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DELHI JUDICIAL SERVICES

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Delhi Rent Control Act

The Delhi Rent Control Act Historical Background

The first rent control measure in Delhi came after the outbreak of the Second World War in 1939, under the Defense of India Rules. This was restricted to New Delhi and the Notified Area, Civil Station. In 1942, the provisions of the Punjab Urban Rent Restriction Act, 1941 were made applicable to the remaining areas of Delhi. It was soon realised that the provision of the Punjab Act were insufficient for a city like Delhi and thus, it was supplemented by another Order under the Defense of India Rules in 1944.

After the war, another comprehensive legislation was passed for all parts of Delhi by the name of The Delhi and 'Ajmer Marwara Rent Control Act, 1947. In 1952, it was repealed by The Delhi and Ajmer Rent Control Act, which substituted it and ceased the application of rent Acts of other states to certain parts of Delhi. Another attempt was made in 1958 to plug certain loopholes of the 1952 act. In the same year, the Slum Areas (Improvement and Clearance) Act was passed which sought to protect the interest of the slum dwellers. The next comprehensive enactment on rent control in Delhi was passed in 1958 i.e. The Delhi Rent Control Act, 1958 which came into force on February 9, 1959.

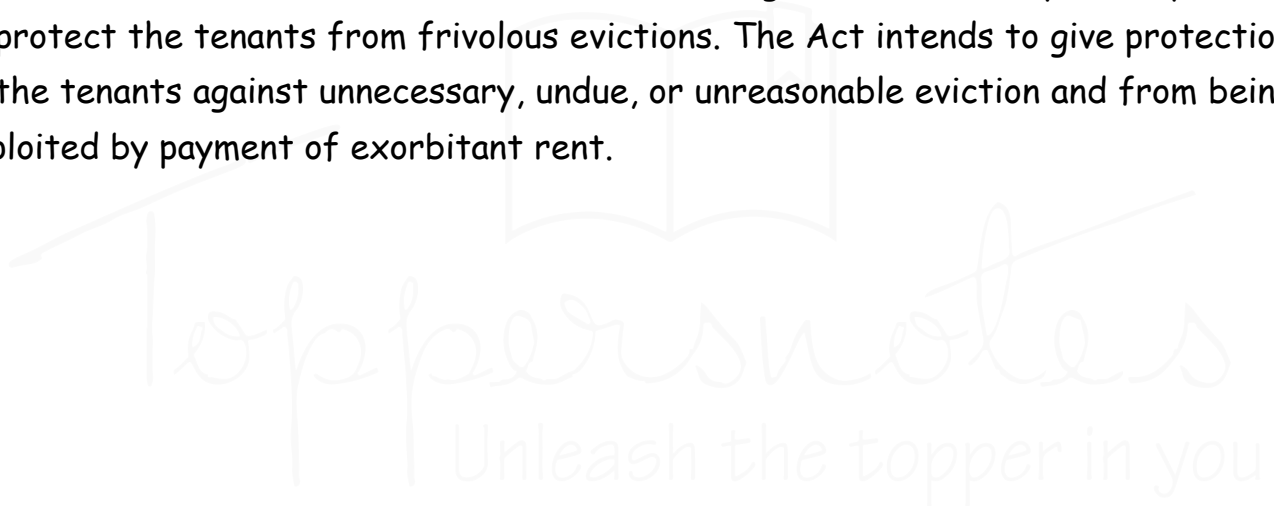
This is the current legislation of rent control in Delhi and it extends to the areas included within the New Delhi Municipal Committee and the Delhi Cantonment Board, together with the urban areas of the Municipal Corporation of the Urban Areas in Delhi.

The statement of objects and reasons for the enactment of the Rent Control Act, indicates that has been enacted with a view:

- (a) To devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants;
- (b) To provide for the determination of the standard rent payable by tenants of the various categories of premises which should be fair, to the tenants, and at the same time, provide incentive for keeping the existing houses in good repairs, and for further investment in house construction; and
- (c) To give tenants a larger measure of protection against eviction.

This indicates that the object underlying the Rent Control Act is to make provision for expeditious adjudication of disputes between landlords and tenants, determination of standard rent payable by tenants and *giving protection against eviction to tenants*. However, the premises belonging to the Government are excluded from the ambit of the Rent Control Act which means that *the Act has been enacted primarily to regulate the private relationship between landlords and tenants with a view to confer certain benefits on the tenants and the same time to balance the interest of the landlords by providing for expeditious adjudication of proceedings between landlords and tenant...*

Thus, Delhi Rent Control Act is a socio-economic legislation which is primarily meant to protect the tenants from frivolous evictions. The Act intends to give protection to the tenants against unnecessary, undue, or unreasonable eviction and from being exploited by payment of exorbitant rent.



