
**ANTI-RENT CONTROL LEGISLATION A BOON OR BANE: ECONOMIC
ANALYSIS OF THE WAQF (AMENDMENT) ACT, 2013**

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ABSTRACT

With various governments enacting laws in its favour, Rent Control is among the leading welfare measures to have endured the test of time in Indian polity. However, occasionally one comes across legislation that promotes an anti-rent control stance. One such example and the legislation analysed by this paper is the 2013 amendment to The Waqf Act. When read in congruence with sections of the Waqf Properties Lease Rules of 2014, the amendment leads to the regulation of waqf properties with regards to evictions and bidding based on circle rates to fall outside the scope of the State Rent Control Laws and promotes free market transactions. This research paper aims to use law and economics as a lens to decipher the viability of the Amendment Act and examines if, in a relatively pro-tenant jurisprudence, this legislation stands out like a sore thumb or a welcome change? The Delhi Rent Control Act is the Rent Control law adopted for this study. Various pedagogical tools from the field of law and economics, be it a cost-benefit analysis, game theory, pareto efficiency and bargaining theory aid this discovery. The research paper also looks at judgments passed by Indian courts considering the tenants' rights at stake vis-a-vis the benefits sought to be gained by the Waqf Board and the public. Facilitated by these various means, this paper makes an argument in favour of the amendment.

Keywords: *Waqf, Rent-control, Game theory, Incentives, Pareto Efficiency*

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1. INTRODUCTION:

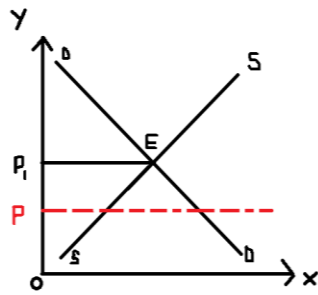
Rent control is a popularly used welfare measure both across the world and in India. While its economic efficiency is questionable and shall be the primary focus of this paper, it is seen as a policy that helps tenants and protects them from landlords. The recent amendment to The Waqf Act, however, goes on to take an anti-rent control characteristic and promotes more free-market transactions. This paper shall use law and economics as a lens to decipher the viability of the Waqf Amendment Act. The paper aims to explore if, in a relatively pro-tenant jurisprudence, an anti-rent control provision stands out like a sore thumb or a welcome change. This paper is divided into four parts. While the first section shall give the reader a foundational understanding of both rent control laws and Waqf properties, the second will present an in-depth economic analysis of the implications the Amendment Act has had in Delhi. The third part will conclude. Various pedagogical tools from the field of law and economics, be it a cost-benefit analysis, game theory, pareto efficiency and bargaining theory shall aid this research.

2. WHAT IS RENT CONTROL?

Rent control is a system of rent regulation that covers a spectrum of policies that can vary from setting the absolute amount of rent that can be charged to varied limits based on geographical factors. Such restrictions may continue between tenancies or may be applied only within the duration of a tenancy. Rent control is therefore inclusive of price control and eviction controls and lays a multitude of obligations on the landlord.² In economic terms, rent control is also called a price ceiling wherein the government sets a price for a commodity when it believes that the equilibrium price in the free market is too high for the common man to afford.³ In the given diagram, OP is the price ceiling, while the equilibrium price is OP_1 -

² Lok Sang Ho, *Rent Control: Its Rationale and Effects*, 7 URBAN STDS. 1184, 1183–89 (1992). <http://www.jstor.org/stable/43083470>.

³ John W. Willis, *Short History of Rent Control Laws*, 36 CORNELL L. REV. 54 (1950), <http://scholarship.law.cornell.edu/clr/vol36/iss1/3>.



2.1.THE EVOLUTION OF RENT CONTROL

Rent control as a policy measure has been adopted since time immemorial to combat the adversities caused by crisis such as war, plague, and the collapse of economies. However, in modern times it has taken shape of a welfare measure that aims at aiding the economically compromised sections of society. This section of the paper explores this evolution of the rent control laws both at a global, as well as national level.

a) Around The World

Rent Control can be traced back to Ancient Rome wherein Caesar himself promulgated a law under which villas in Rome could not be priced over 2000 sesterces a year.⁴ In medieval France, on account of war, paralysis of commerce and plague, various rent control measures were introduced be it a 3/4th reduction in rentals on all leases prior to 1589 or moratoria on agricultural rents.⁵ In Portugal, the havoc caused by the great Lisbon earthquake in 1755 prompted King Jose to freeze rents to rates of the previous year.⁶

Rent control as we know it today was a concept devised by the Europeans at the beginning of the 20th century to prevent landlords from charging exorbitant rentals and evicting tenants during emergencies that the World War brought with it.⁷ The first degree in this regard was the 1914 French rent moratorium and subsequently in 1915 a comprehensive rent control law namely, the British Act was promulgated.⁸

The situation of acute shortage of rental accommodation owed to warfare intensified over the 20th century and spread on a global level.⁹ The end of the Second World War brought with it

⁴ New York Times, May 27, 1923, § 8, p. 13, col. 3.

⁵ Grasilier, *La Question des Loyers aux Temps de la Ligue et de la Fronde*, 22 *NouvErLE REVUE* 161, 279, 23 *NOTVERLE REVUE* 45 (4e Ser. 1916).

⁶ John Willis, *Some Oddities in the Law of Rent Control*, 11 *U. Pirs. L. Rsv.* 609 (1950).

