s) of the arbitrator(s) by not exceeding five per cent for each month that the arbitrator(s) has/have, in the opinion of the court, delayed the arbitral proceedings for reasons attributable to himself/themselves¹⁰⁴. The court has also been empowered to impose actual or exemplary costs upon any of the parties under Section 29-A¹⁰⁵. Further, under Section 29-A¹⁰⁶, an incentive in the form of an additional fee as agreed between the parties, is provided to the arbitral tribunal if such tribunal makes an award within a period of six months from the date on which it enters upon the reference.

Further, Arbitration Act contemplates dispute resolution through fast-track procedures involving a sole arbitrator chosen by the parties, decisions based on primarily on written pleadings, documents and submissions and making of an award within six months from the date the arbitral tribunal enters upon reference¹⁰⁷. Arbitration Act also encourages settlement of disputes through processes of mediation, conciliation etc.¹⁰⁸

Taking into consideration all these factors, we conclude that the Supreme Court in allowing arbitrability of the tenancy / eviction disputes under TOPA, in context of the amended Arbitration Act, will provide a sharper edge and faster disposal rate to such disputes.

III. DISPUTE RESOLUTION UNDER STATE RENT LAWS: MAHARASHTRA, DELHI, AND BENGAL

Despite the decision in *Vidya Drolia*,¹⁰⁹ it is extremely pertinent to consider whether further steps need to be taken to address the issue of multitude of private tenancy related cases before the courts across India.

It is an established position of law that issues like determination of title can only be entertained by a civil judge of competent jurisdiction and there is no dispute in that regard.¹¹⁰ However, it must be considered that a large percentage of the tenancy disputes pending before the civil courts do not always involve a question of title – they could be very well resolved by a mechanism that does not involve a civil court. As an idea this is not completely novel. The appointment of Rent Controllers under various Rent Control Acts is a step in this direction.¹¹¹ The lack of a fixed timeframe to conclude a pending case, in the line with the 2015¹¹² and 2019 amendments¹¹³ to the Arbitration Act, has also not helped the cause.

¹⁰³ Arbitration and Conciliation Act 1996 as amended up to date s 29-A(9).

¹⁰⁴ Arbitration and Conciliation Act 1996 as amended up to date s 29-A(4), proviso.

¹⁰⁵ Arbitration and Conciliation Act 1996 as amended up to date s 29-A(8).

¹⁰⁶ Arbitration and Conciliation Act 1996 as amended up to date s 29-A(2).

¹⁰⁷ Arbitration and Conciliation Act, 1996, s 29-B.

¹⁰⁸ The Arbitration and Conciliation Act 1996 s 30.

¹⁰⁹ *Vidya Drolia* (n 3).

¹¹⁰ Code of Civil Procedure 1908 s 9.

¹¹¹ As under the Delhi Rent Control Act 1958 s 14, and the West Bengal Premises Tenancy Act 1997 s 6. Thereafter, by the West Bengal Premises Tenancy (Amendment) Act, 2005, the Controller's jurisdiction was taken away and placed exclusively with the Civil Judge.

¹¹² Arbitration and Conciliation (Amendment) Act 2015, s 15.

¹¹³ Arbitration and Conciliation (Amendment) Act 2019, ss 5, 6.

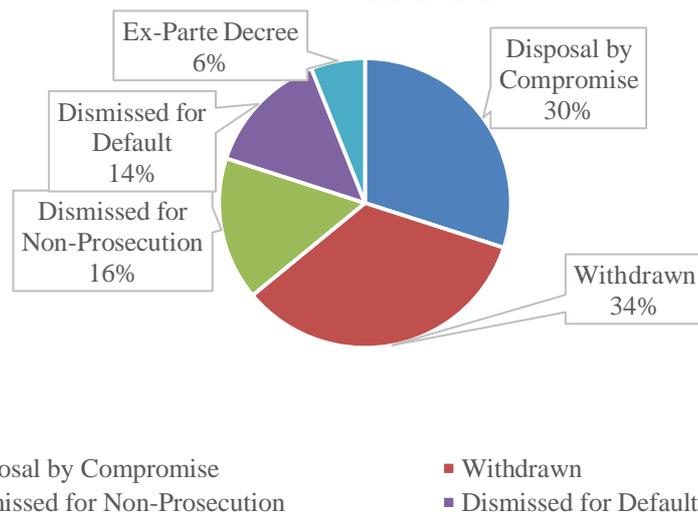
In this section, we shall analyse the rate of disposal of cases under the Rent Control laws applicable in Maharashtra, Delhi, and West Bengal, by considering public data¹¹⁴ available with respect to eviction suits for a five-year period filed before judicial authorities in Maharashtra, Delhi, and West Bengal.

