A SATYAWATI SHARMA (DEAD) BY LRS.

v.

UNION OF INDIA AND ANR.

(Civil Appeal No. 1897 of 2003)

APRIL 16, 2008

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[B.N. AGRAWAL AND G.S. SINGHVI, JJ.]

Delhi Rent Control Act, 1958:

s.14(1)(e) – Constitutionality of – Held: s.14(1)(e) is C *violative of doctrine of equality embodied in Article 14 of Constitution insofar as it discriminates between premises let for residential and non-residential purposes when same are required bona fide by landlord for occupation for himself or for any member of his family dependent on him, and restricting* D *latter's right to seek eviction of tenant from premises let for residential purposes only – Discriminatory portion of s.14(1)(e) struck down – While adopting this course, well recognized rule kept in view that offending portion of statute can be severed without doing violence to remaining part thereof – Legislation* E *– Delhi Rent Control Act, 1995 – s.22(r) – Constitution of India, 1950 – Article 14.*

s.14(1)(e) – Classification of premises with reference to purpose of their user – Reasonableness of – Held: The 1958 Act which was reasonable at the time of enactment has with F *lapse of time or changed circumstances become unreasonable – Period of almost 50 years has elapsed from enactment of 1958 Act – During this long span of time those who came from West Pakistan as refugees and even their next generations have settled down in different parts of country and occupying* G *prime positions in various fields and earned wealth – Not only this, availability of premises which can be let for non-residential purposes has substantially increased – Therefore, reason to sustain classification of premises with reference to purpose of their user, is no longer available for negating challenge to*

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s.14(1)(e) on ground of violation of Article 14 of the Constitution – Legislation – Delhi Rent Control Act, 1995 – s.22(r) – Constitution of India, 1950 – Article 14. A

Rent Control and eviction: History of Rent Control Legislation discussed – Punjab Urban Rent Restriction Act, 1941 – Delhi Rent Control Ordinance, 1944 – Delhi and Ajmer-Marwara Rent Control Act, 1947 – Delhi and Ajmer Rent Control Act, 1952 – Delhi Rent Control Act, 1958 – Delhi Rent Control Act, 1995 B

Judicial notice – Delhi Rent Control Act, 1995 – Makes no distinction between premises let for residential and non-residential purposes for seeking eviction on ground of bona fide need – Although 1995 Act is yet to be enforced, judicial notice taken of fact that legislature has removed implicit embargo on landlord's right to recover possession of premises if same are bona fide required by him/her, after taking note of developments which took place in the last 37 years i.e. substantial increase in availability of commercial and non-residential premises or premises which can be let for commercial or non-residential purposes and meteoric rise in prices of land and rentals of residential as well as non-residential premises. C D E

Constitution of India, 1950:

Article 14 – Doctrine of equality – Applicability of – Reasonable classification – Theory of. F

Article 14 – Changed circumstances/Lapse of time – Legislation – Constitutionality of – Held: Legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. G H

A In the writ petition filed by landlords before the High Court, prayer made was that s.14(1)(e) of Delhi Rent Control Act, 1958 was violative of equality clause embodied in Article 14 of the Constitution insofar as it differentiated between the premises let for residential and non-residential purposes in the matter of B eviction on the ground of bona fide requirement of the landlord and restricts the landlord's right only to the residential premises.

The writ petitions were heard by the Full Bench of High Court along with the other writ petitions involving challenge to the vires of s.14(1)(e). After referring to ****H.C. Sharma's case*** C and ******Amarjit Singh's*** case, the Full Bench of High Court dismissed the writ petitions. Hence these appeals.

Allowing the appeals and partly striking down s.14(1)(e) of Delhi Rent Control Act, 1958, the Court

D **HELD: 1. S.14(1)(e) of the Delhi Rent Control Act, 1958 is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona** E **fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only. However, s.14(1)(e) is not totally struck down because it is neither** F **the pleaded case of the parties nor the argument that s.14(1)(e) is unconstitutional in its entirety and ends of justice would be met by striking down the discriminatory portion of s.14(1)(e) so that the remaining part thereof may read as : "that the premises are required bona fide by the** G **landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation." While adopting this course, well recognized rule is kept in view that if the offending** H

portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible. [Paras 38, 39] [620-G; 621-A, B, C, D, E]

R.M.D. Chamarbaugwalla v. Union of India AIR (1957) SC 628; *Bhawani Singh v. State of Rajasthan* (1996) 3 SCC 105 – relied on.

2. An analysis of Rent Control Legislation which were made applicable from time to time show that till 1947 no tangible distinction was made between the premises let for residential and non-residential purposes. The implicit restriction on the landlord's right to recover possession of the non-residential premises was introduced in the Delhi and Ajmer-Marwara Rent Control Act, 1947 and was continued under the 1958 Act. However, the 1995 Act does not make any distinction between the premises let for residential and non-residential purposes in the matter of eviction of tenant on the ground that the same are required by the landlord for his/her bona fide use or occupation. Even though, the 1995 Act is yet to be enforced and in **Common Cause v. Union of India* this Court declined to issue a writ of mandamus to the Central Government, for that purpose, judicial notice can be taken of the fact that the legislature has, after taking note of the developments which took place in the last 37 years i.e. substantial increase in the availability of the commercial and non-residential premises or the premises which can be let for commercial or non-residential purposes and meteoric rise in the prices of land and rentals of residential as well as non-residential premises, removed the implicit embargo on the landlord's right to recover possession of the premises if the same are bona fide required by him/her. [Para 9] [588-F, G; 589-A, B, C]

Malpe Vishwanath Acharya and Ors. v. State of Maharashtra & Anr. (1998) 2 SCC 1; *Prabhakaran Nair v. State of Tamil Nadu* (1987) 4 SCC 238; *Mohinder Kumar and Ors.*

A *v. State of Haryana and Anr.* **(1985) 4 SCC 221**; *D.C. Bhatia and Ors. v. Union of India and Anr.* **(1995) 1 SCC 104**; *C.N. Rudramurthy v. K. Barkathulla Khan* **(1998) 8 SCC 275**; **Common Cause v. Union of India and Ors.* **(2003) 8 SCC 250 – referred to.**

B **3. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. The doctrine of equality means that there should be no discrimination**
C **between one person and another, if having regard to the subject matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application**
D **of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative**
E **instruments including those meant for giving effect to the Directive Principles of State Policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently**
F **similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations. [Para 14]**
G **[595-A, B, C, D, E]**

Ram Krishna Dalmia and Ors. vs. Shri Justice S.R. Tendolkar and Ors., **AIR 1958 SC 538**; *Mohd. Shujat Ali vs. Union of India* **1975 (3) SCC 76**; *L.I.C. of India and Another vs. Consumer Education & Research Centre and Others* **1995**
H **(5) SCC 482 – relied on.**

Gian Devi Anand vs. Jeevan Kumar & Ors. **1985 (2) SCC 683**; *Motor General Traders vs. State of Andhra Pradesh* **1984 (1) SCC 222**; *Mohinder Prasad Jain vs. Manohar Lal Jain* **(2006) 2 SCC 724**; *State of Haryana vs. Ved Prakash Gupta* **(1999) 1 Rent Law Reporter 689 – referred to.**

4. In the instant case, Full Bench of High Court upheld the validity of s. 14(1)(e) mainly by relying upon the judgment of the Division Bench in **H.C. Sharma case and of this Court in ***Amarjit Singh case and by observing that legislature has the right to classify persons, things, and goods into different groups and that the Court will not sit over the judgment of the legislature. The Full Bench did not, at all, advert to the question whether the reason/ cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite sea saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes. [Para 27] [612-G; 613-A, B, C]

***H.C. Sharma v. Life Insurance Corporation of India & Anr.* **ILR (1973) 1 Delhi 90**; ****Amarjit Singh v. Smt. Khatoon Quamarin* **(1986) 4 SCC 736 – referred to.**

