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**THE LEGAL METAMORPHOSIS OF RESIDENTIAL
PROPERTY: A STUDY OF SECTION 5 OF THE TRANSFER
OF PROPERTY ACT WITH SPECIFIC REFERENCE TO
AIRBNB AND SHORT-TERM RENTALS IN INDIA**

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ABSTRACT

The proliferation of digital platforms such as Airbnb, MakeMyTrip, OYO Rooms, and Zostel has fundamentally reconfigured how Indian homeowners monetise residential property. This paper examines the legal complexity that arises when a private dwelling is converted — even temporarily — into a commercial hospitality venture. Anchoring the analysis in Section 5 of the Transfer of Property Act, 1882, which defines "transfer of property" and delineates permissible interests in immovable property, the paper interrogates whether short-term letting constitutes a "licence" or a "lease" under Indian law and what cascading regulatory consequences flow from that classification. Deploying doctrinal legal research, comparative statutory analysis, and qualitative case-study methodology, the paper maps the multi-layered framework of municipal laws, zoning regulations, fire-safety codes, foreign exchange management norms, GST obligations, and income-tax provisions that a homeowner-turned-short-term-host must navigate. The paper concludes that while no single statute prohibits the short-term rental model, the absence of a dedicated regulatory architecture creates profound legal uncertainty for individual hosts, platform operators, and local governments alike, and advocates for a bespoke legislative framework akin to models adopted in Singapore and France.

Keywords:

Section 5 TPA; short-term rental; Airbnb India; OYO; licence versus lease; zoning law; GST; sharing economy; residential-to-commercial conversion.

1. INTRODUCTION

India's sharing economy has matured rapidly. Platforms such as Airbnb, OYO Rooms, MakeMyTrip's homestay vertical, Zostel, and a host of regional aggregators have enabled millions of urban and semi-urban homeowners to list their spare bedrooms, entire flats, or second homes for nightly or weekly bookings. For many households, this represents a meaningful side income — frequently exceeding the yield from a conventional long-term tenancy — obtained without the friction of extended landlord-tenant relationships.

The legal architecture governing this activity, however, is a patchwork of colonial-era statutes, state-specific regulations, municipal by-laws, and sector-specific rules that were never designed with platform-mediated hospitality in mind. At the apex of this structure sits Section 5 of the Transfer of Property Act, 1882 (hereafter "TPA"), which provides the foundational vocabulary for any transaction involving immovable property in India. Whether a host is said to "transfer" property to a guest, whether the arrangement constitutes a "lease" attracting rent-control and tenancy legislation, or whether it is merely a "licence" conferring a personal privilege, are not academic questions — they determine the entire regulatory fate of the arrangement.

This paper investigates the legal status of short-term residential rentals in India through the lens of the TPA, while mapping the broader regulatory landscape that a homeowner-as-host must navigate. The paper is targeted at legal practitioners, property owners, platform operators, and policymakers seeking clarity on an area of law that courts and legislatures have yet to address with any systematic rigour.

2. RESEARCH METHODOLOGY

This paper employs a mixed doctrinal and empirical methodology, which may be disaggregated into the following constituent methods.

2.1 Doctrinal Legal Research

The primary methodology is doctrinal analysis of primary legal sources: the Transfer of Property Act, 1882; the Registration Act, 1908; the Indian Easements Act, 1882; the Specific Relief Act, 1963; applicable state rent-control legislation; the Model Tenancy Act, 2021; the Goods and Services Tax Act, 2017; the Income Tax Act, 1961; the Foreign Exchange Management Act, 1999; and municipal regulations of the cities of Delhi, Mumbai, Bengaluru,

Hyderabad, and Chennai. Judicial precedents — from the Supreme Court of India, various High Courts, and the Consumer Disputes Redressal Commission — are analysed to identify how courts have construed the lease-licence boundary and the permissible use of residential premises.

2.2 Comparative Statutory Analysis

A cross-jurisdictional comparative method is deployed to examine how peer jurisdictions — Singapore, France, the United Kingdom, and the State of New York — regulate short-term residential rentals. The objective is not to transplant foreign law but to identify regulatory design principles that may inform an Indian legislative response.