⁷ WILLIS, *supra* note 2 at 54.

⁸ A Evatt, *Fair Rent Experiment in New South Wales*, 2 *J. CoMP. LEais. & INT. LAW* 10 (1920).

⁹ WILLIS, *supra* note 2.

an inflow of returning soldiers that steeply raised the demand for rental accommodations. The end of the war also coincided with the industrial revolution that was already facilitating an increase in urban-rural migrations. These factors caused rentals to soar through the roof, and to prevent this unprecedented rise, countries across the world introduced rent control legislations.¹⁰ In 1939, Australia, Nicaragua, Cuba and Australia took action by implementing rent control policies. Elsewhere, the Portuguese colony of Macao restricted rents, the Canadian began rent regulations, the Japanese promulgated laws and the South Africans revived their legislation.¹¹ In the United States rent control was introduced in the form of local rent control ordinances in the states of New York, Puerto Rico, and Hawaii, however there was no federal law mandating price ceilings.¹²¹³

b) In India: Delhi

Along with the rest of the Commonwealth, India too adopted rent control in the aftermath of the second World War.¹⁴ For the purpose of this paper, the evolution of rent control law in Delhi has been chosen. It was under the Defence of India Rules in 1939 that rent control was first introduced in Delhi.¹⁵ While its applicability was limited to certain parts of the National Capital Region, eventually the remaining regions came under the control on the Punjab Urban Rent Restriction Act, 1941.¹⁶ This was later supplemented by an additional order under the Defence Rules of 1944.¹⁷ After the end of the second World War, a new legislation was passed titled the Delhi and Ajmer Marwara Rent Control Act 1947.¹⁸ This was later repealed in 1952 and application of other state rent control on Delhi was ceased.¹⁹ The rent control law prevalent in Delhi today is the 1958 Delhi Rent Control Act.²⁰

With various governments enacting laws in its favour, Rent Control continues to be among the leading welfare measures to have endured the test of time in Indian polity. However,

¹⁰ Joseph Gyourko & Peter Linneman, *Equity and Efficiency Aspects of Rent Control: An Empirical Study of New York City Department*, UNI. OF PSLV PHILLY, 19104-6302 (Received February 3, 1986), <http://www.socsci.uci.edu/~jkbrueck/course%20readings/gyourko%20and%20linneman2.pdf>.

¹¹ WILLIS, *supra* note 2.

¹² H.R. 7695, 77th Cong., 2d Sess. (1942), H. R. REP. 2568, 77th Cong., 2d Sess. (1942).

¹³ *Ambassador East, Inc. v City of Chicago*, 399 Ill. 359, 77 N. E. 2d 803 (1948).

¹⁴ Aditya Alok & Pankti Vora, *Rent Control In India – Obstacles For Urban Reform*, MANUPATRA, (2011), <http://docs.manupatra.in/newslines/articles/Upload/9B58E8ED-1417-4224-AC9C-C06F4A03DCFC.pdf>.

¹⁵ The Defence of India Act, 1939, No. 35, Acts of Parliament, 1939 (India).

¹⁶ The Punjab Urban Rent Restriction Act, 1941, No.10, Acts of Parliament, 1941 (India).

¹⁷ The Defence Rules, 1944, No. 23, Acts of Parliament, 1944 (India).

¹⁸ The Delhi and Ajmer Marwara Rent Control Act, 1947, No. 19, Acts of Parliament, 1947 (India).

¹⁹ The Delhi and Ajmer Marwara Rent Control Act, 1958, No.38, Acts of Parliament, 1947 (India).

²⁰ Kiran Wadhwa, *Delhi Rent Control Act: Facts and Fallacies*, 21 ECO. POL. WKLY 1347,1351–56 (1991), <http://www.jstor.org/stable/4398063>.

occasionally one comes across legislation that promotes an anti-rent control stance. One such example is the 2013 amendment to the Waqf Act.

2.2.WAQF

Waqf is an appropriation or settlement as defined by many Arabic scholars.²¹ It is a property, both immovable or movable, that is given in the name of Allah for religious, pious, or charitable purposes. Once created it becomes reserved without any right to absolute alienation.²² The Waqf distinguishes itself from trusts by virtue of having a narrower scope and a non-dissolvable nature.²³ Funds collected from such properties are typically used to alleviate the economic misfortunes of the Muslim community.²⁴

a) *The Indian Context*

In the Indian context, the Waqf Act of 1954 was passed to promote better administration of the waqf properties.²⁵ Subsequently, whether it be the lack of a proper procedure for collecting rentals or the absence of a clear division of power, owed to deficiencies arising out of the legislation and the amendments succeeding it, the Waqf Act, 1995 was enacted with the object of bringing uniformity and preventing mischief.²⁶

Under the Waqf, a survey commissioner is directed to highlight all properties that qualify as Waqf in a particular region.²⁷ A ‘mutawalli’ or supervisor then proceeds to manage the Waqf and has the exclusive decision-making authority in matters pertaining to its administration.²⁸ Owing to this immense power bestowed on these actors and the boards both at the state and national level, properties under the Waqf are often misused for personal benefits. Indeed in 2015, Maulana Kalbe Jawwad, a prominent U.P. politician and mutawalli was accused of

²¹ A. Majid, *Waqf as Family Settlement among the Mohammedans*, SOCIETY OF COMP LEGIS, 9, (1908), <https://www.jstor.org/stable/752189>.

