



**GOVERNMENT OF INDIA
LAW COMMISSION OF INDIA**

THE LAW ON ADVERSE POSSESSION

Report No. 280

May, 2023

The 22nd Law Commission was constituted by Gazette Notification for a period of three years vide Order No. FNo. 45021/1/2018-Admn-III(LA) dated 21st February, 2020 issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi. The term of the 22nd Law Commission was extended vide Order No. FA No. 60011/225/2022-Admn.III(LA) dated 22nd February, 2023.

The Law Commission consists of a Chairperson, three full-time Members, Member Secretary, two *ex-officio* Members and two Part-time Members.

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Hon'ble Justice Ritu Raj Awasthi

Full-time Members

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Prof. (Dr.) Anand Paliwal

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Dr. Reeta Vasishtha, Secretary, Legislative Department

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Law Commission of India



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Date: 24th May, 2023

Hon'ble Sri Atjun Ram Meghwalji
Namaskar!

I am pleased to forward you **Report No. 280** of the Law Commission of India on "**The Law on Adverse Possession.**"

The concept of adverse possession has been a part of Indian legal framework since a very long time. It is rooted in the idea that land must not be left vacant and instead be put to judicious use. The law on adverse possession underwent a significant change post the enactment of the Limitation Act of 1963. By virtue of the said change, the position of the true owner was fortified as he had to merely prove his title, while the burden of proof of adverse possession shifted on the person claiming so.

The Hon'ble Supreme Court, in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others* [(2009) 16 SCC 517] and *State of Haryana v. Mukesh Kumar and Others* [(2011) 10 SCC 404], observed that there is a need to have a fresh look at the law of adverse possession and recommended that the Union of India seriously consider the issue and make suitable changes, wherever necessary. Pursuant to this, a reference was made to the Law Commission by the Ministry of Law & Justice *vide* letter dated 19th December, 2008, thereby requesting the Commission to examine and undertake a study in the matter and furnish a report on the same.

Consequently, the 19th Law Commission prepared a Consultation Paper-cum-Questionnaire and post receiving the responses to the same, the Commission opined that the present provisions afforded sufficient protection to the true owner of land and there was no need to make any amendments in the law. However, a final report on the subject could not be submitted then.

Bearing in mind the relevance and importance of the subject and the fact that this reference had been pending since 2008, the 22nd Law Commission considered it expedient to deliberate afresh over the subject. After undertaking extensive consultations and conducting an in-depth study of the matter, the Commission has finalized this Report. It is to bring on record that in the full quorum meeting of the Law Commission held on 11th May, 2023, all the Members, including *Ex-officio* Member Dr. Reeta Vasishta, Legislative Secretary, had signed the Report after being in full agreement with it. On the said date, *Ex-officio* Member Dr. Niten Chandra,



Law Secretary, did not sign the Report as he was in a hurry to attend some urgent meeting. Subsequently, *vide* letter dated 16th May, 2023, Dr. Niten Chandra informed this office regarding his concern on certain issues relating to the recommendations put forth in this Report, which were duly addressed by me *vide* my letter dated 18th May, 2023. Later, at the request of Dr. Niten Chandra, a meeting of the Law Commission was called for today, i.e., 24th May, 2023 to further discuss our Report. Again, all the Members of the Law Commission present in the said meeting as well as the Part-time Members, who were contacted by me on telephone, informed that they fully agree with our final Report. Accordingly, it was decided that this Report shall be released without any further delay, with liberty to Dr. Niten Chandra to give his dissent note. At this stage, Dr. Reeta Vasishta, on an after-thought, informed the House that she will also send her dissent.

The Commission is of the considered view that there is no justification for introducing any change in the law relating to adverse possession. Accordingly, this Report is being submitted for your kind perusal.

With warmest regards,

Yours sincerely,

(Justice Ritu Raj Awasthi)

Shri Arjun Ram Meghwal
Hon'ble Minister of State (Independent Charge)
Ministry of Law & Justice
Government of India
Shastri Bhawan
New Delhi -110001.

ACKNOWLEDGEMENT

Upon receiving the reference for the subject-matter of this Report from the Ministry of Law & Justice pursuant to the judgment of the Hon'ble Supreme Court in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan & Others*, the Law Commission held deliberations with all the relevant stakeholders, scholars, academicians, intellectuals, etc. In keeping with the preliminary research conducted on this subject, the 19th Law Commission released a Consultation Paper-cum-Questionnaire on "Adverse Possession of Land/Immovable Property" on its website, inviting views and suggestions from the concerned intelligentsia and the public in general. We are much thankful to all the people who took out their valuable time to furnish their comments and submissions on the law relating to adverse possession.

After taking into consideration the suggestions so furnished, the Commission held further consultations with lawyers, professors and academic experts to have better hold of the issues relating to the subject-matter. We express our heartfelt thanks to all such individuals.

The Commission gratefully acknowledges the laudable assistance rendered in the preparation of this Report by **Mr. Rishi Mishra, Mr. Gaurav Yadav, Mr. Shubhang Chaturvedi**, and **Mr. Davinder Singh**, who worked as Consultants. We place on record our fervent approbation for their assiduous efforts in conducting research and aid in drafting of this Report.



TABLE OF CONTENTS

1. REFERENCE TO THE COMMISSION	1
2. INTRODUCTION.....	3
3. HISTORICAL BACKGROUND OF ADVERSE POSSESSION.....	4
4. PREVIOUS REPORTS OF THE LAW COMMISSION	7
5. THE DECISIONS OF THE SUPREME COURT SUGGESTING CHANGE IN THE LAW OF ADVERSE POSSESSION.....	14
6. RELEVANT STATUTORY PROVISIONS	21
Scope of the Limitation Act, 1963.....	26
7. BROAD ASPECTS RELATING TO ADVERSE POSSESSION ..	27
8. CHANGES MADE IN THE LAW RELATING TO ADVERSE POSSESSION	35
9. ADVERSE POSSESSION VIS-À-VIS MORALITY	46
10. THE LIMITATION ACT, 1963 IN RESPECT OF ADVERSE POSSESSION: WHETHER ANY AMENDMENT IS NECESSARY? ..	51
Regarding the Questions posed by the Law Commission in the Consultation Paper.....	55
11. RECOMMENDATIONS	59
ANNEXURE – I	61

THE LAW ON ADVERSE POSSESSION

1. REFERENCE TO THE COMMISSION

- 1.1. This matter has come up for consideration of the Commission pursuant to the order dated 23rd September, 2008 of the Hon'ble Supreme Court in Civil Appeal No. 1196 of 2007 in the case of *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others*.
- 1.2. In this case, while dealing with Article 65 of the Schedule of the Limitation Act, 1963, the Hon'ble Court observed that:

"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 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 has illegally taken possession of the property of the true owner. The law ought not to benefit or give 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."

- 1.3. In view of the observation made by the Hon'ble Supreme Court, the Ministry of Law & Justice *vide* letter dated 19th December, 2008 referred the matter to the Law Commission of India, thereby requesting the Commission to undertake the study in the matter and furnish a report.



2. INTRODUCTION

2.1. The Supreme Court of India opined in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others*¹ and *State of Haryana v. Mukesh Kumar and Others*² that there is an urgent need for a fresh look regarding the law of adverse possession. The Supreme Court did not approve the theory of a trespasser being able to perfect title by adverse possession. The apex Court also recommended the Union of India to seriously consider and make suitable changes in the law of adverse possession.