A. MAHARASHTRA

In Maharashtra, MRCA is the relevant rent control legislation which has replaced the earlier Bombay Rents Act. Under MRCA, the jurisdiction to entertain and adjudicate tenancy disputes has been bestowed on the Court of Small Causes (In Brihan Mumbai and in any area for which a Court of Small Causes is established under the Provincial Small Causes Court Act, 1887), the Court of the Civil Judge (Junior Division – for all other areas), and the Court of the Civil Judge (Senior Division – for areas where there is no Civil Judge, i.e. Junior Division constituted).¹¹⁵

Based on the data¹¹⁶ available of eviction cases filed under the between 2015 to 2019 in the Small Causes Court at Dhobi Talao, Mumbai, it appears that out of a total of 1955 cases filed, only 568 cases, being 29%, have been disposed. The situation as far as the

Pie Chart 1: Analysis of Disposal of Cases in Small Causes Court, Dhobi Talao between 2015-2019



disposed cases are concerned is shown in pie Chart 1.

As is evident from the chart above, even among the disposed cases, there is no single case between 2015-2019 that has been adjudicated and decreed or dismissed upon contest. All of the cases fall within categories where minimum or no adjudication has taken place. 6% of the cases were decided *ex-parte* against the defendant, 14% were dismissed for default, 16% were dismissed for non-prosecution, and 30% ended up in compromise between the parties while 34% of the cases were withdrawn.

¹¹⁴ E-Courts Mission Mode Project, ‘District Courts of India’ (10 September 2020) <<https://districts.ecourts.gov.in>> accessed 19 September 2020.

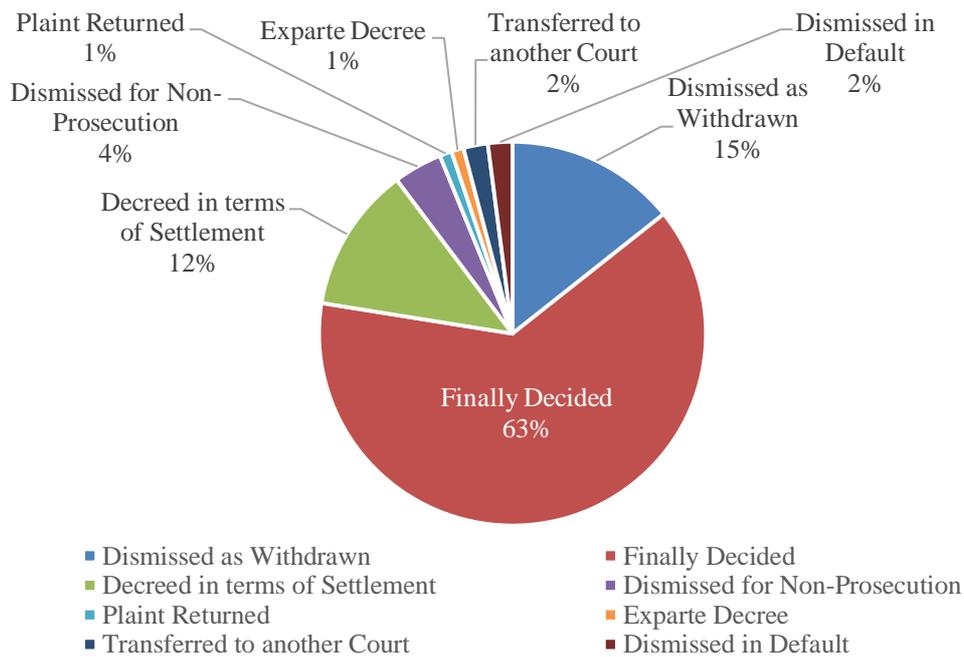
¹¹⁵ Maharashtra Rent Control Act, 1999, s 33.

