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The Constitutional Equilibrium of the Bangladesh Premises Rent Control Act, 1991

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ABSTRACT

The friction between the participants of a lease isn't a newfangled aspect; such has been in existence over long periods of time. However, recent developing events allude to the exponential enumeration of such kerfuffle. Enactments addressing such issues and providing easement have been in performance since the independence of the Indian subcontinent, which underwent multiple repeal and reenactments pertaining to adapting it to the need of the respective time. Principle of Equity suggests vigilant bus non-dormant bus jura subveniunt i.e., to be legally aware and to act promptly furthermore, Bangladesh is a developing nation where multiple sources imply the literacy level to be up to seventy percent (70%), however, legal knowledge is not as widely prevalent as it should be. Not much research has been done on the current topic hence; this study aspires to enlighten the legal rights and limitations of a landlord and a tenant. Through the route of this study, it has been recurrently proven that the concept of rental payment mainly dictates the course of law. A tenant continues to be one so long the rent is cleared and is willing to abide by the regulations of tenancy without fashioning a lump and the landlord without reasonable grounds and bonafide requirements cannot evict a tenant.

Keywords: Tenant, Landlord, Debacle, Ejection, Constitutional equilibrium, and Rent Control Act.

INTRODUCTION:

The landlord-tenant kerfuffle isn't a newfangled phenomenon of society; such has been in existence over noteworthy timeframe and has been involuntarily inherited by the present generation. During the absolute British occupation of Bengal, the occupants in 1765 introduced agriculture and farming based on auction pertaining to ease of revenue compendium. Wherein the revenue collection procedure was contractual, which gradually flourished into the Zamindari Settlement in Bengal, thereafter promulgating the enactment of 1793 recognized as the Permanent Settlement Act. The afore-stated statute remained in performance for a period of one and half century. During such course,

numerous rebellious movements erupted in Bengal by the peasant class, who were indiscriminately disgruntled and their efforts to reform and dethrone the exploitive zamindari system failed to cumulate or reciprocate any outcome. It wasn't until after the independence of the Indian subcontinent and the formation of West and East Pakistan (now Bangladesh) that the turmoil of the revolting peasants was acknowledged, hence finally abolishing the aristocratic landlord juncture via the enactment of State Acquisition and Tenancy Act of 1950 dealing with the agricultural tenancy and the Non-Agricultural Tenancy Act of 1949 as the name suggests incorporating all non-agricultural tenancy. However, the necessity to

protect the interest of the non-agricultural commercial and residential tenants occurred to the government and based on previous enactments, the Premises Rent Control Act of 1991 (hereinafter *the Act*) was enforced as a special statute to be executed by the Judiciary in Bangladesh in compliance with the provisions of the Transfer of Property Act, 1882.

Abu Shofiun Mohammad Taj Uddin in their research mentions the victimization of the landlords, whereby tenants exploit the good will and faith of the lessor i.e. *contra bonos mores*. The tenants initiate intentional dispute, question ownership and attempt to escape lawful rental proliferation. Bangladesh is constitutionally defined as a democratic socialist society, free from exploitation, persisting the rule of law and upholding the fundamental freedoms and rights. Under such views, the maxim *salus populi est suprema lex* is widely prevalent within the democratic society. Furthermore, to encrypt the term tenancy, Black's Law Dictionary according to the decision of *Brown vs Bragg* (22 Ind. 122) defines it as 'not fixed and made certain in point of duration by the agreement of the parties.' Moreover, Section 3 of the Act defines the terminology tenant in two categorial broad perspectives viz.

- a) any person by whom, or on whose account, rent is payable for any premises
- b) a person continuing in the possession after the termination of a tenancy in his favor

In the case of *Sudkya Ramji Mahar vs Mohamad Isak*, it was established that the term tenant includes ongoing and former tenants. However, inheritance of a business facility and its continued occupation of the premises do not entitle the inheritor to be enveloped by the definition.