2.2. The 19th Law Commission considered the matter and issued a Consultation Paper-cum-Questionnaire which is attached to this report as “**Annexure – I**”. After receiving the responses, the Commission prepared a paper dated 31st August, 2013, in which it was opined thus:

“The Commission is of the view that existence of limitation period of 12 years for taking action for recovery of land is a sufficient protection accorded to the real owner. The doctrine of adverse possession should be retained to enable a person who has acquired the possession to title bonafidely to keep his possession. Such a limitation gives a legitimate right to the real owner to reclaim his possession. It is a fair balance created by the statute. Moreover, proving ownership on the basis of adverse possession is not easy.”

2.3. It would appear that, thereafter, the 19th Law Commission did not submit the final Report and Recommendations.

¹ (2009) 16 SCC 517.

² (2011) 10 SCC 404.

3. HISTORICAL BACKGROUND OF ADVERSE POSSESSION

- 3.1. Going back into history briefly, the rudimentary form of adverse possession can be found as early as 2000 B.C. in the Code of Hammurabi, of which Law 30 specifically dealt with the concept of adverse possession.³ Law 30 of the Code provided that:

"If a chieftain or a man leaves his house, garden, and field and hires it out, and someone else takes possession of his house, garden, and field and uses it for three years: if the first owner returns and claims his house, garden, and field, it shall not be given to him, but he who has taken possession of it and used it shall continue to use it."

- 3.2. The academic scholarship on adverse possession traces its evolution in the English jurisprudence. The sole historical basis of title by adverse possession is the development of statutes of limitation on actions for the recovery of land in England. The Statute of Westminster, 1275 was the first such statute which limited actions for the recovery of land by precluding a suitor from alleging dated claims. This statute and its immediate successors functioned in an era of property law in which ownership stemmed from the concept of *seisin*.⁴ With the passage of time, the English law gradually separated ownership from possession, thus in turn, the rationale behind statutory enactment also shifted. With the importance of *seisin* declining, possession no longer conferred ownership; instead, it only

³ See Chilperic Edwards (ed.), *The Hammurabi Code and the Sinaitic Legislation* 32-33 (1904); Also see J.G. Sprankling, "An Environmental Critique of Adverse Possession" 79 *Cornell Law Review* 816-884 (1994). The phrase "adverse possession" was apparently coined in a 1757 English decision in *Taylor d. Atkyns v. Horde*.

⁴ J.G. Sprankling, "An Environmental Critique of Adverse Possession" 79 *Cornell Law Review* 821 (1994).

served as tangible evidence of the occupant's entitlement to ownership.⁵

- 3.3. Finally, the English Statute of 1623 formed the basis of limitation statutes throughout the common law world. In the opening words, it recited that these limits were necessary for “quieting men’s estates, and avoiding of suits”. The Statute prescribed three basic periods which can be described broadly as twenty years for land actions, six years for contract and some tort actions and four years for torts affecting the person.
- 3.4. The Statute of 1623, however, did no more than bar or take away the right of entry and ejectment after twenty years, but left open the real action by writ of right for forty years more. Consequently, it was held in England that the right of entry and the remedy by ejectment, might be barred, but that the ‘mere right’ itself was left outstanding.⁶ Thus, to remedy this, the Statute of 1833 was enacted, which not only barred the remedy of ejectment but expressly abolished real actions and extinguished the former title after twenty years. By the Real Property Limitation Act of 1874, the period of limitation was reduced to twelve years from the time the cause of action first accrued. The groundwork for the limitations model, inherited by colonial India, was thus, put in place.
- 3.5. The Supreme Court of India, in *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others*, traced the history of adverse possession and stated thus:

⁵ J.G. Sprankling, “An Environmental Critique of Adverse Possession” 79 *Cornell Law Review* 821 (1994).

⁶ *Trustees of Dundee Harbor v. Dougall* (1852) 1 Macqueen 317.

*"...The concept of adverse possession has a root in the aspect that it awards ownership of land to the person who makes the best or highest use of the land. The land, which is being used is more valuable than idle land, is the concept of utilitarianism. The concept thus, allows the society as a whole to benefit from the land being held adversely but allows a sufficient period for the "true owner" to recover the land. The adverse possession statutes permit rapid development of "wild" lands with the weak or indeterminate title. It helps in the Doctrine of Administration also as it can be an effective and efficient way to remove or cure clouds of title which with memories grow dim and evidence becomes unclear. The possessor who maintains and improves the land has a more valid claim to the land than the owner who never visits or cares for the land and uses it, is of no utility. If a former owner neglects and allows the gradual dissociation between himself and what he is claiming and he knows that someone else is caring by doing acts, the attachment which one develops by caring cannot be easily parted with. The bundle of ingredients constitutes adverse possession."*⁷



⁷ (2019) 8 SCC 729.

4. PREVIOUS REPORTS OF THE LAW COMMISSION

- 4.1. The Law Commission has also previously dealt with the subject-matter of adverse possession. The Commission, in its 3rd Report on Limitation Act, 1908, recommended that in order to avoid injustice and inequity to the true owner and to simplify the law, the then Article 142 must be restricted in its application only to suits based on possessory title and the owner of the property should not lose his right to it unless the defendant in possession is able to establish adverse possession. The relevant paragraphs of 3rd Report on Limitation Act, 1908 are quoted below:

“132. Article 142 and 144 have introduced a good deal of confusion in the law relating to suit for possession by owners of property. The law as it stands whether in suit under section 9 of the Specific Relief Act or in one covered by Article 142 seems to favour a trespasser as against an owner. The anomaly is due to the decisions which have held that in an ejectment action by the owner of property it is not sufficient for him to establish his title but if he has averred in his plaint original possession and subsequent dispossession or discontinuance of possession, he should go further and establish that his title was subsisting at the date of suit, in the sense that he was in possession of the property within 12 years before the date of the institution of the suit. That Article 142 applies to a suit by the owner of the property as well as a person suing merely on the basis of a possessory title is the view taken by some courts [vide the Full Bench decisions in Official Receiver, E. Godavari v.



*Govindaraju,⁸ and Bindhyacval Chand v. Ram Gharib,⁹] while others restrict its applicability to a suit based on a possessory title alone [vide *jaichand Bahadur v. Girwar Singh*,¹⁰ *Mt. Jijibai v. Zabu*¹¹; and *Kanhaiyalal v. Girwar*¹²]. A person who is the owner of the property when he sues for recovery of possession has thus to establish not only his title but also that he was in possession of the property within 12 years if he frames his plaint as one for possession after dispossession.*

...

...

135. In our opinion, Article 142 must be restricted in its application only to suits based on possessory title. The plaintiff in such a suit seeks protection of his previous possession which falls short of the statutory period of prescription, to recover possession from another trespasser. The plaintiff's prior possession no doubt entitles him to protection against a trespasser though not against the true owner. The true owner's entry would be a rightful entry and would interrupt adverse possession. But if the defendant trespasser is a person who wishes to oust the plaintiff who was himself a prior trespasser or a person who did not come into possession as a trespasser but continued to hold it as such, in order to enable him to acquire a title by adverse possession, the law must undoubtedly step in and give relief to the plaintiff. As against the true owner

⁸ ILR 1940 Mad 1953.

⁹ 57 All 278.

¹⁰ 41 All 669.

¹¹ 150 IC 679 (Nag).