¹¹⁶ E-Courts Mission Mode Project, ‘Court of Small Causes, Mumbai’ (18 September 2020) <<https://districts.ecourts.gov.in/mumbai-smallcause-court>> accessed 19 September 2020.

B. DELHI

Private tenancy matters within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and in such urban areas within the limits of the Municipal Corporation of Delhi, are governed by DRCA and TOPA.¹¹⁷ While DRCA bestows exclusive jurisdiction with Rent Controllers for the adjudication of tenancy disputes,¹¹⁸ TOPA being a general law is to be adjudicated by Civil Courts.¹¹⁹

As far as eviction matters under the DRCA go, the numbers before the Senior Civil Judge cum Rent Controller, New Delhi, Patiala House Court, for the years 2016-2019 show that out of a total of 622 matters filed before this Court, 484 matters (77%) saw final disposal.¹²⁰



Pie Chart 2: Analysis of Disposal of Cases before the Rent Controller, Patiala House between 2016-2019

As is evident from the pie chart above, a staggering 63% of the matters disposed were due to adjudication on contest, resulting in either an eviction order or an order of final dismissal. This might be due to the provisions of the DRCA themselves that provide for a summary procedure with respect to petitions for eviction on the ground of personal *bona fide* requirement of the landlord.¹²¹ Every application for the recovery of possession on the ground specified in the clause (e) of the proviso to Section 14(1) of DRCA or Section 14A-14D thereof, is to be dealt in a summary manner with the defendant filing a leave to

¹¹⁷ DRC does not apply to any premises, whether residential or not, whose monthly rent exceeds Rs. 3500, and to any newly constructed premises for a period of 10 years. All such are covered by the general law of TOPA, 1882, where the rent and tenure of tenancy can be freely negotiated.

¹¹⁸ Delhi Rent Control Act 1958 s 14.

¹¹⁹ Transfer of Property Act 1882 s 106 read along with Civil Procedure Code 1908 s 9.

¹²⁰ E-Courts Mission Mode Project, ‘New Delhi’ (19 September 2020) <<https://districts.ecourts.gov.in/newdelhi>> accessed 19 September 2020.

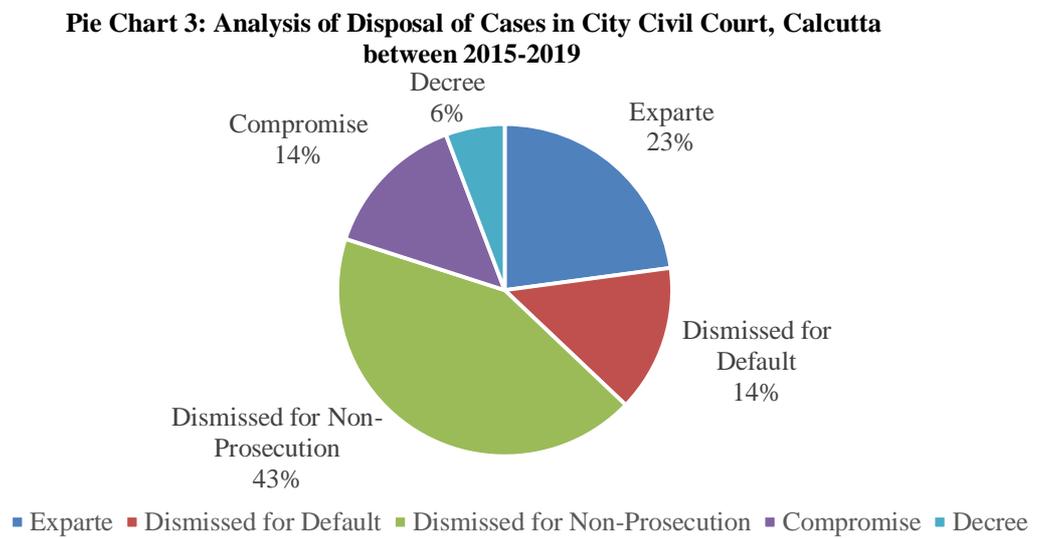
¹²¹ Delhi Rent Control Act 1958 s 25B.

defend.¹²² Further, DRCA also bars any appeal or second appeal from being filed against any order passed by the Controller for recovery of possession of premises.¹²³

C. WEST BENGAL

In West Bengal, the WBPTA is the relevant rent control legislation. For matters beyond the purview of WBPTA,¹²⁴ TOPA comes to the aid of an aggrieved party. While WBPTA confers exclusive jurisdiction to adjudicate tenancy disputes to a civil judge,¹²⁵ TOPA being a general law is to be dealt with by civil courts.