²² Abdul Sathasr Hajee Moosa Sait v Smt. Maimuna Bai, Crp. No. 779 of 2008.

²³ *Id.*

²⁴ Haitam Suleiman, *The Islamic Trust Waqf: A Stagnant or Reviving Legal Institution?*4 EJIMEL, (2016), <http://www.ejimel.uzh.ch>.

²⁵ The Waqf Act, 1954, No. 29, Acts of Parliament, 1954 (India).

²⁶ The Waqf Act, 1995, No. 43, Acts of Parliament, 1995 (India).

²⁷ *Id.* at 3(p).

²⁸ *Id.* at 3(i).

selling Waqf properties to build graves and use funds collected to construct his personal properties.²⁹

As per the Joint Parliamentary Committee in its ninth report, as much as, 70% of all Waqf properties in the national capital region are under illegal occupancy.³⁰ Further, as per the 'Sanchar committee report' this encroachment has primarily materialised in two ways, *firstly the absolute usurpation of property without incurring any costs and secondly by way of transgenerational occupancy of rented property at nominal prices that remain stagnant.*³¹ These private encroachers are both state-endorsed and often wealthy. Owing to these factors and the lack of funding of the Waqf boards, effective legal action against them is rendered impossible. While the poverty-stricken Muslim suffers, these actors thrive in a system that facilitates corruption and the misuse of Waqf land.³²

A prime example of this was the *Karnataka Waqf Board Scam* wherein over 50% of the land under the Karnataka Waqf Board had been misappropriated by politicians and board members, in collusion with the real estate mafia.³³ In contravention of the proposed rent of two to three lakhs per annum, in Delhi, as many as 120 shops were found paying less than ten thousand rupees.³⁴ Other famous examples include the Windsor Manor Hotel worth Rs. 600 cr. being leased out for a mere Rs.12,000 per month and the alleged illegality of Mukesh Ambani's 27 storied house in Mumbai.³⁵ The Waqf is not a financially stable institution and most of them find it difficult to pay employees let alone maintain properties.³⁶ This is due to the non-competitive nature of the rental properties in addition to the meagre funds the boards receive in the form of donations.

²⁹ Syed Waseem Rizvi hits back at Maulana Kalbe Jawwad: 'Sold waqf properties, land for graves', THE INDIAN EXPRESS, June 18, 2015, <https://indianexpress.com/article/cities/lucknow/syed-waseem-rizvi-hits-back-at-maulana-kalbe-jawwad-sold-waqf-properties-land-for-graves/>.

³⁰ Rajya Sabha, 2008: Qur'an, al-Ma'idah 05:1.

³¹ Government of India, Status of Muslim Community, 221.

³² Khan I.A., 'Administration of Waqf's properties in India: Rhetoric or Realities' (2014) Proceeding of the International Conference on Masjid, Zakat and Waqf, <http://conference.kuis.edu.my/imaf/images/e proceedings/2014/wakaf/w01-imaf2014.pdf>.

³³ Neil Munshi (27 March 2012). "Another \$39bn Indian corruption scandal: this time it's land". *The Financial Times*.

³⁴ Neil Munshi (8 December 2021) 'Pay revised rents or evict shops, Wakf Board to traders'. *The Tribune*. <https://www.tribuneindia.com/news/archive/delhi/pay-revised-rents-or-evict-shops-wakf-board-to-traders-695691>.

³⁵ Nitish Kashyap, *Sale Of Land For Mukesh Ambani's House 'Antilia' Illegal, Against Provisions Of Wakf Act: Maharashtra State Board Of Wakfs*, LIVELAW, 2017, <https://www.livelaw.in/sale-of-land-for-mukesh-ambanis-house-antilia-illegal-against-provisions-of-wakf-act-maharashtra-state-board-of-wakfs-read-affidavit/>.

³⁶ Neil Munshi (27 March 2012). "Another \$39bn Indian corruption scandal: this time it's land". *The Financial Times*.

Indeed, Section 72 of the Waqf Act, 1956 limits donations to 7% even from mutawallis.³⁷ The sheer economic inefficiency of Waqf properties can also be seen on comparing the meagre Rs. 165 cr. annual income of the organisation with its property value that exceeds 1.2 lakh cr.³⁸ It is to prevent cases of corruption and to improve the economic efficiency of these properties that various amendments are brought about to the legislation.

b) The Amendment and Its Implications

The 2013 amendment to the Waqf Act (“Amendment Act”) was brought about to streamline procedures preventing the encroachment and misuse of properties in Delhi.³⁹ Section 5 of the Amendment Act expands the scope of the term “encroacher” to include persons whose tenancy, lease or license has expired or been terminated.⁴⁰ This labels all tenants with expired leases as “encroachers” that lie outside the purview of Section 14 of the Delhi Rent Control Act which provides for the protection of “tenants” from eviction.⁴¹ Further, Sections 54, 56 and 57 of the Amendment Act provide for tenants occupying premises after termination to be dispossessed, based on the judgement of Waqf tribunals regarding the rights and obligations of the lessor and lessee of the property.⁴²

The Waqf Properties Lease Rules (“WPLR Rules”) enacted in 2014 are in congruence with the Amendment Act and advance the streamlining and transparency agenda of the legislators. Rules 4, 5, 6, 7, 18 and 19 of the WPLR Rules, when read conjointly with the Amendment Act, facilitate the regulation of Waqf properties with regard to evictions and increase in rents.⁴³ Whether it be the procedure for short duration leases or the fixing of reserve price at 2.5%, the rules promote an increase in rent on a periodic level and move towards market competition.⁴⁴

c) The Indian Housing Paradox

³⁷ WAQF ACT, *supra* note 25, at 72.

