

**Consultation Paper-cum-Questionnaire on  
Adverse Possession of Land/Immovable Property**

The claim to rights and interests in relation to property on the basis of possession has been recognized in all legal systems. Uninterrupted and uncontested possession for a specified period, hostile to the rights and interests of true owner, is considered to be one of the legally recognized modes of acquisition of ownership. The prescription of periods of limitations for recovering possession or for negation of the rights and interests of true owner is the core and essence of the law of adverse possession. Right to access to Courts is barred by law on effluxion of prescribed time. The conditions necessary for the acceptance of a claim based on adverse possession have been laid down basically by way of Judge-made law. Several exceptions to the concept of adverse possession based on legal relationship between the title holder and the person in actual possession as well as the character of land are also recognized by law. Permissive possession or possession without a clear intention to exercise exclusive rights over the property is not considered as adverse possession.

**2. The legal position and principles governing adverse possession.**

**2.1** As observed by the Supreme Court of India in the case of *Karnataka Board of Wakf Vs. GOI*<sup>1</sup>, in the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts rights over it *and the person having title omits or neglects to take legal action against such person for years together( emphasis supplied)*. "The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner".<sup>2</sup> The

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<sup>1</sup>( 2004) 10 SCC 779

<sup>2</sup> Amrendra Pratap Singh vs. Tej Bahadur Prajapati, (2004) 10 SCC 65

essential requisites to establish adverse possession are that the possession of the adverse possessor must be neither by force nor by stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that the possession is adverse to the paper owner.

**2.2** The law on adverse possession is contained in the Indian Limitation Act. Article 65, Schedule I of The Limitation Act prescribes a limitation of 12 years for a suit for possession of immovable property or any interest therein based on title. It is important to note that the starting point of limitation of 12 years is counted from the point of time “when the possession of the defendant becomes adverse to the plaintiff”. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title. Article 64 governs suits for possession based on possessory right. 12 years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which bears the heading – “Extinguishment of right to property”. It lays down:

*“At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.”*

That means, where a cause of action exists to file a suit for possession and if the suit is not filed within the period of limitation prescribed, then, not only the period of limitation comes to an end, but the right based on title or possession, as the case may be, will be extinguished. The section assists the person in possession to acquire prescriptive title by adverse possession<sup>3</sup>. When the title to property of the previous owner is extinguished, it passes on to the possessor and the

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3 U.N. Mitra's Law of Limitation & Prescription, 13<sup>th</sup> edition, 2011. Vol. I, revised by Justice S A Kader, P.732

possessory right gets transformed into ownership. [Section 27] is an exception to the well accepted rule that limitation bars only the remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy<sup>4</sup>. It means that since the person who had a right to possession has allowed his right to be extinguished by his inaction, he cannot recover the property from the person in adverse possession and as a necessary corollary thereto, the person in adverse possession is enabled to hold on to his possession as against the owner not in possession.

**2.3** As far as the Government (Central or State) property is concerned, the period of limitation for any suit (except a suit before the Supreme Court) is 30 years and the starting point of limitation is the same as in the case of a suit by a private person (vide Article 112, Schedule I of Limitation Act). Acquisition of easements by prescription is provided for by Section 25 of The Limitation Act.

**2.4** The legal position as regards the acquisition of title to land by adverse possession has been succinctly stated by the Judicial Committee of the *Privy Council in Perry vs. Clissold*<sup>5</sup>:

*“It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is for ever extinguished and the possessory owner acquires an absolute title.”*

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<sup>4</sup> Valliamma Champaka vs Sivathanu Pillai (1964) 1 MLJ, 161 (FB)

<sup>5</sup> (1907) AC 73, at 79

**2.5** This statement of law has been accepted by the Supreme Court of India in the case of *Nair Service Society Ltd. vs. K.C. Alexander*<sup>6</sup>. The Bench consisting of three Judges observed thus:

*“The cases of the Judicial Committee are not binding on us. But we approve of the dictum in 1907 AC 73. No subsequent case has been brought to our notice departing from that view. No doubt, a great controversy exists over the two cases of (1849) 13 QB 945 and (1865) 1 QB 1. But it must be taken to be finally resolved by 1907 AC 73. A similar view has been consistently taken in India and the amendment of the Indian Limitation Act has given approval to the proposition accepted in 1907 AC 73 and may be taken to be declaratory of the law in India.”*

**2.6** It was clarified by a three-Judge Bench of the Supreme Court in *Kshitish Chandra Bose v. Commissioner of Ranchi*,<sup>7</sup> *“All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded, but that is not the case here.”* It was also clarified in a series of decisions that while possession shall be open and exclusive and in assertion of one’s own right, the fact that the possessor did not know who the real owner was, will not make his possession any the less adverse. There are certain passing observations in some judgments of the Supreme Court rendered by two learned Judges that the plea of adverse possession is not

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6 AIR 1968 SC 1165

7AIR 1981 SC 707

available if the adverse possessor does not know who the true owner is; but, the law declared by the larger Bench decisions of the Supreme Court obviously prevails.

**2.7** The intention to exclude others from the control of property is an essential element of factual possession. The intention to possess the property exclusively implies the intention to exclude all others including the true owner whether known or unknown to the adverse possessor. In an article written by Justice (ret'd.) S.A. Kader – “Law of Adverse Possession in India – Recent Trends Unsettling the Law”<sup>8</sup> the learned author pointed out that the attempted distinction made in *P.T. Munichikkanna Reddy vs. Revamma*<sup>9</sup> between the ‘intention to possess’ and ‘intention to dispossess’ is not in conformity with the settled law and that both these concepts are correlative to each other. The following statement of law by Slade, J on “intention to possess” has been approved by House of Lords in *JA Pye (Oxford) Ltd. Vs. Graham*<sup>10</sup>:

*“What is really meant, in my judgment, is that the animus possidendi involves the intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.”*

**2.8** In *The Secretary of State vs. Vira Rayan*<sup>11</sup>, a Division Bench of Madras High Court rightly pointed out that the ignorance of the owner will not prevent the accrual of a title by prescription. The possession must be open and hostile enough to be capable of being known by the parties interested in the property (*vide T. Anjanappa vs. Somalingappa*).<sup>12</sup> In other words,

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<sup>8</sup> Annexure II to Volume II of U.N. Mitra’s Law of Limitation, 13<sup>th</sup> Edn.

<sup>9</sup> (2007) 6 SCC 59

<sup>10</sup> 2003 1AC 419

<sup>11</sup> ILR 9 Mad. 175

<sup>12</sup> 2006 7 SCC 570

the possession to become adverse to the owner must be so overt and open that the person against whom time runs, can, with exercise of reasonable diligence, be aware of what is happening.

### **3. Justification for adverse possession.**

**3.1** The rationale for adverse possession rests broadly on the considerations that title to land should not long be in doubt, the society will benefit from some one making use of land the owner leaves idle and that that persons who come to regard the occupant as owner may be protected.<sup>13</sup> The maxim that law and equity does not help those who sleep over their rights is invoked in support of prescription of title by adverse possession. In other words, the original title holder who neglected to enforce his rights over the land cannot be permitted to re-enter the land after a long passage of time. A situation lasting for a long period creates certain expectations and it would be unjust to disappoint those who trust on them.

**3.2** The 'great' purpose of adverse possession as described by a jurist Henry W. Ballantine in his article "*Title by Adverse Possession*,"<sup>14</sup> "is automatically to quiet all titles which are openly and consistently asserted, to provide proof of meritorious titles and correct errors in conveyancing". Another justification for the law of adverse possession is captured in the quote that possession is "nine points of the law". The moral justification of the law of adverse possession was graphically stated by Justice O.W. Holmes who said "*man like a tree in the cleft of a rock, gradually shapes his roots to the surroundings, and when the roots have grown to a certain size, can't be displaced without cutting at his life,*".

### **4. Criticism of adverse possession and the plea to have a fresh look.**

**4.1** Some legal scholars in foreign countries have pleaded for abolition of adverse possession describing it as legalized land theft and a means of unjust enrichment. It has also been pointed

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<sup>13</sup> William B Stoebeck, "*The Law of Adverse Possession in Washington*", (1960) 35 Wash. L. Rev. 53.