The Delhi Rent Control Act, 1958 (Delhi Act 59 of 1958)

Chapter 1

Preliminary

1. Short title, extent and commencement:-
 - (a) This Act may be called the Delhi Rent Control Act, 1958.
 - (b) It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule: Provided that the Central Government; may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.
 - (c) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. - In this Act, unless the context otherwise requires:-
 - (a) "Basic rent", in relation to premises let out before the 2nd day of June, 1944, means the basic rent of such premises as determined in accordance with the provisions of the Second Schedule;
 - (b) "Controller" means a Controller appointed under sub-section (1) of section 35 and includes an additional Controller appointed under sub-section (2) of that section;
 - (c) "Fair rate" means the fair rate fixed under section 31 and includes the rate as revised under section 32;
 - (d) "Hotel or lodging house" means a building or part of a building where lodging with or without board or other services is provided for a monetary consideration;
 - (e) "Landlord" means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant;
 - (f) "Lawful increase" means an increase in rent permitted under the provisions of this Act;
 - (g) "Manager of a hotel" includes any person in charge of the management of the hotel;

- (h) "Owner of a lodging house" means a person who receives or is entitled to receive whether on this own account or on behalf of himself and others or as an agent or a trustee for any other person, any monetary consideration from any person on account of board, lodging or other services provided in the lodging house;
- (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, 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;
- (j) "Prescribed" means prescribed by rules made under this Act;
- (k) "Standard rent", in relation to any premises, means the standard rent referred to in section 6 or where the standard rent has been increased under section 7, such increased, rent;
- (l) "Tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes -
 - (i) A sub-tenant;
 - (ii) Any person continuing in possession after the termination of his tenancy; and
 - (iii) In the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's -
 - (a) Spouse,
 - (b) Son or daughter, or, where there are both son and daughter, both of them,
 - (c) Parents,
 - (d) Daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,
 - (i) Any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);
 - (ii) Any person to whom a licence, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation I :- The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows: -

- (a) Firstly, his surviving spouse;
- (b) Secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;
- (c) Thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and
- (d) Fourthly, his daughter-in-law, being the widow of his pre- deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II:- If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III:- For the removal of doubts, it is hereby declared that,

- (a) Where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be;
- (b) The right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs;
- (c) "Urban area" has the same meaning as in the Delhi Municipal Corporation Act, 1957 (66 of 1957).

Analysis of The Definition of Tenant

The definition of the tenant' in the Act is exhaustive. It can be well understood in three parts:

- The first part is general part
- The second part includes certain persons
- The third part excludes certain persons

The opening general part of the definition means that any person who is bound in law to pay rent of any premises is a tenant under the Act.

The second part includes-

- (i) A sub-tenant
- (ii) Any person continuing in possession after the termination of his tenancy or statutory tenant; and
- (iii) Devolution or transmission of tenancy on the death of the tenant continuing in possession after the termination of his tenancy

The third part i.e, clause (iii) states that only those relations of the deceased tenant which are specifically mentioned in the Explanation-I are benefit and no other. At the same time it will benefit only any one or more of them who had ordinarily living in the premises such as a member or members of his family up to the date of his (tenant's) death. This clause applies only to the tenant whose tenancy had been determined among lifetime and he continued in possession thereafter. **Jaimal Singh v. Jaswant Singh, 1989 (2) RCJ 246 Del.**

Scope of sub-Clause (iii) to clause (1) of Section 2: Various Limitations

In **Mohan Lal v. Shri Krishan, 1977 (2) RCJ 505**, the Court held that the 1976 amendment to the definition of tenant extended the protection to heirs and successors, but at the same time it is a restricted protection. There are many limitations on the right conferred by the amendment. The limitations are:

- (1) The heir must not be financially independent. If he was not financially dependent on the deceased tenant, he has a right to possession only for a limited period of 1 year.
- (2) Only four classes of heirs i.e.
 - (a) the surviving spouse
 - (b) son or daughter
 - (c) parents &
 - (d) widowed daughter-in-law a predeceased son have been conferred the right to continue in possession.