¹² 51 All 1042.

a person who is in possession for a length of time short of the statutory period is not entitled to any protection but the net result of the decisions under Article 142 is that the true owner must prove that he had a subsisting title on the date of suit. We, therefore, suggest that in order to avoid injustice and inequity to the true owner and to simplify the law, Article 142 should be restricted to suits based on possessory title and the owner of the property should not lose his right to it unless the defendant in possession is able to establish adverse possession. Article 142 may, therefore, be amended as follows:

“For possession of immovable property based on possessory title when the plaintiff while in possession of the property has been dispossessed - 12 years from the date of dispossession.”

- 4.2. The Law Commission again undertook a comprehensive review of the Limitation Act, 1963. In its 89th Report titled “The Limitation Act, 1963”, the Commission took note of the criticism of some jurists regarding adverse possession; however, it recommended that the doctrine deserves not to be disturbed in its essence. The relevant paragraphs are quoted below:

“35.14. The position of the illegal occupant. – The doctrine of acquisition of title by adverse possession is deeply rooted in our system of jurisprudence. The doctrine is derived from the Roman Law concept of usucapio and longi temporis praescriptio, but in Roman Law, there was an added requirement that the possession must be bona fide and for justa causa. English law has not insisted on the doctrine by

observing that "certainty of title to land is a social need and occupation of land which has long been unchallenged should not be disturbed." Thus, the English version is just the opposite of the Roman concept.

In the registration systems of certain Commonwealth countries, a distinction is made between the acquisition of title by an adverse possession to registered land and unregistered land, with the result that a rank trespasser or a squatter is not able to extinguish the title of a registered proprietor.

...

...

35.17. Law Commission's Report. – *Reverting, to the text of Article 65, the articles relating to possession were examined in great detail by the Law Commission in its Report on the Act of 1908. There was a preliminary observation that Articles 142 and 144 had introduced a good deal of confusion in the law relating to suit for possession by the owners of property. The law Commission also discussed the Privy Council case on the subject, which had settled the proposition that the rule of prescription should be applied not to cases of want of actual possession by the plaintiff, but to cases where the plaintiff had been out of possession and another person was in possession for the prescribed time. The Commission then made the following recommendation on the subject:*

"In our opinion, Article 142 must be restricted in its application only to suits based on possessory title. The

plaintiff in such a suit seeks protection of his previous possession which falls short of the statutory period of prescription, to recover possession from another trespasser. The plaintiff's prior possession no doubt entitles him to protection against a trespasser, though not against the true owner. The true owner's entry would be a rightful entry and would interrupt.

35.18. Law Commission's recommendation. – *For these reasons, the Law Commission (in that Report) recommended a re-draft of Article 142 as under: -*

“For possession of immovable property based on possessory title where the plaintiff while in possession of the property has been dispossessed – 12 years from the date of dispossession.”

A new article was to govern suits based on title – 12 years' period to be counted from the time when possession becomes adverse.

35.19. Summary of the position in Supreme Court judgment. – *The amended article, though phrased somewhat differently has not given rise to any serious controversy and the Supreme Court in a recent judgment on the subject, has succinctly summarized the law on adverse possession or hostile title thus:*

“Adverse possession or hostile title must be established by a consistent course of conduct and it cannot be shown by a stray or sporadic act of possession. However, 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. One of the important facts, which clearly proves adverse possession, may be that the possessor had let out the land for cultivator purposes and used it himself from time to time without any protest from the owner or any serious attempt by the owner to evict the possessor, knowing full well that he was asserting hostile title in respect of the land. If a person asserts a hostile title even to a tank which, as claimed in the present case by the owner, i.e. the municipality, belonged to it and despite the hostile assertion of title no steps were taken by the owner, to evict the trespasser, his title by prescription would be complete after thirty years."

35.24. No change needed. – *We have made a passing reference to the fact that like many other well established legal doctrines, the doctrine of adverse possession has also attracted the adverse notice of some jurists. However, as stated above, the philosophy underlying the same has become an integral part of our jurisprudence. Both on the merits and on the ground just now mentioned, the doctrine deserves not to be disturbed in its essence.*

We have also referred to the developments in England as a matter of interest. In India, these controversies have not arisen.



Accordingly, we do not recommend any change in the article."

- 4.3. The 193rd Report of Law Commission briefly discussed the subject of adverse possession. It stated that as per Article 65 of the Schedule to the 1963 Act, a person in adverse possession of immovable property acquires title to the property. Such possession must be open and continuous and in defiance of the title of the real owner for twelve years so that the person can prescribe title by adverse possession. So far as Government property is concerned, Article 112 prescribes a requirement of thirty years for according title by adverse possession. The Report further stated that the principles of law evolved by the Courts also permit acquisition of limited rights by adverse possession.



5. THE DECISIONS OF THE SUPREME COURT SUGGESTING CHANGE IN THE LAW OF ADVERSE POSSESSION

5.1. The Supreme Court, in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others*¹³, held:

“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 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 has illegally taken possession of the property of the true owner. The law ought not to benefit or give 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



¹³ (2009) 16 SCC 517.

of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

5.2. In the aforementioned case, the trial court decreed the suit for declaration and injunction. The trial court held that the plaintiff purchased the land in question several years ago. It was also held that the plaintiff perfected the title by adverse possession. In fact, there was no pleading in the case in support of adverse possession. The first appellate court reversed the judgment of the trial court. The High Court in second appeal upheld the decision of the appellate court. The plaintiff then approached the Supreme Court. The Supreme Court held that the plaintiff did not prove title to the property. The Supreme Court also held that there was no pleading or proof for adverse possession. Thus, the apex Court dismissed the appeal of the plaintiff.

5.3. In *State of Haryana v. Mukesh Kumar and Others*¹⁴, a similar question was considered by the Supreme Court. The relevant observations and findings for the purpose are quoted below:

“Fifth Amendment of the US Constitution – a principle of a civilised society.

40. Another important development in the protection of property rights was the Fifth Amendment. James Madison was the drafter and key supporter for the Fifth Amendment. The Fifth Amendment states: ‘nor shall private property be taken for public use, without just compensation’. The main issue is to

¹⁴ (2011) 10 SCC 404.

pay just compensation for acquiring the property. There are primarily two situations when a landowner may obtain compensation for land officially transferred to or depreciated by the government. First, an owner may be entitled to compensation when a governmental entity intentionally acquires private property through a formal condemnation proceeding and without the owner's consent. The State's power to take property is considered inherent through its eminent domain powers as a sovereign. Through the condemnation proceedings, the government obtains the necessary interest in the land, and the Fifth Amendment requires that the property owner be compensated for this loss.

41. The second situation requiring compensation under Fifth Amendment occurs when the government has not officially acquired private property through a formal condemnation proceeding, but 'nonetheless takes property by physically invading or appropriating it'. Under this scenario, the property owner, at the point in which a 'taking' has occurred, has the option of filing a claim against the government actor to recover just compensation for the loss. When the landowner sues the government seeking compensation for a taking, it is considered an inverse condemnation proceeding, because the landowner and not the government is bringing the cause of action.

42. We inherited this law of adverse possession from the British. The Parliament may consider abolishing the law of adverse possession or at least amending and making

substantial changes in law in the larger public interest. The Government instrumentalities - including the 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. The Government should protect the property of a citizen - not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of the Parliament, then at least the law must require those who adversely possess land to compensate title owners according to the prevalent market rate of the land or property in question. This alternative would provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessors - some of whom may be poor - to pay market rates for the land they possess, perhaps some lesser amount would be realistic in most of the cases. The Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a given case.