<sup>14</sup> 32 HLR 135

out that there is no certainty in the law of adverse possession and the courts in several cases have wrestled with the meaning of the expressions – actual, continuous, open, hostile and exclusive possession.

**4.2** The Supreme Court of India, has in two recent decisions, namely, *Hemaji Waghaji vs. Bhikhabhai Khengarbhai*<sup>15</sup> and *State of Haryana Vs. Mukesh Kumar*<sup>16</sup>, has pointed out the need to have a fresh look at the law of adverse possession. Borrowing the language from the judgment of the High Court (Chancery Division) of England in *J.A. Pye (Oxford) Ltd. vs. Graham*<sup>17</sup>, the Supreme Court in the former case, described the law of adverse possession as irrational, illogical and wholly disproportionate and extremely harsh for the true owner “and a windfall for dishonest person who had illegally taken possession of the property”. The Supreme Court, after extensively quoting from *P. T. Munichikkanna Reddy vs. Revamma (supra, 9)* reiterated the observation therein that “with the expanding jurisprudence of the European Court of Human Rights, the Court has taken an unkind view to the concept of adverse possession in the recent judgment of *J.A. Pye (Oxford) Vs. United Kingdom*”. The Court was not aware that the said judgment of ECHR has not been approved by the Grand Chamber consisting of a larger Bench, on a reference made to it in the same case.

**4.3** In *Hemaji Waghaji's case*, the Supreme Court held on the facts that the appellant had miserably failed to prove adverse possession. However, the Court went further and made the following observations at paragraphs 34 to 36 (of AIR).

*“34. Before parting with this case, we deem it appropriate to observe*

*that the law of adverse possession which ousts an owner on the basis of*

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15 AIR 2009 SC 103,

16 2011(10) SCC 404

17 (2000) 3 WLR 242

*inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.*

*35. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose its possession only because of his inaction in taking back the possession within limitation.*

*36. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”*

## **5. The two decisions of Supreme Court – critical analysis and closer look.**

**5.1** In *Hemaji Waghaji* case, the court extensively referred to the earlier decision in *P.T. Munichikkanna Reddy vs. Revamma* (*supra*, 9) and placed heavy reliance on ECHR decision in *J.A. Pye Oxford Vs. United Kingdom*. Practically, the words employed by the learned trial Judge Neuberger, J in *J.A. Pye (Oxford) vs. Grahams*<sup>18</sup> and the European Court of Human



Rights (ECHR) in *J.A. Pye (Oxford) Ltd. vs. United Kingdom*<sup>19</sup> have been repeated in the concluding paragraph. The fact that by the time *Hemaji Waghaji's case* was decided, the Grand Chamber of ECHR delivered its judgment on 30<sup>th</sup> August, 2007 disapproving the ratio of the 2005 decision of ECHR in the case between the same parties was not brought to the notice of the learned Judges of Supreme Court. The Grand Chamber of the ECHR examined the legislation relating to adverse possession from the point of view of the objective of the law, the principles of proportionality and fair balance and held that the existence of the limitation period for actions for recovery of land as such pursues a legitimate aim and that the fair balance required by Article 1, Protocol No. 1 to the Convention was not upset by the law dealing with adverse possession.

**5.2** Another aspect which needs to be mentioned in this context is that it is not clear from the decision of the Supreme Court in *Revamma* and *Hemaji* as to what difference would it make if the right to property is considered to be human right apart from being a constitutional or statutory right. In *Revamma*, it was merely clarified that property dispute issues including adverse possession is being examined by the European Human Rights Courts on the premise that it is a human right. The ultimate decision in both the cases decided by the Supreme Court turned on the facts of the case i.e., whether there was enough evidence to substantiate the plea of adverse possession and that was answered in the negative.