- (3) In the order of succession spouse succeeds to the exclusion of son or daughter. Son & daughter will exclude parents. The parents will exclude the daughter-in-law, the first category excludes the second and so on.
- (4) If there are two successors of the same category and one of them was financially independent and the other was financially dependent then the one financially independent will enjoy the right to continue in possession for one year and the financially dependent one will enjoy the right to continue in possession for his lifetime, provided he belongs to the "same category" to which the financially independent successor belonged
- (5) The successor should "*ordinarily live in the premises with the deceased person at a member of his family up to the day of his death*" in order to be entitled to right to continue in possession.
- (6) If one successor of a category has enjoyed the right and there is no other successor of the same category, the right to continue in possession comes to an end and does not pass on to the successor in the lower category
- (7) The right of a successor is personal to him and does not extend beyond the lifetime of the successor. It does not devolve on his heirs

Explanation I:- Provides The Order of Succession as to:-

1. Surviving spouse;
2. Son or daughter or both
3. Parents; or
4. Daughter-in-law, being the widow of the predeceased son.

Subject To Conditions: The successor should have been ordinarily living in the premises with the statutory tenant as a member of his family up to the date of his death.

Explanation II:- It provides that if the person who acquires by succession the right to continue in possession after the termination of tenancy was not financially dependent on deceased tenant, such successor will acquire the right only for a limited period of one year or till his death, which occurs earlier, and thereafter the right of such successor would be extinguished. So Explanation-11 prescribes the period for those relations who were not financially dependent on the deceased person on the date of his death and limits it to one year.

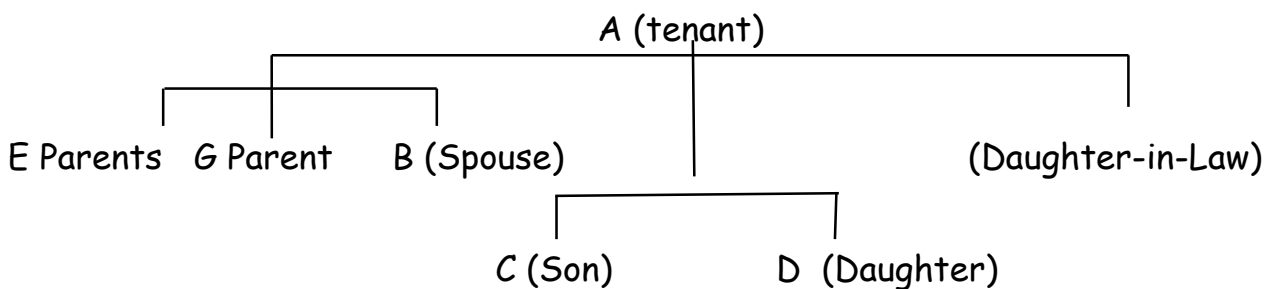
But if he was financially dependent on the deceased, he will succeed as tenant, entitled to remain in possession till his death, not otherwise becoming liable to vacate on an order of eviction passed against him. For example, if there is son and daughter, and son is financially independent, then he will enjoy it for one year, but daughter who was financially dependent on the deceased will have the right to continue in possession for her life.

Explanation III:- Explanation III has been inserted to remove all doubts which may arise on construction of the aforesaid provisions. Explanation III makes it clear that the right of a successor to the statutory tenant is confined only to the persons in the same category, to the exclusion of the persons in the lower 1 categories and where the successor who succeeds under Explanation-I dies or his right is otherwise extinguished, the right cannot pass on to the successor of the deceased tenant in any lower category.

In short, it clarifies that when right of a successor of the tenant is extinguished, then it will not affect any rights of any other successor of the same category. But if there is no other successor in the same category, the heirs of any lower category will not get any right.

Note: This clause applies only to residential premises. In case of non residential premises this clause is inapplicable and ordinary law of succession applies and all heirs of the tenant becomes tenants by inheritance. (**Gian Devi v. Jeewan Kumar**, AIR 1985 SC 796).

Example:



As per Explanation III, A tenant dies and as per successions the tenancy rights of the residential premises had to devolve on his spouse (B). But if she was not ordinarily residing with the deceased tenant, then it devolves on C who gets limited tenancy for a period of 1 year as "C" was not financially dependant on the deceased tenant nor on B. Therefore, after one year the tenancy right of "C" extinguishes but this does not stop D (Daughter) to claim her tenancy right.

Explanation III Clause (b):- It provides that the right of every successor To continue in possession after the termination of tenancy shall be personal to him and shall not, on the death of his successor, devolve on any of his heirs, In short, it states that there will be only one succession. After a relation has succeeded and he remained tenant for the period permitted, there shall be no further succession to his heirs.