2.3 Qualitative Case-Study Research

Three case studies are developed based on publicly available information, platform policy documents, news reportage, and regulatory notices issued by municipal authorities: (i) the Brihanmumbai Municipal Corporation's notices to Airbnb hosts under the Maharashtra Regional and Town Planning Act, 1966; (ii) the Bengaluru city zoning controversy surrounding homeowners listing in residential zones; and (iii) OYO's Townhouse model as a hybrid commercial-residential use. These case studies ground the doctrinal analysis in lived regulatory reality.

2.4 Secondary Source Analysis

Peer-reviewed journal articles, law review notes, NITI Aayog policy papers on the sharing economy, FICCI reports on homestay tourism, and academic commentary on the TPA are reviewed to situate the paper within existing scholarship. The secondary literature reveals a notable lacuna: while several studies address the economics of platform-based rentals in India, the property-law dimension — specifically the TPA interface — is substantially under-examined.

2.5 Limitations

The paper does not undertake primary empirical research (surveys or interviews) owing to resource constraints. Municipal regulations and zoning master plans are in a state of flux in several Indian cities, and the analysis reflects the legal position as of mid-2024. The paper does not address criminal law dimensions (e.g., implications under the Indian Penal Code or POCSO for unverified guests) in any depth, as these merit separate treatment.

3. SECTION 5 OF THE TRANSFER OF PROPERTY ACT, 1882: THE FOUNDATIONAL ARCHITECTURE

3.1 The Statutory Text and Its Significance

Section 5 of the TPA provides: "In the following sections 'transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and 'to transfer property' is to perform such act. In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

The section performs two distinct functions. First, it defines "transfer of property" as an act of conveyance of a property interest from a transferor to a transferee. Second, it establishes that only a "living person" (or juridical equivalent) may be a party to a transfer, thus excluding dispositions to deities and unborn persons from the main TPA regime. For the short-term rental context, the critical inquiry is whether the nightly booking of a flat on Airbnb constitutes a "conveyance" of a "property" interest in the sense contemplated by Section 5.

3.2 The Modes of Transfer and the Short-Term Rental

The TPA recognises five substantive modes of transferring immovable property: sale (Section 54), mortgage (Sections 58-98), lease (Section 105), exchange (Section 118), and gift (Section 122). Of these, only a lease is analytically proximate to a short-term rental arrangement. Section 105 defines a lease of immovable property as a transfer of "a right to enjoy" such property in consideration of a price, for a certain time, either expressed or implied, or in perpetuity. A licence, by contrast, is governed not by the TPA but by Section 52 of the Indian Easements Act, 1882, which defines a licence as a grant that "makes lawful to the grantee something that would otherwise be unlawful" — crucially, without conveying any interest in the property. The lease-licence binary is the central legal question of this paper.

3.3 The Lease-Licence Distinction: Doctrinal Analysis

The Supreme Court of India has consistently held that the distinction between a lease and a licence is a question of the substance of the transaction, not its label. The test was classically formulated in *Associated Hotels of India Ltd. v. R.N. Kapoor* (AIR 1959 SC 1262), where the Court observed that if a document gives exclusive possession of the premises, it is a lease

regardless of how it is described. Where the grantor retains control and the grantee has no right to exclude the grantor, it is a licence.

In *Sohan Lal Naraindas v. Laxmidas Raghunath Gadit* (AIR 1971 SC 276), the Court further nuanced this by holding that the true test is not exclusive possession per se, but whether the transaction creates an interest in property. The Delhi High Court in *Rajinder Kumar Malhotra v. Satya Narain* (2008) applied these principles to service apartments and concluded that daily or weekly bookings in a hotel-like setting create a licence, not a lease, because the operator retains overall possession, provides attendant services, and the arrangement lacks the definite term and exclusivity markers of a lease.

Applying this jurisprudence to a typical Airbnb transaction: a guest books a flat for three nights. The host retains a key, the booking can be cancelled by either party, the host's belongings remain in the flat, and the platform mediates the entire relationship. On these facts, the arrangement almost certainly constitutes a licence rather than a lease — with significant legal consequences.