**5.3** It is interesting to note that the Northern Ireland Law Commission in its Report on Land Law [NILC8 (2010)] had expressed the view that in the light of the decision of the Grand Chamber of the European Court of Human Rights in the case of *J.A. Pye (Oxford) Ltd. Vs. U.K.*, the human rights issues relating to the doctrine of adverse possession have been put to rest for the time being and should not be pursued further. The consultees were unanimously in

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19 (2005) 49 ERG 90

agreement with the Law Commission that the doctrine of adverse possession should be retained to enable a squatter to acquire the title of a dispossessed owner after the expiration of the specified period of limitation.

**5.4** On a close and fair reading of the judgment in *Hemaji's case* and even the latter case in *State of Haryana Vs. Mukesh Kumar (supra, 16)*, it is fairly clear that the Court deprecated the law in so far as it benefits a rank trespasser who had wrongfully taken possession of the property belonging to another. The observations in para 35 reinforces this view point quite clearly. A rank trespasser is thus frowned upon. So, it needs to be seriously examined whether the protection should be extended to a naked and dishonest trespasser and to those who may have purchased the property from such trespasser. While claims based on adverse possession may deserve to be recognized, it can still be ensured that the possession originating from dishonesty and foul means does not receive the same recognition in law.

**5.5** In the latest case of *State of Haryana Vs. Mukesh Kumar (supra, 16)*, there is a trenchant criticism of the doctrine of adverse possession. The same learned Judge who authored the judgment in *Hemaji's case* reiterated what was said earlier after referring to the English cases and made certain important observations which need to be taken note of. That was a case in which the State of Haryana (Police Department) set up the plea of adverse possession which was not accepted by the trial court and appellate court on a review of evidence. The learned Judge Dalveer Bhandari, J speaking for the Bench, described the law of adverse possession as archaic and “needs a serious relook” in the larger interest of the people. It was observed: “*Adverse possession allows a trespasser – a person guilty of a tort, or even a crime, in the eye of the law – to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling.*”

*This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.*” The learned Judge posed a question: *“How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling”* and then observed *“We are clearly of the opinion that time has come for change”*. The observations made earlier at paragraph 39 are also relevant. *“The Government instrumentalities – including Police – in the instant case have attempted to possess land adversely. This, in our opinion, is a testament to the absurdity of the law and a black mark upon the justice system’s legitimacy”*. Then, it was said *“if this law is to be retained according to the wisdom of Parliament, then at least the law must require those who adversely possess land to compensate the title owners according to the prevalent market rate of the land or property.”* Then at paragraph 40, it was observed that Parliament must seriously consider at least to abolish “bad faith” adverse possession i.e., adverse possession achieved through intentional trespassing. At paragraph 41, it was also observed that if the Parliament decides to retain the law of adverse possession, the duration of possession (i.e., limitation period) under the law of Limitation should be extended to 30 to 50 years, “rather than a mere 12”. It was pointed out that *“a longer statutory period would decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title.”* In the penultimate paragraph, the Court said *“we recommend the Union of India to immediately consider a seriously deliberate either abolition of law of adverse possession and in the alternate, to make suitable amendments in the law of adverse possession”*.

## **6. Position in other countries**

**6.1** The acquisition of land under the doctrine of adverse possession is recognized in all the civil and common law jurisdictions. The concept and elements of adverse possession are almost the same. However, there is no clear pattern as regards the length of limitation periods. The period after which the real owner may no longer bring an action to repossess her land varies from 10 years to 30 years. In the case of claims by the Crown (State) in most of the countries, it is 60 years. Proof of good faith on the part of the possessor of the land will significantly reduce the limitation period in some jurisdictions such as France, Spain, The Netherlands and Poland. For instance, French law permits the acquisition of title to land by prescription over a 30-year period if the possession is continuous, uninterrupted, peaceful, public and unequivocal. A reduced prescription period of ten years is provided if the possessor had acted in good faith and in genuine belief of the existence of a just title. However, if the true owner does not live within the district of the Court of Appeal, then the period is extended by twice the number of years i.e., 20 years. In some countries, e.g., Hungary, Germany, Massachusetts/US, the evidence of good faith is not a relevant consideration. The application of the doctrine of adverse possession as well as the duration of possession also depends on whether the land is registered or not. Significant differences in the application of adverse possession arise where the States have adopted the system of land registration. Where the title to land is registered, some States have abolished the capacity to acquire land by prescription (e.g., Canada) while retaining the right in respect of unregistered land. This difference reflects the policy that the uncertainty of ascertaining ownership is eliminated by a system of registration so that the rationale for the doctrine of adverse possession is thereby weakened.<sup>20</sup> Most countries do maintain the doctrine of adverse possession in respect of registered land. (e.g., UK, Australia, US and Newzealand) and Courts