Taking again the above example, the son or daughter (C or D) coming within second category, can not claim any right upon the death of the successor to the statutory tenant in the 1st category.

Interpretation of Certain Key Wards used in Section 2(I)

The words "**ordinarily living**" means to reside, to settle, to take up ones abode, to dwell permanently or for considerable time. The words "**living with**" means that the person claiming to succeed to the tenancy of the particular premises, must fairly and truly be said to have been residing with the predecessor in those premises in the sense that the successor lived and shared for living purpose, the premises in question. The word "**residing with**" is something more than "living at" even when the premise becomes a person's postal address. The words "resides with imports some measure of factual community of family living and companionship.

The word "**Financially dependent**" is meant, only for residential purposes and the financial dependence must be on the deceased person.

Meaning and Scope of Contractual and Statutory Tenancy

Contractual Tenancy:- In this case, the parties by means of an agreement or contract enter into a relationship of landlord and tenant. It can be terminated by a notice, by efflux of time or by any other term of the said agreement.

Statutory Tenancy:- When a person after expiry of the contractual Tenancy continues with the premises and does not vacate the same, he is known as a statutory tenant. Such tenancy right of the tenant is called statutory tenancy

After the termination of the tenancy, the tenancy thereafter will not be by means of an agreement of contract but under DRC Act. The expression "statutory tenant" emerged in response to reconcile the concept of a tenant under general law and a tenant as defined in rent control legislation. The object of all rent control legislation is to grant protection to the tenant after the protection of his contract has been lost. The tenant remains in possession of premises after the determination of the contract of tenancy by virtue of the Rent Control Act which applies to him. Since he continues to be a tenant by virtue of the statute; he sometimes is called a statutory tenant as distinguished from a contractual tenant.

After 1976 Amendment:-

If any statutory tenant dies leaving behind widow and his son and his parents, the widow is to inherit the rights of the deceased tenant and on extinction of widow's right, the right will not survive and cannot be inherited either by the son or the parents of the deceased who are in lower categories.

Position of Statutory Tenant Under English Law:-

Under the Act of 1920 the right of a statutory tenant to remain in possession is purely personal and is neither assignable nor heritable. The Statutory tenancy comes to an end with the tenants death or voluntary surrender by him **Keeves v. Dean (1924) 1 KB.**

The general law is that in the absence of a contract to the contrary, a tenant may assign, sublet and part with possession of tenancy premises. But in England this right is regulated by statute. As a statutory tenant, one may sublet a part of the dwelling house but not the whole of it as in that case, the tenancy itself ceases to exist. In **Roe v. Russell**, 1928 (2) KB 117, it was held that a statutory tenant in whose contract of tenancy no prohibition against subletting was contained, has power to sublet part of his premises although he cannot, by a number of subletting part with the whole of the premises which he holds as a statutory tenant.

Position of Statutory Tenant In India: -

The principles of English law, came up for consideration for the first time by Supreme Court in **Anand Niwas (P) Ltd. v. Anandji Kalyanji (1964)** 4 SCR 892, with reference to Bombay Rent Control Act, 1947. The case dealt with the right of a statutory tenant in the matter of sub-letting. The issue in this case was, whether a tenant whose tenancy has been terminated had any right to sublet the premises? The Court held that a statutory tenant means a tenant whose tenancy has determined but who continues in possession, has no power of subletting. The Court held as follows:- "A statutory tenant has no interest in the premises occupied by him and he has no estate to assign or transfer. A statutory tenant is a person who on determination of his contractual right, is permitted to remain in occupation so long as he observes and performs the conditions of the tenancy and pays the standard rent. His personal right of occupation is incapable of being transferred or assigned, and he having no interest in the property there is no estate on which subletting may operate."

3. Act not to apply to certain premises. - Nothing in this Act shall apply -
 - (a) To any premises belonging to the Government;
 - (b) To any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government: Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority; the provisions of this Act shall apply to such tenancy;
 - (c) To any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or

- (d) To any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction.

Scope of Section 3

In general, Section 3 has provided that nothing in the Act shall apply to any premises belonging to the Government, or to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government, provided that any premises belonging to the Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then notwithstanding any judgement, decree or order of any Court or other authority, the provisions of the Act shall apply to such tenancy. The exemption does not depend upon the nature of relationship with the occupier. It is not necessary that the Government should have leased the premises or entered into any relationship with the actual occupier to claim exemption. So, Government property may be given on lease and the lessee may further lease out that property in favour of other persons.