4. THE MULTI-LAYERED REGULATORY LANDSCAPE

4.1 Zoning Law and Land-Use Regulations

The most immediate constraint on residential short-term rentals in Indian cities is zoning law. Development Control Regulations (DCRs) in Indian cities typically designate land as "Residential," "Commercial," "Industrial," or "Mixed Use." Residential zones permit only dwelling units and allied uses. The conduct of a commercial lodging business — which a short-term rental effectively is — arguably constitutes an impermissible change of land use.

Mumbai's Development Control and Promotion Regulations, 2034 (notified under the Maharashtra Regional and Town Planning Act, 1966), define "lodging house" and "hotel" as distinct commercial uses. A residential flat converted to a short-term rental arguably falls within the definition of a "lodging house" — defined as a building where persons are lodged for hire — thereby requiring a commercial land-use designation and a lodging house licence from the BMC under Section 394 of the Mumbai Municipal Corporation Act, 1888.

The Bengaluru Master Plan 2031 (prepared under the Karnataka Town and Country Planning Act, 1961) similarly restricts commercial activities in residential zones. Homeowners listing properties in residential zones risk enforcement action by the Bruhat Bengaluru Mahanagara Palike (BBMP), including sealing of premises and demand notices.

Delhi's Master Plan 2041, notified under the Delhi Development Authority Act, 1957, does

permit "guest house" use in certain residential zones at the plot/neighbourhood level, provided relevant permissions are obtained from the Municipal Corporation of Delhi and fire safety norms are met. This makes Delhi's framework somewhat more hospitable to short-term rentals than Mumbai or Bengaluru, though the permissions regime is cumbersome.

4.2 Registration and Stamp Duty

Under Section 17 of the Registration Act, 1908, leases of immovable property for periods exceeding one year must be registered. Since a typical Airbnb booking is for days or weeks, the Registration Act's compulsory registration requirement does not technically apply. However, if the arrangement is characterised as a lease — which, as discussed above, is unlikely for most short-term bookings — then registration would be mandatory for transactions exceeding one year, and the unregistered document could not be used as evidence in court (Section 49, Registration Act).

Stamp duty implications are similarly contingent on classification. Most state stamp acts impose duty on leases above a threshold duration. A licence, being a personal privilege and not an interest in property, does not attract the same stamp duty as a lease, offering homeowners a potential tax efficiency — albeit one that must be weighed against the absence of legal title protection that a registered lease would confer.

4.3 Rent Control Legislation

A pervasive concern among potential short-term rental hosts is the risk of a guest acquiring "tenant" status under state rent-control legislation and thereby becoming difficult to evict. States including Maharashtra (Maharashtra Rent Control Act, 1999), Karnataka (Karnataka Rent Act, 1999), Tamil Nadu (Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017), and Delhi (Delhi Rent Control Act, 1958) have rent-control statutes that confer security of tenure and rent-fixation rights on tenants.

However, the consensus in the case law is that these statutes apply to tenants, i.e., persons holding a lease. A licensee — which, as argued above, a short-term rental guest typically is — does not acquire the protection of rent-control legislation. The Supreme Court in *Prabhudayal v. Kanahyalal* (AIR 1974 SC 1999) confirmed that a licensee, even one in possession, does not have the protections available to a tenant. This is a major legal advantage of structuring short-term rentals as licences.

The Model Tenancy Act, 2021, promulgated by the Central Government and adopted (with modifications) by several states, codifies the lease-licence distinction for residential properties

and expressly excludes hotel and lodging-house accommodation from its scope — further supporting the characterisation of short-term rentals as licences.

4.4 Hotel and Tourism Regulations

The Ministry of Tourism's guidelines for the classification of hotels and the registration of homestays create a parallel regulatory regime. The Incredible India Bed & Breakfast/Homestay Scheme classifies a "homestay" as a private residence where the owner lives in the same premises and lets out one to six rooms. This scheme explicitly contemplates the commodification of residential space for tourism purposes and provides a registration mechanism.

Many state governments — including Goa, Himachal Pradesh, Uttarakhand, Kerala, and Rajasthan — have enacted state tourism policies that specifically regulate homestays. Goa's Homes & Hostels Policy (2019) requires all property owners renting to tourists to register with the Department of Tourism and comply with safety norms, maximum occupancy limits, and heritage conservation requirements where applicable. These states provide the closest approximation of a functioning short-term rental regulatory framework in India.

