

“UNDERSTANDING LEAVE AND LICENSE AGREEMENTS IN INDIAN LAW”

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Abstract

Understanding Leave and License Agreements in Indian Law

“In the world of property dealings, leave and license agreements serve as the perfect balance between access and control, redefining the dynamics of temporary property usage in India.” The concept of leave and license agreements in Indian law originates from the Indian Easements Act, 1882, which distinguishes a “license” from a “lease.” Leave and license agreements in India today are widely used for temporary property arrangements, particularly in urban housing and commercial spaces. Governed by the Indian Easements Act, 1882, they offer flexibility without transferring ownership rights. Leave and license agreements in Indian law, governed by the Indian Easements Act, 1882, allow temporary use of a property without transferring ownership or interest. Unlike leases, these agreements provide flexibility for licensors and licensees, making them ideal for short-term arrangements in housing and commercial sectors. Mandatory registration and stamp duty, especially in states like Maharashtra, ensure legal clarity and prevent disputes. Judicial interpretations and technological advancements like e-registration have further streamlined the use in India’s evolving real estate landscape. Ambiguities in distinguishing leave and license agreements from leases, inconsistent state regulations, and challenges in enforcement complicate their use in India. Analyzing legal frameworks, precedents, and practical challenges to bridge gaps between theory and practice. Ambiguities in distinguishing leave and license agreements from leases, inconsistent state regulations, and challenges in enforcement complicate the use in India. This research analyzes legal frameworks, precedents, and practical challenges to bridge gaps between theory and practice. The aim is to analyze the legal framework and practical challenges of leave and license agreements in Indian law, with the objective of distinguishing them from leases, addressing enforcement issues, and proposing measures for improved clarity and consistency in their application.

Introduction

With the rapid growth of urbanization and real estate transactions in India, the need for flexible and legally sound property arrangements has increased. Leave and License Agreements have emerged as a preferred alternative to traditional lease agreements, offering property owners and occupants a structured yet temporary arrangement. Unlike a lease, a license does not transfer any interest in the

property but merely grants permission for its use. Governed primarily by the Indian Easements Act, 1882, and state-specific rent control laws like the Maharashtra Rent Control Act, 1999, these agreements ensure legal clarity while protecting the rights of both licensors and licensees. This seminar explores the concept, legal framework, key features, and judicial interpretations of Leave and License Agreements, shedding light on their significance

in India's evolving real estate landscape.

A Leave and License Agreement is a legal contract that lays down the terms and conditions for a property owner (known as the 'licensor') to grant permission to another party (the 'licensee') to utilise the property for a specific duration. Unlike a lease agreement, which entails more comprehensive rights for the tenant, a leave and license agreement offers temporary occupancy rights without transferring ownership. This agreement encompasses aspects like rent, duration, and conditions for termination. It's vital for both parties to comprehend and abide by the terms specified in the agreement. Moreover, online platforms provide convenient tools for creating, customising, and signing leave and license agreements efficiently.

Leave and Licence Agreements are a popular mode of occupying immovable property (both offices and residences) especially in the city of Mumbai.

Leave and Licence agreement is different from leases as leases create an interest in property whereas the former does not. Also, leases are transferable which is not the case in a Leave and Licence agreement.

Licensor is the person who grants the Licence and a Licensee is the person who pays for the Licence and enjoys the rights. Licences must not be confused with leases or rental agreements as they are each different in their own aspects.

History of Leave and License Agreements in Indian Law

The concept of leave and license agreements has its roots in the British colonial era when property laws were structured based on English legal principles. The Indian Easements Act, 1882, provided the first statutory framework defining a license as a personal right to use a property without conferring ownership or tenancy rights.¹

Before the enactment of modern rent control laws, property transactions in India were primarily governed by informal agreements, often leading to disputes over tenancy rights.

