

RENT CONTROL

**REPORT OF A STUDY BY
ECONOMIC ADMINISTRATION REFORMS
COMMISSION**

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RENT CONTROL

I

Introductory

We have been asked in our terms of reference to undertake an examination of the rent control laws in force and to make recommendations regarding a model law.

2. To start with, we invited comments and suggestions from different State Governments. We also had discussions at both ministerial and official levels in some of the States where the problems pertaining to rented accommodation were particularly acute. In addition, we have also had consultations with economists, judges, etc., and have taken into account a fairly large number of representations received from persons and organizations seeking changes in the existing legislation.

Our approach

3. Our examination of the existing legislation in different States shows that while they have some common objectives and features, there are also many variations in their scope and provisions. This is understandable, as the nature of the housing problem itself, and consequently the manner of dealing with it, varies from State to State. As local conditions are different in the different States, the laws are also bound to be different. In fact, even within the State of Maharashtra, there are three different pieces of rent control legislation applying to different parts of the State, mainly because those areas formed parts of different States prior to the re-organization of States; and although high-level committees have examined the possibility of having a uniform legislation for the State as a whole, a decision is yet to be taken.

4. In the circumstances, we have come to the conclusion that any attempt to prescribe a model law for all the States may turn out to be an infructuous exercise. Instead we have tried to view the subject from a broad economic and social perspective and identify certain basic principles and considerations for incorporation in all State

legislations, with such variations or special features as may be found necessary in the light of local conditions and problems. The various State Governments could keep these principles in view for preparing a memorandum of legislation, with due regard to local conditions.

Report in outline

5. In Section II we trace the origins of rent control in the years of and following the Second World War, and refer to the major weaknesses and unintended adverse consequences of the kind of rent control which have been operating for some decades now. Against this background we proceed to make certain recommendations in Sections III to VI. In Section VII we deal with the problems of rent control in the Cantonment areas. In Sections VIII and IX we deal briefly with some larger issues regarding urban housing and land-use. The following is a summary of our main conclusions and recommendations :

- (i) The freezing of rentals at old historic levels, the excessive protection of tenancy rights and the extreme difficulty of recovering possession of the accommodation even for the owner's own use have tended to
 - hit hard the house-owner of modest means;
 - depress property values and affect adversely the revenues of municipal bodies and the State and Central Governments;
 - impose onerous burdens on the administration and the judiciary and lead to large numbers of pending cases;
 - render investment in housing for rental unattractive, inhibit the letting out of available accommodation, bring about a deterioration of the existing stock of housing through the neglect of maintenance, and thus aggravate the acute scarcity of accommodation for hire;
 - encourage various mal-practices and abuses such as on-money (pugree), partial receipts for rent, capital considerations (in black money) for tenancy transfers, etc.;

— and in general, protect the haves against the have-nots, i.e., the tenant (even if affluent) as against the landlord (even if not so affluent) and the sitting tenant as against the prospective tenant who is looking for accommodation on rent. (Paragraphs 11—21)

- (ii) (a) Against the above background, it is necessary to restrict the area of operation of rent control so as to make it more purposeful and administratively manageable. From this point of view the following should be excluded from the purview of rent control :

all accommodation hired for non-residential use (as rent control is essentially concerned with the rentals of residential accommodation), but perhaps small shopkeepers could continue to have the benefit of rent control;

accommodation hired for residential purposes by diplomats and other foreigners and commercial establishments (as such tenancies do not need or deserve the protection of rent control);

tenancies in premises owned by Governments or municipal bodies (who can be expected to be fair and equitable in their dealings);

and cases where the landlord is the employer and the tenant his employee (as the accommodation, usually on concessional rental, goes with the employment, and the employer should be able to allot it without any difficulty to another employee when the occasion arises, with or without any change in the rent).

In respect of existing tenancies falling under the above categories, adequate notice, say one year or so, should be given for the removal of rent control, to avoid disruption. (Paragraphs 24—29, 31—32)

- (b) Government should as far as possible build residential accommodation for their employees,

and refrain from hiring private residential accommodation. The resort to acquisition/requisition should also be minimised. (Paragraph 30)

- (c) There is a case for confining rent control to the relatively modest premises occupied by the less affluent though it is difficult to draw a suitable dividing line for the purpose. We would urge the State Governments to consider this possibility. (Paragraphs 33--34).
 - (d) Considering the urgent need for new housing, and as an incentive for the construction of houses, there should be an exemption from rent control on all new construction for a period of five years from the date of completion. (Paragraph 36)
- (iii) (a) In the determination of a fair rent, it is necessary to get away from an examination of the actuals of cost of construction, as it is this which gives rise to protracted delays, disputes and litigation. An alternative would be to go by norms and indices for land-values and standard construction costs per sq. meter (locality-wise and year-wise), with discounts/premia relating to standards of construction and with a reasonable return added, but even the fixing of norms and updating them from time to time could lead to delays, and the norms could be challenged and become subject to litigation. It would be better to avoid calculations and adopt a different basis, as set forth below. (Paragraphs 40--42).
- (b) In the case of new construction, the rent prevailing at the end of the five-year de-control period should become the controlled rent on the commencement of control; it is necessary only to provide a formula for subsequent revisions. Similarly in the case of existing tenancies, all that needs to be done is to provide a formula for up-dating the old frozen rents, and thereafter periodically revising them. Where the house has been in the owner's occupation and is being let out on rent for the first time (or after a long spell, say eight years, of owner-occupation), it

should be given the same treatment as a new house, i.e., a five-year freedom from rent control; this would provide an incentive for the letting out of existing accommodation. If the accommodation had been let out on rent in the recent past, say, within eight years preceding the current spell of renting; taken back by the landlord for his own use, and is now being let out again, the old rent merely needs to be updated. (Paragraphs 43—45)

- (c) In exceptional cases not falling in any of the categories mentioned above, the law should leave it to the Rent Control authorities to determine a fair rent, having regard to the prevailing level of rent for comparable accommodation in the area. (Paragraph 46)
- (d) The tenant cannot expect the rent to remain frozen in money terms for all times, and the landlord cannot expect the content of the rent in real terms to be maintained by frequent revisions. We would recommend a partial neutralization of inflation at intervals, i.e., rents should be revised for the neutralization of 50% of the incidence of inflation once in every five years; for this purpose the urban non-manual employees' consumer price index should be used. In respect of a property which is coming under control for the first time, the first such revision may have to be made immediately on the commencement of control, if during the preceding five years of de-control the rent has remained unchanged. (Paragraphs 47—50)
- (e) In respect of existing accommodation the rents of which have remained frozen for at least five years, it is necessary to up-date the rents so as to neutralize 50% of the inflation from the initial determination of the rent to the present; but to avoid the serious difficulties which might arise from a sudden, sharp increase in rentals, the updated rent should be given effect to in a staggered manner over a five-year period. At the end of that five-year period there should be a further revision to off-set 50% of the inflation

occurring during that five-year period. Thereafter, the adjusted rent should be subject to periodical revisions like all other rents. (Paragraphs 51—53)

- (f) These recommendations regarding the periodical revisions of rent and the updating of the old frozen rents should be given statutory backing. (Paragraph 54)
- (iv) (a) The excessive protection of the occupancy rights of the tenant at the expense of the legitimate needs of the owners inhibits the letting out of accommodation; this needs to be remedied. In the case of existing tenancies, the law should enable the owner to regain possession of his house or flat for his own use after giving six months' notice to the tenant, if he (the owner) has no alternative accommodation. (The procedural aspects are covered in (v) below.). If for reasons for which the owner is not responsible the re-occupation of the accommodation by the owner gets delayed beyond the notice period, the owner should be entitled to recover damages from the tenant, at a rate, say 50% higher than the normal rent. (Paragraphs 55—56)
- (b) In the case of new construction, the commencement of control after the first five years need apply only to the rental; the period of occupancy, the conditions for its renewal and the notice to be given for the termination of the tenancy should be left to be regulated by the lease agreement, which should be respected by the law. In the absence of a lease agreement, the law should provide for a reasonable notice for the termination of the tenancy. As we have recommended a limited revision of the rent once in five years, the owner will not be able to use a change of tenancy as a means of raising the rent. (Paragraphs 57—58)
- (c) In categories which will fall outside the purview of rent control in accordance with our recommendations, there should be a reasonable period of notice, say six months, for the termination of the

tenancy, unless the lease provides for it otherwise. (Paragraph 59)