4.2. In the rent control legislations made applicable to Delhi from time to time, residential and non-residential premises were treated at par for all purposes. The scheme of the 1958 Act also does not make any substantial distinction between residential and non-residential premises. Even in the grounds of eviction set out in proviso to s.14(1), no such distinction has been made except in Clauses (d) and (e). In **H.C. Sharma, the Division Bench of the High Court, after taking cognizance of the

A acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that
B if such restriction was not imposed, those up-rooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West
C Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set up of the Government and have earned huge wealth in different trades, occupation, business and
D similar ventures. Not only this, the availability of buildings and premises which can be let for non-residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/
E classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to s.14(1)(e) on the ground of violation of Article 14 of the Constitution, and such arbitrary classification cannot be upheld the discrimination which
F was latent in s.14(1)(e) at the time of enactment of 1958 Act has, with the passage of time (almost 50 years) has become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria. [Para 28]
G [613-F, G; 614-A, B, C, D, E, F, G]

Harbilas Rai Bansal v. State of Punjab & Anr. (1996) 1 SCC 1; *Rattan Arya v. State of Tamil Nadu* (1986) 3 SCC 385; *Joginder Pal v. Naval Kishore Behal* (2002) 5 SCC 397; *Rakesh Vij v. Dr. Raminder Pal Singh Sethi* (2005) 8 SCC
H 504 – referred to.

5. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. [Para 29] [614-G; 615-A]

State of Madhya Pradesh v. Bhopal Sugar Industries **AIR (1964) SC 1179;** *Narottam Kishore Dev Verma v. Union of India* **AIR (1964) SC 1590;** *H.H. Shri Swamiji Shri Admar Mutt Etc v. The Commissioner, Hindu Religious & Charitable Endowments Department* **(1979) SCC 642;** *Chintapalli Achaiah v. P. Gopala Krishna Reddy* **AIR (1966) AP 51;** *Pasupuleti Venkateswarlu vs. Motor & General Traders* **(1975) 1 SCC 770;** *Hasmat Rai v. Raghunath Prasad* **(1981) 3 SCC 103 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1897 of 2003

From the Judgment and Order dated 27.8.2002 of the High Court of Delhi at New Delhi in C.W.P. No. 1092/1999

WITH

Civil Appeal No. 1898 of 2003 and Civil Appeal No. 5622 of 2006.

C.S. Rajan, T.S. Doabia, A.C. Gambhir, P.D. Sharma, Mohan Pandey, Shish Pal Laler, Balbir Singh Gupta, Sadhana Sandhu, R.C. Kathiam, P. Parmeswaran, D.S. Mahra, B.V. Balram Das, Manu Nayar, K.K. Sharma, Hameed S. Shaikh, A.L. Trehan, Praveen Swarup and Ashwani Kumar for the appearing parties.

The Judgment of the Court was delivered by

A **G.S. SINGHVI, J.** 1. Whether Section 14(1)(e) of the Delhi Rent Control Act, 1958 (for short 'the 1958 Act') is ultra vires the doctrine of equality enshrined in Article 14 of the Constitution of India is the question which arises for determination in these appeals.

B 2. For the sake of convenience, we have noted the facts from Civil Appeal No.1897 of 2003:

(i) On August 18, 1953, Delhi Improvement Trust leased out a plot of land measuring 184 sq. yards situated at Basti Reghar, Block 'R', Khasra Nos.2942/1820 to 2943/1820 to Shri Jagat Singh son of Pt. Ram Kishan. In terms of Clause 4(c) of the lease deed, the lessee was prohibited from using the land and building (to be constructed over it) for any purpose other than residence, with a stipulation that in case of breach of this condition, the lease shall become void.

(ii) After constructing the building, the lessee inducted Shri Jai Narain Sharma and Dr. Ms. Tara Motihar, as tenants in two portions of the building, who started using the rented premises for running watch shop and clinic respectively.

(iii) Smt. Satyawati Sharma (appellant herein), who is now represented by her LRs, purchased property i.e. house bearing No.3395-3397, Ward No.XVI, Block R, Gali No.1, Reghar Pura, New Delhi from legal heirs of the lessee.

(iv) After purchasing the property. the appellant filed Petition Nos.184 of 1980 and 187 of 1980 for eviction of the tenants by claiming that she needed the house for her own bona fide need and also for the use and occupation of the family members dependant upon her. The appellant further pleaded that she wanted to demolish the building and reconstruct the same. She also alleged that tenants have been using the

premises in violation of the conditions of lease and, therefore, they are liable to be evicted.

(v) The tenants contested the eviction petitions by asserting that the so called need of the landlord was not bona fide; that there were no valid grounds for permitting the landlord to demolish the building and reconstruct the same and that they had not violated the conditions of lease. They further pleaded that the previous owner let out the premises for non-residential purposes; that the appellant was also issuing rent receipts by describing the rented portions as shop/clinic and that in view of order dated 11.12.1978 issued by the Government of India, Ministry of Housing and Urban Development, Delhi Development Authority was condoning violations of the lease conditions.

(vi) By an order dated 17.5.1991, Additional Rent Controller, Delhi dismissed the eviction petitions. He held that the appellant is owner and landlady of the suit premises, but she has not been able to prove that portions thereof were let for residential purposes; that the appellant and her dependent family members do not have suitable alternative accommodation except the one occupied by her elder son, who was under the threat of eviction and that the need of the appellant is bona fide. The Additional Rent Controller further held that the tenants are guilty of violating clause 4(c) of deed dated August 18, 1953. He, however, declined to pass order for recovery of possession by observing that under Section 14(1)(e) of the Act, such an order can be passed only in respect of premises let for residential purposes. The Additional Rent Controller also rejected other grounds of eviction put forward by the appellant.

3. The appeal preferred by the appellant was dismissed

A by Rent Control Tribunal, Delhi vide its judgment dated 10.11.1998. The Tribunal agreed with the Additional Rent Controller that an order of eviction of the tenant can be passed under Section 14(1)(e) only if the premises were let for residential purposes. The Tribunal then held that the portions B given to the tenants were being used for non-residential purposes and, therefore, they cannot be evicted on the ground of bona fide need of the landlord.

4. The appellant challenged the orders of the Additional Rent Controller and Rent Control Tribunal in Civil Writ Petition C No.1093 of 1999. She filed another petition, which was registered as Civil Writ Petition No.1092 of 1999, with the prayer that Section 14(1)(e) of the Act be declared ultra vires of Article 14 of the Constitution insofar as it does not provide for eviction of the tenant from the premises let for non-residential purposes. D Both the writ petitions were heard by the Full Bench of Delhi High Court along with other writ petitions involving challenge to the vires of Section 14(1)(e) and were dismissed by the order under challenge. The Full Bench referred to an earlier judgment of the Division Bench in **H.C. Sharma vs. Life Insurance** E **Corporation of India & Anr.** [ILR 1973 (1) Delhi 90] and large number of judgments of this Court including **Amarjit Singh vs. Smt. Khatoon Quamarin** [1986 (4) SCC 736] and held:-

i) Tenants of non-residential premises are a class by themselves. The Parliament in its legislative wisdom F did not think it fit to make any provision for eviction of a tenant from such premises on the ground of bona fide requirement of the landlord for residential purpose. Referenced to Section 29(2)(r) of the 1995 Act, in our opinion, cannot be said to have any G relevance whatsoever for the purpose of determining. Admittedly, the 1995 Act is yet to come into force. If the said Act is yet to come into force, the question of taking recourse to the provisions of the said Act would not arise more so because this court in exercise of H its jurisdiction under Article 226 of the Constitution of

India would not be in a position to direct the Government to do so which is a legislative function. On the other hand, the very fact that said Act is yet to come into force in an indicia to the fact that the Central Government does not in its wisdom consider that the said benefit should be extended to non-residential premises also.

ii) Judicial review of legislation is permissible only on limited grounds, namely when a statute is enacted by a legislature which had no authority therefor or when it inter alia violates any of the provisions contained in Part III of the Constitution. Once it is held, as we are bound to, that the non-residential premises having regard to the interpretation clause, forms a separate class, such classification, having a reasonable nexus with the ground of eviction, cannot be said to be discriminatory in nature. Article 14 of the Constitution would apply only to persons similarly situated. Owners of residential and non-residential premises stand on different footings. In the event, the legislature in its wisdom thinks it fit to extend its protective wing to a class of tenants from being evicted on a particular ground, the same by itself cannot be said to be discriminatory so as to attract the wrath of Article 14 of the Constitution of India. The court in a situation of this nature is only entitled to see as to whether such classification is valid and rational. Once the rationality in such legislation is found, the court will put its hands off.

iii) Furthermore, the provisions of the said Act had been declared intra vires by the Apex Court in Amarjit Singh v. Khatoon Quamarain (supra). In that case, an argument was advanced that unless the second limb of Section 14(1)(e) of the Act is read in such a way that it was in consonance with Articles 14 and 21 of the Constitution of India, the same would be void as

being unconstitutional. The question raised therein has been dealt with the Apex Court.