In contrast, the metropolitan cities — Delhi, Mumbai, Bengaluru, Chennai, Hyderabad, and Kolkata — largely lack specific short-term rental frameworks, forcing the activity into a regulatory grey zone.

4.5 Fire Safety and Building Codes

The National Building Code of India (NBC 2016), published by the Bureau of Indian Standards, specifies fire-safety requirements for buildings based on their occupancy classification. Residential buildings (Group A under NBC) are subject to less rigorous fire-safety requirements than hotels and lodging houses (Group B). A homeowner who converts a residential flat into a de facto lodging house without complying with Group B fire-safety norms — emergency lighting, fire exits, sprinklers, fire-resistant doors — may be in breach of NBC norms.

State fire service acts, such as the Maharashtra Fire Prevention and Life Safety Measures Act, 2006, vest fire authorities with inspection and enforcement powers. Short-term rental hosts who have not obtained fire safety no-objection certificates may face enforcement action, particularly following incidents of fire-related deaths in unlicensed guest accommodation.

4.6 Apartment Society Regulations

A distinctive feature of India's urban housing market is the prevalence of cooperative housing societies and apartment owners' associations. The bye-laws of these bodies — governed under the Maharashtra Co-operative Societies Act, 1960, the Karnataka Apartment Ownership Act, 1972, and their equivalents — frequently contain provisions restricting commercial use of apartment units and requiring prior permission for subletting or licensing.

In practice, many resident welfare associations (RWAs) in Bengaluru, Delhi-NCR, and Hyderabad have passed resolutions prohibiting Airbnb-style letting by apartment owners, citing security concerns, noise disturbance, and damage to common areas. Breach of these bye-laws can result in fines, suspension of services (water, electricity, parking), and civil proceedings in the cooperative courts.

This private-law dimension — the contractual relationship between the apartment owner and the housing society — operates independently of the public-law regulatory framework and can be a more immediate obstacle to short-term rentals than formal statutory prohibitions.

5. FISCAL DIMENSIONS: GST AND INCOME TAX IMPLICATIONS

5.1 Goods and Services Tax

The GST implications of short-term residential rentals in India are governed by the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017, and the associated schedules and notifications. GST Council Notification No. 12/2017-CT(Rate) exempted "services by way of renting of residential dwelling for use as residence" from GST. Conversely, accommodation services provided in hotels, inns, guest houses, clubs, campsites, or other commercial places intended for residential or lodging purposes are taxable.

The GST Council's 47th Meeting (2022) amended the tax position to clarify that renting of residential dwelling to registered persons (i.e., business entities registered under GST) would attract GST under the reverse charge mechanism. For individual homeowners renting to individual tourists through platforms like Airbnb, the position remains somewhat ambiguous. The Advance Ruling Authority in Karnataka (in re: Venkatesh Residency, 2019) held that renting of rooms in a residential house for short periods to transient guests constitutes a "supply of accommodation service" taxable at 12% GST (for tariffs between ₹1,000-₹7,500 per day) or 18% (for tariffs above ₹7,500 per day), treating the activity as commercial rather than residential letting.

Hosts who cross the GST turnover threshold (₹20 lakhs per annum for services, reduced to ₹10

lakhs in certain states) must register for GST, file periodic returns, and remit tax. For many casual hosts earning modest income from occasional rentals, compliance is both burdensome and non-intuitive, creating a significant grey economy.

5.2 Income Tax

Income from short-term residential rentals is taxable under the Income Tax Act, 1961. The applicable head of income depends on the nature of the letting. If a homeowner simply lets out a property without providing any services, the income is taxed under "Income from House Property" (Section 22-27 of the IT Act) after a standard deduction of 30% and deduction of municipal taxes paid. If, however, the host provides attendant services — linens, meals, concierge — the income may be characterised as "Income from Business or Profession" (Section 28), attracting different deduction rules and audit thresholds.