Further, non-agricultural tenancy is relatively equivalent to commercial tenant ship, a non-agricultural tenant is an any individual who holds non-agricultural land under and with the consent of the less or, under a special contract creating liability of rent on the holder of such property to the less or and also to the successors-in-interest of the lessor. Natheless, does not include 'any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or is owned, by the

person to whom such occupier is, or but for a special contract would be, liable to pay rent for such occupation.'

While a landlord is defined as an individual of whom lands or tenements are holden. He who, being the owner of an estate in land, has leased it for a term, on specified rent, to another person called the tenant. In Bangladesh, the term landlord has been defined in multiple legislations, the Act in Section 2(b) provides a landlord to be any person who for the time being is either receiving or is entitled to receive rent of any premises on his own behalf, or receive as a trustee or receiver on behalf or for the benefit of any other person entitled to receive rent if the premises were let to a tenant. Landlord can also be equivalented to the definition of proprietor within the meaning of Section 2(20) of the State Acquisition & Tenancy Act, 1950 which provides such to be any person owning any estate wholly or partially either in trust or for his own benefit. Moreover, a landlord has been provided as a person to whom rent is payable in respect of any accommodation. The terms landlord and tenant are antonymic-synonymous and complimentary to one other based on their interdependence, representing a familiar legal relationship to one another. In the case of *Nainsukhdas Baldeodas vs Asst. Collector Vizianagram*, it was settled after assessing, the term landlord does not distinguish between previous and future landlord, the connotation of the *lexis* categorically includes heirs and legal representatives of the previous owner (s) and also assignees. The primary aspect of confrontation, as evident from the trend of various litigations, are based on disagreement to the terms and conditions of the contract, tendency to fraud, unfeasible and unnoticed eviction, impractical raise in rent, underplaying responsibilities, personal disagreements, non-rental payment etcetera.

The controversy in the case of *Abdul Aziz vs Abdul Majid* was based on the extension of tenancy, whereby the tenant was accommodated under a periodical commercial lease for an agreed period of 11 consecutive months. Post expiry of such defined period, the landlord repudiated to allow any extension, serving the tenant a notice of eviction under section 106 of the Transfer of Property Act, 1882. However, according to the tenant an option of renewal of tenancy was avail-

able in the written agreement between both the parties. The suit was ruled in favor of the landlord holding that the extension was exclusive to the pleasure of the landlord who was later ruled other-wise by the Appellant Division. Moreover, the facts of the case of *Maulana vs Makhan Lal Saha* allegations of being a habitual defaulter of rent was issued against the defendant tenant along with showing the cause of the requirement of the leased premises for his utilization and occupation. In contrast the defendant submitted otherwise while also accusing the plaintiff of raising controversies with respect to the rental rate, the bench scrutinized the facts while construing whether or not the defendant was a habitual defaulter and whether or not a notice of eviction was served in compliance with Section 106 of the Transfer of Property Act, the Court found the appeal to be immaterial and hence dismissed it. Conclusively numerous studies have been conducted by various esteemed authors favoring and defending tenancy rights, however, the *injuria sine damno* incurred on the landlords have been negated.

This study aims to evaluate the jurisdiction of the Act subjecting it to the scrutiny of comparison to other similar operational statutes of other governments and that of Bangladesh respectively, though the enactment aims to protect tenancy rights of the lessee(s), how far a lessor's interest is protected shall be assessed in the light of extensive legal literatures and case studies.

METHODOLOGY:

The prime rationale of this study attempts to decipher the vires of the Premises Rent Control Act, 1991 and also the grounds of protection provided by it to the concerned opposite parties i.e., this article endeavors to answer the following questions –

- i. The nature and the vires of the Act of 1991
- ii. Whether or not it protects the Interest of the Lessee
- iii. Whether or not the interest of the lessor is protected

Hence, this study will manifest its results based on relevant content analysis decrypting the existing available literatures via the procedures described herein below.

Literature Survey

In the course of architecting this research manuscript, works of various-esteemed authors published on the related topic shall be searched on recognized electronic databases and extensively examined.