(iv) In the instant case, the Statute itself has indicated the persons or things to whom its provisions are recommended to apply. The said Act is a beneficial legislation. It seeks to protect the tenants. Tenants are broadly classified into three categories – residential, non-residential and/or other tenant. Such a classification as regards premises or tenancy cannot per se be said to be unreasonable.

(v) In the instant case, so far as Sections 14(1)(e) and 14(1)(k) are concerned, the statute itself has indicated the persons to whom the provisions would apply. The provision is absolutely clear and unambiguous. In such a case the Court is only required to examine whether the classification is based upon reasonable differentia, distinguishing the person, group from those left out and whether such differential has reasonable nexus with the objects to be achieved. The impugned provision indisputably was intended to beneficially apply to landlords and of one class of tenancy viz. tenancy in respect of the residential premises and not non-residential premises.

5. The Full Bench also noticed the judgment in **Harbilas Rai Bansal vs. State of Punjab & Anr.** [1996 (1) SCC 1] whereby Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act No.29 of 1956, was struck down but distinguished the same by making the following observations :-

"The objects and reasons of the said Act, thus, were considered having regard to the provisions made at the time of commencement of the said Act. Such a contingency does not arise in the instant case. Reasonable nexus to the objects to be achieved of the said Act having

regard to the performance for which the building is being used must be found out from the legislative intent. Legislative intent may change from State to State."

6. Learned counsel for the appellants relied on the judgment of this Court in **Harbilas Rai Bansal vs. State of Punjab & Anr.** (supra) and argued that the classification made between the premises let for residential purposes and non-residential purposes in the matter of eviction of tenant on the ground of bona fide need of the landlord is irrational, arbitrary and violative of Article 14 of the Constitution. Shri A.C. Gambhir submitted that even though the constitutional validity of Section 14(1)(e) of the Act was upheld by the Division Bench of the High Court in **H.C. Sharma vs. Life Insurance Corporation of India & Anr.** (supra), that decision cannot, in the changed circumstances and in view of the later judgments of this Court in **Rattan Arya vs. State of Tamil Nadu** [(1986) 3 SCC 385], **Harbilas Rai Bansal vs. State of Punjab** (supra), **Rakesh Vij vs. Dr. Raminder Pal Singh Sethi** [(2005) 8 SCC 504] be treated as good law. He argued that the reason which prompted the legislature to exclude the premises let for non residential purposes from the purview of Section 14(1)(e) of the 1958 Act and which found approval of the Division Bench of the High Court has, with the passage of time, become non-existent and the classification of the premises into residential and non-residential with reference to the purpose of lease has become totally arbitrary and irrational warranting a declaration of invalidity qua the impugned section. In support of this argument, the learned counsel relied on the judgment of this Court in **Malpe Vishwanath Acharya and Others vs. State of Maharashtra & Another** [1998 (2) SCC 1]. Shri Gambhir pointed out that in the Delhi Rent Control Act, 1995 (for short 'the 1995 Act'), which was enacted by the Parliament in the light of the National Housing Policy, 1992 and observations made by this Court in **Prabhakaran Nair vs. State of Tamil Nadu** [1987 (4) SCC 238], no distinction has been made between the premises let for residential and non-residential purposes in the matter of

A eviction of the tenant on the grounds of landlord's bona fide need and argued that even though that Act has not been enforced, the Court can take cognizance of the legislative changes and declare the implicit restriction contained in Section 14(1)(e) on the eviction of tenant from the premises let for non-residential B purposes as unconstitutional.

7. Shri C.S. Rajan, learned senior counsel appearing for the Union of India emphasized that the purpose of the Act is to protect the tenants against arbitrary eviction by the landlord and argued that the classification of the premises with reference to C the purpose of lease should be treated as based on rational grounds because the same is meant to further the object of the enactment. Shri Rajan referred to the judgment of **Amarjit Singh vs. Smt. Khatoon Quamarin** (supra) to show that challenge to the constitutionality of the Section 14(1)(e) on the ground of D violation of Article 14 has already been negatived and argued that the vires of that provision cannot be re-examined merely because a similar provision contained in the 'Punjab Act' has been declared unconstitutional in **Harbilas Rai Bansal vs. State of Punjab** (supra). Learned senior counsel relied on the E judgments of this Court **In Re The Special Courts Bill**, 1978 [1979 (1) SCC 380] and **Padma Sundra Rao (Dead) and Others vs. State of Tamil Nadu and Others** [2002 (3) SCC 533] and argued that the Court should not attempt to rewrite Section 14(1)(e) so as to facilitate eviction of the tenants from F the premises let for non-residential purposes. Shri S.P. Laler, learned counsel appearing for the respondents in Civil Appeal Nos.1897 of 2003 and 1898 of 2003 supported the judgment of the Full Bench of the High Court and argued that the distinction made by the legislature between the premises let for residential G and non-residential purposes is based on rational ground i.e. acute shortage of non-residential premises/buildings and, therefore, the same cannot be treated as unconstitutional.

8. We have considered the respective arguments/ submissions. For deciding the question raised in these appeals, H it will be useful to notice the salient features of rent control

legislations, which were made applicable to Delhi from time to time. These are:- A

i) In exercise of the power vested in it under Rule 81 of the Defence of India Rules, the Government of India promulgated New Delhi House Rent Control Order, 1939. This order was made applicable only to residential premises. Section 11 thereof B provided that a tenant in possession of a house shall not be evicted therefrom whether in execution of a decree or otherwise and whether before or after the termination of the tenancy except on the grounds mentioned therein. Clause (iv) of sub-section 2 of Section 11A was as under: C

> "that the landlord was at no time during the twelve months immediately preceding the date of his application residing within the limits of the Delhi or New Delhi Municipality or the Notified Areas of the Civil Station, Delhi or Delhi Fort, D that it is essential in the public interest that he should take up residence in that area and that he is unable to secure other suitable accommodation, the Controller shall make an order directing the tenant to put the landlord in possession of the house, and if the Controller is not so satisfied, he shall make an order rejecting the application." E

(ii) On 15th October, 1942, the Punjab Urban Rent Restriction Act, 1941 was made applicable to the Province of Delhi, except the areas to which the New Delhi House Rent Control Order was applicable. The definition of the expression F "premises" in the Punjab Urban Rent Restriction Act made no distinction between "residential" and non-residential" premises. Section 10(1) of that Act provided that no order for recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay rent to the full extent allowable G by this Act and perform other conditions of the tenancy. However, in terms of proviso to Section 19(1), the Court could make an order for recovery of possession if the landlord satisfied that the prescribed notice had been served on the tenant. Sub-section 2 of Section 10 provided that where any order mentioned H

A in sub-section 1 has been made on or after the First day of January, 1939 but not executed before the commencement of the Act, the Court by which the order was made may if it is of opinion that the order would not have been made if the Act had been in operation on the date the order was made, rescind or B vary the order. The proviso to Section 10(2) enumerated the other grounds for eviction of the tenants. One of the grounds was that the premises are reasonably and bona fide required by the landlord for his own occupation.