In the City Civil Court at Calcutta, between 2015-2019, approximately 115 eviction cases have been filed. Out of these 115 cases, 35 cases (30%) have been disposed of while 80 cases (70%) are pending till date at various stages of trial such as filing of service return, filing of written statement, peremptory hearing, evidence and issues. While at first blush, a 30% disposal rate may seem promising, the reality is very different when one delves into the outcome of such cases and the manner of their disposal.



From an analysis of the cases disposed of by the City Civil Court, Calcutta from 2015-2019, it becomes evident that as the days draw closer to the present day, the disposal rate for cases reduce drastically. In the years 2018-2019 and 2019-2020, almost all cases filed¹²⁶ have been pending. Most have not moved from the service return stage at all. Only 2 cases have been disposed of in these 2 years on grounds of non-prosecution and default only.

¹²²Ibid.

¹²³Ibid s 25B(8).

¹²⁴ WBPTA does not apply to premises let out for residential purposes which carries more than i) Rs. 6,500 as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or Howrah Municipal Corporation or, ii) Rs. 3000 as monthly rent in other areas to which WBPTA extends. As for premises let out for non-residential purposes, WBPTA does not apply to premises which carry more than i) Rs. 10,000 as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or Howrah Municipal Corporation or, ii) Rs. 5000 as monthly rent in other areas to which WBPTA extends. *See* West Bengal Premises Tenancy Act, 1997, s 3(e).

¹²⁵ West Bengal Premises Tenancy Act 1997 s 6

¹²⁶Thirty-two (32) cases in total.

From the data set out above, it is clear that the judicial mechanism put in place under both general and special laws for tenancy, has proved to be less than adequate when it comes to timely disposal of pending disputes. Rent litigation apparently now takes anywhere between fifteen and twenty-five years for its finality at the apex court level.¹²⁷ This has affected the confidence of the litigants in the judicial process. Even if arbitration is allowed for landlord-tenant disputes under TOPA pursuant to *Vidya Drolia*,¹²⁸ as mentioned earlier, the view taken by the three-judge bench with regard to tenancies governed under special rent control legislation¹²⁹ will not be sufficient to boost the confidence of the litigants unless further steps are taken to ensure faster resolution of tenancy/eviction disputes under the Rent Control Acts as well.

IV. THE MODEL TENANCY ACT, 2019: AN ANSWER TO THE CONUNDRUM?

On July 10, 2019, the Central Government through the Ministry of Housing and Urban Affairs (“**MOHUA**”), issued a Draft Model Tenancy Act, 2019 (“**DMTA**”).¹³⁰ The preamble to the DMTA acknowledges that “*the existing rent control laws are restricting the growth of rental housing segment and discourage the landowners from renting out their vacant premises*” and it aims to “*balance the interests of landowner and tenant*”.¹³¹ In bringing about the DMTA, the government has recognised “*the need to create a conducive legal atmosphere, which would help unlock the existing properties for being rented out and for mass scale investment in new rental housing stock*”.¹³² It also recognised the need to shift ideology from a tenant-protective system to a system where “*decisions on tenancy should be determined by market forces, i.e. it should be mutually agreed between the landlord and the tenant rather than be specified by law (as standard rent under existing rent control laws)*”.¹³³

The DMTA makes an attempt to introduce a different adjudicatory mechanism to that currently prevailing State and Union Territory Rent Control Acts. DMTA establishes authorities such as the Rent Authority, Rent Courts, and Rent Tribunals to entertain and adjudicate applications and appeals under itself.¹³⁴ The jurisdiction of civil courts in relation to tenancy matters is completely barred,¹³⁵ and the Act prospectively repeals applicable State and Union Territory Rent Control Acts.¹³⁶

Though DMTA has many redeeming features and does, in theory, try to achieve the objectives and remedy the problems existing above,¹³⁷ it faces several challenges, most fundamental one being the fact that DMTA is a model template for states to adopt and is not a

¹²⁷ D.N. Jauhar, ‘Adjudicating Rent Matters: Wages of Legislative Inaction’ (2000) <<http://14.139.60.114:8080/jspui/bitstream/123456789/713/20/Adjudicating%20Rent%20Matters.pdf>> accessed 11 August 2020.