The expression "belonging to the Government means premises of which the Government is the owner. This becomes clear by comparing this expression with the expression "the premises taken on lease or requisitioned by the Government in clause (b).

The expression other like relationship created by a grant' obviously refers to relations which may not, strictly speaking, be that of lessor and lessee. It would include licensees and allottees.

Chapter 2

Provisions Regarding Rent

4. Rent in excess of standard rent not recoverable:-

- (1) Except where rent is liable to periodical increase by virtue of an agreement entered into before the 1st day of January, 1939, no tenant shall, notwithstanding any agreement to the contrary, be liable to pay to his landlord for the occupation of any premises any amount in excess of the standard rent of the premises, unless such amount is a lawful increase of the standard rent in accordance with the provisions of this Act.
- (2) Subject to the provisions of sub-section (1) any agreement for the payment of rent in excess of the standard rent shall be construed as if it were an agreement for the payment of the standard rent only.

Section 4 clearly declares that barring certain exceptions to be liable to pay his landed rent in excess of the standard rent, unless such amount is lawful increase of the standard rent in accordance with the provision of the Act.

The exceptions are-

- (a) Where rent is liable to periodical increase by virtue of an agreement entered into before 1st day of January 1939 and
- (b) Where the landlord is entitled to recover such increase under the provisions of the Act,

5. Unlawful Changes Not To Be Claimed Or Received:-

- (1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.
- (2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any premises, -
 - (a) Claim or receive the payment of any sum as premium or puggree or claim or receive any consideration whatsoever, in cash or in kind, in addition to the rent; or
 - (b) Except with the previous permission of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

- (3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or sub-tenancy, as the case may be, of any premises.
- (4) Nothing in this section shall apply:-
- (a) To any payment made in pursuance of an agreement entered into before the 1st day of January, 1939; or
 - (b) To any payment made under an agreement by any person to a landlord for the purpose of financing the construction of the whole or part of any premises on the land belonging to, or taken on lease by, the landlord, if one of the conditions of the agreement is that the landlord is to let to that person the whole or part of the premises when completed for the use of that person or any member of his family: Provided that such payment does not exceed the amount of agreed rent for a period of five years of the whole or part of the premises to be let to such person.

Explanation:- For the purposes of clause (b) of this sub-section, a "member of the family" of a person means, in the case of an undivided Hindu family, any member of the family of that person and in the case of any other family, the husband, wife, son, daughter, father, mother, brother, sister or any other relative dependent on that person.

6. Standard Rent:-

- (1) Subject to the provisions of sub-section
- (2) "Standard rent", in relation to any premises, means-
 - (A) In the case of residential premises-
 - (1) Where such premises have been let out at any time before the 2nd day of June, 1944, -
 - (a) If the basic rent of such premises per annum does not exceed six hundred rupees, the basic rent; or
 - (b) If the basic rent of such premises per annum exceeds six hundred rupees, the basic rent together with ten per cent. of such basic rent;
 - (2) Where such premises have been let out at any time on or after the 2nd day of June, 1944, -
 - (a) In any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947 (19 of 1947), or the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952),

- (i) If such rent per annum does not exceed twelve hundred rupees, the rent so fixed; or
 - (ii) If such rent per annum exceeds twelve hundred rupees, the rent so fixed together with ten per cent. of such rent;
 - (b) In any other case, the rent calculated on the basis of ten percent. per annum of the aggregate amount of the actual cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction:
- (B) In the case of premises other than residential premises -
- (1) Where the premises have been let out at any time before the 2nd day of June, 1944, the basic rent of such premises together with ten per cent. of such basic rent: Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words "ten per cent.", the words "fifteen per cent." had been substituted;
 - (2) Where the premises have been let out at any time on or after the 2nd day of June, 1944, -
 - (a) In any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947 (19 of 1947) or the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952),
 - (i) If such rent per annum does not exceed twelve hundred rupees, the rent so fixed; or
 - (ii) If such rent per annum exceeds twelve hundred rupees, the rent so fixed together with fifteen per cent. of such rent;
 - (b) In any other case, the rent calculated on the basis of ten percent. per annum of the aggregate amount of the actual cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction: (2) Notwithstanding anything contained in sub-section (1), -
 - In the case of any premises, whether residential or not, constructed on or after the 2nd day of June, 1951, but before the 9th day of June, 1955, the annual rent calculated with reference to the rent at which the premises were let for the month of March, 1958, or if they were not so let, with reference to the rent at which they were last let out, shall be deemed to be the standard rent for a period of seven years from the date of the completion of the construction of such premises;