(iii) In 1944, the Delhi Rent Control Ordinance (XXV), 1944 C was promulgated. In this Ordinance, the word 'premises' was defined to mean any building which is let separately for use as a residence or for commercial use or for any other purpose. Clauses (a) to (e) of Section 9 of the Ordinance specified the grounds on which the landlord could recover possession of the D premises. One of the grounds was that the landlord requires the premises for his use as residence. This means the landlord could not recover possession of the premises if he needed the same for commercial use.

(iv) In 1947, the Delhi and Ajmer-Merwara Rent Control E Act was enacted and was made applicable to all the parts of Delhi. Section 2(b) of the 1947 Act which contained the definition of the word 'premises' read as under:-

> "premises" means any building which is, or is intended to F be, let separately for use as a residence or for commercial use or for any other purpose,....."

Section 9(e) which provided for eviction of the tenant on the ground of bona fide requirement of the landlord was as under:-

> G "that purely residential premises are required bona fide by the landlord who is the owner of such premises for occupation as a residence for himself or his family, that he neither has nor is able to secure other suitable accommodation, and that he has acquired his interest in the premises at a date prior to the beginning of the tenancy H

or the 2nd day of June, 1944, whichever is later, or if the interest has devolved on him by inheritance or succession, his predecessor had acquired the interest at a date prior to the beginning of the tenancy or the 2nd day of June, 1944, whichever is later;....."

(v) The 1947 Act was replaced by the Delhi and Ajmer Rent Control Act, 1952. Section 13 of that Act enumerated various grounds on which a tenant could be evicted. Clause (c) of Section 13(1) was as under:-

"that the premises let for residential purposes are required bona fide by the landlord who is the owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation;

Explanation:- For the purposes of this clause, "residential premises" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes:....."

(vi) After 6 years, the Delhi Rent Control Act, 1958 was enacted. The Preamble of this Act shows that it is a legislation for the control of rents and evictions and of rates of hotels and lodging houses, and for the lease of vacant premises to Government, in certain areas in the Union Territory of Delhi. Section 2(i) of that Act defines the premises to mean any building or part of a building which is intended to be or is let for use as a residence or for commercial use or for any other purpose. The definition of the term "standard rent" contained in Section 2(k) refers to the premises irrespective of its use. Section 3 which exempts certain premises from the operation of the Act also does not make any distinction between residential and non-residential premises. Clause (c) of that section which provides for exemption in the context of monthly rent speaks of residential as well as non-residential premises. Section 6 relates to standard rent. It deals with residential as well as non-residential premises. Para A of Section 6(1) specifies the

A standard rent for residential premises and para B specifies such rent for premises other than residential premises. Sub-section (2) of Section 6 which provides for fixation of standard rent refers to premises irrespective of their user. The limitation prescribed (Section 12) for filing application for fixation of standard rent B does not make any distinction between the premises let for residential, commercial and other purposes. Section 14(1) which contains prohibition against passing of an order or decree by any Court or Controller for recovery of possession of any premises does not make any distinction between the premises C let for residential, commercial or other purposes. Clauses (a), (b), (c), (f), (g), (j), (k) and (l) of proviso to Section 14(1) specify different grounds for recovery of possession of the premises irrespective of its user. Only clauses (d) and (e) speak of premises let for use as residence or residential purposes.

D Sections 2(i) and 14(1)(d) and (e) of the 1958 Act which have bearing on the decision of the appeals, read as under:-

2. In this Act, unless the context otherwise requires –

E (i) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes, –

(i) the garden, grounds and outhouses, if any, F appertaining to such building or part of the building'

(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house.

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14. **Protection of tenant against eviction.** – (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the

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landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) to (c).....

(d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application from the recovery of possession thereof;

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

Explanation.– For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes.

(vii) The 1958 Act was amended five times between 1960 to 1988, but demands continued to be made by the landlords and the tenants for its further amendment to suit their respective causes. In 1992 National Housing Policy was notified. One of the important features of that Policy was to remove legal impediments to the growth of housing in general and rental housing in particular. Both the Houses of Parliament adopted the Policy. Thereafter, the 1995 Act was enacted. Though the new Act has not been enforced so far and in **Common Cause vs. Union of India and Others** [2003 (8) SCC 250], this Court

A declined to issue a writ of mandamus to Central Government to notify the same, it will be useful to take cognizance of the statement of objects and reasons and Section 22(r) of the 1995 Act to which reference was made by the learned counsel during the course of hearing. The same reads as under:-

B **Statement of objects and reasons:**

The relations between landlords and tenants in the National Capital Territory of Delhi are presently governed by the Delhi Rent Control Act, 1958. This Act came into force on the 9th C February, 1959. It was amended thereafter in 1960, 1963, 1976, 1984 and 1988. The amendments made in 1988 were based on the recommendations of the Economic Administration Reforms Commission and the National Commission on Urbanisation. Although they were quite extensive in nature, it was felt that they did not go far enough in the matter of removal D of disincentives to the growth of rental housing and left many questions unanswered and problems unaddressed. Numerous representations for further amendments to the Act were received from groups of tenants and landlords and others.

E 2. The demand for further amendments to the Delhi Rent Control Act, 1958 received fresh impetus with the tabling of the National Housing Policy in both Houses of Parliament in 1992. The Policy has since been considered and adopted by Parliament. One of its major concerns is to remove legal F impediments to the growth of housing in general and rental housing in particular. Paragraph 4.6.2 of the National Housing Policy specifically provides for the stimulation of investment in rental housing especially for the lower and middle income groups by suitable amendments to rent control laws by State G Governments. The Supreme Court of India has also suggested changes in rent control laws. In its judgment in the case of Prabhakaran Nair vs. State of Tamil Nadu, the Court observed that the laws of landlords and tenants must be made rational, humane, certain and capable of being quickly implemented. In this context, a Model Rent Control Legislation was formulated H

by the Central Government and sent to the states to enable them to carry out necessary amendments to the prevailing rent control laws. Moreover, the Constitution (Seventy-Fifth Amendment) Act, 1994 was passed to enable the State Governments to set up State-level rent tribunals for speedy disposal of rent cases by excluding the jurisdiction of all courts except the Supreme Court.

3. In the light of the representations and developments referred to above, it has been decided to amend the rent control law prevailing in Delhi. As the amendments are extensive and substantial in nature, instead of making changes in the Delhi Rent Control Act, 1958, it is proposed to repeal and replace the said Act by enacting a fresh legislation.

4. To achieve the above purposes, the present Bill, inter alia, seeks to provide for the following, namely:-

(a) exemption of certain categories of premises and tenancies from the purview of the proposed legislation;

(b) creation of tenancy compulsorily to be written agreement;

(c) compulsory registration of all written agreements of tenancies except in certain circumstances;

(d) limit the inheritability of tenancies;

(e) redefine the concept of rent payable and provide for its determination, enhancement and revision;

(f) ensure adequate maintenance and repairs of tenanted premises and facilitate further improvement and additions and alterations of such premises;

(g) balance the interests of landlords and tenants in the matter of eviction in specified circumstances;

(h) provide for limited period tenancy and automatic eviction of tenants upon expiry of such tenancy;

A (i) provide for the fixing and revision of fair rate and recovery of possession in respect of hotels and lodging houses;

(j) provide for a simpler and speedier system of disposal of rent cases through Rent Authorities and Rent
B Tribunal and by barring the jurisdiction of all courts except the Supreme Court; and

(k) enhance the penalties for infringement of the provisions of the legislation by landlords and tenants.

C 5. On enactment, the Bill will minimize distortion in the rental housing market and encourage the supply of rental housing both from the existing housing stock and from new housing stock.

6. The Notes on clauses appended to the Bill explain the
D various provisions of the Bill."

22. **Protection of tenant against eviction.**–

(r) that the premises let for residential or non-residential purposes are required, whether in the same form or after re-construction or re-building, by the landlord
E for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable
F accommodation.