¹²⁸ *Vidya Drolia* (n 3) [48] [49].

¹²⁹ *Ibid* [49]

¹³⁰ Model Tenancy Act 2019.

¹³¹ Model Tenancy Act 2019 preamble.

¹³² Model Tenancy Act 2019.

¹³³ Model Tenancy Act 2019.

¹³⁴ Model Tenancy Act 2019 ss 32-38.

¹³⁵ Model Tenancy Act 2019 s 40.

¹³⁶ Model Tenancy Act 2019 s 47.

¹³⁷ Model Tenancy Act 2019 ss 4, 5(3), 11, 20, 22, 24 and 26.

Central Bill or an Act of the Parliament.¹³⁸ Therefore, there is no enforceability of DMTA until and unless any State adopts the DMTA, or part of it, with or without modifications, and enact it. No State has till date adopted any suggestion made under DMTA. Additionally, there are a few more issues in the DMTA which makes it less effective than it should be, even if it were to be enacted and enforced. Under DMTA, the prescribed time limit within which the Rent Court or the Rent Tribunal is to dispose an application or appeal is merely directory in nature.¹³⁹ Further, DMTA goes on to say that “*the Rent Court ‘shall not ordinarily’ allow more than three adjournment at the request of a party throughout the proceedings*”.¹⁴⁰

Such directives do very little to prevent unnecessary adjournments in our judicial system. A time bound mandatory requirement might have addressed the problem in a better manner. Further, with this indulgence, doors to taking other interpretative leaps and holding all other time-lines as being directive, instead of being mandatory, have been left open.¹⁴¹ The DMTA also does not consider a possibility of allowing any alternate dispute resolution mechanism, like arbitration or mediation, between the landlords and tenants, even if they choose so.

In spite of the aforesaid issues plaguing DMTA, it can still be considered in a positive light. It is an indication that the government has opened up to the idea of a tenancy law, that would strike a balance between the interest of the landlord and the tenants, and would reflect market realities¹⁴², instead of imposing outdated restrictions on the parties. However, unless it is implemented properly, it would not be able to address the largest problems afflicting rent control legislations, *i.e.* enforcement and delay in adjudication.

V. CONCLUSION AND RECOMMENDATIONS

The past few years have seen overhauling of major laws in India, from the new Companies Act, 2013, and the Insolvency and Bankruptcy Code, 2016, to the Goods and Service Tax Act, 2017. These changes, coupled with the DMTA, shows a positive intent of the legislature to introduce the laws in accordance with the current times and provide better relief to the citizens of India. However, not all of it has been smooth sailing. The number of amendments to these new laws prove that the lawmakers could not effectively pre-empt the challenges the amended laws would pose in terms of implementation.

We conclude that the Supreme Court in allowing arbitrability of the tenancy / eviction disputes under TOPA, in context of the amended Arbitration Act, will provide a sharper edge and faster disposal rate to such disputes. While it is argued that change in the dispute resolution mechanism for tenancy/eviction disputes in India is required, one should be cognizant of the fact that any drastic or ill-designed move would jeopardise the interests of innumerable litigants. Curtailment of the jurisdiction of civil courts may receive a negative reaction from the legal fraternity, as tenancy disputes form a substantial majority of the civil

¹³⁸ As recommended by the Deputy Secretary (Housing), Ministry of Housing and Urban Affairs. See Government of India, Ministry of Housing and Urban Affairs, ‘Draft Model Tenancy Act, 2019’ (18 September 2020) <<http://mohua.gov.in/cms/draftmodificationact.php>> accessed 19 September 2020.

¹³⁹ The Model Tenancy Act, 2019 s 35.

¹⁴⁰ The Model Tenancy Act, 2019 s 35(6).

¹⁴¹ The Model Tenancy Act, 2019 ss 35(7), 35(8), 37(2), 38(3).

¹⁴² Refer to the Preamble of the Draft Model Tenancy Act, 2019 that identifies the restrictions imposed by the existing rent control laws and the effort to develop an accountable and transparent model keeping in mind the evolving nature of the housing requirements in the country.

court practice. However, it cannot be denied that ‘something is rotten in the state of Denmark’ and steps need to be taken to fix the dispute resolution mechanism of tenancy/eviction disputes, in terms of delay in adjudication, sooner than later.