Case Studies

Article 111 of the Constitution of The People's Republic of Bangladesh, 1972 provides for precedence or *ratio decidendi* declaring the binding effect transpiring upon the judiciary in order of hierarchical descension of the judicial system of the Republic. To better understand, it has been declared by the Appellate Division that law declared by it is mandatorily binding on the High Court Division and the state generally, additionally the law declared by either division of the Supreme Court shall be binding on all subordinate courts. Additionally, any judgment passed in any sub-ordinate Court contrary to that professed by either Division is unlawful or illegal. Germane litigations from Bangladesh and around the world *mutatis muntadis* shall be referred to, in an effort cognize and interpret the provisions of the Act.

Comparative Survey

In this Section, the Act shall be scrutinized analogizing it to *pari material enactments* and judicatures of other States especially to that of the Indian Subcontinent. The easements available to both parties via the execution of the statute shall be gauged.

RESULTS:

While demarcating the Republic, Article 1 of the Constitution aesthetically confers it as unitary, independent and sovereign. Thereby, delegating all powers of the Republic to the citizens of the Republic. It has also been affirmed and pledged that the State shall substantiate the fulfillment of creating an exploitation free nation. In harmony of the regimes provided by the Constitution, the objectives of this study will be fulfilled here after *nexus* the aforementioned methods

Nature and Interpretation of the Act of 1991

Originally provisions relating to premises rent control were enacted in 1951 which was legislatively recognized as the 'East Bengal Premises Rent Control Ordinance.' In the same year the aforesaid statute experienced repeal by the enactment of East Bengal

Expiring Laws. The Laws relating to premises rent control was then-again enacted in 1953 as the 'East Bengal Premises Rent Control Act,' which thereon underwent two ordinance repeal and reenactment in 1961 and 1984 respectively only thereafter came about the Premises Rent Control Act of 1991. The Act is a private special act and its enactment is aimed to better the provisions of control of the premises rent while safeguarding the interest of the two concerned parties, i.e., landlord and tenant defined in Section 2 sub-section (e) and (b) respectively of the Act. While construing it must be remembered that the primary purpose of such must attract the legislative intent, where words are plain and unambiguous, the plain text must be given full effect which can be attained by reading the statute wholly, the reasons leading to such is, an enactment must not be construed in isolation, but always in/by reference to the context in which the provision appeared. The maxim *ut res magis valet quam perat* must be applied while construing however also remembering that such approach must make the Constitution better rather than making it worse.

Statutory interdependence, in the case of this Act the Transfer of Property Act, 1882 and the Contract Act, 1872 must be strongly considered. In the case of *Mahmuda Khatun vs Habibur Rahman* it was held that the provisions of the Act are by nature, special and such would prevail over the general provisions of Transfer of Property Act. Further a monthly tenant cannot be considered to be trespasser under any other enactment (in *Yousuf (Md.) and others Vs. Administrator of Waqf and others* was the Waqf Ordinance, 1962) without having resorted to the provisions of the Premises Rent Control Act of 1991.

Constitutional Competence

The Constitution of People's Republic of Bangladesh provides it to be the supreme law of the Republic, and if any other law is inconsistent with the Constitution that other law shall to the extent of the inconsistency be void. All enactments of the state must be in conformity, consistency and complimentary to the constitutional provisions. In the 8th Amendment Case, it was held that law amending the Constitution is higher than ordinary laws, however, lower than the Constitution and all amendments are to be examined under the light of Article 7. Thereon Article 7 has been re-