- (v) (a) The inordinate delays and heavy costs involved in the processes of resolution of disputes between landlord and tenant should be eliminated by taking such disputes away from the judiciary and entrusting them to administrative tribunals to be called Rent Control tribunals to be established in the numbers needed. They should be one-man Tribunals presided over by judicial or Revenue Officials of the rank of District Munsiffs or SDOs or DROs, or by a retired District Judge or Collector in appropriate cases. They should follow summary procedures and give decisions largely on the basis of written statements and plaints, with oral evidence limited to the minimum, and representation by Counsel allowed only where absolutely necessary. The Code of Civil Procedure in all its detail should not be applicable to them. One appeal from the decisions of such a Tribunal (on questions of law only) should lie to a Special Court presided over by an officer of the rank of a District Judge; with the provision of this judicial forum for appeal, the jurisdiction of Courts should be barred. The Tribunals should also be given powers to execution and should be provided with a small complement of bailiffs for the purpose, supported by the State Police constabulary where a breach of the peace is apprehended. The execution of decisions given by the Special Court of appeal should also be through the machinery of the Tribunal. (Paragraphs 60—68)
- (b) Arbitration as a means of resolving disputes between landlords and tenants has been suggested but this too could be subject to delays. (Paragraph 69)
- (vi) There should be a Central law relating to rent control in Cantonment areas; and the properties of the Cantonment Boards themselves should be exempted from rent control. (Paragraphs 70—74)
- (vii) (a) The ultimate check on soaring rents can come only through much larger investment in urban housing. (Paragraph 75)

- (b) In the public investment in housing, there should be a proper balance between urban and rural areas as also between congested metropolitan cities and the smaller cities, so as not to aggravate the exodus to the already congested areas. In urban housing, priority should be given to the construction of cheaper accommodation for the relatively lower-income groups. (Paragraph 76)
- (c) The housing needs of Government employees should be met, as far as possible, by the Government, so as to ease the housing position in the community as a whole. (Paragraph 77)
- (d) Defence authorities should ensure the optimal utilization of the land in their possession whether in Cantonment areas or in the cities proper, and refrain from adding to the urban housing and congestion problems by occupying residential accommodation in city areas. Land in excess of present and prospective requirements should not be retained by the Defence authorities either in Cantonment areas or in the urban areas proper. (Paragraph 78)
- (e) Government-owned housing sites which are not likely to be built upon in the near future should be leased to private parties, who should construct buildings of the type approved by Government and make a certain proportion of the floor space available to Government on concessional rent. This would increase land availability for urban housing and at the same time provide resources for the public housing programmes. (Paragraph 79)
- (f) In the private sector, companies should be induced to provide accommodation to a larger number of their employees by some tax incentives and/or legal obligations, as also by the removal of company-hired accommodation from the purview of rent control. (Paragraph 81)
- (g) Construction of blocks of flats on ownership basis should be encouraged, but care should be taken to avoid excessive congestion; and a proper

legal framework should be provided to protect the interests of the owner-occupants vis-a-vis the builders, help them to raise institutional finance, and ensure the smooth working of the cooperative arrangements. Steps should be taken to encourage construction to cater to the needs of the middle-income groups rather than the demand for luxury housing for the rich. (Paragraphs 82—83)

- (h) Agencies such as the Housing and Urban Development Corporation and the Housing Development Finance Corporation should be supported and enabled to expand their activities. Both Government and public and private sector employers should introduce or expand schemes for the grant of loans to their employees for the construction of houses. (Paragraph 84)
- (viii) (a) There should be time-bound programme for the start of construction on the surplus land which has come to the Government under the Urban Land Ceiling Act. Land on which Governmental agencies are likely to commence construction within a year should be identified within three months, and the rest should be promptly allotted to others in accordance with a scheme of priorities. The funds that become available to Government through this should be utilised for extending public housing programmes, particularly to cater to the needs of low income groups and the weaker sections of society. (Paragraphs 86—89)
- (b) The allotment of such surplus land to private parties should be not as free-hold property but on a long-term lease on certain terms and conditions relating to land-use, types of construction, and a share for Government in the capital gains if the property gets transferred. (Paragraph 90)
- (c) In general, the allotment of land should not be on concessional terms but should realise the full value of the land; but there should be no attempt to raise the prices artificially by releasing plots in small lots. The number of plots to be allotted

over a quarter or a half-year should be announced at one time. (Paragraph 91)

- (d) Care should be taken to avoid encouraging too high a proportion of immigrants into the larger cities to become permanent residents owning their housing. (Paragraph 92)
- (e) If a plot of land although technically surplus, is unusable for fresh construction, or is best used by the former owner, such land should be given on lease to the former owner subject to appropriate conditions about its use. (Paragraph 94)
- (f) A strong town-planning agency is necessary for the purposeful development of urban sites for housing as well as for other purposes. (Paragraph 95)

II

Origins of rent control

6. The necessity for the control of rents by special legislation for properties located within urban areas was felt during World War II. At that time not much by way of new construction for the civil population was possible. A good proportion of private accommodation was requisitioned by the authorities for the war effort. In consequence, rents were beginning to shoot up. Landlords were trying to get rid of their existing tenants to get better rents. The legislation was undertaken primarily to save tenants from harassment by unscrupulous landlords, and also to secure accommodation for Government's purposes and the war effort.

7. In the post-war and post-Independence period, the movement of population from rural to urban areas in search of better avenues of employment perpetuated and even aggravated the scarcity of accommodation despite increased building activity. The necessity for continuing rent control so as to protect the tenant from rack-renting as also from eviction by landlords on insufficient grounds was therefore felt to be all the more necessary. Rent Control Acts were passed in many States which did not have such a legislation during war-time.

The case for rent control legislation

8. Ordinarily, the land lord-tenant relationship is governed by a Lease which covers such matters as the rent payable, the term of occupancy, etc. The case for regulating by law the level of rent and the occupancy rights of the tenant arises on two considerations. The first is that generally those who own houses are more affluent than those in search of accommodation (a room, a barsati or a tenement) there is a shortage of available accommodation relative to the demand for it, the bargaining position of the landlords improves tremendously, and tenants have little option but to pay the unconscionably high rents demanded and yet live in fear of being ousted. The threat of eviction can be used as an instrument for raising the rent upwards from time to time.

Basic features of rent control legislation

9. The basic features of rent control laws of all the States reflect these concerns. The legislation usually specifies its scope, i.e., the kind of properties and areas to which it applies; provides for the determination of a fair rent, as also for the protection of tenants from arbitrary eviction; and lays down procedures for the recovery of vacant possession by the owners. The heritability of tenancy is another aspect covered by rent control legislation; the law also deals with such matters and repairs to the property, the sub-letting of the properties procedures for the settlement of disputes regarding rent or tenancy, etc.

Adverse consequences of rent control

10. Unfortunately, even a cursory examination will indicate that the operation of the rent control legislation as it stands in the various States is subject to major weaknesses and has led to various unintended consequences. This has also been brought home to us in the numerous discussions that we have had with various people on the subject, and in the representations that we have received. Some of the weaknesses and deleterious consequences of rent control are set forth in the ensuing paragraphs as a preliminary to a consideration of the needed reforms.

Rents frozen at old levels

11. In the first place, standard or fair rents, fixed in relation to the original cost of the premises, have remained frozen at the

original levels for decades. This has tended to hit the house-owners of modest means very hard. Such State Governments as have replied to our questionnaire have conceded the need for an upward revision of rents, and a similar point was also made by some State Governments at both the ministerial and the official levels during our discussions with them.

Repercussions on municipal and other revenues

12. Rent Control laws have had major repercussions on the revenues of Central and State Governments and municipal bodies. Property taxes levied by municipal bodies and wealth tax levied by the Central Government on housing property are based on a valuation of the property which in turn is related to the rental value of the building, and this gets limited under a regime of rent control. There is little doubt that rent control laws erode the resources of the municipal corporations in cities like Bombay and Calcutta, necessitating recourse to obnoxious octroi duties as a source of revenue. It is, of course, arguable that if Government takes special steps to save people from unduly high rents, the sacrifice of some revenue has to be accepted as a corollary. However, such a view can have validity only in regard to modest premises occupied by tenants who cannot afford to pay high rents; the sacrifice of revenue cannot be justified in relation to luxury dwellings or affluent tenants.

Impact on housing

13. Further, in an assessment of the rent control legislation the impact on housing must also be taken into account. The question of return on investment in housing has an important role in determining the flow of resources into house-building for purposes of rental. It may be argued that investment in real estate is motivated more by the expectation of capital appreciation than by that of a handsome periodical return on the investment, but capital appreciation arises more in respect of land than the construction thereon; house construction *per se* is influenced by the return on the investment, besides other factors. It seems clear that the operation of rent control legislation during the last several decades in the various States has undoubtedly been one of the factors leading to the inadequacy of investment in housing and the serious shortage of housing which prevails.

Maintenance neglected

14. Rent control has affected not merely new construction but also the maintenance of the existing stock of housing. The cost of repairs has gone up so much in recent years, and is so out of tune with the costs prevailing when most of the buildings under rent control were constructed, that with the controlled rent fixed years ago and related to the historical costs of construction, most landlords are unable or unwilling to spend on repairs and maintenance, even though normally the responsibility for maintenance rests with the owner. Indeed, as things are, quite a high proportion of house-owners in old urban areas would actually prefer that their houses should collapse so that they could get a far bigger return by selling the plot of land than they get now by way of rental. The seriousness of this problem is brought out by the report of High-Powered Steering Group for Slums & Dilapidated Houses (Kerkar Committee) set up by the Maharashtra Government. It points out that in the 11 years from 1970 on the average 118 houses a year collapsed in Bombay which left 2135 people homeless. Having regard to the fact that in the 70's Bombay added normally 2.25 million to its population, which would mean about 4,500 households a year, while the new houses put up each year in the public and private sectors taken together averaged only 28,000 a year, it is clearly necessary that every possible step should be taken to ensure that the existing houses continue to be available.