With the introduction of the Maharashtra Rent Control Act, 1999, the legal status of leave and license agreements became more structured, mandating registration and ensuring clear legal distinctions from leases. Judicial interpretations, particularly by the Supreme Court, further refined the applicability of such agreements, reinforcing the intent of the parties over mere terminology in determining whether an arrangement is a lease or a license.²

What is a Leave and Licence Agreement

A Leave and Licence Agreement serves as a legally binding document between a property owner (licensor) and a tenant (licensee), dictating the terms and conditions for the licensee's occupation of the premises. Commonly employed in short-term rental arrangements like residential accommodations or office spaces, this agreement offers clarity and flexibility for both parties. From defining rent amounts to and termination conditions, every aspect is carefully detailed to ensure a seamless tenancy experience. Let's explore the key features of a Leave and Licence Agreement to grasp its significance in property transactions.

Leave and license agreement: The legal definition

The definition of the leave and license agreement can be found in the Indian Easements Act, 1882. Section 52 of the Indian Easements Act states:

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.

According to the Supreme Court (SC), if a leave and license agreement permits only the usage of a property in a specific way or under specific terms, while it is in the possession and control of the owner, it will be a license. This means that

no interest in the property is transferred to tenant.

So the owner of the property still maintains legal possession of his or her property. The Supreme Court states, "The legal possession, thereof, continues to be with the owner of the property but the licensee is permitted to make use of the premises for a particular purpose. But for this permission, his occupation would be unlawful. It does not create in his favor any estate or interest in the property."³

As there is no easement right granted, the landlord of the property can revoke the permission granted to the tenant at any time. The landlord can choose to let out his property for short periods by working out a leave and license rental agreement. This benefits tenants as well as they will not have to give extended notice periods when they want to vacate a property.⁴

Features of a Leave and Licence Agreement

Here are the key features typically included in a Leave and Licence Agreement:

- **Duration of Occupancy:** Clearly defines the period during which the licensee is authorised to occupy the premises, ensuring clarity regarding the agreement's duration.
- **Rent Amount:** Specifies the rent payable by the licensee to the licensor for using the property, along with any applicable taxes or fees.
- **Permitted Usage:** Outlines the authorised purposes for which the property can be utilised, such as residential or commercial activities, to prevent unauthorised use.
- **Conditions for Termination:** States the circumstances under which either party can terminate the agreement, establishing a transparent process for ending the arrangement.
- **Security Deposit:** Determines the amount of security deposit to be paid by the licensee to the licensor, serving as a financial

safeguard for the property owner.

Importance of a Leave and Licence Agreement

A Leave and Licence Agreement holds significant importance in property transactions, providing a structured framework for both landlords and tenants to govern their rental arrangements.

- **Flexibility:** Enables parties to tailor terms according to their specific requirements, including rent adjustments, occupancy duration, and other provisions.
- **Legal Protection:** Offers legal recourse in case of disputes, ensuring adherence to agreed-upon terms and proper eviction procedures.
- **Clarity:** Eliminates ambiguity through clear and concise language, delineating rights, responsibilities, and obligations of both parties.
- **Financial Security:** Establishes defined payment terms and penalties for breaches, ensuring financial stability and accountability.
- **Occupancy Rights:** Defines the licensee's right to occupy the premises and the licensor's entitlement to enter, inspect, and maintain the property.

Characteristics of Leave and License Agreement

- A popular choice among landlords, the Leave and Licence agreement has the following properties.
- No transfer of interest is created from owner to tenant.
- No property rights are created
- The amount due as Licence fee, deposit and other charges can be contractually determined by participating individuals
- Typical duration of leave and license contract is eleven (11) months. But Commercial leases are often of long duration, sometimes running into 5-6 years as well. In case of factories, cinema halls or such other properties; leases can be multi-decades or even multi-

century long.

- Owner in case of leave and licence agreement maintains higher freedom and rights when it comes to cancellation and eviction of tenant.