cognized as the Pole Star of the Constitution and every prevalent statute within the state. Moreover, all organs of the state must implicitly operate under the umbrella of the Constitution, all conferred powers and its performance can only be operative under the authority of the Constitution. Though the jurisdiction to formulate new enactments is devolved constitutionally to the legislature, however, such enactments must be subjected to the provision of Article 7(2) and also must not violate the provisions of Chapter 2 and 3. The principles laid in Chapter 2 are fundamental directives and is *sine qua non* to the governance of Bangladesh. Such principles are to be mandatorily observed while promulgating new laws. Moreover, all existing laws of the State are subjected to the consistency check of Chapter 3 or Fundamental Rights as inconsistency attracts nullity or voidness, either wholly or partially to the extent of discrepancy respectively. The parliament is inhibited from implementing any enactment that contaminates the basic structure of the Constitution. In the case of *Khondoker Delwar vs Italian Marble Works*, it was established that Constitutional Supremacy is one of the basic characteristic constituents of the Constitution.

Further, the Constitution protects the rights of its citizens through law, availing identical treatment of every citizen according to law. Hence to summarize, supremacy of the Constitution denotes its prevalence under all circumstances. It serves as the standard or embodiment against which the legitimacy of actions by the various organs of the republic is to be measured. Now with that settled, the competence of the Act must be gaged under the shadow of the constitution i.e., whether or not the interest of the concerned citizens of the Act viz. landlord and tenant are equally protected or not, is contemplated extensively hereinafter.

Protection of Interest of the Lessor

The Act allows ejectment of a tenant only on certain specified grounds. Procedurally, the lessor is obliged to serve a notice under Section 106 of the Transfer of Property Act, terminating tenancy correctly addressed to the lessee, provided the notice is returned with the endorsement of the post man, the purpose of it is served and such satisfies the connotation of Section 27 of the General Clauses Act. The non-obstante clause in Section 18 suspends the provisions of the Transfer of

Property Act and the Contract Act permitting prevalence of the Act of 199 over it. The grounds of such ejectment are constrained to the following

a. Action done in contrast to Section 108 (m)(o)(p) of the Transfer of Property Act

The maxim *vigilantibus iura scripta sunt* i.e., the legally aware are recommended unvaryingly to always establish written contract, rendering such can never be emphasized enough. However, in the absence of a written agreement Section 108 of the Transfer of Property Act, 1882 takes the wheel which provides the rights and liabilities of lessor and lessee. Nevertheless, the Section stands inapplicable to a tenancy at will. To incite the provisions of Section 108, the material defect of the property with reference to the intended use must be cited and specified by the lessee in the course of making allegations: subject to the acknowledgement of such defect by the lessor which could not be easily known or identified by the lessee. The defect herein-before stated refers to the physical aspect, i.e., nature and condition of the property and not defect in the lessor's title. A lessee is not entitled to refund of deposit on repudiating the lease on the mere ground that the lessor fails to produce documentation of the title, where it is visible that the lessor possessed *prima facie* a good title. Temporary landscape alteration like flooding of an agricultural land, etc. does not deliver the lease to be presumed void by the lessee in absence of a written contract.

Breach of contract to yield possession or illegal possession by the lessee is actionable by the lessor and special damage can be demanded by the latter. It can be fairly observed on plain reading of subsection (m) of Section 108 of Transfer of Property Act, 1882 that physical status of the leased property, i.e., its nature and condition is featured. The provision can be further categorized into three categories viz. return, review and repair. The first part (*return*), the lessee on termination of the lease is beholden to restore the property in as good a state as such was initially leased which however exempts reasonable wear and tear cause by irresistible force(s). Secondly the lessor and his representatives must be allowed to enter upon such leased premises and reconnoiter the condition. Provided, any damage is encountered leave a notice regarding the same to the lessee. Thirdly, the recipient of