15. In view of the seriousness of this problem as well as the political constraints in lifting rent control, the Maharashtra Government took powers by legislation in 1969 to repair old buildings, the funds for which were to be found by an additional cess on buildings as well as subventions from the municipal corporation and the State. While the Kerkar Committee found that during the 11 years of operation (1970-81) the Repair Board had restored nearly 6,000 buildings in Bombay spending about Rs. 54 crores in the process, the accomplishment is clearly far short of the target set for it, and the resource problem has been a major constraint in the way. In many other States, no steps seem to have been taken to ensure repairs to rent-controlled buildings.

Resumption difficulties disincentive for letting out

16. Turning to construction for self-occupation, clearly the return in the shape of rent is not the primemotivation. However, those who build for their own use may not always need the accommodation immediately; such buildings are usually let

out until such time as the owner wants to move in, which may be when he retires from service. Such letting out also enables people to service the loan taken to finance the construction. However, such letting out for relatively short periods of time presupposes that the owner will be able to get vacant possession of the property when he needs it but in many cases the tenants have become the *de facto* owners of the property. The opinion that we have on the legislation as it stands is almost unanimous to the effect that the tenant is over-protected. The prolonged litigation which is usually necessary to regain possession of a house for self-occupation acts as a powerful disincentive to the letting out of premises.

17. Further, those in need of accommodation for short periods of time—and their number is not small in the metropolitan cities—are deprived of the opportunities of getting accommodation on a short-term lease simply because the law is such that tenancy rights can be asserted to prolong the period of occupation. We, therefore, have the strange situation in cities like Bombay, Delhi and Calcutta that while there is an acute shortage of accommodation, there are vacant flats and houses which are not let out.

18. Another type of problem involving litigation arises in the case of forceful occupation by a person who is not a lawful tenant but claims to be one; in such cases the owner has to go through protracted proceedings to evict the person. Contrary-wise, many landlords, whether or not they have a good case to possession of their buildings, try to turn the tenant out by force and occupy the premises.

Volume of litigation increasing

19. The volume of litigation under the rent control laws seems to be increasing steadily. In Delhi, for example, the number of cases pertaining to rent as well as those pertaining to eviction show that each year the number of cases filed exceeds the number of cases disposed of, with the result that the number of cases carried forward has been steadily going up; and even more significant is the fact that the number of eviction cases is very much higher—roughly 10 times or more than cases pertaining to rent. At the end of August, 1981 the pendencies in regard to rent control cases and eviction cases were 551 and 7302 respectively. Appeals to the High Court by aggrieved parties in regard to cases disposed of also show that disposals lag far behind the number of cases instituted.

Malpractices and abuses

20. Perhaps the greatest weakness of the Rent control laws is that they have given rise to a host of malpractices and abuses. The payment of on-money of one kind or another has become a regular feature of the arrangements under which a tenant can get accommodation on rent in the congested metropolitan towns. Sometimes the tenants are called upon to make large deposits with the landlords. Often a part of the rent is paid in cash without any receipt. Tenants who are firmly entrenched and enjoy the protection of the Rent Control Act often find ways to gain illicit advantages for themselves. Sometimes they sublet a part or the whole of the premises for a much higher rental than they pay to the landlord. At times, tenancies are transferred for a large capital consideration—paid in block money—of which the principal beneficiary is the outgoing tenant, with the landlord usually getting a smaller share. While it is impossible to get an estimate of the extent of malpractices, there is little doubt that considerable amounts of tax evasion and black money generation take place in a process of nominal compliance with the laws while in substance they get flouted. In considering what changes should be made in the Rent Control laws, it would be a mistake to proceed on the assumption that the provisions of the law are being effectively enforced.

Protection of 'haves' against 'have-nots'

21. The purport of all this is not to suggest that the case for rent control as put forward in paragraph 8 above is invalidated; but only that it is necessary to recognise that some contrary situations also exist. Not all tenants are poor, not all landlords are rich. Among the tenants, there are rich people, companies, and business establishments; and among the landlords, there are many whose main source of income is what they derive from a house or a part of a house. A law to protect the weak can become an instrument of exploitation in the hands of the strong. Rent control in actual operation tends often to protect the 'haves' against the 'have-nots'. The interests of the tenant, whether he be poor or affluent, are protected at the cost of the house-owner even if he be of modest means. The protection to the sitting tenants also depresses the availability of accommodation on rent, and is thus at the cost of the potential tenants, i.e., the large numbers of people who need rented accommodation in urban areas but are unable to find it.

22. While any drastic changes involving sudden and sharp increases in rentals or the termination of large numbers of tenancies will be neither feasible nor desirable, it is clear that a better balance between the rights of the tenants and those of the landlords, and between the interests of those who are already in occupation of rented accommodation and those who are in seeking such accommodation, has to be brought about, and steps taken to overhaul the prevailing tortuous procedure and obviate long-drawn litigation.

III

REFORMS NEEDED

Reduction in extent of coverage of rent control

23. Against the background set forth in the preceding section, we proceed to examine what changes in the rent control laws are desirable and necessary. The first question we consider is whether consistently with basic objectives of legislation, any changes in its extent of coverage are called for. Considering the many undesirable side-effects of rent control laws, and the administrative and judicial time which gets taken up in dealing with matters pertaining to them, we feel that it would be desirable to restrict the scope of the application of rent control laws to a carefully selected sphere where they would serve a justifiable social purpose.

Exclusion of accommodation hired for non-residential use

24. From this point of view, there seems to be no reason why premises used for office or commercial purposes should be given the protection of rent control. Rent control legislation is primarily concerned to ensure the availability of residential accommodation at reasonable rents to those who are in search of such accommodation. In the case of offices and commercial establishments, the rent to be paid for hired accommodation is a part of the administrative or business costs, and there is little justification for such costs being depressed by current control legislation nor can it be said that the argument of protecting the weak against the strong applies here as offices, business houses, etc., cannot be said to be the weaker party in their relationship with the house-owners; it should be perfectly possible for them to negotiate reasonable leases covering the rental, period of occupancy, notice for termination, etc.

25. Further, shops enjoying very low controlled rents do not necessarily sell their products any cheaper than those who pay much higher rents. It is true that among the shopkeepers there are those of seemingly modest means, though one must add that in some locations even 'paanwallahs' and street vendors have quite a sizable income. However, this is a matter on which a judgement has to be exercised by the local authorities. A deserving category of shopkeepers, or shopkeepers in selected areas, or shopkeepers who occupy only a modest floor area, could perhaps continue to get the benefits of rent control, but there is little justification for large establishments in fashionable areas to be paying only nominal rents merely because their tenancy began at a time when rents were low.

...accommodation hired by Government for office use..

26. Having regard to the essential objectives of rent control legislation, we recommend that all accommodation hired for non-residential use should be outside the purview of rent control. This applies equally to the hiring of accommodation by a State or the Central Government for office use.

and residential accommodation hired by foreigners and diplomats..

27. In the case of accommodation hired for residential purposes, there are certain classes of tenants who should be left to regulate their relations with the landlords by the lease on which they hire the premises without the benefit of the protection of rent control legislation. Diplomats and foreigners as a class fall into this category; as a rule, they do pay high rents, and landlords are only too anxious to have them as tenants. They also enjoy certain immunities in the matter of legal proceedings. To confer on them any special rights *vis-a-vis* their landlords does not seem to be warranted. It could be argued that what is true of foreigners as a class may not be true of foreign students, some of whom might not be able to pay the going market rent for residential accommodation; but the answer to this is to provide them with inexpensive hostel accommodation to the extent possible or help them financially in other ways rather than bring them within the purview of rent control protection.

and by commercial establishments.

28. The question arises whether the hiring of residential accommodation by commercial establishments (whether they

be public or private limited companies, registered firms, partnerships, etc.) for their employees and executives should have the benefit of rent control protection. Such commercial employers have, or often assume the responsibility of providing their employees with accommodation at a reasonable rent; if their employees cannot afford to pay the market rent, the employer can subsidise the rent and deduct this expenditure from the taxable income of the business to the extent provided for in the tax laws. It would appear therefore that such tenancies can be safely placed outside the sphere of protection provided by the rent control legislation.

29. We have advisedly used the term 'commercial establishments' because we wish to distinguish them non-commercial organizations such as universities, research institutions, professional associations, charitable organisations, etc. In the cases of such organizations, while office accommodation need not be given the protection of rent control, accommodation hired by the organization for residential use by their employees should be within the purview of rent control, unless it happens to be exempt from rent control on other grounds (e.g. if it is new construction).

Private residential accommodation hired by the Government

30. This would apply also to accommodation hired for residential purposes by Governments, State and Central; but we would say that by and large they should either build residential accommodation for their employees or pay them a house rent allowance and should minimise, if not avoid, the hiring of private accommodation for allotment for residential purposes to their employees. We would also urge that recourse to the acquisition/requisition of accommodation by the Government under certain enactments should be exceptional and minimal; we believe that executive instructions already exist to this effect.