The platform (Airbnb or OYO) is required under Section 194-O of the IT Act (inserted by the Finance Act, 2020) to deduct tax at source (TDS) at 1% on gross payments to resident Indian hosts if the aggregate annual payment exceeds ₹5 lakhs. This provision was specifically enacted to capture the gig and platform economy within the TDS net. Platform operators who fail to deduct or deposit TDS face penalties and interest under Sections 201 and 220 of the IT Act. Foreign-currency income from international guests booked through a foreign platform entity has additional Foreign Exchange Management Act (FEMA) implications. Under FEMA 1999 and the Foreign Exchange Management (Current Account Transactions) Rules, 2000, receipt of foreign exchange for services rendered in India constitutes a current account transaction and is permissible. However, hosts must ensure compliance with banking channel requirements and RBI reporting norms where applicable.

6. COMPARATIVE PERSPECTIVES: LESSONS FOR INDIA

6.1 Singapore

Singapore's Urban Redevelopment Authority (URA) prohibits the short-term rental (under three months) of private residential properties under the Planning Act, Cap. 232. This bright-line rule, enforced through substantial penalties (up to SGD 200,000), resolves the legal ambiguity at the cost of foreclosing the sharing economy for most residential property owners. Singapore's approach reflects a policy priority of preserving residential neighbourhood character and preventing housing cost inflation.

6.2 France

France offers a more nuanced model. The ALUR Law (2014) and subsequent amendments to the Tourism Code allow short-term rental of a principal residence for up to 120 days per year without special authorisation, while secondary residences require registration with the municipality and, in Paris and other high-demand cities, a "change of use" authorisation from the local council. This graduated framework — distinguishing principal from secondary residences and capping letting days — balances the sharing economy against housing supply concerns.

6.3 United Kingdom

London introduced a 90-day cap per calendar year for short-term letting of entire properties (Greater London Authority Act 1963, as amended by the Deregulation Act 2015). No permission is required within this cap, but hosts must pay council tax and may be liable for business rates if they exceed the cap. Beyond 90 days, planning permission for a "change of use" from residential to sui generis use is required. The English model is notable for its simplicity and enforceability.

6.4 Implications for India

India's federal structure — where property, land use, and local self-government are state and local subjects — militates against a single national framework. However, the Central Government has constitutional authority under Entry 97 of the Union List (residuary powers) and the concurrent list entries relating to tourism and contracts. A Central framework analogous to the Model Tenancy Act — providing model rules for states to adopt — could effectively harmonise the regime without encroaching on state prerogatives. NITI Aayog's 2018 Discussion Paper on the Sharing Economy recommended exactly such an approach but was not followed by legislative action.

7. CASE STUDIES IN REGULATORY AMBIGUITY

7.1 The BMC and Airbnb Notices in Mumbai (2019-2022)

Between 2019 and 2022, the Brihanmumbai Municipal Corporation issued notices to several hundred Airbnb hosts in Mumbai's residential areas, characterising their activities as "lodging house" operations requiring a licence under Section 394 of the Mumbai Municipal Corporation Act, 1888. The notices demanded that hosts either obtain commercial lodging licences or cease

operations. Many hosts, unaware of the regulation, received electricity and water disconnection threats.

Airbnb India filed representations before the BMC and engaged with the Maharashtra Tourism Development Corporation (MTDC) to frame a homestay-specific notification. As of the time of writing, a definitive resolution has not been reached, and the regulatory position in Mumbai for short-term rental hosts remains uncertain.

7.2 BBMP Zoning Action in Bengaluru (2021-2023)

The BBMP undertook a survey of short-term rental properties in Bengaluru's Indiranagar and Koramangala wards in 2021. Properties operating as de facto hotels or service apartments in residential zones were served with notices under the Karnataka Town and Country Planning Act, 1961, for "change of land use" without permission. Several multi-unit operators who had aggregated multiple flats for short-term letting were treated as unlicensed hotels.

Individual homeowners letting a single bedroom or apartment faced little direct enforcement, reflecting a pattern observed globally: regulatory action tends to target professional multi-property operators while individual casual hosts operate with relative impunity. This selective enforcement, while pragmatically convenient, creates legal uncertainty and unequal competitive conditions.

7.3 OYO's Hybrid Model: Residential Meets Commercial

OYO Rooms' original business model involved aggregating independent budget hotels, but its subsequent expansion — OYO Home, OYO Townhouse — involved signing revenue-sharing agreements with residential property owners and operating their flats as branded accommodation units. This model raises acute legal issues: the owner enters into a commercial arrangement with OYO, which manages the property and receives guests. The property is used commercially, OYO's staff access the premises, and guests are hotel-equivalent residents.