³⁸ Ahmad EU, ‘Family Wakf: Colonial Law and Modernist Sharia’ (2010-2011) Vol. 71 Proceedings of the Indian History Congress’ <https://www.jstor.org/stable/44147543>.

³⁹ The Waqf (Amendment) Act, 2013, No. 27, Acts of Parliament, 2013 (India).

⁴⁰ *Id.* at § 5.

⁴¹ The Delhi Rent Control Act, 1958, § 14, No. 59, Acts of Parliament, 1958 (India).

⁴² The Waqf (Amendment) Act, 2013, § 54, 55 & 57, No. 27, Acts of Parliament, 2013 (India).

⁴³ The Waqf Properties Lease Rules, Rules 4,5,6,7,28, & 19, 2014 (India).

⁴⁴ *Id.*

The Indian housing paradox is a situation wherein there simultaneously exists a shortage of approximately 19 million housing units and a vacancy of over 11 million units.⁴⁵ Urban India has seen a 35% decline in those opting for rental accommodations while the growth rate of vacant rental homes stands at an alarming 12.5%.⁴⁶

This is a result of market friction caused due to unintentional vacancies and intentional vacancies in the form of rational landlord owners withdrawing their properties from the market. These factors are further guided by poor contract enforcement and pro-rent control measures such as the Waqf or the Delhi Rent Control legislation. This empirical data was gathered via the 2011 census and hence reveals a situation prior to the Waqf Amendment Act its corresponding Property Lease Rules.⁴⁷ This phenomenon has gathered worldwide prominence with cities in China and Mexico also facing similar problems.^{48,49}

Indeed, Sahil Gandhi his paper titled, “*Explaining India’s housing vacancy paradox*” has asserted that a pro-landlord policy change liberalizing rent adjustments could potentially reduce vacancy rates by 2.8 to 3.1 percentage points.⁵⁰ Further, as assertion has been made that such policies could potentially lead to the reduction of the Indian housing shortage by 7.5%.⁵¹

3. ECONOMIC ANALYSIS OF THE AMENDMENT: WHAT PROPERTY LAW SOUGHTS TO ACHIEVE

One must acknowledge that the economic analysis of law as a field, primarily belongs to the classical and neoclassical schools of thought. Therefore, this school brings with it, its fair set of assumptions and fundamental criticisms at the hands of Marxist and Frankfurt schools of economic thinking. However, this does not imply that one must completely disregard the field. It is precisely this convergence that makes the economic analysis of law essential to test the true efficiency of legislation and facilitates a well-rounded analysis. Therefore, one must understand theories of the classicals and then apply them to the anti-rent control stance taken

⁴⁵ Boehm, J., & Oberfield, E. (2020), *Misallocation in the Market for Inputs: Enforcement and the Organization of Production*, THE QUARTERLY JOURNAL OF ECONOMICS, 135(4), 2007-2058.

⁴⁶ *What can developing cities today learn from the urban past? Regional Science and Urban Economics*, 94 (2022), p. 103698, [10.1016/j.regsciurbeco.2021.103698](https://doi.org/10.1016/j.regsciurbeco.2021.103698)

⁴⁷ CENSUS, 2011.

⁴⁸ P. Monkkonen, *Empty houses across North America: Housing finance and Mexico’s vacancy crisis* *Urban Studies*, 56 (10) (2019), pp. 2075-2091

⁴⁹ C. Zhang, S. Jia, R. Yang, *Housing affordability and housing vacancy in China: The role of income inequality*, JOURNAL OF HOUSING ECONOMICS, 33 (2016), pp. 4-14

⁵⁰ Sahil Gandhi, et.al., *Insecure property rights and the housing market: Explaining India’s housing vacancy paradox*, JOURNAL OF URBAN ECONOMICS, Volume 131, 2022, <https://doi.org/10.1016/j.jue.2022.103490>.

⁵¹ *Id.*

by the Waqf Amendment. Hence, the four primary questions to answer in the economic analysis of property law as per Cooter and Ulen are -

a) *What can be privately owned?*

This question distinguishes private from public property.

In India there are two types of Waqfs, namely public waqfs and private waqfs.⁵² Public Waqfs are those which are administered by the Waqf Board in furtherance of religious, pious, and charitable purposes.⁵³ On the other hand, a private Waqf or a Waqf-alal-aulad, authenticated by the Musselman Wakf Validating Act, is a property bestowed by the settlor upon their family and descendants.⁵⁴

b) *What are the ownership rights of properties?*

The answer to this question helps establish property rights to benefit from the increase in productivity; the rule of perpetuity is also encompassed under this.

When it comes to Waqf properties in the Indian context, the title of public waqfs cannot be passed on to private individuals. This is contrast to the practice in Pakistan wherein the Chief Commissioner has the power to transfer the title of public waqfs to private individuals.⁵⁵

c) *How much can the state intervene?*

This is the substantial question that this paper aims to answer.

d) *What is a better form of repayment?*

Be it damages or injunctions, bargaining theory is used to determine the most efficient form of payment i.e.- when cost is high, damages and when low, injunctions.⁵⁶

In case of Waqf properties, as shall be depicted in the subsequent sections of this paper, landlords are more likely to breach contractual obligations and pay damages as this exercise emerges to be more economically viable.