Accommodation owned by Government or municipal bodies

31. Finally, there are certain categories of landlords who can be relied upon to treat tenants fairly and equitably. The application of Rent Control laws to buildings owned by them would be unnecessary and sometimes, damaging. Government-owned buildings must come in this category. If they are let out on payment of rent it is usually on certain

wider policy considerations, such as providing accommodation to their employees or to the needy. The same is true of municipal bodies. The assertion of tenancy rights against them may result in not greater social justice but loss.

Employer-provided accommodation

32. Again those who have been provided with accommodation for a certain reason or purpose cannot be allowed to continue to occupy it when they have ceased to qualify for the allotment. Employers who provide accommodation to their employees, usually on a concessional rent, should be entitled to regain vacant possession of the dwelling when the employees get transferred or go out of their employment. Employers should also be free to refix the rent when a new employee moves in, taking into account his emoluments and other factors. We believe it would be a sensible step to withdraw the application of Rent Control laws to tenancies in premises owned by Government and municipal bodies, as well as in cases where the landlord is the employer and the tenant his employee.

Luxury accommodation

33. In this context, a question which needs consideration is whether it is necessary to extend the protection of rent control laws to luxury buildings. It could be argued that it is the less affluent occupants of relatively modest dwellings who deserve protection, and that those who live in fashionable localities and occupy luxury apartments could be expected to pay the market rent. Something akin to this principle is in operation in Tamil Nadu where buildings the rental value of which exceeds Rs. 400/- per month are exempted from the operation of the Rent Control Act. This selective application has enabled Tamil Nadu to administer the Act more effectively; their courts are not cluttered up with rent control cases; and finding accommodation on rent at Madras, while not easy, is not as difficult as it is in Bombay or Calcutta. There is therefore room for suggesting that a similar selectivity, on the basis of either a rental level (say Rs. 1000/- per month) or a floor-area limit, should be adopted in other States also, with a view to limiting the scope of the Rent Control law, easing

the burden on the Administration and the Courts, and rendering the availability of accommodation on rent somewhat more comfortable.

34. However, there are certain difficulties. It is not easy to lay down the dividing line above which rent control would not be applicable, as conditions both as regards rental values and as regards the size of the accommodation, vary considerably from locality to locality. It would also be difficult to lay down a dividing line which would be appropriate for both old and new buildings; a limit which exempts most of relatively new construction from rent control (because of the prevailing high rents), may still keep all existing accommodation within the purview of rent control. Further, the prescription of such a dividing line could well lead to all new construction being above that line, i.e., of the kind which would be exempted from rent control, though it is difficult to say how much effect this could have. It could also be contended (though, in our view, with more apparent plausibility than real cogency) that it is not entirely equitable to control rents at the lower range and leave rents at a higher level free. On the whole, we do feel that there is some merit in a selectivity which limits the extent of application of rent control legislation, and we would urge the State Government to consider the possibility of adopting such a principle in their state as a whole or in particular cities within the State, and the rental or other level at which rent control should begin to apply.

Notice desirable for withdrawal of rent control from existing tenancies.

35. The removal of certain categories of tenants from the protection of rent control would be a major change from past practice. While it can create no difficulties in new cases, a sudden disruption of existing and long-standing arrangements has to be avoided. In order to enable landlords and tenants to come to new agreements in regard to the rentals and the period of occupancy, it may be desirable to give a reasonably long notice in such cases, say one year or so.

Five-year rent control holiday for new construction

36. We should now like to turn from categories of tenancies to another kind of exclusion from rent control. Some States have exempted new construction from rent control for a period, as a means of providing an incentive—or removing a disincentive—for the construction of houses. Considering the urgent need for new housing, we are of the view that among the general principles which ought to be embodied in the rent control legislation in all the States, the most important is the exemption of new construction from rent control for a period of, say, five years from the date on which the construction is completed, and the accommodation is ready to be let out. (This would be one more de-controlled area and would go to reduce the burden on the administrative and judicial authorities and the area of contact between the Government and the citizens). In a later section we shall deal with the other steps that need to be taken to bring about additions to the stock of housing, but freedom from rent control for the first five years is in our view the most important element in the package of measures aimed at that result.

Advantage of restricting the area of operation of rent control

37. We believe that restricting the area of operation of rent control on the lines indicated in the preceding paragraphs will have many beneficial effects. First, companies and others who can afford it may think it worthwhile to undertake some construction of their own to meet their needs; at present, they find it so much cheaper to take advantage of rent-controlled accommodation that they do not think of construction at all. Secondly municipal authorities, State Governments and the Central Government will have a sizable increase in revenue as a more realistic valuation of these premises becomes possible when rent control does not artificially reduce rental values.

Thirdly, investment in new housing may increase in the expectation of a realistic return, and the reluctance of owners to let out their premises even when they do not need them for their immediate use will diminish, with the result that more accommodation will become available, easing the position.

IV

Determination of fair rent

38. Even after certain categories of tenancies are taken out of the purview of rent control, a large number of cases will still remain within the ambit of control. It is therefore, necessary to simplify the operations of control minimise the complexities which cast a burden on the administration and the citizens alike, and reduce the need for recourse to litigation. The most important aspect which needs to be tackled from this point of view is the initial determination of a fair rent and the manner in which the rent so fixed can be adjusted from time to time.

39. When we use the expression 'fair rent' the question naturally arises; fair to whom? Clearly, the rent has to be fair (in the sense of being reasonable for the extent and standard of accommodation and the locality in question) to the tenant who lives in the house; and it has to be fair to the owner who has made the investment in it. But that is not all: the rent has to be fair also to the prospective tenant who is looking for accommodation. "Fair" in this context would mean not merely that it should be affordable by the prospective tenant, but that it should be such as to ensure the availability of accommodation on rent through the provision of a suitable recompense for investment in housing for rental. Further, the rent has also to be fair to the community in the sense of making for a realistic and not unduly depressed valuation of properties, so as to facilitate the flow of reasonable revenues to municipal bodies and to the State and Central Governments by way of the taxes which are based on such valuations.

Reference to actuals of construction costs to be avoided

40. The major difficulty in the determination of fair rent arises from the effort to fix it with reference to the original cost of construction. The determination of the original cost of construction with reference to construction date, prices, documents and accounts is an elaborate and time-consuming process and fraught with infinite possibilities of dispute between the landlord and the Rent Controller. This gives rise to litigation, and the establishment of the

cost of construction to the satisfaction of the Courts is also a tedious process which takes an enormous amount of time. If the process of determination of the controlled rent is to be simplified and speeded up, the most crucial reform is to de-link this from the actuals of construction costs.

Valuation based on norms and indices, an improvement?

41. It has been suggested that it would be a great improvement if the determination of a fair rent could be based on certain norms and indices, instead of actuals of construction costs. For instance, with reference to indices of land-values in different localities and the standard construction cost per square metre, an attempt could be made to estimate the cost of construction of a house without going into the actuals. To deal with variations in the standards of construction a system of premia or discounts on the standard cost of construction with reference to the type of construction and the quality of materials, could be adopted, such premia or discounts could be determined by an architect or expert drawn from a panel to be set up for the purpose. It has further been suggested that it might be possible to develop some norms in regard to these factors also. Having determined the cost of construction in the above manner, the rent has to be so fixed as to provide a reasonable return on the investment. The rate of return must clearly be one which would attract investment into housing. Many factors have to be taken into account in determining what this rate should be. The kind of interest available on fixed deposits in banks would be a relevant factor, but house-owners have to pay municipal taxes on their property and have also to spend on repairs and maintenance out of the rent which they get. Taking all these factors into account, an appropriate return on the estimated cost of the land and the building could be provided.

Likely difficulties in the normative approach

42. However, this may turn out to be not as simple as might appear at first sight. The fixing of norms for land-values, construction costs, etc., may take a good deal of time; and as they may quickly become out of date, the frequent updating of norms may be necessary. Similarly,

the return element will also have to be reviewed from time to time with reference to the prevailing returns on alternative investments. Construction costs estimated on the basis of such norms may also be challenged and become the subject of litigation. The best course would be to eliminate altogether the need for calculating a fair rent and to determine it instead on a different basis. This is perfectly feasible as will be seen from the ensuing paragraphs.

Better to avoid calculations and take an existing rent as a reference point : (a) for new construction

43. Taking new construction first, we have already recommended a five-year freedom from rent control. Once this is accepted, the determination of the controlled rent when the property comes within the purview of rent control becomes a simple matter. In fact, a special act of determination would not be necessary; the rent which actually prevails at the end of the period of freedom from control should become the controlled rent, without a fresh calculation. Clearly, it will be against the spirit of the five-year freedom from control to seek to revise the rent downwards on the introduction of control. There is no reason why a tenant who has been paying a certain rent towards the end of the period of de-control should not continue to pay the same rent on the commencement of control. The introduction of control can at best freeze the prevailing rent or moderate further increases, and not reduce the existing level of rent. No occasion will therefore arise for any calculation or determination of a fair rent on the commencement of control after the first five years in respect of new construction. All that needs to be done is to provide a mechanism for subsequent revisions of the rent in a manner which is fair both to the tenant and to the landlord.