OYO has faced disputes with property owners (characterised by OYO as licensing/management agreements), with several cases before the National Consumer Disputes Redressal Commission and various High Courts concerning wrongful termination of agreements, misappropriation of bookings, and overbooking. The legal status of OYO's agreement with a residential property owner remains unresolved, straddling the lease-licence-management contract trichotomy that Indian property law has not yet systematically addressed.

8. TOWARDS A COHERENT REGULATORY FRAMEWORK FOR INDIA

8.1 The Case for Legislative Intervention

The foregoing analysis reveals a regulatory vacuum characterised by four structural deficiencies: (i) the absence of a statutory definition of "short-term rental" that distinguishes it from both long-term leasing and commercial hotel accommodation; (ii) zoning frameworks that predated the platform economy and have not been updated to accommodate it; (iii) fragmented fiscal obligations that are disproportionately burdensome for individual hosts; and (iv) an absence of consumer protection norms specific to the short-term rental context (guest safety, property damage, data privacy).

8.2 Proposed Legislative Principles

Drawing from the comparative analysis and the doctrinal mapping, this paper proposes the following legislative principles for a central model framework.

First, a statutory definition of "short-term residential rental" should be enacted, defining it as the letting of a residential dwelling unit for a period not exceeding 90 days per booking, by the owner or long-term lessee thereof, for consideration, through any platform or otherwise. This definition would carve out short-term rentals from the ambit of rent-control legislation (expressly), hotel regulation (subject to registration), and the compulsory registration requirements of the Registration Act for leases exceeding one year.

Second, a "principal residence" exemption — up to 180 days per year — should permit homeowners to let their primary residence without commercial land-use designation, analogous to the French model. Secondary residences and entire apartment units let more than 180 days per year should require registration with the local body and compliance with fire-safety norms. Third, a simplified single-window GST registration and compliance mechanism — perhaps a composition scheme at a flat rate — should be made available to individual hosts earning below ₹50 lakhs annually from short-term rentals, reducing the compliance burden.

Fourth, platform intermediaries — Airbnb, OYO, MakeMyTrip — should be mandated to collect and remit applicable taxes on behalf of hosts, verify property registrations, and maintain guest records accessible to law enforcement, as a condition of operating in India.

Fifth, apartment society bye-laws should be required by state co-operative laws to make any prohibition on short-term letting a matter of a special resolution (two-thirds majority) rather than a simple majority, balancing individual property rights against community concerns.

9. CONCLUSION

The legal metamorphosis of residential property from a private dwelling into a short-term hospitality product — facilitated by platforms like Airbnb, OYO, and MakeMyTrip — is one of the most significant disruptions to Indian property law since the advent of cooperative housing. Section 5 of the TPA, construed in conjunction with the lease-licence jurisprudence of the Supreme Court, suggests that most short-term rental arrangements are licences rather than leases, with consequential exclusions from rent control and compulsory registration. This characterisation, however, does not resolve the thicket of zoning, fire-safety, GST, income-tax, and society bye-law obligations that individually converge on the homeowner-host.

The Indian homeowner who lists a spare bedroom on Airbnb for ₹2,000 a night is, knowingly or unknowingly, operating at the intersection of at least seven bodies of law — property law, tenancy law, land-use planning, building regulation, direct taxation, indirect taxation, and consumer protection — without the benefit of any statute or regulation that specifically addresses her situation. This is the central legal paradox of the Indian short-term rental economy.

The paper has argued that legislative intervention — modelled loosely on the graduated French approach, the time-cap of the English model, and adapted to India's federal structure through a central model framework — is the most sustainable response. The Model Tenancy Act, 2021, demonstrates that the Central Government possesses both the will and the constitutional authority to provide model rules in the tenancy domain; a complementary "Model Short-Term Rental Act" would be a logical and overdue sequel.

Until such legislation materialises, homeowners, platform operators, and their legal advisors must navigate a labyrinth of overlapping, sometimes contradictory, legal obligations — a condition of structural uncertainty that serves neither the homeowner-host, the transient guest, nor the Indian tourism economy at large.

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