such notice is obligated to renovate the incurred damage(s) postulating he or his agents are responsible for such occurrence(s). Repair insinuates the renewal or replacement of part that has decayed. A qualified obligation to repair befalls the lessee by the provision of Section 108(m) of the Transfer of Property Act, notwithstanding a written contractual document, the lessee is obliged to maintain and uphold the leased property in good condition. In the case of *Steuart & Co Ltd vs C. Mackertich*, it was established that a lessee is bound to make repairs when expressly mentioned in a written contract and under such no rental deduction is sustainable, however, in the absence of any written contract no such obligation befalls the lessee. This judgment has no application in Bangladesh as the Act overpowers the Contract Act. Decrepitude resulting out of forces of nature e.g., by friction of air, fire, etc. falls within the meaning of 'irresistible force,' the lessee shall only be granted ease if the manifestation isn't a byproduct of his negligence. There exists an implied compulsion on the lessee to maintain the premise 'wind and watertight' and to make necessary repairs. As the lessee is under covenant to maintain the leased premise 'air and watertight' and in habitable condition, by virtue of such, the lessor is entitled to repairs of damages caused by subsequent earth-quake pertaining to restoration of such inflicted property to leasable status. Section 108 (o) of the Transfer of Property Act entitles the lessee to reasonable use of property and its produce. However, the leased property mustn't be exploited for use of anything other than the leased intent, or any damage be caused to the lessor's interest by selling trees or pulling down constructed buildings or excavating the ground as mines or quarries in short perform any action of permanent injury or destruction. A tenant can employ the leased property for use according to his interest, for his convenience treating it as his own given no harm is brought to it. However, permanent physical alteration of the leased property against the interest of the landlord is prohibited i.e., an act which impedes the land itself or is said to be detrimental. The intention behind the lease must always be invoked, when a property is leased for agricultural use and settling tenants, the lessee is endowed with reasonable limited rights as a user of the covering soil which however does not permit excavation i.e., to dig, collect and sell surface stones.

Notwithstanding anything provided, if an agreement expressly stipulating to work a mineral is conveyed such does not attract inconsistency. The provision deals with the physical aspect of the leased property through the course of the lease no presumable harm is said to be brought where the lease was granted for one purpose and within the allowed alteration to the leased land a byproduct is used, such usage is very well consistent to the provisions of this section. Furthermore, Section 108(p) provides for prohibition of erection of any permanent structure excluding for agricultural purpose without the consent of the lessor. The term 'permanent' used herein is contradistinctive from temporary. If substantial alteration is brought about in the physical character of the leased premise, such alteration attracts the mischief of this clause. The original intention behind granting the lease must be upheld.

In the instance where the lease is granted for agricultural use, such must not be tampered. Where lease was granted for the purpose of laying a flower garden, the lessee is not entitled to erect buildings on the leased property. In the case of *Ghulam Hussain vs Riaz Hussain* it was established that additions to the existing structure of the rented house made by tenant without consent or permission of the landlord prefers the cost on the tenant. Such does not create any liability on the landlord nor does it grant or fortify the claim of purchase of the rented house by the tenant nor does it entitle him to compensation. Breach of implied covenants is believed to be confirmed when the tenant is substantially and materially responsible for impairments to the leased premise and inflicts material alterations without the consent or permission of the landlord, such actions satisfy the collective mischief within the meaning of Section 108 (m,o,p) of the Transfer of Property Act.

b. **Non-Payment of Rent**

In the case of *Hafez Abul Khair vs State*, the incumbency on the tenant to pay rent to the landlord was well reconciled. There exists no compulsion on the landlord to pursue the tenant in demand of the outstanding rent. On the other hand, it is mandatorily binding on the tenant to transact the rent to the lessor within the stipulated period of time to avoid being a defaulter which automatically results in eviction of the