9. An analysis of the above noted provisions would show that till 1947 no tangible distinction was made between the premises let for residential and non-residential purposes. The
G implicit restriction on the landlord's right to recover possession of the non-residential premises was introduced in the Delhi and Ajmer-Marwara Rent Control Act, 1947 and was continued under the 1958 Act. However, the 1995 Act does not make any distinction between the premises let for residential and non-
H residential purposes in the matter of eviction of tenant on the

ground that the same are required by the landlord for his/her bona fide use or occupation. Even though, the 1995 Act is yet to be enforced and in **Common Cause vs. Union of India** (supra) this Court declined to issue a writ of mandamus to the Central Government, for that purpose, we can take judicial notice of the fact that the legislature has, after taking note of the developments which have taken place in the last 37 years i.e. substantial increase in the availability of the commercial and non-residential premises or the premises which can be let for commercial or non-residential purposes and meteoric rise in the prices of land and rentals of residential as well as non-residential premises, removed the implicit embargo on the landlord's right to recover possession of the premises if the same are bona fide required by him/her.

10. Section 13(3)(a) of the Punjab Act (unamended and amended), which came up for consideration in **Harbilas Rai Bansal vs. State of Punjab** (supra) reads as under:-

Unamended Section 13(3)(a) of the Punjab Act.

13(3)(a). A landlord may apply to the Controller for an order directing tenant to put the landlord in possession–

(i) in the case of a residential or a scheduled building if–

(a) he requires it for his own occupation;

(b) he is not occupying another residential or a scheduled building, as the case may be, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(ii) in the case of a non-residential building or rented land, if–

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be and

(c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the urban area concerned;

(iii) in the case of any building, if he requires it for the re-erection of that building, or for its replacement by another building, or for the erection of other building;

(iv) in the case of any building, if he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer or as a "registered practitioner" within the meaning of that expression as used in the Punjab Medical Registration Act, 1916 (II of 1916), or for the residence of his son who is married, if–

(a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and

(b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period:

Provided further that where that landlord has obtained possession of a residential, a scheduled or non-residential building or rented land under the provisions of sub-paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraphs for the possession of any other building of the same class or

rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-paragraph (iv) he shall not be entitled to apply again under the said sub-paragraph for the possession of any other building for the use of or, as the case may be, for the residence of the same son.

(b) The Controller shall, if he is satisfied that the claim of the landlord is bona-fide make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

Amended Section 13(3)(a) of the Punjab Act.

13. **Eviction of tenants**.– (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1949, as subsequently amended.

(2) * * *

(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession–

(i) in the case of a residential building, if–
(omitted as not relevant)

(ii) in the case of rented land, if–

A (a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land, and

B (c) he has not vacated such rented land without sufficient cause after the commencement of this Act, in the urban area concerned.

11. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's C approach while interpreting the rent control legislations. An analysis of the judgments of 1950s' to early 1990s' would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant – **Mohinder Kumar and Others vs. State of Haryana and Another** [1985 (4) SCC D 221], **Prabhakaran Nair and Others vs. State of Tamil Nadu and Others** (supra), **D.C. Bhatia and Others vs. Union of India and Another** [1995 (1) SCC 104] and **C.N. Rudramurthy vs. K. Barkathulla Khan** [1998 (8) SCC 275]. In these and others case, the Court consistently held that the E paramount object of every Rent Control Legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute F scarcity thereof. However, a different trend is clearly discernible in the latter judgments. In **Malpe Vishwanath Acharya and Others vs. State of Maharashtra & Another** (supra), this Court considered the question whether determination and fixation of rent under the Bombay Rents, Hotel and Lodging Houses, Rates G Control Act, 1947, by freezing or pegging down of rent as on 1.9.1940 or as on the date of first letting was arbitrary, unreasonable and violative of Article 14 of the Constitution. The three-Judge Bench answered the question in affirmative but declined to strike down the concerned provisions on the ground that the same were to lapse on 31.3.1998. Some of the H

observations made in that judgment are worth noticing. These are: A

> "Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. *When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants.* It is not as if the government does not take remedial measures to try and off set the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent – the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context." B C D E
>
> "When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social Legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The Legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article F G H

A 14 of the Constitution. This Article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others."

12. In **Joginder Pal vs. Naval Kishore Behal** [2002 (5) SCC 397], the Court after noticing several judicial precedents B on the subject observed as under:

"The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation C and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the D tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. *The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the* E *society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to* F *take care of those situations where the landlords too are weak and feeble and feel humble.*

[Emphasis added]

13. We shall now deal with the core question whether G Section 14(1)(e) of the 1958 Act can be treated as violative of equality clause embodied in Article 14 of the Constitution insofar as it differentiates between the premises let for residential and non-residential purposes in the matter of eviction on the ground of bona fide requirement of the landlord and restricts the H landlord's right only to the residential premises.

14. Article 14 declares that the state shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the Directive Principles of State Policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations.

15. In **Ram Krishna Dalmia and Ors. vs. Shri Justice S.R. Tendolkar and Ors.**, [AIR 1958 SC 538], this Court considered the inter-play of the doctrines of equality and classification and held:-

> "It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be found on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be

A achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under
B consideration. It is also well established by the decisions of Supreme Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

Speaking for the Court, Chief Justice S.R. Das enunciated some principles, which have been referred to and relied in all
C subsequent judgments. These are:

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated
D as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear
E transgression of the constitutional principles ;

(c) that it must be presume that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are
F based on adequate grounds;

(d) that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

G (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of times and may assume every state of facts which can be conceived existing at the time of legislation;
H and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be resumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

16. In **Mohd. Shujat Ali vs. Union of India** [1975 (3) SCC 76], the Court observed that Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." At the same time, the Court cautioned against the readymade invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brawer, "the very idea of classification is that of inequality". The Court has tackled

A this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional B generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of C reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination D *between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same.* This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity E requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped F together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. *The test which has been evolved for this purpose is — and* G *this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution — that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the*

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object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in State of Jammu & Kashmir v. Triloki Nath Khosa the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in **State of Jammu & Kashmir v. Triloki Nath Khosa**: (at SCC p. 42)

A "Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

B [Emphasis added]

17. In **L.I.C. of India and Another vs. Consumer Education & Research Centre and Others** [1995 (5) SCC 482], the Court reiterated the above noted principal in the following words:-

C "The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. Maneka Gandhi v. Union of India [1978 (1) SCC 248] ratio extricated it from this moribund and put its elasticity for egalitarian path finder lest the classification would deny equality to the larger segments of the society. The classification based on employment in Government, semi-Government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice."

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18. In **Gian Devi Anand vs. Jeevan Kumar & Ors.** [1985 (2) SCC 683] the Supreme Court considered the question whether the statutory tenancy in respect of commercial premises is heritable. The facts of that case were that one Wasti Ram

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was tenant in respect of Shop No. 20, New Market, West Patel Nagar of the respondents at a monthly rental of Rs.110/-. The tenancy commenced from September 1, 1959. In April, 1970, the respondent landlord determined the tenancy by serving a notice to quit. In September, 1970 he filed a petition under Section 14 of the Act for eviction of Wasti Ram on the grounds of non-payment of rent, bona fide requirement, change of user from residential to commercial, substantial damage to the property and sub-letting. He also impleaded one Ashok Kumar Sethi, as defendant No. 2 by alleging that he had been unlawfully inducting a sub-tenant. The Rent Controller negatived all the grounds of challenge except the non-payment of rent. He held that the premises had been let out for commercial purpose and as such the ground of bona fide requirement was not available to the landlord for seeking eviction of the tenant. On the issue of non-payment of rent, the Rent Controller held that the tenant was liable to pay a sum of Rs.24/- by way of arrears for the period from March 1, 1969 to February 28, 1970 after taking into consideration all payments made and a further sum of Rs.90/- on account of such arrears for the month of September, 1970. He, accordingly, directed eviction of the tenant. The landlord challenged the order of the Rent Controller by filing an appeal. The tenant, namely Wasti Ram, filed cross objection on the findings recorded by the Rent Controller on the issue of default. The Rent Control Tribunal allowed the cross objection of the tenant and held that there was no default in the matter of payment of rent. The Tribunal rejected the landlord's plea regarding damage to the property but remanded the matter to the Rent Controller for deciding the question of sub-letting afresh after affording opportunity to the parties to lead evidence. Smt. Gian Devi Anand, the widow of the deceased tenant appealed against the order of the Tribunal. The landlord filed cross objections to question the finding recorded by the Tribunal on the issue of default by the tenant in payment of rent. The High Court held that after the demise of the statutory tenant, his heirs do not have the right to remain in possession because the statutory tenancy was not heritable and the protection afforded to the