43. The Parliament must seriously consider at least to abolish 'bad faith' adverse possession, i.e., adverse possession achieved through intentional trespassing, actually believing it to be their own could receive title through adverse possession sends a wrong signal to the society at large. Such a change would



ensure that only those who had established attachments to the land through honest means would be entitled to legal relief.

44. In case, the Parliament decides to retain the law of adverse possession, the Parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere 12. Such an extension would help to ensure that successful claimants have lived on the land for generations, and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also 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.

45. Reverting to the facts of this case, if the Police department of the State with all its might is bent upon taking possession of any land or building in a clandestine manner, then, perhaps no one would be able to effectively prevent them.

46. It is our bounden duty and obligation to ascertain the intention of the Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious re - look is absolutely imperative in the larger interest of the people.



47. *Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of 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.*

48. *The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.*

49. *If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.*

51. *In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and*

in the alternate to make suitable amendments 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."

5.4. In respect of land reserved for public utility, the Supreme Court observed in *Ravinder Kaur Grewal v. Manjit Kaur*¹⁵ as follows:

"When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession."



¹⁵ (2019) 8 SCC 729.

6. RELEVANT STATUTORY PROVISIONS

- 6.1. The Limitation Act, 1963 contains 31 sections and the Schedule. The Schedule is divided into three Divisions, namely, **Suits** (Articles 1 to 113 in Parts divided as I to X), **Appeals** (Articles 114 to 117) and **Applications** (Articles 118 to 137 in Parts I and II).
- 6.2. **Section 2 (j)** defines “period of limitation” as under: “period of limitation” means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act.”
- 6.3. **Section 3:** Section 3 provides that subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.
- 6.4. **Sections 4 to 24** deal with various situations which may arise in the matter of computation of the period of limitation. These sections are mentioned hereunder briefly.
- 6.5. **Section 4** deals with expiry of prescribed period when court is closed. **Section 5** provides for extension of the prescribed period. **Sections 6, 7 and 8** deal with legal disability and speak of providing for further time to the person under disability or his legal representatives, as the case may be, for instituting a suit or making an application for execution of a decree after the disability ceases. **Section 9** provides

that once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it, together with the exception to the general rule. **Section 10** provides for suits against trustees and their representatives and it says that no suit within the ambit of Section 10 shall be barred by any length of time. **Section 11** provides for suits on contracts entered into outside the territories to which the Limitation Act extends. **Sections 12 to 15** provide for exclusion of time in computing the period of limitation for suits, appeals or applications, as the case may be. Sections 12 to 15 contain a scheme under which in certain circumstances, certain specified period could be excluded in computing the period of limitation. **Section 16** states what is the effect of death of a person on or before the accrual of the right to sue and also for computation of the period of limitation in those contingencies. **Section 17** states what is the effect of fraud or mistake in the case of a suit or application. **Sections 18 and 19** provide for computing a fresh period of limitation in the case of an 'acknowledgement' and 'payment' respectively. **Section 20** provides for effect of 'acknowledgement' or 'payment' by another person. **Section 21** provides for substitution or addition of a new plaintiff or defendant. **Section 22** speaks of continuous breaches and torts. **Section 23** provides for compensation for acts which are not actionable without special damage. **Section 24** says that all instruments shall, for the purposes of the Limitation Act, be deemed to be made with reference to the Gregorian Calendar.

- 6.6. **Section 25** provides for acquisition of easement by prescription and **Section 26** deals with exclusion of certain periods pertaining to acquisition of easements. However, Sections 25 and Section 26 and

the definition of easement in Section 2 shall not apply to cases arising in the territories to which the Indian Easement Act, 1882, may for the time being extend, as provided in Section 29(4).

- 6.7. **Section 27** deals with extinguishment of right to property. It lays down that the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.
- 6.8. **Section 29** provides for savings. **Section 30** provides for suits, etc, for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908. **Section 31** deals with provisions as to barred or pending suits, etc.
- 6.9. The Schedule of the Limitation Act, 1963 contains three columns, namely, “description of suit”, “period of limitation” and “time from which period begins to run”. The period of limitation for a suit, appeal or application is computed with reference to the entries in the aforesaid three columns.
- 6.10. Part V of the Schedule of the Limitation Act deals with “Suits Relating to Immovable Property. Part V contains Articles 61 to 67. Of these, Articles 61, 63, 64, 65, 66 and 67 speak of suits for possession in different contingencies. Part IX deals with suits relating to Miscellaneous matters. Articles 110, 111 and 112 of Part IX are relevant for the purpose. The aforesaid articles have close nexus with Section 27.



6.11. For the purpose of the discussion on the subject, it is expedient to quote below Articles 64, 65, 110, 111 and 112:

Description of suit	Period of limitation	Time from which period begins to run
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
65. For possession of immovable property or any interest therein based on title. Explanation.—For the purposes of this article— (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

<p>immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;</p> <p>(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.</p>		
<p>110. By a person excluded from a joint family property to enforce a right to share therein.</p>	<p>Twelve years</p>	<p>When the exclusion becomes known to the plaintiff.</p>
<p>111. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.</p>	<p>Thirty years</p>	<p>The date of dispossession or discontinuance.</p>
<p>112. Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of</p>	<p>Thirty years</p>	<p>When the period of limitation</p>

the Central Government or any State Government, including the Government of the State of Jammu and Kashmir.		would begin to run under this Act against a like suit by a private person.
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Scope of the Limitation Act, 1963

- 6.12. The Limitation Act applies to courts and not to quasi-judicial bodies or Tribunals.¹⁶ Generally speaking, the Limitation Act only bars the remedy but doesn't destroy the right to which the remedy relates to. The exception to the general rule is contained in Section 27 of the Limitation Act, 1963.
- 6.13. Though the period of limitation prescribed in the Limitation Act precludes a plaintiff from bringing a suit which is barred by limitation, there is no such limitation so far as any defence is concerned.
- 6.14. The rationale behind the law of limitation is that it is founded on public policy. The concept of adverse possession is based on the legal maxim '*vigilantibus non-dormientibus subvenit lex*' which means that the law favours only the vigilant and not the sleepy – only the active citizen and not those who are dormant or in other words those who are not concerned about their rights.

¹⁶ See *L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. and Another* AIR 2005 SC 1209; (2004) 11 SCC 456; *M.P. Steel Corporation v. Commission of Central Excise* (2015) 7 SCC 582.

7. BROAD ASPECTS RELATING TO ADVERSE POSSESSION

7.1. The Limitation Act is an Act of repose. “Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aim at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.”¹⁷

7.2. Possession and adverse possession are not the same thing. The classical requirement of Adverse Possession is that the possession must be *nec vi nec clam nec precario*, i.e to say, the possession required must be adequate in continuity, in publicity and in extent. However, it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running out, if he exercises due vigilance, can be aware of what is happening.¹⁸

7.3. A person pleading adverse possession has no equities in his favour.

“Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on

¹⁷ See *P.T. Munichikkanna Reddy and others v. Revamma and others* (2007) 6 SCC 59: AIR 2007 SC 1753.