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<sup>20</sup>See Report of the British Institute of International and Comparative Law for Her Majesty's Court Services (September 2006).

continue to recognize the public policy value of extinguishing title to registered property after a certain period. (*supra*, 20)

**6.2** In UK, the acquisition of land by adverse possession is governed by the Limitation Act of 1980 and the Land Registration Act of 2002 which repealed the earlier Act of 1925. The Limitation Act of 1980 provides that no action shall be brought by any person to recover any land after the expiration of twelve (12) years from the date on which the right of action accrued to him. The right of action shall be treated as having accrued on the date of dispossession or discontinuance. It made no distinction between registered and unregistered land. S.17 of the said Act provided that on the expiry of limitation regulating the recovery of land, the title of the paper owner was extinguished. Section 75(1) of Land Registration Act, 1925 however, provided that on the expiry of the limitation period, the title was not extinguished, but the registered proprietor was deemed to hold the land thereafter in trust for the squatter. The Land Registration Act of 2002 (which repealed the 1925 Act) made a number of changes to the law as it related to registered land. It provided that adverse possession for however long would not of itself bar the owner's title to a registered land. However, a squatter is entitled to apply to be registered as proprietor after ten (10) years and a procedure is prescribed for dealing with such application.

**6.3** In US, all States within the Federation recognize title acquired by adverse possession after limitation periods ranging from 5 to 40 years. In addition to varying time limitations, there are differences among the States as to the role of good faith as a necessary condition for adverse possession and as to certain categories of land type and use. Most of the jurisdictions in US do not require an element of good faith in cases of actual and uninterrupted possession. (*supra*, 20)

## **7. Abolition of adverse possession – pros and cons**

**7.1** One view point which has considerable merit is that the wholesale abolition of adverse possession would trigger practical problems affecting common people and bona fide possessors of property who may have no title documents. Multitude of people especially those in rural areas belonging to agriculturist families remain in possession since long whether by virtue of inheritance, purchase or otherwise without having valid and legally recognized title deeds. The lack of a legal regime under which the titles are registered and the shoddy manner in which the land records are maintained by the concerned Departments of Government has made it difficult to those entering into land deals to know even through reasonable diligence the true owner of land and the history of ownership. People in rural areas live in their ancestral houses or enjoy possessory rights over parcels of land from times immemorial, bona fide believing that they or their ancestors are the true owners of land. There is no means of knowing whether the land in question is Government land or the land over which the Government has a right of resumption or some one else has superior title over land. At least the ordinary people do not know. Even legitimate owners who may have only the element of possession as the foundation for assuming or defending their rights may suffer if the concept of adverse possession is abolished or allowed to remain under stringent conditions. That the possession is “nine points of law” applies with great force to such category of persons.

**7.2** On the other hand, the question may be legitimately asked as to why those who grab the land overnight by force or otherwise without semblance of bona fides and without color of title should be allowed to get title by adverse possession? Why should land theft or grabbing be made the basis for deriving title by reason of open, hostile enjoyment for a long period? Should not the conduct of occupier of land be taken into account? Further, what about those owners of property who may not be physically available to evince an intention towards disrupting hostile

possession. These questions do arise. In the ultimate analysis, there is perhaps a need to strike a fair balance between competing considerations in the process of considering the changes in law if any.

**8.** A representation has been made to the Central Government by Pravasi Properties Protection Council (PROP), Sion, Mumbai stating inter-alia that adverse possession has become a handy tool to the relatives and neighbours to occupy the NRI's properties with the aid of village officers who are instrumental in effecting changes in land records. They suggest the abolition of law of adverse possession and to check the menace of trespassers. It is not specifically indicated as to how such problems of NRIs could be adequately taken care of by abolishing adverse possession. However, the need to devise some special measures for protection/restoration of properties owned by NRIs deserve due consideration.