A B C D E F G H

A statutory tenant was not available to the heirs. This Court reversed the order of the High Court and held:

> "We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has been determined but who is protected against
B eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises, which he occupies is derived from the provisions
C of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property
D in the subject matter of tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the
E premises in his occupation. It is not possible to claim that the "sanctity" of contract cannot be touched by legislation. It is therefore necessary to examine the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondent's predecessors-in-interest
F retained a heritable interest in the disputed premises even after the termination of their tenancy."

In paragraph 34 of the judgment, the Court highlighted difference between the residential and commercial tenancies and concluded that the legislature could never have intended
G that the landlord would be entitled to recover possession of the premises or the building let for commercial purposes on the death of the tenant of the commercial tenancies, even if no ground for eviction as prescribed in the rent Act is made out. In the concluding part of the judgment, the Court took cognizance
H of the absence of provision for eviction of the tenant of non-

residential premises even when the same are bona fide required by the landlord for his use or occupation and observed:

> "Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. In spite of various restrictions put on the landlord's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. *A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property in spite of his letting out the same to a tenant. The Legislature in its wisdom did recognise this fact and the Legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions on*

A *some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that Legislature*
B *may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well."*

[Emphasis added]

19. What is significant to be noted is that in para 34 of the
C aforementioned judgment, the distinction between residential and non-residential tenancies was made in the context of the rights of the heirs of the tenant to continue to enjoy the protection envisaged under Section 14(1). The Court was of the view that the heirs of the tenants of the commercial premises cannot be
D deprived of the protection else the family of the tenant may be brought on road or deprived of the only source of livelihood. The Court also opinioned that if the heirs of the individual tenants of commercial tenancies are deprived of the protection, extremely anomalous consequences will ensue because the
E companies, corporations and juridical entities carrying on business or commercial activities in rented premises will continue to enjoy the protection even after the change of management, but the heirs of individual tenants will be denuded of similar protection. At the same time, the Court noted that the
F landlord of a premises let for residential purpose may bona fide require the same for his own use or the use of his dependent family members and observed that the legislature should remove apparent discrimination between residential and non-residential tenancies when the landlord bona fide requires the same. If the
G observations contained in para 34 are read in any other manner, the same would become totally incompatible with the observation contained in the penultimate paragraph of the judgment and we do not see any reason for adopting such course., more so, because the later part of the judgment has
H been relied in **Harbilas Rai Bansal vs. State of Punjab** (supra)

and **Rakesh Vij vs. Dr. Raminder Pal Singh Sethi** (supra). A

20. In **Rattan Arya vs. State of Tamil Nadu** (supra), the Court considered challenge to the constitutionality of Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 under which residential buildings or part thereof occupied by any tenant paying monthly rent of more than Rs.400/- were exempted from operation of the Act. It was urged on behalf of the appellant that distinction made between the residential and non-residential buildings in the matter of applicability of the Act was unreasonable, irrational and arbitrary. The Court referred to different rent control legislations applicable to the State of Tamil Nadu and observed that the scheme of the Act does not make any distinction between residential and non-residential buildings insofar as the rights of the tenant's and obligations of the landlord's are concerned and there are no special rights attached to the tenancies of the non-residential buildings as against the tenancies of residential buildings so as to warrant exemption only to residential buildings. The Court also took cognizance of enormous increase of rents throughout the country, referred to the judgment in **Motor General Traders vs. State of Andhra Pradesh** [1984 (1) SCC 222] and struck down Section 30(ii) of the Tamil Nadu Act on the ground that the same is violative of Article 14 of the Constitution. B C D E

21. In **Harbilas Rai Bansal vs. State of Punjab & Anr.** (supra), the Supreme Court examined the constitutionality of the amendment made in the Punjab Act, whereby the landlord was deprived of his right to seek eviction of tenant from non-residential building on the ground of bonafide requirement for his own use. This Court referred to the unamended and amended Section 13(1)(a) of the Punjab Act and observed: F G

> "The Scheme of the Act, unmistakably aims at regulating the conditions of tenancy, controlling the rents and preventing unreasonable and mala fide eviction of tenants of the residential and non-residential buildings. For the advancement of these objects, tenants are invested with H

A certain rights and landlords are subjected to certain obligations. These rights and obligations are attached to the tenants and the landlords of all buildings, residential or non-residential. None of the main provisions of the Act, to which we have referred, make any serious distinction B between residential and non-residential buildings."

The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the C Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided — conforming to its objects and reasons — bona fide requirement of the premises by the landlord, whether D residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardships to the tenant. E Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering F great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out G the shop till the time her children grow up and need the premises for their personal use. It would be wholly arbitrary — in a situation like this — to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential H

premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises." A B

22. For taking the aforesaid view, the Court drew support from the observations contained in the concluding portion of the judgment in **Gian Devi Anand vs. Jeevan Kumar & Ors.** (supra). This is evident from paragraph 17 of the judgment, which is extracted below:- C

"In *Gian Devi case* the question for consideration before the Constitution Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The above-quoted observations were made by the Bench keeping in view that hardship being caused to the landlords of commercial premises who cannot evict their tenants even on the ground of bona fide requirement for personal use. The observations of the Constitution Bench that "bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial" fully support the view we have taken that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of Article 14 of the Constitution of India and are liable to be struck down." D E F

23. The ratio of **Harbilas Rai Bansal vs. State of Punjab** (supra) was noted and approved in **Rakesh Vij vs. Dr. Ravinder Pal Singh Sethi** (supra), in the backdrop of the argument that the amendment made to the Punjab Act 1956 was not applicable to the Union Territory of Chandigarh. While G H

A rejecting the argument, the three Judge Bench referred to Article 13(2) of the Constitution, some of the judgments in which that Article was considered and observed:

> "We find sufficient force in the contention raised by the learned counsel for the respondent landlord. In Harbilas
B Rai Bansal this Court held in very clear terms that the classification created by the Amendment Act, 1956, by which the words "a non-residential building or" occurring in Section 13(3)(a)(ii) were deleted and certain other amendments had been made, had no reasonable nexus
C with the object sought to be achieved by the Act and consequently the provisions of the Amendment Act were violative of Article 14 of the Constitution."