¹⁸ See *Lakshmi Reddy v. Lakshmi Reddy* AIR 1957 SC 314; *Secretary of State for India v. Debandra Lal Khan* AIR 1934 PC 23; *Karnataka Board of Wakf v. Government of India and ors.* (2004) 10 SCC 779; *Ravinder Kaur Grewal v. Manjit Kaur* (2019) 8 SCC 729; *S.M. Karim v. Bibi Sakina* (1964) 6 SCR 780: AIR 1964 SC 1254; *Balkrishnan v. Satyaprakash* (2001) 2 SCC 498).

what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."¹⁹

- 7.4. Possession is never considered adverse if it is referable to a lawful title. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.
- 7.5. Possession must be open and without any attempt at concealment. It is, however, not necessary that possession must be so effective as to bring it to the specific knowledge of the owner (except ouster).
- 7.6. Possession must be hostile, actual, open, notorious, exclusive and continuous, continued for the required period of time.
- 7.7. Mere sporadic acts of possession exercised from time to time would not be sufficient for the acquisition of title by adverse possession.

¹⁹ See *P.T. Munichikkanna Reddy and others v. Revamma and others* (2007) 6 SCC 59; AIR 2007 SC 1753.

“Adverse possession or hostile title must be established by a consistent course of conduct and it cannot be shown by a stray or sporadic act of possession. However, 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.....”²⁰

- 7.8. Adverse possession depends on the intention of the occupant to claim and hold the land in opposition to the whole world. Adverse possession consists of actual possession with intent to hold the property solely by the possessor to the exclusion of all others.
- 7.9. Possession implies dominion and control and consciousness in the mind of the person having dominion -- as distinguished from occupation which only implies bare use of the land without any right to retain it.
- 7.10. Possession need not in all cases be actual physical possession. Constructive possession is enough. For example, the property in the possession of tenants. “The manner of possession depends upon the kind of possession which the particular property is susceptible. That possession to the extent to which it is capable of demonstration must

²⁰ *Kshitish Chandra Bose v. Commissioner of Ranchi* (1981) 2 SCC 103.



be hostile and exclusive and will cover only to the extent of the owner's possession.”²¹

7.11. Mere continuance of unauthorised possession for a period of more than twelve years is not enough.²²

“.... that mere termination of a licence of a licensee does not enable the licensee to claim adverse possession, unless and until he sets up a title hostile to that of the licensor after termination of his licence. It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough.”

“It is well recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the

²¹ See *Smt. Chandrakantaben J Modi and Narendra Jayanti Lal Modi v. Vadilal Bapalal Modi and Others* AIR 1989 SC 1269.

²² *Gaya Prasad Dikshit v. Dr. Nirmal Chander* AIR 1984 SC 930: (1984) 2 SCC 286.

possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."²³

- 7.12. As against co-owners, the co-owner who claims adverse possession has to plead and prove ouster also. The co-heir/co-owner in possession cannot render his possession adverse to the other co-heir/co-owner not in possession merely by any secret hostile animus. It is well settled that in order to establish adverse possession of one co-owner as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. It is well settled that mere non-participation in the rent and profits of the

²³ See *T. Anjanappa and others v. Somalingappa and another* (2006) 7 SCC 570.

land of a co-sharer does not amount to an ouster so as to give title by adverse possession to the other co-sharer in possession.²⁴

7.13. Permissive possession does not constitute adverse possession. A permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years or more.²⁵

7.14. Possession referable to a contract or to an agreement or to a mortgage cannot be adverse. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse. If a person has come into possession under colour of title, he can plead adverse possession only on disclaiming his title and pleading hostile claim to the knowledge of the title holder.²⁶

7.15. A question arose whether a person who has perfected title by adverse possession can file a suit for declaration of title. The Supreme Court in *Gurudwara Sahib v. Gram Panchayat Village Sirthala*²⁷, *State of*

²⁴ See *Coriea v. Appuhamy* 1912 AC 230; *Lakshmi Reddy v. Lakshmi Reddy* AIR 1957 SC 314; *Maharajadhiraj of Burdwan Udaychand Mahatab Chand v. Subodh Gopal Bose and Others* AIR 1971 SC 376; (1970) 3 SCC 681; *Shambhu Prasad Singh v. Phool Kumari and Others* AIR 1971 SC 1337; (1971) 2 SCC 28; *Syed Shah Gulam Ghouse Mohiuddin and Others v. Syed Shah Ahmed Mohiuddin Kamisul Qadri* AIR 1971 SC 2184; (1971) 1 SCC 597; *Bhubneshwar Prasad Narain Singh and Others v. Sidheshwar Mukherjee and Others* AIR 1971 SC 2251; (1971) 1 SCC 556; *Mohd. Zainulabudeen v. Sayed Ahmed Mohideen and Others* AIR 1990 SC 507; (1990) 1 SCC 345; *Karbalai Begum v. Mohd Sayeed and Another* AIR 1981 SC 77; (1980) 4 SCC 396.

²⁵ See *State Bank of Travancore v. Arvindan Kunju Panicker and Others* AIR 1971 SC 996; (1972) 4 SCC 274.

²⁶ See *Padma Vithoba Chakkayya v. Mohd. Multani and Another* AIR 1963 SC 70; *Achal Reddy v. Ramakrishna Reddiar and Others* AIR 1990 SC 553; (1990) 4 SCC 706; *Mool Chand Bakhru and Another v. Rohan and Others* AIR 2002 SC 812; (2002) 2 SCC 612; *Mohan Lal Kachru and Others v. Mirza Abdul Gaffar and Another* AIR 1996 SC 910; (1996) 1 SCC 639; *R. Chandevappa v. State of Karnataka* (1995) 6 SCC 309.

²⁷ (2014) 1 SCC 669.

*Uttarakhand v. Mandir Sri Laxman Sidh Maharaj*²⁸ and *Dharampal v. Punjab Wakf Board*²⁹, held that adverse possession cannot be used as a sword but it can be used as a defence, i.e., as a shield. A three-judge bench of the Supreme Court in *Ravinder Kaur Grewal v. Manjit Kaur* overruled these decisions and held that adverse possession can be used as a sword and a suit for declaration can be filed by a person who perfected the title by adverse possession. The Supreme Court held:

“The plea of acquisition of title by adverse possession can be taken by the plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on the aforesaid basis in case of infringement of any rights of a plaintiff.”

7.16. Once title is acquired by prescription under Article 65 read with Section 27 of the Limitation Act, 1963, the person who has perfected title by adverse possession would get all the rights which the title holder of a land has.

7.17. The expression “title” would include the title acquired by the plaintiff by way of adverse possession. It was held in *Ravinder Kaur Grewal v. Manjit Kaur*³⁰ thus:

“58.Section 27 of the Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such

²⁸ (2017) 9 SCC 579.

²⁹ (2018) 11 SCC 449.

³⁰ (2019) 8 SCC 729.

property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that...."

*"Adverse possession is heritable and there can be tacking of adverse possession by two or more person as the right is transmissible. "In our opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfilment of certain conditions, tacking may be by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period."*³¹

- 7.18. Once a suit for recovery of possession is instituted against the defendant in adverse possession, his adverse possession does not continue thereafter. In other words, the running of time for acquiring title by adverse possession gets arrested.³²

³¹ See *Ravinder Kaur Grewal v. Manjit Kaur* (2019) 8 SCC 729.

³² See *Babu Khan and others v. Nazim Khan (dead) by LRs. and others* (2001) 5 SCC 375: AIR 2001 SC 1740.