In response to the third question, Coase's theorem postulates that the transactions between individuals should take place in an efficient matter i.e., with low costs of exchange. This implies that if such transactional costs are low, people will bargain and find the most valuable

⁵² G.M.A Bhaimia v The Madras State Wakf Board, (1968) 1 MLJ 410

⁵³ WAKF ACT, *supra* note 25 at s. 2.

⁵⁴ G.M.A Bhaimia v The Madras State Wakf Board, (1968) 1 MLJ 410

⁵⁵ The Islamabad Capital Territory Waqf Properties Act, 2020, s. 17(a).

⁵⁶ Robert Cooter and Thomas Ulen, *Law and Economics, 6th edition*, BRKLY LAW BOOKS 72 (2016), <http://scholarship.law.berkeley.edu/books/2>.

use.⁵⁷ Hence, the object behind any property law should be to either help in reducing transactional cost or intervene when either the transactional costs are too high or when parties are unable to negotiate voluntarily.⁵⁸ By analysing the Waqf Amendment Act, the WPLRs and the old legislation through this lens, this paper shall establish whether an anti-rent control stance is a boon or a bane.

3.1. MARKET EQUILIBRIUM

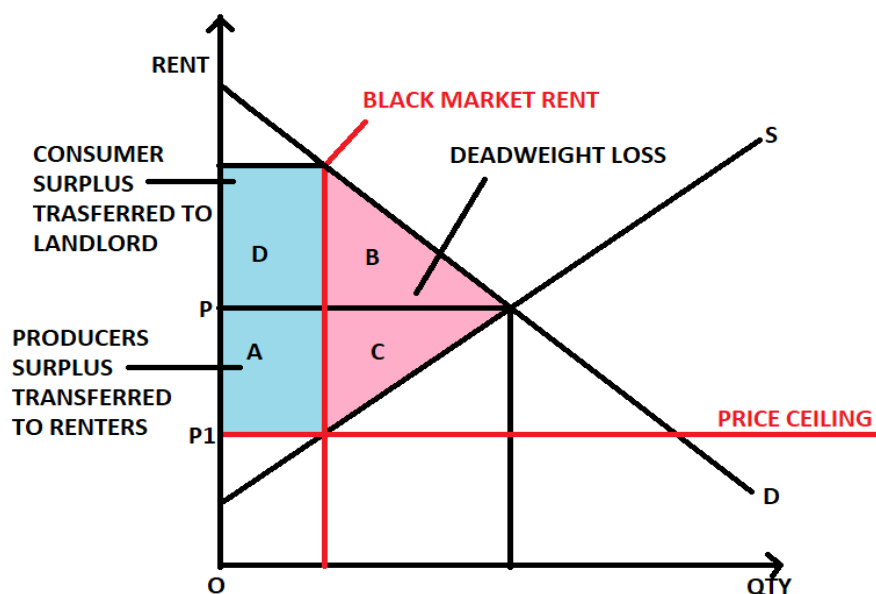
The figure (1) depicts the problem associated with rent control. When the equilibrium price (P) is greater than the price ceiling (P1), the consumers, in this case, the tenants, value the property at a greater price than the landlords and are willing to pay more than the price ceiling i.e., P1. This creates a situation of excess demand with landlords charging above the price ceiling and leads to emergence of a black-market rent that in some cases is greater than even the original market equilibrium, P.⁵⁹ It also gives leeway to the landlords to exploit tenants—in the case of the Waqf properties, exorbitant rates are often charged and the mutawallis collude with other actors, such as wealthy tenants who are not in need of the concession, to mutually benefit. One may argue that the motive behind rent control is solely to help the poor by reducing rental prices, but this is only a short-run phenomenon. However, in the long run, rent control has a negative effect on both the demand and supply of rental housing. While both the supply and quality of rental properties reduces owed to the lack of monetary incentive, the demand skyrockets leading to a large shortage of rental houses.⁶⁰ The advantages of rent control in Waqf properties are nullified by these factors, leaving tenants worse off than before.

⁵⁷ R. H. Coarse, *The Problem of Social Cost*, 3 JRNL OF LAW & ECO 2, 1-44, (1960), <http://www.jstor.org/stable/724810>.

⁵⁸ COOTER & ULEN, *supra* note 55, at 72.

⁵⁹ Neva Goodwin, Jonathan Harris, Julie Nelson, Brian Roach and Mariano Torras, *Macroeconomics in Context*, ROUTLEDGE, 79, (2015), ISBN 978-0-7656-3882-3.

⁶⁰ Choon-Geol Moon and Janet G. Stotsky, *The Effect of Rent Control on Housing Quality Change: A Longitudinal Analysis*, 6 JRNL OF POL. ECON 1132,1114–48, (1993), <http://www.jstor.org/stable/2138574>.



(1)

3.2.ECONOMIC EFFICIENCY

a) Game Theory, Pareto Efficiency and Potential Pareto Improvement – The Landlords Perspective

Game Theory

The study of how and why rational individuals make choices in a competitive atmosphere using strategies of cooperation and non-cooperation is known as game theory.⁶¹ Originally framed by Merrill Flood and Melvin Dresher, the most common game is that of the prisoners' dilemma.⁶² In figure (2), varying strategies of two different rational individuals are highlighted. This game depicts why individuals do not cooperate, despite mutual benefit.