leased premise. The defined time within which rent is elected to be paid must either be within the period demarcated in the contract or if absent within the fifteenth (15th) day of the next month. Statutorily, it has been restricted that the monthly rent must be cleared by the 15th day of the following month; dissatisfaction of such disentitles the defaulter to protection against eviction. Acceptance of overdue rent by the landlord without any objection does not constitute waiver and the plea of waiver must be adopted as soon as maybe. Within the definition of default, the Act does not prescribe any particular period, it can be a month or more or the tenant can be a habitual defaulter. If default has taken place, the protection from ejection is nonviable. According to HC Black, a defaulter is one who makes default. One who misappropriates money held by him in an official or fiduciary character, or fails to account for such money. A defaulter is not only a person who admits him to be one but also an individual who contest his liability or one who omits an act that was legally binding on the individual to suffice. When property is transferred in the form of lease in exchange for payment to the transferee. Provided an arrear of land revenue is outstanding; the transferee resultantly becomes a defaulter within the definition of the Act. A defaulter can be defined also as a lessee or tenant who fails to pay rent for a period of three months collectively or fails to transact the rent via money order or deposit the rejected rent by the landlord to the Rent Controller within the statutorily prescribed period. Provided, a tenant pays the rent with negligence, the nomination for eviction is inevitable. When it is established that the tenant defaulted in payment of the rent, the lessor is entitled to get a decree of ejection as no protection can be lawfully offered once the tenant is an ascertained defaulter. Clearance of prolonged overdue rent commonly does not exclude the tenant from the mischief of eviction. Mere acceptance of the arrear rent by the landlord is insufficient to disprove the tenant from being a defaulter. In the case of *Abdul Awal & Ors vs. Jebon Nahar* it was held that eviction of a tenant is not lawfully concerned with exhausting the advance founded on the fact that receiving the advance for a tenancy tenured for less than two decades is prohibited. Further, acceptance of a money order does not have any effect on the performance of a notice of eviction ser-

ved under Section 106 of Transfer of Property Act, 1882.

c. Lessor's *Bonafide* Requirement of the Premise

In *Nanda Kishore Agarwala vs Binayok Saha* it was established that apart from defaulted rental payment, *bonafide* requirement of the premise for the use of the owner entitles the lessor to get a decree of ejection of the tenant. The Act describes the *bonafide* requirements of the landlord, which is subject to either –

- i. For the purpose of construction (building) or renovation (rebuilding)
- ii. For occupation for self or for any person for whose benefit the premises is held or
- iii. Any other justifiable reasonable cause.

The term building used in the Act represents two distinctive connotations, one is a structure of substantial dimensions, erected to last for a considerable period of time or permanently and secondly it denotes part of a building let or to be let separately. Rebuilding defines the re-construction of certain parts of an old building by taking down any one of the building components i.e., the roof, the wall or the foundation itself. Building and rebuilding of a structure by nature accrues the requirement of displacing a tenant(s), as the performance of the attempted task cannot be implemented under the occupation of a tenant(s).

While determining the question of reconstruction, the High Court Division held that seeking permission based on possession of the disputed land by the lessee no application under Section 21(1) and 21(3) is maintainable. A *bonafide* requirement must be accompanied by necessity surrounded by adequate material(s) on record as a *bonafide* requirement isn't a mere wish, whim or fancy of the lessor. In the case of *Nur Begum vs Dr Yusuf Ahmed & another* it was held that the requirement of the suit property by the plaintiff for an adult son and a widowed daughter falls within the meaning of *bonafide* requirement as connected individuals are within the family. Based on the norm of burden of proof, the burden of proving a *bonafide* requirement or need is binding on the lessor. Business expansion of the landlord requiring an adjacent-leased room constitutes *bonafide* requirement. It is not necessary for a lessor to prove permanent settling in case of compelling necessity, occasional accommo-

dation is sufficient to order eviction. The plaintiff in the case of *Chand (Md) Sawdagar vs SMA Rahman* required the suit house located in Dhaka for accommodating himself, given to ill health and requisite to undergo treatment of serious ailments and also the fact that his son who had a business in Dhaka, lived with his sister also needed the suit house for accommodation. *Bonafide* requirement must not only be composed of elements like 'need' and 'must have,' such elements in turn must encompass honesty. A requirement is subject to facts and circumstances of each individual case. The requirement of a rented premise for a close relative does not satisfy the provision of Section 10(2)(c)(ii) of the Act unless it can be shown that the premise was under the lessor for the benefit of close relative(s).