The Maximum Period of Leave and License Agreement

The maximum period for a leave and License agreement in India is typically 11 months. This 11-month period is standard for most agreements, whether they are for residential or commercial purposes. However, it is not essential that leave and license agreement has to be renewed for only 11 months; the tenure can be decided by the lessor and the lessee.⁵

Difference Between Rent Agreement and Leave and Licence Agreement

On the surface, lease and licence agreement and rent agreement appear to be the same thing, yet there is a significant difference between them.

Interest and Transferability:

Leave and License Agreement: A leave and license arrangement grants permission to use the property but doesn't create an interest in the property itself. It's a permission-based agreement that doesn't confer ownership or proprietary rights to the licensee. Additionally, leave and license agreements typically can't be transferred to another party.

Rent Agreement Similarly, a rent agreement doesn't confer ownership but allows temporary use of the property. Unlike leave and license, some leases might create a leasehold interest in the property, especially longer-term commercial leases. Leases can often be transferred, subject to the terms of the agreement and local laws.⁶

Term:

- **Leave and License Agreement:** Can be signed for varying durations, including shorter periods like 11 months.
- **Rent Agreement:** Can be signed for

different durations, not strictly limited to monthly terms.

Assets/Property Type:

- **Leave and License Agreement:** Typically done for immovable properties.
- **Rent Agreement:** Commonly done for movable properties, lands, and immovable properties as well.

Maintenance Responsibility:

- **Leave and License Agreement:** Maintenance responsibilities can vary based on the terms of the agreement.
- **Rent Agreement:** Maintenance responsibilities usually fall on the tenant or renter, who is responsible for the upkeep of the property. In leasing, particularly in commercial leasing, the lessee may bear the maintenance burden, shifting the responsibility to the industry or company that has invested in the lease.

Flexibility of Terms:

- **Lease & License Agreement:** Terms and conditions are predetermined and mutually accepted in the leasing contract.
- **Rent Agreement:** Renting agreements can change terms and conditions at any time, at the landlord's discretion.

Why is a Leave and License Agreement Better for Homeowners than a Regular Rent Agreement?

Squatters are any property owner's greatest fear. It's quite common to hear accounts of renters unlawfully occupying large houses since owning real estate is out of reach for a large part of the population. If the squatter refuses to vacate your property, it usually leads to a lengthy legal struggle, or an out-of-court settlement that may not be in your best interests. But don't worry; there's a procedure in place to rescind the Leave and license Agreement.

You have two choices: sign a normal rent agreement or create a leave-and-license agreement. In either situation, as a property

owner, you would want to rent out your property with complete confidence that ownership will remain "vacant and unencumbered" at the end of the contract term.

In a Leave And License Agreement, the owner licenses the property to the tenant, and the tenant vacates the premises at the conclusion of the license period. The tenant has no right to claim ownership of the property. The Rent Control Act does not apply to this arrangement.

But in Rental Agreement, Tenants may claim ownership of property after staying for at least ten years and filing a claim under the Rent Control Act. You have a few choices for evicting the renter and raising the rent.⁷

Choose an 11-month Leave and License agreement to make your agreement even more secure. After 11 months, extend the contract for another 11 months. Limit your agreement to 11 months. A renter should not understay or overstay his or her lease because the lessor will have to pay for remodelling, painting, cleaning, repairs, and broker fees again. The recommended tenancy period is 5 years, though with renewed agreements, tenants can stay as long as both parties agree⁸

Legal Aspects

Indian Easements Act, 1882

- There is no statutory definition for the term "leave and licence". The first statute which is relevant for a leave and licence is the Indian Easements Act, 1882. S. 52 of the Act, defines a 'licence' as a right granted by one person to another to do something in or upon the grantor's immovable property, which act would

in the absence of such a right be unlawful. It further states that a licence must not amount to an easement or an interest in the property. Thus, a licence is only a permission or a right to do something upon an immovable property. It is solely a personal right or privilege granted to the licensee by the licensor. A licence does not confer any interest in the immovable property.