The basic assumptions –

Player A – Is the Waqf board and complies with stringent rent control regulations.

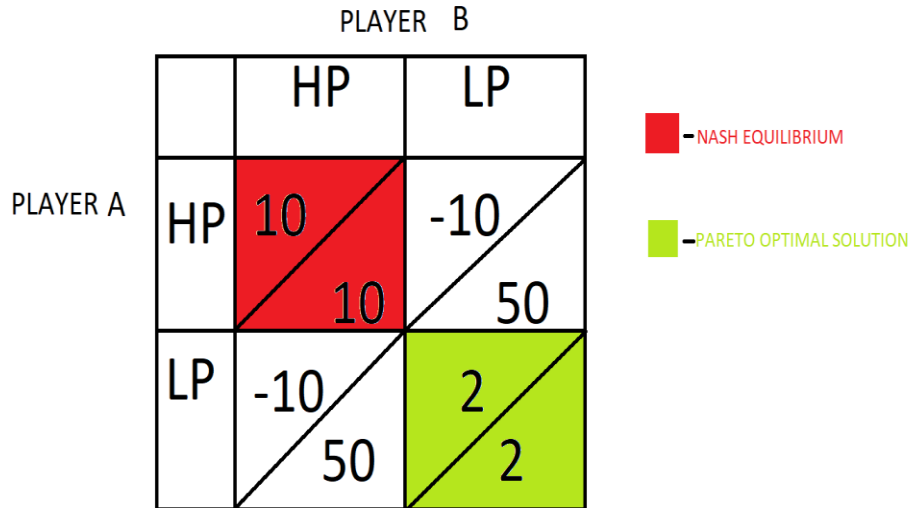
Player B – Owes property that does not fall under rent control.

Applying this concept to the case of rental accommodations and taking into consideration the aforementioned assumptions, we find that if two landlords, A and B are left in a free market to decide the cost of their rental properties, they shall both choose to charge lower prices or the

⁶¹ COOTER AND ULEN, *supra* note 55, at 33-36.

⁶² GOODWIN, *supra* note 58, at 405.

pareto optimal solution (2,2) even though the most profitable or the Nash equilibrium would be in the situation wherein they both charged higher price (10,10).



(2)

Therefore, in arguendo, a free-market transaction would not lead to shortages or a situation of excess demand and there would be less scope to exploit tenants due to the competitive nature of the market. However, in the same game, if we assume that Landlord A comes under stricter rent control laws while B’s situation remains the same, the result will be different.

In such a situation (figure (3)), B will always charge the higher price (10) since he shall be aware of the fact that irrespective of his price, A will not be able to do anything. For B, charging higher rent will always be the dominant strategy. This shall further worsen the already inflationary situation caused by the rent control itself.

		PLAYER B	
		HP	LP
PLAYER A	HP	2 10	2 2
	LP	2 10	2 2

(3)

It is at this point that one can question whether the existence of multiple Waqf properties around Delhi's posh Khan Market area has a role to play in cause the market to be ranked the 20th most expensive retail location.⁶³

Pareto Efficiency and Pareto Improvement

Any policy that improves the position of one without harming another is said to be Pareto efficient.⁶⁴ As was showcased in the game above, if there exists strict rent control then the likelihood of a Pareto efficient outcome is negligible. However, the chances of such an outcome increase if both landlords are allowed free market transactions. Therefore, the anti-rent control stance adopted by the Amendment Act and the WPLR is more Pareto efficient than the previous legislation.

One may argue that if the amendment did not happen then Landlord B would be better off than Landlord A and once it had happened Landlord A would be better off than Landlord B. However, this is not entirely true. As opposed to Pareto efficiency, the Kaldor-Hicks, or the

⁶³ Delhi's Khan Market world's 20th most expensive retail location: Report Nov 24, 2019 https://economictimes.indiatimes.com/industry/services/property/-/cstruction/delhis-khan-market-worlds-20th-most-expensive-retail-locationreport/articleshow/72209987.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

⁶⁴ COOTER AND ULEN, *supra* note 55, at 42.

potential Pareto improvement approach postulates that any policy that improves the position of one more than it harms the position of another is economically efficient in nature. The idea behind this is that in theory, those benefiting can compensate those being harmed even if they do not do so.⁶⁵

While the situation of the Waqf board, in this case Landlord A, has improved by the introducing a slightly relaxed rent control, the reserve price has been increased to up to 2.5% from the original bar (that was lower as per rule 7 of the WPLR) and a competitive bidding process has been adopted (as per rule 6 of the WLPR), Waqf properties are still not at an equal footing with regular landlords.⁶⁶ Therefore, the advantage is not significant enough to render any substantial disadvantage to other properties. If anything, the amendment seeks to improve a Pareto inefficient situation by trying to make the aggrieved party better off. Therefore, the amendment is both Pareto and Kaldor-Hicks efficient.

b) Bargaining Theory and Efficient Breach – The Landlord and The Tenant

Bargaining Theory

A form of game theory, this matrix is often used to understand property-related decisions. This theory postulates that bargaining helps in the movement of resources from those who value it less, to those who value it more, thereby, increasing the overall prosperity of the economy.⁶⁷ Applying it to properties up for rent, one can assume that a bargain exists only when a potential buyer values a property more than the potential seller values it.