(b) For existing tenancies

44. In respect of existing tenancies also, the prevailing rent forms a readily ascertainable reference point, and the problem is merely one of providing a mechanism for revising the rent so as to compensate the landlord for the erosion of income that he has suffered because of the rent having remained frozen for many years while price-levels have kept changing.

(c) Where owner-occupied premises get let out on rent...

45. Thus in respect of both new construction and existing tenancies there seems to be no need for any calculations for the determination of a fair rent. It may be felt that the need would arise if an existing accommodation, which has been under the landlord's own occupation, is let out for rent. But that is not necessarily so. Where the accommodation has been all along under the occupation of the owner and is now being let out on rent for the first time, we would recommend that the treatment should be the same as in the case of new construction; in other words, there should be a freedom from rent control for a period of five years. The five-year freedom from control, which is meant as an incentive for new construction could in the case of existing accommodation act as an incentive for letting it out on rent. In those cases in which the accommodation had been rented out at some time in the past, was thereafter occupied by the owner himself, and is again being let out on rent, we would suggest that where the earlier spell of renting was more than 8 years prior to the present spell, the case should be treated as one of renting out for the first time, i.e. given a five-year freedom from rent control. Where the earlier spell of renting was less than 8 years prior to the present spell, the rental which had prevailed during the earlier spell should be taken as the base for being updated according to the mechanism to be provided.

(d) Exceptional cases

46. It will be seen from the fore-going that there is hardly any case in which it is necessary to enter into any calculations for the initial determination of the fair rent. We cannot readily conceive of any case which will not fall into one of the categories listed above. If a few cases do arise which cannot be readily dealt with on the lines indicated above, it does not seem necessary for the law to lay down detailed provisions for such exceptional cases which must be very small in number. We would recommend that the law should leave it to the discretion of the rent control authorities to determine a fair rent in such cases, having regard to the prevailing level of rent for comparable accommodation in the area in question.

Periodical revision of rent

47. Having dealt with the problem of determination of a fair rent, we now turn to that of the periodical revision of that rent. The first question to consider is whether there should be a revision at all. An extreme view could be that rent, being a return on the investment made, should not undergo any revision because the original investment remains unaltered. But in an inflationary situation, a return related to the original investment in money terms would mean a much lower return on the original investment in real terms. In all discussions on inflation, it is recognised that the fixed-income groups are the worst hit. Salaried workers and wage-earners are cited among the principal victims of inflation, and dearness allowances are granted to alleviate the hardship; but landlords whose rents are fixed are even worse hit. Not only does the real value of their rent keep deteriorating, but the cost of repairs and maintenance and often property taxes go up with inflation. In an inflationary situation and even otherwise, all of us do pay higher prices over the years for the goods and services that we buy; neither the community nor the landlord can assume the responsibility of providing immunity from price-rise to a select group of people for one particular kind of outlay, namely, house rent. Most of the State Governments agree in principle on the desirability of allowing rents to be revised upwards after a certain lapse of time. The question is one of deciding how much increase should be allowed over what period of time.

Once every five years

48. We believe that it would be reasonable to allow a revision of the rent once in every five years. One method of revising the rent periodically would be to break it down into different components and adjust each separately; the element of maintenance and repairs could be revised with reference to the actuals during the preceding five years; the changes in municipal taxes could be reflected fully; and the return element could be revised with reference to the prevailing rates of return on medium-term bank deposits. At the same time, the prevailing market rents for similar accommodation would also have to be kept in view, though the logic of control may mean that the controlled rent, even after revision, should remain somewhat below the market rent.

Partial neutralisation of inflation effect....

49. However, any such elaborate formula for the revision of the rent on the basis of all these factors would entail too many complications and would be time-consuming; it would be wholly inconsistent with our aim of simplification; and it could give rise to disputes. A simpler approach might be to try and maintain the original rental value in real terms, *i.e.*, to compensate for the erosion of the real value of the rent because of inflation. However, the neutralisation of the effects of inflation cannot be total. If the tenant cannot expect total immunity from inflation in the matter of the rent that he has to pay, the landlord for his part cannot expect the rent to be revised periodically to maintain its value in real terms unimpaired. We would, therefore, suggest a 50% neutralisation of inflation. In other words, once in five years the controlled rent should be revised to offset 50% of the inflation which had occurred during the preceding five years. This could be done with reference to a suitable index. The best index for the purpose would be the Urban 'Non-Manual Employees' Consumer Price Index.

New construction coming under control : initial adjustment

50. In some cases it is possible that during the five-year period of freedom from rent control the rent has remained unchanged, because the accommodation had been hired for a fixed rent on a five-year lease. If so, it is in fact an out-dated rent which, but for the commencement of control, might have been revised upwards. We would recommend that in those cases in which the rent of the property coming within the purview of rent control has remained unchanged for a full period of five years, it should first be revised so as to neutralise 50% of the inflation which had occurred during those five years, and the rent so arrived at should then be the controlled rent which thereafter would be subject to five yearly adjustments.

Old frozen rents to be revised over a five-year period

51. We now turn to the problem of existing tenancies. Many of these are very old and the rents were fixed a few decades ago. These old and frozen rents bear little relation to present-day maintenance costs, or to the current returns from alternative investments, or to the prevailing

marked rents in respect of new accommodation. In the case of new construction we have suggested that the periodical revision of rents should be based on a partial neutralization of the effects of inflation. Applying the same principle to existing tenancies where rents have remained frozen for at least five years, what needs to be done is to update those rents by neutralising 50 per cent of the inflation which has taken place from the time of initial determination of those rents up to the present time.

52. However, considering the price increases that have taken place over the years, such an updating exercise might result in rentals which would represent a very large increase. During the course of our discussions on rent control with various people, including State Governments at both the political and official levels, we found that there was general agreement that these frozen rents should be revised. At the same time, apprehensions were expressed about the hardship that might be caused to large numbers of tenants of low income by any sharp and sudden increase in rentals. There would certainly be serious political difficulties in effecting any large increases all at once. It appears, therefore, inevitable that while the rent control laws might be harsh to house-owners, attempts to redress the injustice to them would at best have to be partial and gradual. We would suggest that having updated the old frozen rent in the above manner, the actual increase will have to be staggered so as to reach the figure aimed at over a period of five years.

53. It must be borne in mind that the up-dating of the old frozen rent would in fact be as on a particular date, though it is then given effect to in a staggered manner over a five-year period. At the end of that five-year period, therefore, the 'updated' rent would represent a five-year-old rent. It would be necessary to revise it at that stage to neutralise 50% of the inflation experienced during that five-year period; thereafter the rent so arrived at should be subject to periodical adjustments (five-yearly adjustments) along with the rentals of all other net controlled premises.

Changes to be given statutory backing

54. We suggest that our recommendations in regard to the initial determination of the controlled rent and the subsequent

quinquennial revision of such rents should be brought into effect through appropriate provisions in the law itself. In addition, the law should empower the Rent Control authorities to lay down a phased programme for the revision of the old frozen rents over a period of five years. With these legal powers and suitable instructions and guidelines, the inequities can be gradually reduced and ultimately eliminated.

V

Occupancy rights

55. We now turn to the question of occupancy rights. In an earlier Section we referred to the excessive protection that the rent control laws at present in operation provide to the tenant in this regard making him virtually the *de-facto* owner of the property. We do feel that while rent control in some form should continue and while the tenant should also have some degree of stability of tenancy, there is a case for letting the period of occupancy be determined by the provisions of the lease on which the accommodation is hired.

Existing tenancies : resumption for own use to be facilitated through changes in the Law

56. In respect of the existing tenancies it may be difficult to introduce this principle, as this may lead to serious disruption. However, it is at least necessary to ensure that an owner who has let out his own house or flat and has been living elsewhere for professional or business reasons or because he has been occupying accommodation provided by his employer, is able to regain possession of his own property by giving adequate notice to the tenant without time-consuming and harassing litigation. The rent control laws of most States do recognise the right of the owner to live in his own house, particularly in the case of those who have been serving in the Defence Forces and have retired; but the principle needs to be universalised. Except where the terms of the lease expressly provide for the notice period and for the termination of the lease, the law should provide that the owner should be able to regain possession of his house or

flat for his own use after giving six months' notice to the tenant if he has no other vacant accommodation of his own in the same city, or if such accommodation as he had been occupying in the city has to be vacated under circumstances beyond his control. For the purpose of proving his claim the procedures he has to follow should be simple, but we shall deal with that in the next Section. The law should also provide that in the event that a final decision and therefore the reoccupation of the accommodation by the owner gets delayed beyond the date on which the notice expires, for reasons for which the owner is not responsible, the owner should be entitled to be compensated by the tenant by way of damage at a rate, say 50% higher than the normal rent.