- S.56 of the Act provides that a licence cannot be transferred by a licensee or his agent unless the terms of the licence so provide. A licence cannot be assigned by the licensee.
- A leave and licence of an immovable property is different from a lease of the same as the lease creates an interest in the property which the licence does not. Over a period of time the Supreme Court and various High Courts have laid down several tests for determining a licence from a lease but none of them are conclusive. The most famous being that of Associated Hotels of India Ltd. v. R.N. Kapoor, AIR 1959 SC 1262 and the latest decision on this issue is of ICICI, (1999) 5 SCC 708 (SC).⁹
- A wide scale misconception among many people is that a leave and licence can only be for 11 months.

How to make a legally valid Leave And Licence Agreement?

- Prepare Contents of Deed
- Print it on stamp paper of required value.
- The licensor and the licensee must then place their signatures in the designated places along with the signatures of two (2) witnesses

Differences Between Lease And Leave And Licence Agreement

Basis	Lease agreement	Leave and License Agreement
Interest in Property	Creates interest in Property	Does not create interest in property

Possession	Grants exclusive possession of immovable property	Only provides permission to occupy certain property
Transferability	Leases are transferable	Licenses are not transferable
Revocability	Irrevocable	Revocable
Governance	Rent Control Act	Indian Contract Act

Advantages of the Leave and Licence Agreement

Let's take a look at some of the advantages-

- makes eviction and in general, getting the tenant to vacate the house easier.
- no property rights are created in the favour of the lessee.
- no transfer of interest occurs.
- keeps the Rent Control Acts away as this cannot be considered as tenancy. It falls under the Indian Contract Act.

Rent Act

- The Maharashtra Rent Control Act, 1999 now covers within its ambit all leave and licence arrangements.
- The landlord is responsible for getting the leave and licence agreement registered under the Registration Act. Any landlord who contravenes these provisions shall on conviction be punished with imprisonment up to 3 months and/or fine up to ₹ 5,000.

Stamp Duty

According to Art.36A of the Bombay Stamp Act, the stamp duty on a leave and licence agreement varies according to the location of the property and the tenure of the agreement.

Please refer to the Topic on Stamp Duties – Schedule 1, Art.36A for the levy of stamp duty. The Leave and Licence agreement sets up a relaxed owner-tenant relationship.¹⁰

Termination of the Leave and License Agreement

- To terminate the agreement, all you

need to do is to provide the landowner with advance notice, following the provision under your rental agreement format. If both parties agree to terminate at any time by mutual consent.

- The licensor can include clauses stating proper maintenance of the premises and a penalty if the licensee does not comply with the terms.¹¹

Judicial Interpretations

Indian courts have consistently distinguished between leases and licenses. In **Associated Hotels of India Ltd. v. R. N. Kapoor (1959 AIR 1262)**, the Supreme Court clarified that a license does not create an interest in the property but is a mere permission to use it. In **Delta International Ltd. v. Shyam Sundar Ganeriwalla (1999 (4) SCC 545)**, the Supreme Court reinforced that the intention of the parties, rather than the terminology used in the agreement, determines whether an arrangement constitutes a lease or a license.¹²

Documents Required to Register a Rent Agreement

To formalise a Leave and Licence Agreement, certain documents must be provided ensuring legal validity and compliance:

Identity Proof:

Both the licensor and Licensee must provide their identity proofs, such as Aadhar cards, passport copies, or voter IDs.

Address Proof:

Address verification documents, like utility bills or Aadhar cards, are necessary to confirm the residential addresses of both parties.

Property Ownership Proof:

The licensor should provide proof of property ownership, such as the property's title deed or sale deed.

Photographs:

Recent passport-sized photographs of both parties are typically required.

Stamp Duty:

Paying the applicable stamp duty is essential, and the receipt should be included in the documentation.

Notarisation: Some states require notarised signatures of both parties to validate the agreement.

Steps How to Register for Leave and Licence Agreement**Prepare the Agreement:**

Begin by drafting a comprehensive Leave and Licence Agreement that outlines all terms and conditions, including rent, deposit, duration, and responsibilities of both parties. Ensure that it adheres to the legal framework.