d. Denial of the Landlord's Title

On challenging the title of the landlord, the tenant forfeits tenancy rights and hence is seized of the protective luxury against mischief of eviction under the Act as a tenant. Once the title of the landlord is acknowledged as the owner of the leased property and also the recipient of the rent prior obtaining possession of the leased property, the tenant is estopped from refusing or denying such acknowledgement of title post obtaining possession as provided by Section 116 of Transfer of Property Act, 1882. Denial of the landlord's title without any valid reason by a tenant operates as forfeiture of tenancy. There exists no right in respect of a tenant to challenge the title of the lessor representing a third party who holds no interest in claiming the suit property. When the title of the landlord is denied by a tenant, a notice of eviction addressed to the lessee in regards of the lease is not a mandate.

The denial of the title is sufficient to establish grounds to order eviction by forfeiture of tenancy. When a tenant displays unwillingness to attorn to a new landlord, the lessor in such cases is lawfully granted the privilege to ask for his eviction after serving a maintainable notice of eviction in the Court of Small Causes. In matters of change of ownership, when a new landlord takes the seat, it is not required by law to effect attornment by notice, mere verbal information on the change of ownership is sufficient.

Protection of Interest of the Lessee

The Act provides for control of premises rent. There exists no iota of doubt that the Act is *intra vires* in respect of tenants as a lessee can only be ejected on the specified grounds hereinbefore discussed. The Constitution of People's Republic of Bangladesh in Article 40 guarantees the Freedom of Profession and Occupation that every citizen possesses the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. Hence a lessee by the provision of the Act is protected of his fundamental right of trade and business, the inevitable expiration of contractual tenure does not terminate tenancy provided the tenant has actively paid his rent within the allowed time and is ready to abide by the terms and conditions of tenancy.

a. Procedure for non-acceptance of rent by the Lessor

The manifestation in Section 18 of the Act '*as long as the tenant pays rent*' illustrates that the point of default on the counterpart of the tenant continues till the passing of the decree. Compulsion on the landlord pursuing the tenant for rental clearance is nonexistent.

However, the obligation to pay rent is statutorily imposed on the tenant. A monthly tenant must pay the rent either in accordance to the terms of the contract or within the 15th day of the following month in the absence of a contract, to avoid being addressed a defaulter. Provided, the recipient of the rent refuses to accept it without any written notice of willingness to receive such impending rent on a later date in compliance with Section 19 (2). Thereon, Section 19 subsection 1 of the Act directs and permits the tenant to either deposit or transfer the agreed rental amount when there exists any *bonafide* doubt or dispute corresponding the rental recipient. Such deposit must be made within or must not exceed the prescribed period i.e., the 15th day of the subsequent month as deposit made beyond such period is incompliant to the aforementioned provisions. There exists no distinction between default for a month or more or being a habitual defaulter. The rental deposit must be prompt and ongoing as a tenant is prohibited from either advance or deferred payment in insubordination of lawful agreement. Whereby, the deposited rent was refused by the landlord, the tenant thereafter unlocks the

privilege of depositing the rent to the Rent Controller. The definition of Rent Controller has been provided in Section 2(a) as an officer who is responsible on request of either the landlord or tenant to fix the standard rent, hear certain applications, accept deposit of unaccepted rent, et cetera. In the case of Sheikh *Mohd Salimullah vs Shafiqul Alam*, it was established that while deciding suits on merit, the findings of the Rent Controller in regards of default is of no effect as the controller is not required to decide anything in those regards. All formal requirements of law must be satisfied before obtaining a certificate from the Rent Controller. Lumped rental deposit to the Rent Controller does not render the deposit sufficient to save ejection. The deposit of rent by a tenant in favor of an unwilling landlord must be accompanied by an application containing the circumstances leading to it.