Future cases : period to be regulated by lease

57. As regards future cases, we have already recommended that new construction should have freedom from rent control for the first five years, and should come within the purview of rent control thereafter; this does not mean that they should also come within the purview of the excessive protection of tenancy rights which has characterised the operation of rent control legislation in the past. Rent control legislation should essentially try to control the rental, leaving the period of tenancy to be governed by the lease on which the accommodation is hired. The lease should normally be for a reasonable period, say two years, but leases of a shorter duration need not be ruled out, as the accommodation may be needed only on a short-term basis in certain cases. It is the risk of a short-term tenancy becoming a virtually permanent tenancy or *de-facto* ownership that inhibits owners from letting out their property the possibility of letting out accommodation for a short-period and getting it back on the expiry of the period may increase the availability of accommodation for hire. Some years ago, a practice known as 'Leave and Licence' was in operation in Bombay under which persons coming to Bombay and in need of rented accommodation were able to get it, because the lease period was strictly limited by the agreement and the landlord had no apprehension of being unable to regain the possession of the property at the end of the period of agreement; unfortunately the 'Leave and Licence' practice no longer operates in Bombay, and this has certainly made it more difficult to hire accommodation in that city.

In the absence of lease reasonable notice period to be provided:

58. What we have to ensure is that the owner is not enabled to make use of short leases as a means of raising the rent. If a mechanism for rent increases is laid down on the lines of our recommendations in the preceding Section, the owner will be able to revise his rent only once in five years and to the extent of 50% of the inflation; he would not be able to make use of changes in tenancy to raise the rents. It is, therefore, possible to leave the period of tenancy to be regulated by the lease, without endangering the rent control aspect. The law should honour the provisions of the lease agreement regarding the period of notice to be given for the termination of the tenancy on either side, etc. Where the lease is silent in this regard or where there is no written lease agreement, the law should provide for a reasonable period of notice for the termination of the tenancy.

Also in cases outside the purview of rent control

59. In an earlier Section we also recommended that certain categories of tenancies, such as companies, foreigners or diplomats, offices, shops and commercial establishments, etc., should be taken out of the purview of rent control protection; but stability of tenure is of some importance even in such cases. Shops or business houses, for instance, need to know with some degree of certainty that they would be able to operate from certain premises for a certain length of time. In the normal course, the tenure would be governed by the lease agreement. However, the rent control legislation could lay down that all such tenants should be given a reasonable period of notice, say, six months, for the termination of the tenancy, if the lease itself does not provide for security of tenure.

VI

Protracted disputes and litigation

60. One of the major weaknesses in the operation of rent control is the protracted and time-consuming processes and heavy costs involved in the settlement of disputes between landlords and tenants. The main recommendations that we have made earlier in this Report are designed to restrict

the area of operation of rent control legislation, minimise the need for elaborate modes of determination of a fair rent and provide for a simple mechanism for rent increases. We feel that the adoption of these suggestions should lead to a considerable reduction in justiciable issues and in the scope for litigation.

Need for machinery for quick resolution of disputes

61. However, disputes between landlords and tenants cannot be totally eliminated, and they could relate to issues such as (i) the reasonableness of the rent, (ii) the landlord's need to terminate the tenancy because of misfeasance or denial of the landlord's title or non-payment of rent on the part of the tenant, or because of the landlord's bonafide requirement for the accommodation for his own personal occupation. A decision on the issues of category (ii) would in turn lead to the actual execution processes and the difficulties involved therein. It is therefore necessary to provide an effective machinery for the quick resolution of disputes and also for the prompt recovery of possession of the property by the landlord or any other person whose claim has been upheld.

Existing machinery and procedures

62. Difficulties have been experienced and brought to our notice, arising out of the nature of the machinery provided and the procedures now followed under the Rent Control Acts. The rent courts are mostly manned by district Munsiffs; and the cases are taken on appeal to the District Judge, and even to High Courts, by the litigants who make issues appear to be mixed questions of fact and law. The proceedings are governed by the Code of Civil Procedure in all its detail. There is an enormous volume of arrears of cases at the various levels of the judicial hierarchy. This has caused considerable concern both to the Administration and to the affected parties, and much concern has been expressed by the highest judicial authorities in the land over such mounting arrears.

63. Most of the issues in dispute are in the nature of small causes, and also largely revolve on questions of fact. This particularly applies to category (ii) above. In regard to category (i) if a need should arise at all for the determination

of a fair rent, (and we have tried to minimise the scope for disputes on this account), the predominant element of evidence will relate to the prevailing rates of rent in any locality, and this again is largely a question of fact and point for local enquiry. Questions of intricate law are likely to be at the minimum, and it would be our endeavour to prevent any wilful prolongation of cases through the interpolation of irrelevant issues of law. Speed is the essence of the matter for ensuring justice and relief.

Administrative Rent Control Proposals necessary

64. We have given careful thought to these aspects and would recommend that Rent Control matters should be taken out of the purview of the regular judiciary, and entrusted to a one-man Administrative Tribunal to be designated as 'Rent Control Tribunal'. One or more such tribunals can be constituted for any distinct area, depending on the volume of cases. The Tribunal should be constituted with any person who is qualified to be appointed or is functioning as a District Munsiff, or any serving officer who is of the rank of a Sub-Divisional Officer or D.R.O. We are of the view that the appointment of revenue officers as Rent Control Tribunals would be advantageous because they can bring to bear their revenue experience and local knowledge on the proceedings and thus ensure the speedier disposal of cases.

65. We would also suggest that powers should be taken by the Government to set up a Rent Control Tribunal with a retired District Judge or Collector, retired Sub-Judge or retired District Revenue Officer as the presiding officer in special cases. This enabling provision could be pressed into service where the volume of cases is beyond the capability of a regular sitting administrative tribunal to dispose of in a reasonable time, or in special cases involving any intricate issues of law, or very large values. This provision will be found particularly useful & necessary to clear the backlog and ensure a quick transition to the new procedure; & the machinery to be set up will not be cluttered up with the backlog.

Tribunals to follow summary procedures

66. The more constitution of such Tribunals is not enough; their mode of functioning is of equal importance.

They should adopt a summary procedure. They should take action on the written plaints and affidavits of parties, and as far as possible decide on such written affidavits or statements, minimising the need for oral evidence. Oral evidence should be necessary only if the lease itself is oral, or where questions of fact can be proved only through oral evidence. This criterion of relevant evidence should be strictly adopted by the Tribunals. The right of being represented by the Counsel should ordinarily not be necessary in view of the nature of the issues, but the Tribunal may in its discretion and for reasons to be recorded, allow such representation where it deems fit.

Power of execution

67. The Tribunals should also be given powers of execution, and for this purpose should be provided with a small contingent of bailiffs. In cases where a breach of the peace is apprehended, or where the need for the arm of the law is felt, the State Police constabulary could be pressed into service.

Decisions to be final : only one appeal

68. The decisions of these Rent Control Tribunals should be subject only to one appeal, restricted to questions of law, to a Special Court presided over by an officer of the rank of a District Judge. The decisions of that Court should be final and they should also be executed through the staff of the Rent Control Tribunals. Except for this one judicial forum for appeal, the jurisdiction of the Courts should be barred. Attention is invited to the similar provisions in the Public Premises (Eviction of Unauthorised occupants) Act of 1971.

Recourse to arbitration

69. The suggestion has been made that such disputes can also be settled by arbitration and that this should be encouraged. Arbitrators have much greater freedom and flexibility in regard to procedures than courts, and should be able to give quick decisions; and their decisions can be made binding, obviating protracted appellate proceedings. However, in practice, even arbitration is not a mechanism which is free from the prolongation of proceedings and delay.

Further, the arbitrator's award will have to be filed in Court to be made a rule of the Court; and thereafter the execution proceedings will have to be pursued under the Code of Civil Procedure by such civil Courts. This could mean serious delays, some times wilfully caused through inter-locutory proceedings by interested parties. We are, therefore, not sure that the Arbitration proceedings will lead to a quicker resolution of disputes between landlords and tenants.

Problems of rent control in cantonments

70. At this stage, we should like to glance briefly at certain special problems arising in Cantonment areas. Before the Constitution came into effect, the power to make laws relating to rent control in Cantonment areas was vested in the legislatures of the former Provinces. In the Constitution, however, this was brought within the purview of the legislative jurisdiction of Parliament (Entry No. 3 in List I, i.e. the Union List, in the Seventh Schedule to the Constitution). This meant that with the commencement of the Constitution, the rent control Acts in force in the States were no longer operative in the Cantonments; there was in fact no law regulating this matter in the Cantonment areas. The Cantonments (Extension of Rent Control Laws) Act, 1957 was therefore enacted by the Parliament. In exercise of the powers vested in the Central Government by Section 3 of this Act, the Central Government has, by notification, extended to the Cantonments in several States the rent control laws in operation in the States on the date of the notification.

71. There are, however, two problems in this regard. The first is that such a notification extends the State rent control laws as it exists on a given date to the Cantonment areas in question, but subsequent amendments to the State enactments do not automatically apply to the Cantonment. Each such amendment has to be made applicable to the Cantonment by a special notification by the Central Government, as otherwise the rent control law in operation in the Cantonment would gradually fall out of step with the law in operation elsewhere in the State.

Need for a central enactment

72. Secondly, the administrative authorities (such as the Rent Controller or the Rent Control Tribunal or the Civil Court) under the State enactment would naturally be the State functionaries even in the Cantonments, whereas the better course would be for rent control in a Cantonment to be

administered by the Cantonment authorities, particularly as Cantonments have their own special land laws. It seems therefore, desirable that instead of merely extending the State rent control enactments to the Cantonments by notifications under the Act of 1957, the Central Government should have a separate Central law enacted, dealing with rent control in the Cantonments.