24. The judgment in **Harbilas Rai Bansal vs. State of**
D **Punjab** (supra) was recently noticed in **Mohinder Prasad Jain vs. Manohar Lal Jain** [(2006) 2 SCC 724]. The respondent in that case applied for eviction of the tenant (appellant) from the shop in question on the ground of bona fide personal requirement i.e. for the purpose of running wholesale business in Ayurvedic medicines. The Rent Controller dismissed the application on
E the ground that bona fide requirement of the landlord has not been proved. The Appellate Authority reversed the order of the Rent Controller and returned a finding that the landlord has been able to prove his bona fide requirement. In the revision filed by the appellant, reliance was placed on the judgment of the Full
F Bench of Delhi High Court in **Satyawati Sharma Vs. Union of India & Ors.** (that judgment is under challenge in these appeals) and it was urged that an application for eviction of the tenant on the ground of bona fide requirement of the landlord is not maintainable in respect of non-residential premises. The
G learned Single Judge of Punjab & Haryana High Court referred to an earlier judgment of the Division Bench of that Court in **State of Haryana vs. Ved Prakash Gupta** [(1999) 1 Rent Law Reporter 689], wherein the restriction imposed on the landlord's right to evict the tenant under the Haryana Urban (Control of
H Rent and Eviction) Act, 1973, was struck down and held that the

judgment of the Full Bench of Delhi High Court cannot be relied for granting relief to the appellant. This Court noted that a similar provision had been declared unconstitutional in **Harbilas Rai Bansal vs. State of Punjab** (supra), which was approved by three Judge Bench in **Rakesh Vij vs. Dr. Ravinder Pal Singh Sethi** (supra) and held that the tenant cannot question the landlord's right to seek eviction of the tenant from non-residential premises.

25. We may now advert to the judgment of Delhi High Court in **H.C. Sharma vs. Life Insurance Corporation of India & Anr.** (supra) and the one under challenge. The facts of **H.C. Sharma's case** were that the petitioner had leased out Flat No.28-E, Connaught Place, New Delhi to National Insurance Company Limited for non-residential use. Subsequently, the National Insurance Company Limited became Life Insurance Corporation of India. The petitioner made efforts to convince the Corporation that the premises are required for his bona fide use and occupation but could not convince the concerned authorities. He, therefore, filed an application for recovery of possession. The same was dismissed by the High Court. He then filed Writ Petition questioning the constitutionality of Section 14(1)(e) on the ground that the classification of the premises into residential and non-residential is arbitrary and violative of Article 14 of the Constitution. The Division Bench of Delhi High Court traced the history of rent control legislation applicable to Delhi, the background in which protection was extended to the tenants generally and the limited right given to the landlord to seek eviction of the tenants only from the premises let for residential purposes and observed:

> "In judging whether the restriction imposed by the impugned provisions is reasonable, the court can look into the circumstances under which the restriction came to be imposed. Judicial notice can be taken of the fact that in 1947 there was a large influx of refugees into Delhi. A large number of people who were uprooted from their hearths and homes in West Pakistan settled in Delhi. This

A resulted in acute shortage of house accommodation and business premises with the result that rents soared to a high level which necessitated the regulation of relations between landlords and tenants....."

B *The object in not providing for the eviction of a tenant from a non-residential premises on the ground specified in sub-clause (e) was to give security of tenure to a tenant of such premises. If a tenant of a non-residential premises was allowed to be evicted on the ground of personal requirement by the landlord, it would have had* C *the effect of completely dislocating the business of the tenant and this in turn could have grave consequences on the social and economic fabric of the country, besides causing untold misery to the tenant."*

[Emphasis added]

D

The Division Bench rejected the plea of discrimination and observed:-

"The grievance of the petitioner is that the discrimination between the two classes of landlords is without any rational E basis. World War II broke out in 1939 and an acute shortage of housing accommodation developed. To control the rents and eviction of tenants, the Rent Control Order of 1939 was issued. A study of the relevant provisions of the rent control legislation discussed in the earlier part of F the judgment would show that the restrictions imposed on the landlords to recover possession of residential premises were very stringent upto 1952. Under the Rent Control Order of 1939 and the Delhi Rent Control Ordinance, 1944 a landlord could recover possession of residential G premises only when he had not resided within the limits of Delhi or New Delhi during the twelve months immediately preceding the date of the application and further satisfied the conditions that it was essential in the public interest that he should take up residence in that area and that he H was unable to secure other suitable accommodation.

Under the Rent Control Act of 1947, a landlord could recover possession of residential premises only if he did not possess other suitable accommodation and further, that he had acquired his interest in the premises at a date prior to the beginning of the tenancy or the 2nd day of June, 1944, whichever was later. The rigour of the restrictions qua residential premises was relaxed in the Act of 1952 and a landlord could recover possession of residential premises if he required it bonafide for occupation as a residence for himself or his family and he had no other suitable accommodation. In comparison to this the Rent Control Order, 1939 was not applied to non-residential premises. The Delhi Rent Control Ordinance did not place any bar on the right of the landlord to recover possession of non-residential premises. The only restriction placed was that the landlord could recover possession of the premises for his residential use. The bar against the eviction of tenants from non-residential premises was introduced in the Rent Control Act, 1947 and it has continued since then. A landlord cannot recover possession of non-residential premises on the ground of his personal need. *There is a clear object behind classification of the premises into "residential" and "non-residential". We have earlier observed that in 1947, on partition of the country, there was a large influx of refugees into Delhi. The Government was faced with the problem of resettling the refugees. This necessitated the imposition of restrictions on the right to evict tenants from residential and non-residential premises. The legislature keeping in view the needs of the people and other circumstances allowed the landlord to evict tenants from residential premises for his personal use in case he did not have any other suitable accommodation, but restricted the right of the landlord to recover possession of non-residential premises on the ground of personal need. The necessity behind this discrimination is to assure the security of tenure to the tenants of non-*

A *residential premises so that they can settle in their business without the fear of being ejected.*

Owners of residential buildings and non-residential buildings each stand out as a class by themselves. The impugned provisions make no distinction *inter se* between
B the two classes of properties or their landlords. The impugned provisions take within their fold all the persons similarly situate. So long as there is equality under similar conditions and among persons similarly situated, there is no infringement of Article 14."

C [Emphasis added]

26. A critical analysis of the above noted judgment makes it clear that the main reason which weighed with the High Court for approving the classification of premises into residential and
D non-residential was that by imposing restriction on the eviction of tenants of premises let for non-residential purposes, the government wanted to solve the acute problem of housing created due to partition of the country in 1947. The Court took cognizance of the fact that as an aftermath of partition many hundred-thousands of people had been uprooted from the area
E which now forms part of Pakistan; that they were forced to leave their homes and abandon their business establishments, industries, occupation and trade and the Government was very much anxious to ensure resettlement of such persons. It was felt that if the landlords are readily allowed to evict the tenants,
F those who came from West Pakistan will never be able to settle in their life. Therefore, in the 1947 and 1958 Acts, the legislature did not provide for eviction of tenants from the premises let for non-residential purposes on the ground that the same are required by the landlord's for their bona fide use and occupation.

G 27. Insofar as the judgment under challenge is concerned, we find that the Full Bench upheld the validity of Section 14(1)(e) mainly by relying upon the judgment of the Division Bench in **H.C. Sharma Vs. Life Insurance Corporation of India & Anr.** (supra) and of this Court in **Amarjit Singh vs. Smt. Khatoon**
H

Quamarin (supra) and by observing that legislature has the right to classify persons, things, and goods into different groups and that the Court will not sit over the judgment of the legislature. It is significant to note that the Full Bench did not, at all, advert to the question whether the reason/cause which supplied rational to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite sea saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes.

28. In our opinion, the reasons which weighed with the High Court in **H.C. Sharma vs. Life Insurance Corporation of India & Anr.** (supra) and the impugned judgment cannot in the changed scenario and in the light of the ratio of **Harbilas Rai Bansal vs. State of Punjab** (supra), which was approved by three-Judge Bench in **Rakesh Vij vs. Dr. Raminder Pal Singh Sethi** (supra) and of **Rattan Arya vs. State of Tamil Nadu** (supra), as also the observations contained in the concluding portion of the judgment in **Gian Devi Anand vs. Jeevan Kumar & Ors.** (supra). now be made basis for justifying the classification of premises into residential and non-residential in the context of landlord's right to recover possession thereof for his bona fide requirement. At the cost of repetition, we deem it proper to mention that in the rent control legislations made applicable to Delhi from time to time residential and non-residential premises were treated at par for all purposes. The scheme of the 1958 Act also does not make any substantial distinction between residential and non-residential premises. Even in the grounds of eviction set out in proviso to Section 14(1), no such distinction has been made except in Clauses (d) and (e). In **H.C. Sharma vs. Life Insurance Corporation of India** (supra), the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to

A partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those up-rooted from Pakistan may B not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, C more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non-residential or commercial purposes D has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article E 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of **Harbilas Rai Bansal vs. State of Punjab** (supra), which was reiterated in **Joginder Pal vs. Naval Kishore Behal** (supra) and approved by three-Judges Bench in **Rakesh Vij vs. Dr. Raminder Pal Singh** F **Sethi** (supra). In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of 1958 Act has, with the passage of time (almost 50 years) has become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational G criteria.