8. CHANGES MADE IN THE LAW RELATING TO ADVERSE POSSESSION

- 8.1. Article 64 of the Limitation Act, 1963 corresponds to Article 142 of the Indian Limitation Act, 1908. Articles 142 of the 1908 Act and Article 64 of the 1963 Act are extracted below for easy comparison:

1908 Act:

142. For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
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1963 Act:

64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
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- 8.2. The period of limitation under Article 142 of the 1908 Act and Article 64 of the 1963 Act is the same. But the language and scope of the said Articles underwent substantial change. Under the first column, namely, description of suit, the words “based on previous

possession and not on title” were added in Article 64 of the 1963 Act. The words “or has discontinued the possession” occurring in the first column and the words “or discontinuance” in the third column in Article 142 were omitted in Article 64. The new Article 64 is restricted to suit based on possessory title so that the owner of the property does not lose his right to the property unless the defendant in possession is able to prove adverse possession.

8.3. Article 64 of the new Act is applicable to suits for possession based on previous possession but not on title of immovable property, when the plaintiff while in possession of the property, has been dispossessed. Such a suit must be brought within twelve years of the date of dispossession. The conditions necessary to attract Article 64 are: (a) the suit should be one for possession of immovable property based on previous possession and not on title and (b) the plaintiff, while in possession of the property, was dispossessed. The burden of proving the date of dispossession lies on the plaintiff. The plaintiff has to show that the dispossession was within twelve years prior to the date of filing of the suit.

8.4. Article 65 of 1963 Act corresponds mainly to Articles 144, 140, 141, 138 and 137 of the 1908 Act, which are extracted for easy reference.

1908 Act:

Description of suit	Period of limitation	Time from which period begins to run.
144. For possession of immoveable property or any interest therein not	Twelve years.	When the possession of the

hereby otherwise specifically provided for.		defendant becomes adverse to the plaintiff.
140. By a remainderman, a reversioner (other than landlord) or a devisee, for possession of immoveable property.	Twelve years.	When the estate falls into possession.
141. Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Mohammadan female.	Twelve years.	When the female dies.
138. Like suit by a purchaser at a sale in execution of a decree when the judgment-debtor was in possession at the date of the sale.	Twelve years.	The date when the sale becomes absolute.
137. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years.	When the judgment-debtor is first entitled to possession.

1963 Act:

65. For possession of immovable	Twelve	When the
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<p>property or any interest therein based on title.</p> <p>Explanation.—For the purposes of this article— (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;</p> <p>(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;</p> <p>(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-</p>	<p>years.</p>	<p>possession of the defendant becomes adverse to the plaintiff.</p>
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debtor who was out of possession.		
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8.5. Article 65 of the 1963 Act has made drastic changes in the corresponding articles under the 1908 Act. The words “for possession of immovable property or any interest therein based on title” occurring the column of description of suit in Article 65 of the 1963 Act are similar to the words occurring in Article 144 of the 1908 Act, with some changes. Article 140 of the old Act corresponds to Explanation (a) of Article 65 of the new Act. Article 141 of the old Act corresponds, with some changes, to Explanation (b) of Article 65 of the new Act. Articles 137 and 138 of the old Act, with some changes, have been incorporated in Explanation (c) of Article 65 of the new Act. The period of limitation was twelve years under Articles 137,138,140,141 and 144 of the old Act. Under Article 65 of the present Act also, the period of limitation is twelve years. The expression “when the possession of the defendant becomes adverse to the plaintiff” in the third column of Article 65 of the new Act is the same as that in Article 144 of the old Act.

8.6. Under the 1963 Act, all suits for possession of immovable property have been brought under two categories, namely, (a) suit based on previous possession and not on proprietary title and (b) suit based on proprietary title. Suit based on previous possession is governed by Article 64, while suit based on proprietary title is governed by Article 65. Under Article 64, the starting point of limitation is the date of dispossession. Under Article 65, the starting point of limitation is

“when the possession of the defendant becomes adverse to the plaintiff”.

- 8.7. The reasons for the change brought about by Articles 64 and 65 are seen in the 3rd Report of the Law Commission of India. The recommendation of the Law Commission was as follows:

“If the defendant want to defeat the right of the plaintiff, he must establish the adverse possession for over twelve years which has the effect of extinguishing the title of the owner by operation of Section 28 of the Limitation Act (Section 27 of the 1963 Act), read with Art. 144. (Article 65 of the 1963 Act). If he fails to do so, there is no reason for non-suiting the plaintiff merely because he was not able to prove possession within twelve years..... In our opinion, Art. 142 must be restricted in its application only to suits based on possessory title. The plaintiff in such a suit seeks protection of his previous possession which falls short of the statutory period of prescription, to recover possession from another trespasser. The plaintiff's prior possession no doubt entitles him to protection against a trespasser though not against the true owner. The true owner's entry would be a rightful entry and would interrupt adverse possession. But if the defendant trespasser is a person who wishes to oust the plaintiff who was himself a prior trespasser or a person who did not come into possession as a trespasser but continued to hold it as such, in order to enable the plaintiff to continue his wrongful possession without disturbance and to enable him to acquire a title by

adverse possession, the law must undoubtedly step in and give relief to the plaintiff. As against the true owner a person who is in possession for a length of time short of the statutory period is not entitled to any protection but the net result of the decisions under article 142 is that the true owner must prove that he has a subsisting title on the date of the suit. We, therefore, suggest that in order to avoid injustice and inequity to the true owner and to simplify the law, article 142 should be restricted to suits based on possessory title and the owner of the property should not lose his right to it unless the defendant in possession is able to establish adverse possession. Article 142, may, therefore, be amended as follows:

“For possession of immovable property based on possessory title when the plaintiff while in possession of the property has been dispossessed – 12 years from the date of dispossession.””

8.8. Pursuant to the opinion expressed by the Law Commission, the Parliament appropriately enacted Articles 64 and 65 in the 1963 Act. There is a clear distinction between suits based on prior possession (under Article 64) and suits based on title (under Article 65). Suits under Article 64 are maintainable at the instance of a person in possession as against the whole world except the true owner. Suits under Article 65 are maintainable at the instance of a person who has perfected title by adverse possession, even against the true owner.

8.9. Both articles now constitute independent provisions relating to suits for possession brought under different situations. They do not overlap

notwithstanding that both provide a period of 12 years limitation. They stand distinguished from each other in a number of respects. Article 64 is restricted to suits for possession or dispossession or discontinuance of possession. In order to bring the suit within that article, it must be shown that the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or discontinuance.³³ Article 65 on the other hand, is a residuary article to suits for possession not otherwise provided for suits based on plaintiff title in which there is no allegation of prior possession and subsequent dispossession alone can fall within Article 65.³⁴ Article 64 does not apply for suits for possession based on title and has now been restricted to suits based on possessory title. Article 65 of the Limitation Act applies to suits based on title. It is not necessary for a plaintiff to prove his possession within twelve years, in suits for possession based on title. A suit can fail only if the defendant is able to prove adverse possession for over twelve years.³⁵ But where suit is based on title, plaintiff having failed to prove the same, a finding on adverse possession is not necessary.³⁶ Two articles have been engrafted, whereunder a suit for possession based on title is taken out of the preview of article 64, even though the plaintiff being in possession has been dispossessed. Article 65 applies under which the limitation runs from the time when the defendants' possession became adverse to the plaintiff and not from the time

³³ S.A. Kader, II *U.N. Mitra's Law of Limitation and Prescription* 1383 (Lexis Nexis Butterworths Wadhwa, Nagpur, 13th edn., 2011).

³⁴ *Ramiah v. N. Narayana Reddy (dead) by LRs* (2004) 7 SCC 541 : AIR 2004 SC 4261.

³⁵ *Bhushan Lal (deceased) by LRs v. Suresh Kumar and Others* AIR 1987 All 25.