Visit the Sub-Registrar's Office:

Both the licensor and licensee need to visit the local Sub-Registrar's Office, usually within the jurisdiction of the rented property.¹³

Get the Agreement Stamped:

Pay the necessary stamp duty based on the rent amount and the state-specific rates. This can be done at the Sub-Registrar's Office or an authorised stamp vendor.¹⁴

Submit Documents:

Submit the required documents, including identity proofs, address proofs, property ownership proofs, photographs, and the drafted agreement.¹⁵

Witnesses and Signatures:

In the presence of two witnesses, sign the agreement. The witnesses must also provide their identities and addresses.

Registration:

The Sub-Registrar will review the documents, verify identities, and register the Leave and Licence Agreement. Once registered, it becomes a legally valid document.¹⁶

Collect the Registered Agreement:

Collect the duly stamped and signed agreement from the Sub-Registrar's Office after registration.

Online Registration: In some states, online registration of Leave and Licence Agreements is available. Follow the specific state's online registration process, if applicable.

Legal Points to Note Before Signing a Leave and Licence Agreement

- **Understanding of Terms:** Carefully read and comprehend all terms and conditions in the agreement, including rent, security deposit, and responsibilities.
- **Property Inspection:** Inspect the property thoroughly before signing to ensure it aligns with the description in the agreement.
- **Notice Period:** Be aware of the notice period required for termination and understand the eviction process.
- **Stamp Duty:** Verify that the appropriate stamp duty has been paid and documented in the agreement.
- **Registration:** Ensure the agreement is registered with the local Sub-Registrar's Office for legal validity.
- **Witnesses:** Confirm the presence of witnesses and their signatures on the agreement.
- **Legal Consultation:** Consider seeking legal advice if you have doubts or concerns about the agreement's terms. Prioritising these legal aspects ensures a secure and transparent arrangement for both parties.¹⁷

Practical Implications

- **For Licensors:** Protects property owners from adverse possession claims, provides flexibility in removing the licensee upon expiry.
- **For Licensees:** Ensures legal use of property with clear exit clauses, suitable for individuals and businesses seeking short-term occupancy.
- **For Businesses:** A popular choice for commercial spaces due to flexibility, avoiding complexities associated with lease agreements.¹⁸

Challenges and Recommendations

- **Ambiguities in Law:** Lack of clear statutory guidelines leads to disputes. Court judgments play a significant role in interpreting agreements.
- **Enforcement Issues:** Unregistered agreements often create legal complications, making it difficult to establish legal rights in case of disputes.
- **State-Wise Variations:** Different states have different stamp duty and registration requirements, leading to inconsistencies in enforcement.
- **Recommendation:** A unified legal framework should be introduced to standardize agreements across states, and public awareness should be increased to ensure compliance with legal formalities.

Conclusion

The **Leave and Licence Agreement** stands as a vital legal instrument, meticulously balancing the interests of property owners and occupants in India. Its defined legal framework and the convenience of online registration have made it an indispensable tool for securing property transactions. With clarity on its legal definition, format, and online process, you're well-equipped to navigate the country's dynamic landscape of property management in the country. Embrace the power of informed

decision-making and legal clarity as you embark on your journey within this fascinating Leave & Licence Agreements realm.

A Leave and Licence Agreement serves as a vital legal document that outlines the terms and conditions between a landlord and a tenant. It ensures clarity, legality, and protection for both parties involved in the renting or leasing of a property. By clearly defining responsibilities, rights, and obligations, this agreement helps prevent misunderstandings and disputes in the future. Additionally, it provides a framework for addressing various scenarios such as rent payments, security deposits, notice periods, termination procedures, and even loans like mortgage loans. Therefore, it is essential for both landlords and tenants to carefully review and understand the agreement before signing to ensure a smooth and mutually beneficial tenancy experience.

ENDNOTES

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