Provided, the court is of the view that there exists no material in the application, it may be rejected. So long as the conditions of Section 18 and 19 are met and fulfilled by the tenant, the tenant is entitled to protection of law.

b. Salami, Premium

Statutorily, it has been fixated in Section 10 of the Act that the lessor is prohibited from accepting any salami or premium in advance which is *more than the rent for one month* without prior written consent of the Rent Controller. 'Premium' within the context of the Act is defined as any fine or like sum, or any other pecuniary consideration paid in addition to rent. Furthermore, the term precludes to monetary payment made to the lessor in consideration of representation of distinction between the actual rent and the desired rent. Such is paid also in consideration of the grant of lease. It can also be synonymously defined as capitalized rent. The Act in Section 14 provides the provisions of refund of the paid salami or premium which is however, contrary to Section 10 as the advance is a mere presentation of the consideration of the transaction. If the advance paid by lessor exceeds more than one month's rent, the tenant is granted relief under Section 16 of the Act i.e. available only on an application addressed to the Rent Controller within 6 months since depositing, who on receiving such application may either order refund or adjust it in any appropriate/reasonable manner. Provided the advance was neither refunded nor adjusted;

the non-refunded or non-adjusted money can be substituted as impending rent saving the tenant from default. However, accepting advance beyond the allowed amount (which is subject to adjustment) of the monthly rent is void in law according to the Act.

The Statutory Significance of the Numeral 15 and 2

The numerals 15 and 2 statutorily precepts the characteristic outflow of the Act regarding its two prime factors of time and the agreed exchange. The Number 15 has been recurrent twelve or more times while the Number 2 has been integrated once. On comprehensively scrutinizing the Statute, Section 15 confers Standard Rent or the agreed exchange to be fifteen percent (15%) per annum of the market value of the premises delineated by the Government and such may only be revised *ad valorem* only after the passage of two (2) almanac years, any pre-escalation in rent is beyond the law and is bound to be cast aside. Now that the agreed exchange is settled the vector of time is also constrained to fifteen (15) i.e., wherein absence of a written agreement, the Statue unambiguously dictates the rent to be paid by the fifteenth (15th) day of the succeeding month. Such is also indistinctively pertinent wherein the whereabouts of the landlord cannot be ascertained or there subsists dispute with the landlord and the rent is refused. The tenant is not exempted from rental liability and such must be transmitted to the landlord via postal authorities. Provided such postal transfer is also overturned by the refuting landlord, then the rent is to be deposited within fifteen (15) days to the Rent Controller. Thereafter the aforementioned authority shall forward the deposited rent to the lessor within fifteen (15) days since receiving the deposit and issue a notice and order receiving of the rent within fifteen (15) days since returned or undelivered.

CONCLUSION:

This study essentially set out to examine the Constitutional equilibrium of the Act between a landlord and a tenant. It is well settled that the Constitution and all other enactments are to be interpreted under the illumination of the fundamental principles of state policy and the fundamental rights. In those regards, the Act does not fall prey to Article 7 of the Constitution. Hence, it can be conclusively held to be *intra vires*, as a lessor and a lessee is provided equal protection of

law and easement. The enactment introduces Rent Controller, a mediator in case of any conflict. Establishing a written tenancy contract is commended. The lessor is well within his rights to demand possession of his property back which however must be lawful, within the provisions of the enactment, coherently fulfilling the conditions of necessity in honesty. It is however incumbent upon the tenant to pay rent, a tenant does not invite the mischief of default and continues to be a tenant as long as the rent is paid. The non-obstante clause of Section 18 of the Act of 1991 confirms its precedence over the TP Act and the Contract Act while simultaneously providing for eviction and also protection against it as no ejection can be ordered unless a tenant violates the provision therein. Premium paid to a landlord is strictly forbidden and such is not enforceable under the Act unless, it has been expressly approved by the Rent Controller. In case the contrary occurs, the tenant may make an application to the Rent Controller who may either order refund or adjust the paid amount. The proper implementation of the Act must come to play, it is highly recommendable that criminal aspects such as Fraud, Forgery, Criminal Intimidation, etc. should be accounted in the course of adjudication.

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CONFLICTS OF INTEREST:

Conflict of interest between the author(s) is nonexistent

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