³⁶ *Ranjit Kumar Bhowmik v. Subodh Kumar Roy* (2004) 1 WBLR 228 : (2004) 2 CHN 180.

when the plaintiff was dispossessed as under Article 64.³⁷ Article 64 governs suits for possession based on previous possession and not on title. Article 65 controls suits for possession based on title. Under Article 64, the burden lies on the plaintiff to prove his former possession and subsequent dispossession within 12 years prior to the suit and it is unnecessary to inquire whether the defendant's possession was adverse or when it became adverse to the plaintiff.³⁸ Article 64 has no application where the suit is not based on the ground that the plaintiff has been dispossessed by the defendant.³⁹ When a suit is based only on previous possession, and for recovery, Article 64 applies and the plaintiff can succeed only if it is proved that he was in possession within twelve years prior to suit and he was dispossessed by defendant. If the suit is based on title, even if dispossession is also alleged the defendant can succeed only if he proves his possession became adverse to the plaintiff beyond twelve years of the suit. The plaintiff need only to prove his title and not required to show that he was in possession within twelve prior to the suit.⁴⁰ Under Article 65 the burden lies on the defendant to show that he or predecessor-in-interest had been in continuous adverse possession for over 12 years.⁴¹ Under Article 64 the nature of the plaintiff's possession is not material. Under Article 65, however, the question whether possession has become adverse to the plaintiff is relevant. Article 65 specifically refers to "immovable property or any interest therein" whereas Article 64 mentions only "immovable property" affording room for argument that interest in immovable

³⁷ *Jagannath Garnaik v. Sankar Samal* AIR 1990 Ori 124.

³⁸ *Muhammad Amanullah v. Badan Singh* (1889) ILR 17 Cal 137 (PC).

³⁹ *Tribeni v. Soaroop* AIR 1974 Raj 232.

⁴⁰ *State of Orissa v. Jhunjhunwalla* 1986 CLT 55.

⁴¹ See *Manikyala Rao v. Narasimhaswami* AIR 1996 SC 470.



property stands outside the scope of that article. Finally, while the starting point of limitation under Article 64 is the date of the dispossession, under Article 65 it is the date when the possession of the defendant became adverse to the plaintiff.⁴²

8.10. Where the suit is brought on plaintiff's prior possession and dispossession by defendant, the suit can be brought within 12 years from the date of dispossession.⁴³ Both Articles 64 and 65 are rules of limitation, the only difference being that in former, onus lies on the plaintiff to prove his possession within 12 years, while in the latter, it is for the defendant to prove when his possession became adverse. The possession to become adverse must be actual, visible, exclusive hostile and continued during the time necessary to create a bar under the statute of limitation.⁴⁴

8.11. Under the 1908 Act, a plaintiff suing on title had to prove that he was in possession within 12 years before the filing of the suit. Very often suits filed by title holder were being dismissed on the ground that they failed to prove possession within 12 years. Under Article 65 of the Limitation Act, 1963, the title holder/plaintiff need only prove title to the property and he need not prove that he was in possession of the property within 12 years. Once the title of the plaintiff is either admitted or proved, the entire burden of proof would be on the defendant to prove adverse possession.⁴⁵

⁴² S.A. Kader, II *U.N. Mitra's Law of Limitation and Prescription* 1384 (Lexis Nexis Butterworths Wadhwa, Nagpur, 13th edn., 2011).

⁴³ *Amar Kaur v. Hardev Singh* AIR 1992 P&H 205.

⁴⁴ *Nirakar Das v. Gourhari Das* AIR 1995 Ori 290.

⁴⁵ See *P.T. Munichikkanna Reddy and Others v. Revamma and Others* (2007) 6 SCC 59; AIR 2007 SC 1753; *Saroop Singh v. Banto and Others* (2005) 8 SCC 330).

8.12. Under the 1908 Act, the maximum period of limitation provided was 60 years. Under the present Act, the maximum period of limitation is 30 years for certain types of cases.



9. ADVERSE POSSESSION VIS-À-VIS MORALITY

- 9.1. For understanding the role of adverse possessor from the perspective of the morality of adverse possession, one needs to adopt a new analogy that views such an adverse possessor not as a land thief nor as a deserving labourer, but rather as something akin to the leader of a bloodless *coup d'état*.⁴⁶ An adverse possessor who is successful at his endeavour, assumes the mantle of ownership for quite the same reasons that a successful *coup d'état* produces a government whose legitimacy and authority to rule is unabridged by the initial illegality of its means to attain power. The existence of social order necessitates that someone wield the authority of ownership in the former case, and public authority in the latter. Thus, in a way, adverse possession solves the moral problem of agenda-less objects, i.e., owner-less property, just as the recognition of the existing government, howsoever it may have originated, solves the moral problem of people who may be rendered state-less otherwise.⁴⁷
- 9.2. Since an adverse possessor is generally viewed as an immoral squatter, a question arises as to on what basis can we justify the transformation of squatters into owners? It is required that proper analogy be employed to understand the moral underpinnings of adverse possession. It is often observed that much of the moral analysis visualises adverse possessors as essentially land grabbers. Hence, it becomes all the more imperative to distinguish between an act of robbery or thievery and that of adverse possession. The

⁴⁶ Larissa Katz, "The Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law" 55 *McGill Law Journal* 47 (2010).

⁴⁷ *Ibid.*

characteristic *modus operandi* of a thief is that he achieves his goal of permanent control of someone else's property either by force or by stealth.⁴⁸ This method adopted by the thief indicates towards the character of his claim to the object of theft. The thief takes physical possession of the object in question with the intent of depriving the owner permanently of possession without allowing him to make a counterclaim of authority. The thief does not contest the owner's legitimacy of authority over the object, but rather, asserts his control in spite of his recognition of the owner's superior authority over the object. This is quite evident from the thief's resort to force, stealth or secrecy. It is significant to highlight that the thief does not invite an evaluation of a competing claim to his authority over the object nor is his demand to be judged the owner as a consequence of his actions. Rather, the thief's ultimate aim is to dupe the society into thinking that he is the owner of the object, which is inherently different from attempting to extract a judgment that he is in fact the owner.⁴⁹

- 9.3. The nature of the thief's claims is in stark contrast with the nature of the adverse possessor's claims. The adverse possessor demands public recognition of his authority as owner, which he is able to achieve only where he has evident authority over the land in place of the real owner. Thus, adverse possession of any property can be successful only where it is peaceful, open and notorious.⁵⁰ The adverse possessor's claims get eroded by force or stealth. This is so because by surreptitiously moving in or forcibly removing the

⁴⁸ George P. Fletcher, *Rethinking Criminal Law* 38 (Little, Brown and Co., Boston, 1978).

⁴⁹ Larissa Katz, "The Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law" 55 *McGill Law Journal* 47 (2010).