Let's assume that A is the landlord willing to rent property and B is a tenant interested in it:

In the first situation, A wants to charge Rs. 33,000. B has with him Rs. 50,000 and is willing to pay Rs.40,000 for the rented accommodation. Herein, the scope of bargain lies between Rs. 33,000 and 40,000 and the value generated, or the cooperative surplus is Rs.7,000.

The cooperative solution, therefore, is 33,000 (cash to A) + 40,000 (value of rental property to B) + 17,000 (amount B retains from the original 50k) = 90,000.

In the same situation rent control limits the chargeable amount to Rs. 3,000. Now while A may want to charge 33,000, B will be willing to pay the rent control price of Rs. 3000 even though he has Rs. 50,000 out of which he is willing to spend Rs.40,000. This will lead to a non-

⁶⁵ *Id.*

⁶⁶ WAQF PROPERTIES LEASE RULES, *supra* note 42, at Rules 6 & 7.

⁶⁷ COOTER AND ULEN, *supra* note 55, at 400-405.

cooperative situation wherein, ideally no transaction will take place since there shall be no scope of bargaining. However, the transaction will take place because the law compels it. It will be an inefficient one though.

What the rent control acts do is that they force the parties to bargain to the non-cooperative solution. Left to their own devices, they would either not cooperate or reach the cooperative solution. Indeed, the well-known fact that pro-tenant rent regulations reduce incentive of landlords to rent out their premises is highlighted by this example.⁶⁸

While the amendment does not completely support free-market transactions, it has raised rent control closer to the paying capability of the tenants by increasing the reserve price and adopting competitive bidding.⁶⁹ This makes the price more realistic, generates value in the economy and incentivises the Waqf to maintain the property. Further, the introduction of Section 5 of the Amendment Act which facilitates the speedy eviction of those overstaying their lease agreements, increases the liquidity of the market.⁷⁰ Additionally, the increase in rent also improves the financial standing of the Waqfs thereby helping them help those in need.

Efficient Breach

When only parties to a contract are impacted by it, the liabilities associated with expectation damages give incentive to the promisor the breach or perform contract.⁷¹ There are instances wherein breaching a contract is more economically efficient than performing it, even though it involves liabilities.⁷² In such a situation the net loss (N_L) from the transaction outweighs the net benefit (N_B).

When,

$$N_L > N_B - \text{BREACH}$$

$$N_L < N_B - \text{PERFORM}$$

⁶⁸ Sahil Gandhi, et al., *India's housing paradox: Empty houses and housing shortages*, CENTRE OF SOCIAL AND ECONOMIC PROGRESS, (Feb. 2021), https://csep.org/wpcontent/uploads/2021/02/India%E2%80%99s-housing-paradox-policy-brief_F.pdf.

⁶⁹ WAQF PROPERTIES LEASE RULES, *supra* note 42, at Rules 6 & 7.

⁷⁰ WAKF AMENDMENT, *supra* note 38, at § 5.

⁷¹ COOTER AND ULEN, *supra* note 55, at 289.

⁷² Melvin A. Eisenberg, *Actual and Virtual Specific Performance: The Theory of Efficient Breach and the Indifference Principle in Contract Law*, 93 CAL. L. REV. 975 (2005).

Rent control results in a situation wherein the rental income generated from the property is often less than the expenses the landlord has to incur in order to upkeep the property.⁷³ In such a situation, the incentive to upkeep the property reduces significantly as the cost associated with the breach of contract, i.e., expectation damages are equivalent or less than the rental income being generated.⁷⁴

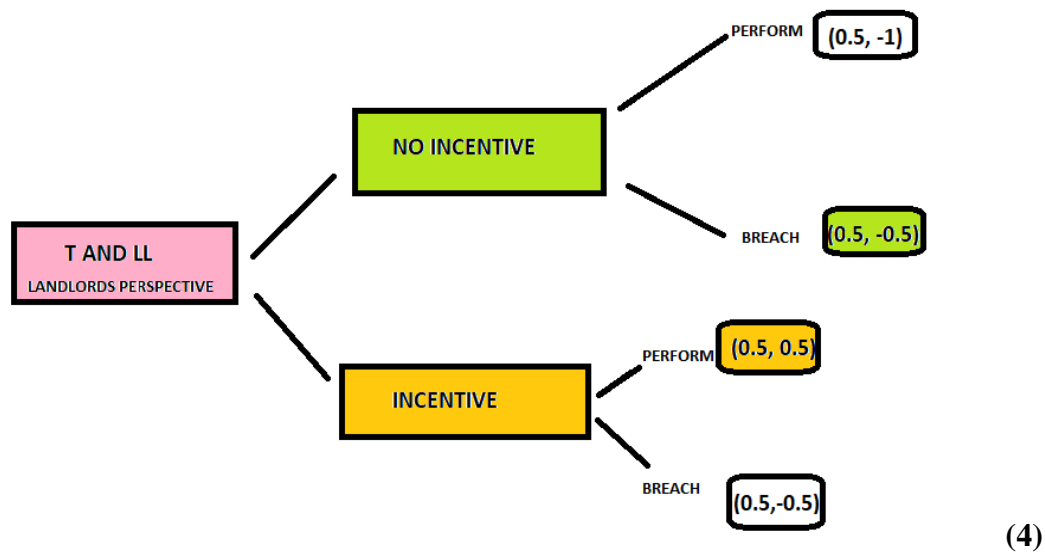
Assuming,

0.5 – performance (Payment of rent)

0.5 - breach (damages)

1 - expenses upkeep of property

The aforementioned numerical values depict the difference in wealth of the Tenant (T) and Landlord (LL) before vis-à-vis after partaking in the agency game.



