



**GOVERNMENT OF INDIA**  
**LAW COMMISSION OF INDIA**

**THE LAW ON ADVERSE POSSESSION**

**Supplementary Note**

**Report No. 280**

**May, 2023**

## **SUPPLEMENTARY NOTE**

For the sake of clarity and removal of any doubts, it is necessary to bring on record certain facts which are very relevant to the law of adverse possession:

1. The judgments of the Supreme Court in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan*<sup>1</sup> and *State of Haryana v. Mukesh Kumar*<sup>2</sup> are based on an understanding of the concept of adverse possession that largely stems from the decision of the European Court of Human Rights (ECHR) in *JA Pye (Oxford) Ltd. v. United Kingdom*<sup>3</sup>. However, in appeal, the Grand Chamber of ECHR overruled this judgment. (Refer to Annexure-I, Page Nos. 68-70 of the Report).
2. Articles 111 and 112 of the Schedule to the Limitation Act, 1963 already provide for a maximum period of limitation of 30 years in case of claims of adverse possession against Government owned land. The Parliament, in its wisdom, had reduced the maximum period of limitation of sixty years in the Limitation Act of 1908 to thirty years under the 1963 Act, thus providing the longest possible period of limitation to safeguard Government property. The constitutional validity of providing a longer period of limitation in favour of the Government was upheld by the Constitution Bench of the Supreme Court in *Nav Rattanmal v. State of Rajasthan*<sup>4</sup>.
3. The Supreme Court, in *Ram Nagina Rai v. Deo Kumar Rai*<sup>5</sup>, has taken into consideration the earlier judgments in the cases of *Hemaji Waghaji*



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<sup>1</sup> (2009) 16 SCC 517.

<sup>2</sup> (2011) 10 SCC 404.

<sup>3</sup> (2005) 49 ERG 90.

<sup>4</sup> AIR 1961 SC 1704.

<sup>5</sup> (2019) 13 SCC 324.

*Jat* and *Mukesh Kumar*, but has not taken the view that the law of adverse possession requires review or re-examination.

4. The judgment in *Ram Nagina Rai* was delivered in 2018 while *Mukesh Kumar* was delivered in 2011. Hence, it is an impossibility that the former judgment could be considered in the latter.
5. In *Ravinder Kaur Grewal v. Manjit Kaur*<sup>6</sup>, a three-Judges Bench of the Supreme Court reaffirmed the long-standing right of adverse possession, meaning thereby that even a suit can be filed to claim title on the basis of adverse possession. Some decisions of the Supreme Court to the contrary were overruled by this judgment.
6. The fundamental duty enshrined under Article 51A(i) of the Constitution of India is double edged. Government servants, who are the custodians of Government lands, are also citizens of India and they owe a greater duty to safeguard public property. Further, Articles 39 and 48A of the Constitution relating to the respective Directive Principles of State Policy are contextually irrelevant.
7. The chapter on 'Adverse Possession vis-à-vis Morality' is included in this Report as the Supreme Court in *Hemaji Waghaji Jat* has called the concept of adverse possession to be immoral. The Report seeks to analyse and explain as to how despite popular perception to the contrary, it can still be understood to be moral. For this, reliance is placed on the scholarly opinion of Larissa Katz. It has not been argued that the concept of adverse possession is to be justified on the ground of morality.
8. The Consultation Paper-cum-Questionnaire on adverse possession prepared by the 19<sup>th</sup> Law Commission was floated in the public domain, inviting views and suggestions from all relevant stakeholders and the

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<sup>6</sup> (2019) 8 SCC 729.

general public. The Commission received only four responses, none of which were from any of the Central or State Government Departments. The 22<sup>nd</sup> Law Commission, after conducting an in-depth study of the subject-matter, came to the conclusion that no change is required to be brought in the existing law on adverse possession. Hence, no fresh notices were issued at this stage to the State Governments or any of the Ministries of the Central Government.

9. The law of adverse possession is not for the benefit of the State or the Government but for the public at large. Hence, it cannot be termed to be colonial.
10. If the executing or controlling agency of Government lands is not acting promptly and properly to prevent any encroachment, it does not mean that the law itself is bad.
11. Removing the law of adverse possession in respect of Government lands would lead to a chaotic situation, leading to a lot of instability as the people will not be able to crystallize their rights, with generation after generation living under the threat of eviction.
12. Lastly, the concept of adverse possession is very much prevalent in almost all foreign jurisdictions, with the exception of the Canadian province of Alberta, where the social and geographical conditions are altogether different from India.





**[Justice Ritu Raj Awasthi]**

Chairperson



**[Justice K.T. Sankaran]**

Member



**[Prof. (Dr.) Anand Paliwal]**

Member



**[Prof. D.P. Verma]**

Member



**[Mr. K. Biswal]**

Member Secretary