Need to exempt Cantonment Board properties from rent contro

73. There is a further problem. The Cantonments Act 1924 enables a Cantonment Board to dispose of the right of occupation of a shop, stall, etc., in a public market through public auction for a period not exceeding three years at a time, or, alternatively, fix the rent or stallage and dispose of the right of occupation by private treaty for a period not exceeding one year at a time, with the previous sanction of the GOC-in-C. As regards properties other than those in the public market, the Cantonment Property Rules enables the Cantonment Board to fix a reasonable rent and dispose of the right of occupation for periods upto five years, or for even longer periods with the sanction of the GOC-in-C or the Central Government, as the case may be. Unfortunately these powers of the Cantonment Board are frustrated by the fact that such occupancy rights come under the purview of the rent control laws, and the Boards run into serious difficulties in matters such as the revision of rentals or the resumption of the property on the expiry of the lease or the term of allotment. It is, therefore, necessary to exempt the Cantonment Board properties from the operation of the rent control laws. While this could no doubt be done even in the context of the extension of the State rent Control legislation to the Cantonments, the problem would become much easier to deal with if a Central legislation on rent control in the Cantonment areas is undertaken. (in a later Section, we refer to the problem of land-use in Cantonments and the demand they make on land and accommodation in urban areas).

VIII

Some larger issues

74. So far we have confined ourselves to the actual operation of rent control, but we propose now to go a little further and consider briefly some wider and more basic issues which are very relevant in this context.

Need for larger investment in urban housing

75. We are convinced that the effort to keep rents under control in a situation of acute scarcity of accommodation can have only a limited success. A part of the answer to the problem of urban housing is to reduce the pressure of demand for it, or at least to prevent a further aggravation of that pressure by adopting policies directed towards the improvement of opportunities and amenities outside the urban complexes through measures of industrial dispersal, programmes of rural development & backward area development, etc. But this will still leave a massive need to be met in urban areas. The ultimate check on soaring rents can only come through a much larger investment in urban housing, particularly in the metropolitan cities where there is a steady influx of people year after year. Even in our examination of rent control legislation we have been influenced by this consideration, and some of the revisions and relaxations that we have recommended are aimed at bringing about conditions that will lead to more private investment in housing. However, even in a relaxed regime of rent control, it would be unrealistic to assume that such private investment as may be forthcoming would be adequate to meet the growing housing needs in the major towns. If these growing needs are to be met, public investment in housing will have to be maintained at a high level; and private investors, especially those of modest means, will need to be supported by loans from the appropriate institutions. Since both public and private investment will be needed in this process, it would be desirable to have a clear picture of the role of each, with due regard to the resource availability.

Public housing programme : Need for balance between urban and rural areas

76. The resources for public investment are by no means abundant. Important as housing is, there are other pressing claims, which cannot be neglected. Further, in the allotment of such public funds as are available for housing, a balance will have to be maintained between urban and rural areas as well as between congested metropolitan cities and the smaller cities. Tilting the balance in favour of metropolitan towns may only intensify the exodus from less thickly populated areas to them; adequate attention to low-cost accommodation and better employment opportunities in the less thickly populated areas can discourage such a trend. In urban housing governmental

outlays should given priority to the construction of cheap accommodation for relatively lower income groups as well as to the housing needs of Government employees. The form is not likely to attract enough private resources. The State will have to play a significant and even dominant role in providing low-cost housing.

Government servants' housing needs

77. As regards Government employees, to the extent the Government provides accommodation to them and does not draw upon the available pool of private accommodation, the housing position for the community as a whole would be greatly eased. Leaving Government servants to fend for themselves in finding rented accommodation in over-crowded cities is undesirable for a number of other reasons as well. We have also urged earlier that as far as possible the Government should not hire private residential accommodation, whether by leasing or by requisitioning (paragraph 32 above). We would reiterate that here.

Government (including Defence) not to aggravate urban housing problem.

78. What we have said about Government generally applies also to the Ministry of Defence and the armed forces. They should as far as possible be self-sufficient as regards accommodation and not hire civil accommodation for their purposes. We understand that there is considerable scope for improvement in land-utilisation and the building of additional accommodation within the cantonment areas. We have not made a special study of this matter, but we note that this was gone into by a Study Group on Cantonment Planning which submitted a report in 1973 : we would urge that the recommendations of that Study Group should be considered and acted upon quickly. In any case, the Defence authorities should refrain from aggravating the problem of urban areas by retaining more land than necessary (for present and prospective use) within the cantonments, or by hiring accommodation in the cities proper for their personnel whether Defence or civil. We are told that in urban centres like Delhi, Bombay, Calcutta, Madras and Bangalore the Defence Ministry holds large tracts of vacant land some of which has been allowed to fall under encroachment; that places where intensive land use is called for hutment-type of accommodation is put up; and that at the same time the

Ministry goes in for hiring accommodation in the city. It is also reported that the hiring of accommodation by the Defence Ministry in small towns like Jodhpur has pushed up rentals beyond the reach of the civil population. We would urge strongly that a planned intensive utilization of land should be undertaken by Govt. Departments including Defence.

Raising Resources : Leasing of Govt. owned land for construction by private parties

79. The paucity of resources which acts as a major constraint on the public housing programme can be overcome if instead of focussing attention on financial resources account is taken of land owned by the Government which is lying vacant and giving no return. We recommend that Government owned housing sites which are not likely to be built upon during the Sixth Plan period for lack of finance should be leased to private parties on terms and conditions which will increase the availability of accommodation for the Government's own purposes and at the same time provide finance for low-cost housing. Private parties to whom the land is leased are likely to benefit considerably from such leases and should therefore be required as a part-recompense to construct buildings of a type approved by the Government on the condition that a certain proportion of the accommodation so built would be made available to the Government for its own use on a concessional rent. Such a programme would add to the pool of urban housing and at the same time provide resources for the public housing programme.

Private sector

80. Turning to the private sector, broadly speaking there are three distinct categories which have to be taken into account, viz., the corporate sector, the professional builders and private parties.

Companies to be induced to build houses for employees

81. A significant proportion of the occupants of rented accommodation in the more congested cities are employees of companies. We have already recommended that buildings leased by the corporate sector should not be brought within the purview of rent control legislation. This may induce companies to consider seriously the construction of accommodation for their own employees as a more economical method

of meeting their needs, further, they would have the freedom to re-allot the accommodation to a new employee when an existing employee gets transferred or retires. The possibility of given them some tax incentives and imposing some legal obligation on them to provide accommodation for a good proportion of their low-paid employees should also be considered in this context.

Blocks of flats on ownership basis to be encouraged

82. There are professional builders in the larger cities who construct blocks of flats which are sold out to different parties. To some extent, they depend on their own resources and borrowings, but in addition and quite substantially—they rely on those who want to take up flats on an ownership basis, to provide the finance even during the construction stage. Ultimately the whole block gets run on a cooperative basis, individual owners of separate flats contributing to the expenses or maintenance and the services necessary for the block as a whole. Such construction deserves encouragement. It puts the limited space to maximum use, which is an important consideration in cities, where the density of population is steadily on the increase. But care has to be exercised in two respects:

(i) Excessive congestion may overstrain the civic facilities like water supply and transport, and without adequate breathing space between one block of flats and another, the growth may turn out to be unhealthy. Proper town-planning is necessary to avoid all these.

(ii) Secondly, in such transactions there are dangers that the rights of the so-called owners may not be adequately protected vis-a-vis the builders, and further the cooperative arrangements may break down because of friction and differences between the members. A proper legal framework to deal with these problems will not only protect the owner-occupants but also help them to raise institutional finance to acquire the property, for which a clear legal title to the property is often a prerequisite.

How to ensure preference for needs of middle income groups over luxury housing for the rich

83. A question which needs consideration in this context is whether any special steps should be taken to ensure that the flats cater to the needs of middle-income groups rather than

mainly or exclusively to those of the rich. Given the inequalities of income, life-styles, etc., it would be unrealistic to try to shut out the construction of flats with expensive floorings, fittings and fixtures. What is important is that the higher-income groups do not pre-empt too much of space which, is in such scarcity in urban areas. Appropriate restaurants on the floor area of such residential unit would be more desirable method of regulating such construction than the prescription of austerity standards in regard to their internal fittings, fixtures or finish. At the same time, some additional safeguards and conditions can be imposed to ensure that a reasonably good proportion of such construction is of the more affordable kind. If the site on which the construction is undertaken belongs to government, the necessary objective can be secured through appropriate conditions in the lease. Since most builders depend on borrowed funds, lending institutions can also influence them in the right direction. For instance there could be differential rates of interest on a plinth-area basis. Further, since most of the builders have prospective buyers and not tenants in view, the tax laws can create a preference for more modest dwellings. Municipal authorities and town-planning organizations can also enforce preference for compact housing through their own regulations. These observations which have been made about blocks of flats would apply equally to houses.

Housing finance agencies to be supported.