In figure (4), both the tenant (T) and the landlord (LL) enter into a rental agreement for the property. From the landlord’s perspective, when there is no incentive for maintaining the property, it is less costly to breach the contract. The expense for him shall be only 0.5 i.e., the cost of damages as opposed to 1, which is the cost of upkeep if he intends to perform the contract. However, in a situation where there already exists an incentive to upkeep the property, the landlord will prefer performance over breach as he will receive 0.5 as opposed to having to

⁷³ James Burling, *The Destructive Power of Rent Control*, PACIFIC LEGAL FOUNDATION, July 12, 2019, <https://pacificlegal.org/the-destructive-power-of-rent-control/>.

⁷⁴ *Rent Ceiling*, INVESTOPEDIA, 27 September 2022, <https://www.investopedia.com/terms/r/rent-ceiling.asp>.

pay 0.5 if he breaches. Therefore, rent control by leaving no incentives to upkeep property perpetuates fewer successful rental contracts this leads to the non-cooperative solution being more profitable and favourable.

Cooter and Ulen correctly postulate that the primary purpose of contract law ought to be to convert non-cooperative solutions into cooperative ones.⁷⁵ Indeed, rent control with its restrictive nature is not in compliance with the same.

4. CONCLUSION AND RECOMMENDATIONS

This research paper sought to conduct a systematic economic analysis of the anti-rent control stance adopted by the Waqf Amendment Act of 2013 and the Waqf Properties Lease Rules of 2014. To aid this analysis, reliance was placed on the Indian housing paradox and statistical findings from the 2011 census prior to the amendment act and corresponding lease rules. Aimed at exploring whether, in an otherwise relatively pro-tenant jurisprudence, this legislation stood out like a sore thumb or a welcome change, it was found that in a strictly economic sense, it was both more Pareto efficient and efficient under the Kaldor-Hick's approach when compared to the older provision. The issues of black-marketing, inflation and excess demand were used to substantiate these claims. Further, it was established that there exists an inverse relationship between the strictness of rent control laws and the amount of value generated by the rental market in an economy. It has been succinctly hypothesised by the Centre of Social and Economic Progress that any policy to improve housing must make penalization of tenants an easier process, reduce the impediments faced by landlord for revising market rent and seek to improve contractual enforcement of pre-existing rental agreements.⁷⁶ This same study further aids the assertion that rent control measures and the weak contract enforcement culture in India are the two primary reasons for the housing paradox in India.⁷⁷

An interesting parallel can be drawn with the Bangladeshi Waqf structure which also seems to echo the ethos of promoting fair price and market competition. Indeed, under Section 69 A mentions consistence with prevailing market price as a prerequisite for all applications regarding redetermination of waqf property prices.⁷⁸ Additionally, even the Pakistani

⁷⁵ COOTER and ULEN, *supra* note 55, at 283.

⁷⁶ GANDHI, *supra* note 50.

⁷⁷ *Id.*

⁷⁸ The Wakf ordinance 1962, s. 69A.

legislation, namely, the Waqf Properties Act, 2020, states under Section 17(a) that maximization of economic benefits is a prerequisite for the sale of waqf properties.⁷⁹

Cooter and Ulen correctly hypothesized that the public ownership of a conventionally private good leads to misallocation. This essentially means that the good in question is utilized by individuals other than those who value it the most.⁸⁰ Efficiency requires that private goods be privately owned, and public goods be publicly owned.

Murphy's law of Economic Policy states that, "*Economists have the least influence on policy where they know the most and are most agreed and have the most influence on policy where they know the least and disagree most vehemently.*"⁸¹ Indeed, while this amendment is a step in the direction of free-market transactions. Interestingly enough the Model Tenancy Act of 2021 seems to have recognised this problem and has sought to limit the extent of rent control by promulgating that rental prices shall be determined based on a written agreement between the landlord and the tenant. However, the continued existence of rent control laws in today's capitalistic world reinstates their importance. Thus, while this paper views the changes to the Waqf law from a purely economic efficiency perspective, one must not disregard it. Conclusively, this paper attempts at showcasing a perspective that would otherwise not come to light when it comes to the discussion surrounding minority rights and its adjoining socio-political discourse in order to put forth the assertion that rent control is not the most effective measure when it comes to public welfare. Hence, the introduction of the Model Tenancy Act and the Amendments made to the Waqf legislation are all steps in the right direction. Well maintained accommodation is provided to tenants, landlords are given a fair price and the courts are not burdened with claims of damages on account of non-performance. Indeed, these changes by promoting free-market transactions in the rental sector, are promulgating a rental policy that is not only more economically viable but also benefits all parties. It is recommended that the Indian legislators continue on this trajectory.

⁷⁹ The Islamabad Capital Territory Waqf Properties Act, 2020, s. 17.

⁸⁰ COOTER and ULEN, *supra* note 55, at 104.

⁸¹ Paul Krugman, *Reckonings: A rent Affair*, NY TIMES, 7 June 2000, 31 <https://www.nytimes.com/2015/04/26/upshot/economists-actually-agree-on-this-point-the-wisdom-of-free-trade.html>.