**9.** On the basis of informations received from the High Courts in U.P., Maharashtra, Delhi, Gujarat, Assam and other NE States, Kerala, Madhya Pradesh, Odisha, Bihar and Rajasthan, there are about 52430 cases in which the plea of adverse possession has been raised in the suits before the trial courts pending at the end of the year 2010. Information has not been received from other High Courts. However, it can be estimated that only in about 80,000 cases, the plea of adverse possession has been raised in the pending matters. In the course of interaction with the judicial officers and lawyers in some places, it has come to light that the plea of adverse possession though raised is quite often not pursued and hardly any evidence is adduced thereon.

**10.** Having regard to the above legal and factual background and the views expressed by the Supreme Court, it is considered necessary to get responses from the public, especially, the Judges, lawyers, legal academia and bureaucracy on various issues concerning adverse possession. A Questionnaire has been prepared and annexed herewith for this purpose.

### Questionnaire on Adverse Possession

1. Do you think that the law of adverse possession under which the legal owner and title holder of immovable property is precluded from bringing an action to recover the possession from a person in occupation of the property for a continuous period of twelve years openly, peacefully and in a manner hostile to the interest of legal owner should be retained in the statute book or the time has come to repeal it? Are there good social reasons or considerations of public policy for retaining the legal acquisition of title through adverse possession?
2. Do you think that having regard to the conditions in our country such as lack of reliable record of rights, title registration, the problem of identity of property and the difficulties of even genuine occupants to back up their possession with formal title deeds, the law of adverse possession should remain or should it be scrapped?
3. (a) Do you think that certain exceptions and qualifications should be carved out by law so as to ensure that the plea of adverse possession should not be made available to those who dishonestly enter the land with full consciousness that they were trespassing into another's land?  
(b) In other words, whether it is just and proper to make the plea of adverse possession available to a naked trespasser entering the land without good faith?  
(c) In any case, whether the bona fide purchasers from a trespasser should be allowed to plead adverse possession. ?
4. If the benefit of acquisition of title by adverse possession is to be denied to a rank trespasser, should he be paid compensation for the improvements made or other expenditure incurred for preservation of land?



5. Do you think that the real owner who did not evince any interest in the land should at any distance of time be permitted to claim back the land irrespective of a string of changes in land occupation and improvements made thereto ?
6. If adverse possession is allowed to remain, do you think that the real owner should be compensated in terms of market value as per the rate prevailing on the date when the person claiming adverse possession started possessing the land? Or, could there be any other principle of working out compensation or indemnification without hassles?
7. If adverse possession is retained, is there a case for enlarging the present period of limitation of 12 years and 30 years (in the case of Govt. land) ? If so, to what extent?
8. As far as the property of the State is concerned, the Limitation Act prescribes thirty year period for filing a suit against a person in adverse possession. Is there a case for abolition of adverse possession in relation to Government property? Should it be left to the Government to claim possession of its land at any time irrespective of the long chain of events that might have occurred and inaction on the part of Govt.?
9. Whether the law which extinguishes the right to property vested with the true owner by reason of the lapse of prescribed period of adverse possession of another can be tested by the standards laid down in Article of the 1<sup>st</sup> Protocol<sup>21</sup> to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms and be faulted on the ground of being 'irrational' and 'disproportionate'?
10. (a) In what way the NRIs would be more handicapped than resident Indians by reason of application of the law of adverse possession?

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21 "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles or international law".

(b) What safeguards and remedies if any should be provided to the N.R.Is to check illegal encroachment of their immovable properties? Should there be longer period of limitation in respect of the property owned by N.R.Is. ?

**11.** Do you think that the principles governing adverse possession and its proof should be provided explicitly in a Statute?

The replies may be sent to Joint Secretary & Law Officer, Law Commission of India, 2<sup>nd</sup> Floor, ILI Building, Bhagwan Das Road, New Delhi-110 001 within a month. The e-mail/Website particulars are given below:

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