84. Finally, there are individuals who may undertake construction for their own residence, usually after retirement, with a possible provision for a part of the dwelling being let out is a source of income. Such construction encourages individuals to save, so it makes additional resources available for investment in housing. But most individuals need to borrow in order to supplement their own savings. In Western countries, building societies mobilise a lot of the savings of the community, attracting long-term deposits on reasonably good rates of interest to make loans to those who want a home for themselves, or to buy them on hire-purchase spread over many years. In India, the Provident Funds and the LIG used to be the main source of funds for private individuals. In recent years, two important new agencies have come in to the field. The housing and Urban Development Corporation has a programme of lending about Rs. 600 crores during the Sixth Plan to finance housing activities, and the Housing Development Finance Corporation is another agency which has

begun to play a very useful role in helping people with moderate incomes to own their own houses. Both these should be supported and enabled to expand their activities. In addition, both the Government and the public and private sector employers should expand the schemes for the grant of loans on reasonable terms to their employees for the construction of houses, or introduce such schemes where they are not in existence. This will add to the stock of housing in the country and reduce to some extent the pressure on private rented accommodation.

85. We conclude our discussion of financial resources by pointing out that the constraints may not be as severe as they appear to be at first sight, provided effective mobilisation from possible sources is attempted. New savings can be generated in the community if the opportunities and facilities for house building are enlarged.

Paucity of building sites in urban areas

86. Finance apart, the major (perhaps the most serious) impediment in the expansion of housing in the paucity of building sites in urban areas and the almost prohibitive prices at which they are sold where available. In order to deal with the problem, the urban Land Ceiling Act was enacted. But in the absence of proper advance planning by State Governments, Union Territories and local authorities for the acquisition of land and development of housing, the administration of, this Act has been such as to reduce the availability of building sites and to push up their prices still further.

Operation of Urban Land Ceiling Act: distortions

87. The basic conception underlying the Act was that those holding land in excess of the prescribed ceiling should part with it at low prices to the State Government, who would then have at their disposal sites on which construction could be started. In practice, the State Governments—for a variety of reasons including the lack of resources—have been unable to undertake a house-building programme of their own on these surplus lands. The owners of the land in excess of the ceiling are also not given permission to build on it. In fact, they often face difficulties even in selling or building on land which is within the ceiling merely because

they have or are suspected to have land in excess of the ceiling. As most of the land declared surplus can neither be sold nor gets built upon, the price of urban land has been shooting up, attracting not only genuine buyers but also speculators and black money. Building prices and rents have recorded a substantial increase.

88: We believe it was not the intention of either the Government or Parliament that the Urban land Ceiling Act should lead to the kind of results that it has. We note that in interpellations in Parliament, Government have indicated that they are contemplating changes in the Act. Whatever shape this Legislation may ultimately take, we would like to emphasise that the objective of policy should be to ensure that in areas where there is an acute shortage of housing, building sites are not allowed to remain vacant for any length of time; and (this is equally important) that the construction undertaken on them makes the fullest possible use of the available area to provide the maximum number of dwellings to those in need of it. The thrust of policy, in other words, should be to speed up construction vacant land and to ensure its optimum utilisation. Depending on local conditions, a view should be taken of the kind of building which should be constructed on any plot of land so as to accommodate as many families as possible, without creating congestion or disrupting the accepted norms of town planning. Instead of bungalows, group housing building and multi-storied apartment houses may deserve encouragement.

89. Urban housing seems to have got into a vicious circle. Non-availability of building sites comes in the way of investment by those who have the funds, and lack of finance limits construction by the Government which does have a lot of land at its disposal. Our discussion of the resources position in the preceding Section brings out how the land available with the Government can generate the finance needed for the housing programme of the public sector, while in the process more land for building purposes will become available to private parties, which have or can mobilise the necessary finance. It is, in our judgment, possible to evolve arrangements under which such surplus land as has come to the Government under the Urban Land Ceiling Act and private capital seeking investment in housing can be brought together in a socially beneficial manner. Towards this end we recommend the following

Programme for construction on surplus land at Govt.'s disposal

- (i) A time-bound programme should be adopted to finalise arrangements for the start of construction on the surplus land at the Government's disposal, whether by governmental agencies or by private ones. Within three months the plots of land on which construction by Governmental agencies can start within a year should be identified. The rest should be promptly allotted to others in accordance with a scheme of priorities.

Priorities for allotment

- (ii) The first preference should be to corporate bodies in the public sector as well as in the private sector who are looking for land to construct housing for their own employees. In this category, not only industrial and commercial enterprises but also non-profit-making institutions such as Universities would need to be included. The second priority should be given to builders and construction agencies who agree to develop residential complexes of the approved kind, with provision where appropriate for each unit to be acquired by individuals on a cooperative basis. To the extent that these two categories do not take up all the available surplus land in any city, the claims of private individuals could be considered.

Funds realised to be used for public housing programmes

- (iii) Since the allotment of land to private parties will place additional funds at the disposal of Government; these could be utilised for expanding public housing programmes, particularly to cater to the needs of low-income groups and the weaker sections of society.

Allotment to be on long-term lease on certain conditions

90. A question which will need to be faced in this context is the kind of terms of which land should be allotted to private parties. The land having become State-owned under the law enacted by Parliament, it would not, we feel, be appropriate

to sell it outright to private parties as free-hold property. The instrumentality of lease for a sufficiently long period to make the investment in housing on the site worthwhile would perhaps be the best answer. A lease-hold arrangement is to be preferred to a free-hold transfer for the additional reason that the lease could contain suitable provisions about land-use and construction. It could also provide for a share in the capital gains if the property gets transferred (which can usually be attributed to appreciation in land value) to come to the Government as the owner of the land.

91. The suggestion is often made that in order to keep the cost of housing down and to check the soaring prices of building sites, governmental agencies should not try to get the maximum price for the land by recourse to auction, and that instead, the land should be allotted at a fair price to deserving parties. On the whole, we feel that selling plots of land at less than the market price can be justified only in special circumstances such as when it is being allotted to deserving non-profit-making institutions such as Universities, or where it is clear beyond doubt that the benefits of cheapness would go to weaker and vulnerable sections of society. Perhaps a small percentage of the land in each development scheme in urban areas could be set apart to meet the needs of such sections, including the fixed income groups. In general, however, the allotment of land on concessional terms gives rise to all kinds of abuses and malpractices. It would be better to realise the full value of the land and use the funds so generated to provide finance for construction for purposes which cannot be adequately looked after by private investment. Of course, there should be no attempt to give an artificial boost to the selling by realising plots in driblets. The number of plots to be sold over a quarter of a half-year should be announced, at one time. The sobering effect which increased availability will have on prices is likely to be more durable and healthy than selling at concessional prices.

Immigrants into urban area not to be encouraged to become permanent residents

92. One of the points to be taken care of in housing policy in the larger cities to avoid encouraging too high a proportion of immigrants to become permanent residents owning their own houses. In many cities, among those who live in slums or in 'jhuggi-jhompri' kind of accommodation, there

is a sizeable element of contractor's labour engaged on temporary work. They come from distant parts of the country when there is a building boom and then go away. Even among those who are in regular employment, a good percentage consists of immigrants who have roots in the rural hinterland to which they return periodically in particular when the agricultural operations are at a peak. It need not be an objective of policy to make them all permanent residents of cities which are already over-congested. No doubt, they should be properly housed while they are working there but they should not be encouraged to make the city their permanent abode. If this view is accepted, then houses constructed for low-income groups and the weaker sections of society should be given on rent, which may well be concessional, but not sold to them at concessional prices. The latter course would be fraught with many dangers and disadvantages. Often, those who get the permanent allotment of a dwelling at a concessional price, turn out to be benamidars of others. Also, in such allotments there are always allegations and opportunities of corruption.

Allotment of land—local factors

93. In the allotment of sites to different builders for different purposes, many purely local factors will have to be taken into account. The type of construction, i.e. whether it should be a high-rise building or a different kind of residential complex, etc., will depend on the size of the plot and its location. Likewise, whether the construction should be of cheaper quarters or of buildings of a somewhat better kind, will depend upon what part of the city the land is located in, and what is the prevailing price of land in that locality. Cheaper residents should as a rule be put up on the cheaper sites; otherwise the cost of subsidising the rent may turn out to be too high. Such cheaper sites are likely to be far away from urban centres, and therefore commuting arrangements should also be made alongside. Satellite townships will also help in the provision of common amenities at cheaper costs, and the dispersal of the population. These should also be planned on such cheaper sites in an integrated manner.

Unusable surplus land to the former owners

94. There may be some land which, although technically surplus, may, because of its smallness or shape or location, be unusable for fresh construction, or may be such

that only the former owner, of whose property it is physically an integral part, can make the best use of it. We see no reason why such land should not be given on lease to the former owner, subject to such conditions about its use as may be appropriate. The case for such allotment would be particularly strong in cases where the owner, when acquiring the land, was required by the authorities to have a plot of a certain minimum size, which to day turns out to be in excess of the ceiling.

Need for strong town-planning agency

95. Finally, we would add that it is not essential that all land should necessarily be used for residential housing. Office space, buildings for commercial use, shopping centres, open space, parks and playgrounds are as much a necessity in any urban area as living accommodation. A strong town-planning agency would be a valuable adjunct to the purposeful development of urban sites for housing as well as other purposes.