In order to conclude our arguments, we need to go back to the issues we had set out to address in this article. *First*, it must be noted that the three-judge bench in *Vidya Drolia*¹⁴³ has rightly allowed arbitration for tenancy disputes under TOPA, and also considering the fact that armed with the 2015 and 2019 Amendments, the Arbitration Act is better equipped to provide timely relief to the litigants. *Second*, with respect to the various State specific Rent Control legislations in India, we strongly believe that alternate dispute resolution mechanisms should be considered by the legislature and the judiciary, in addition to the Rent Authority, Rent Courts proposed in the DMTA. However, issues like determination of the title in a property dispute can and should remain within the jurisdiction of the civil court. We find that the view taken by *Vidya Drolia*¹⁴⁴ with reference to disputes under special Rent Control legislations is in line with the earlier judgements on this subject. However, that does little to address the inadequacy of the existing Rent Control legislations or the practical problems faced by litigants as more fully described in this paper¹⁴⁵. It is pertinent to mention here that the Supreme Court did observe in *Booze Allen* that while arbitration is not generally allowed in disputes involving rights *in rem* as opposed to rights *in personam*, it is not an inflexible rule.¹⁴⁶ The legislature and the judiciary can analyse what parcel of rights can be made subjective to alternate dispute resolution mechanism and what to retain under the aegis of the civil or rent courts.

In light of the above discussion, we have four suggestions to make in order to bolster the dispute resolution mechanism for tenancy disputes. They are as follows:

First, state governments should be encouraged to adopt a broad uniform tenancy code that would balance the rights and obligations of landlords and tenants.

Second, the role of Rent Authority and Rent Courts can be defined in line with DMTA, but with a specified timeline for resolution of the disputes which will prevent undue delays in adjudication.

Third, there can be a mechanism for the parties to go for mediation to resolve the differences amicably at the pre-initiation stage and then again at any time during the resolution process, if both parties agree. However, this also needs to be time bound to ensure this opportunity is not misused to the detriment of any party.

Fourth, vacancies need to be filled with competent people, be it for judicial or administrative roles. India has a dismal judge to population ratio¹⁴⁷ and no manner of modification the dispute resolution process can effectively deliver justice with such disproportionate numbers.

¹⁴³*Vidya Drolia* (n 3)[48], [49].

¹⁴⁴*Ibid* [49].

¹⁴⁵Refer to Alternative Dispute Resolution In Tenancy Disputes – Walking The Tightrope, Chapter III, Dispute Resolution Under State Rent Laws: Maharashtra, Delhi, And Bengal.

¹⁴⁶*Booze Allen* (n 37) [36] – [39].

¹⁴⁷ The judge-population ratio in India is 19.49 judges per million people, whereas it is 107 per million in the USA and 51 per million in the UK. The Law Commission of India, in its 120th report, had recommended the ratio should be increased to 50 judges per million people. See Mustafa Plumber and Pranali Lotikar

It has been seen during the COVID-19 pandemic that with the tenants faltering in rent payments and courts functioning in limited capacities, in many instances landlords and tenants could reach an amicable settlement involving rent waiver or deferment or payment or termination of tenancies, without necessarily going through an adversarial procedure.¹⁴⁸ It is opined that progressing forward and having a structured statutory mediation and arbitration processes can resolve many of the disputes between the stakeholders in tenancy/eviction matters, allowing the courts to address critical legal questions, in a time bound manner.

Chindarkar, 'Dismal: 19.49 judges per million people, shows data' (*DNA India*, 22 December 2018) < www.dnaindia.com/india/report-dismal-1949-judges-per-million-people-shows-data-2698922#:~:text=The%20judge%20population%20ratio%20is,from%2010.5%20to%2050%20judges> accessed 19 September 2020.

¹⁴⁸ Abhay Khairnar and Nadeem Inamdar, 'Hit by Lockdown, commercial property owners, tenants in Pune settle rentals amicably' (*The Hindustan Times* 2 May, 2020) < www.hindustantimes.com/cities/hit-by-lockdown-commercial-property-owners-tenants-settle-rentals-amicably/story-y2YipjVbGrRjCm0LBkyVEJ.html> accessed 19 September 2020.