29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity H

and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. In **State of Madhya Pradesh vs. Bhopal Sugar Industries** [AIR 1964 SC 1179], this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times and observed:

> "Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised, State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reason may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.

30. In **Narottam Kishore Dev Verma vs. Union of India** [AIR 1964 SC 1590] the challenge was to the validity of Section 87-B of the Code of Civil Procedure which granted exemption to the rulers of former Indian States from being sued except with the consent of the Central Government. In the course of judgment, it was observed as under:

> "If under the Constitution all citizens are equal, it may be desirable to confine the operation of Section 87-B to past transactions and nor to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which Section 87-B is founded will wear out and the continuance of the said

A section in the Code of Civil Procedure may later be open to serious challenge."

31. In **H.H. Shri Swamiji Shri Admar Mutt Etc, vs. The Commissioner, Hindu Religious & Charitable Endowments Department** [1979 (4) SCC 642] this Court was B called upon to consider the validity of the continued application of the provisions of the Madras Hindu Religious Endowment Act, 1951 in the area which had formerly been part of State of Madras and which had latter become part of the new State of Mysore (now Karnataka) as a result of the State Re-organisation C Act, 1956. While declining to strike down the legislation on the ground of violation of Article 14 of the Constitution, the Court observed:

"An indefinite extension and application of unequal laws for all time to come will militate against their true character D as temporary measures taken in order to serve a temporary purpose. Thereby, the very foundation of their constitutionality shall have been destroyed the foundation being that Section 119 of the State Reorganisation Act serves the significant purpose of giving reasonable time E to the new units to consider the special circumstances obtaining in respect of diverse units. The decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because of the relevance of historical reasons which justify the application of unequal F laws is bound to wear out with the passage of time. In Broom's Legal; Maxim (1939 Edition, page 97) can be found a useful principle "Cessante Ratione Legis Cessat Ipsa Lex", that is to say, "Reason is the source of the law, and when the reason of any particular law ceases, so G does the law itself."

32. In **Motor General Traders vs. State of Andhra Pradesh** (supra), validity of Section 32(b) of the A.P. Buildings (Lease, Rent and Eviction) Control, Act, 1960 was considered. By that Section it was declared that the provisions of the main H

Act will not apply to the buildings constructed after 25th August, 1957. The Court noted that exemption had continued for nearly a quarter century and struck down the same despite the fact that validity thereon had been upheld by the High Court in **Chintapalli Achaiah vs. P. Gopala Krishna Reddy** [AIR 1966 AP 51]. Some of the observations made in the judgment are worth noticing. These are:

> "What may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of Article 14 of the Constitution if it is persisted in over a long period without any justification."
>
> "What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century....We are constrained to pronounce upon the validity of the impugned provision at this late stage because of grab of Constitution which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge".
>
> "As already observed, the landlords of the buildings constructed subsequent to August 26, 1957 are given undue preference over the landlords of buildings constructed prior to that date in that the former are free from the shackles of the Act while the latter are subjected to the restrictions imposed by it. What should have been just an incentive has become a permanent bonanza in favour of those who constructed buildings subsequent to August 26, 1957. There being no justification for the continuance of the benefit to a class of persons without any rational basis whatsoever, the evil effects flowing from the impugned exemption have caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. The

A second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its B invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported."

33. In **Rattan Arya and Ors. vs. State of Tamil Nadu** C **and Anr.** (supra) the Court relied on the ratio of **Motor General Traders vs. State of Andhra Pradesh** (supra) and struck down Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 by observing that there was no rational basis in picking out the class of tenants of residential buildings paying D a rent of more than Rs.400/- per month and to deny similar right to tenants of other buildings and residential or non-residential premises.

34. In **Malpe Vishwanath Acharya and Others vs. State of Maharashtra & Another** (supra), the Court found that the E criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998.

F

35. Before parting with this aspect of the case, we may refer to the judgment of **Amarjit Singh vs. Smt. Khatoon Quamarin** (supra), on which reliance has been placed by the Full Bench of the High Court for negating the appellant's G challenge to Section 14(1)(e). In that case, the respondent sought eviction of the tenant from the first floor of the premises situated at Maharani Bagh, New Delhi on the ground of personal and bona fide necessity. The suit filed by the landlady was decreed by the learned Single Judge of the Delhi High Court and a direction was issued for eviction of the tenant (appellant). This H

Court referred to the earlier judgments in **Pasupuleti Venkateswarlu vs. Motor & General Traders** [1975 (1) SCC 770], **Hasmat Rai vs. Raghunath Prasad** [1981 (3) SCC 103] and held that in view of the availability of alternative accommodation to the landlady, the High Court was not justified in ordering eviction of the tenant.

36. A careful reading of the aforementioned judgment shows that the plea of unconstitutionality of Section 14(1)(e) of the 1958 Act was neither raised nor debated with any seriousness and the observation made by the Court in that regard cannot be treated as the true ratio of the judgment, which as mentioned above, mainly rested on the interpretation of the expression "reasonably suitable residential accommodation". The bedrock of the respondent's claim was that she had a right to comfortable living and availability of alternative accommodation, by itself not sufficient for declining eviction of the tenant. While rejecting this argument, the Court observed:

> "17. .....The logic of the argument of Shri Kacker is attractive, but the legality of the said submission is unsustainable. Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack renting but restrictive so far as the landlord's right or claim for eviction is concerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek comforts other than habitat — that right the landlord must seek elsewhere."

37. Another contention raised on behalf of the landlady was that Section 14(1)(e) of the 1958 Act should be read in a manner which will make it in conformity with Articles 14 and 16 of the Constitution. This is evinced from para 18 of the judgment which is extracted below:-

> "18. Our attention was drawn to the decision in the case of Bishambhar Dayal Chandra Mohan v. State of U.P.[1982 (1) SCC 39] and our attention was drawn to the observations at p. 66 and 67 of the said case in aid of the

A submission that right to property is still a constitutional right and therefore in exercise of that right if a landlord or an owner of a house lets out a premises in question there was nothing wrong. Shri Kacker submitted that the second limb of Section 14(1)(*e*) of the Act should be read in such B a way that it was in consonance with Article 14 and Article 21 of the Constitution. Otherwise it would be void as being unconstitutional. As a general proposition of law this is acceptable."

The Court rejected the argument and observed:

C

"The Act in question has the authority of law. There is no denial of equality nor any arbitrariness in the second limb of Section 14(1)(*e*) of the Act, read in the manner contended for by the appellant. Article 21 is not violated so far as the landlord is concerned. The rent restricting D Acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The Rent Restriction Acts deal with the problem of rack renting E and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bona fide requirements of the landlords and the tenants in the expanding explosion of need and population and F shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession G any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution."

38. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it H

discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under :-

> "that the premises are required *bona fide* by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

While adopting this course, we have kept in view well recognized rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible – **R.M.D. Chamarbaugwalla vs. Union of India** (AIR 1957 SC 628) and **Bhawani Singh vs. State of Rajasthan** [1996 (3) SCC 105].

As a sequel to the above, the explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant.

40. In the result, the appeals are allowed. The impugned judgment is set aside and Section 14(1)(e) of the 1958 Act is partly struck down. Section 14(1)(e) shall now read as indicated in para 39 above. Consequently, the writ petitions filed by the appellants shall stand allowed and the orders impugned therein shall stand quashed. The parties are left to bear their own costs.

D.G. Appeals allowed.