⁵⁰ *Sherren v. Pearson*, [1887] 14 S.C.R. 581 at 585; *Powell v. McFarlane* (1979), 38 P. & C.R. 452 (Ch. D.) at 478.

original owner, he eventually ends up unveiling that he himself lacks effective authority.⁵¹

9.4. In order to claim adverse possession of any property, the squatter must prove that the owner lacks effective authority since day one. In spite of being able to establish so, the adverse possessor however, must still wait out for the time period set by the statutory period of limitation before the law accords recognition that he has taken over from the original owner.⁵² This period of limitation is necessary to determine whether the original owner has in fact failed to exert effective authority over the property in question from day one. The loss of authority cannot be, as H.L.A. Hart put it, “verified or falsified ... in short spaces of time.”⁵³

9.5. The ownership authority of the adverse possessor is conclusive and not provisional as the same is evident from the retrospective characteristic of adverse possession. During the statutory period of limitation, the adverse possessor’s *de facto* authority over the property is not in contest with the owner’s *de jure* authority. Rather, once the statutory waiting period is over, it is confirmed that there was all along but a single person, namely the adverse possessor, whose decisions about the property in question were authoritative.⁵⁴ The retroactive nature of adverse possession also helps in explaining as to why a successful adverse possessor, very much like the leaders

⁵¹ Larissa Katz, “The Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law” 55 *McGill Law Journal* 47 (2010).

⁵² *Ibid.*

⁵³ H.L.A. Hart, *The Concept of Law* 118 (Clarendon Press, Oxford, 2nd edn., 1994).

⁵⁴ Larissa Katz, “The Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law” 55 *McGill Law Journal* 47 (2010).

of a successful *coup d'état*, cannot be held liable for wrongdoing. Right since day one the adverse possessor is recognized as owner despite the fact that had he not succeeded in his endeavour, he would have been liable for trespass, just as the leaders of a failed *coup d'état* would have been liable for treason.⁵⁵

- 9.6. The moral dilemma surrounding adverse possession can thus be justified on analogous grounds. The moral significance of adverse possession hence entails the role of ensuring that ownership serves its primary function.⁵⁶ The predominant function of the owner of a property is to take charge of the property by setting the agenda for it. Hence, in a situation when there is no one clearly incharge of a property, avoidance of any potential conflict among the users of that property can only be ensured through ownership generated agenda-setting authority. Authoritative resolution of questions regarding the use of any property cannot be ensured if the original owner lacks effective authority over that property and the squatter is also denied *de jure* authority over such property on account of adverse possession. Thus in such a case, the primary function of ownership to enable use of any property would remain unfulfilled. If no one has effective authority over a property, there arises a vacancy in the position of owner of that property. Such a vacancy results in destabilizing the other peoples' relations with respect to that property.⁵⁷ In such a circumstance, the law of adverse possession

⁵⁵ *Beaulane Properties Limited v. Palmer* [2005] EWHC 817 (Ch.) at 70-71.

⁵⁶ Eduardo Moises Penalver, "The Illusory Right to Abandon" *Cornell Legal Studies Research Paper No. 09-015* (July 1, 2009) available at: <https://ssrn.com/abstract=1428517> (last accessed May 01, 2023).

⁵⁷ Larissa Katz, "The Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law" 55 *McGill Law Journal* 47 (2010).

ensures that there is always someone in charge of that property in the eyes of the law, and hence no unsettling vacancies. This is precisely the reason why the law validates the claim of adverse possession made by the squatter only when the owner can be shown to have lost effective authority. This is also the rationale behind the owner being able to defeat the adverse possessor's claims by showing that he continues to be in charge of the property. Ultimately, the concept of adverse possession addresses the law's most pressing concern which is not who is owner but rather that the office of owner is filled instead of lying vacant.⁵⁸



⁵⁸ Larissa Katz, "Exclusion and Exclusivity in Property Law" 58 *University of Toronto Law Journal* 275, 306 (2008).

10. THE LIMITATION ACT, 1963 IN RESPECT OF ADVERSE POSSESSION: WHETHER ANY AMENDMENT IS NECESSARY?

10.1. Under the Limitation Act, 1908 the title holder had to prove possession within 12 years of the date of filing of the suit. This created difficulty for the owners of immovable property, who on many occasions failed to prove possession and, on that ground, lost their cases before court. But after the commencement of the Limitation Act, 1963, once a plaintiff proves his title, the entire burden is on the defendant to prove that he has perfected title by adverse possession. This makes the position of the plaintiff better than it was under the 1908 Act.

10.2. It is relevant to note here that the period of limitation provided was twelve years in Articles 137, 138, 140, 141 and 144 of the old Act, even when the maximum period of limitation under the old Act was sixty years. Under the new Act, the maximum period of limitation has been reduced to thirty years. However, the period for prescribing title by adverse possession under Articles 64 and 65 of the new Act continues to be twelve years.

10.3. Article 112 of the Limitation Act, 1963 provides for any suit by or on behalf of the Central Government or any State Government. The period of limitation is thirty years. The time for computing the period of limitation begins to run "when the period of limitation would begin to run under this Act against a like suit by a private person." Article 112 would take in a suit filed by the Government for possession of immovable property based on previous possession

(under Article 64) as well as a suit for possession of immovable property or any interest therein based on title (under Article 65). Thus, if the Government files the suit either under Article 64 or 65, they would get thirty years' period to file the same, while in similar circumstances, a private person would get only twelve years' period.

10.4. Title to immovable property can be acquired by adverse possession against the Government in the same way as title can be acquired against a private person. But the person claiming prescriptive title by adverse possession against the Government must prove adverse possession for a period of thirty years under Article 112 of the 1963 Act. The same would be the position whether the suit is filed by the Government or against the Government. Therefore, where a private person sues the Government for a declaration that he acquired title against the Government by his adverse possession, he must prove that his adverse possession was for a continuous period of thirty years. The burden of proof would be on such private person claiming title by adverse possession against the Government to prove that he was in possession of the property with all the incidents of adverse possession for a period of thirty years. Proof of adverse possession for a shorter period will not shift the onus of proof to the Government to show that the said possession did not continue for the full period of thirty years (sixty years under the old Act).⁵⁹

⁵⁹ See AIR 1924 PC 150; (1892) 19 Cal 312; 19 Ind App 69 (PC); AIR 1927 Madras 456; (1905) 28 Madras 130 : 32 Ind app 53 (PC); AIR 1964 Orissa 233; AIR 1916 PC 21: 39 Madras 617: 43 Ind App 192; AIR 1964 Orissa 233; AIR 1949 Nagpur 403; AIR 1921 Bombay 177; AIR 1926 Madras 125; AIR 1940 Nagpur 49; AIR 1944 Nagpur 201; AIR 1925 Madras 780; AIR 1929 Madras 441; AIR 1941 Lahore 241. [See V.R. Manohar & W.W. Chitaley *AIR Commentaries on Limitation Act* 596 (All India Reporter, Nagpur, 6th edn., 1991).

- 10.5. Article 112 of the 1963 Act corresponds to Article 149 of the 1908 Act and the period of limitation provided therein was sixty years. When the 1963 Act came into force, the maximum period of limitation was reduced to thirty years. Accordingly, in Article 112, the period of limitation has been fixed at thirty years.
- 10.6. By interpretation of Articles 64, 65 and 112 of the Limitation Act, there cannot be any doubt that a private person would be able to prescribe title by adverse possession against the Government only on the expiry of thirty years. In *Nav Rattanmal v. State of Rajasthan*⁶⁰, the Supreme Court held that the period that is allowed to the Government to file a suit, is a matter of legislative policy and cannot be brought within the scope or purview of a challenge under Article 14 or under any other Article of the Constitution of India. It was held that there is a rational basis for granting the Government as regards the period, within which claims might be put in suit between the Government on the one hand and private individuals on the other.
- 10.7. The constitutional validity of Article 149 of the 1908 Act (Article 112 of the 1963 Act) was challenged before the Supreme Court in *Nav Rattanmal v. State of Rajasthan* on the ground that providing a longer period of limitation under Article 149 for suits by on or behalf of the Government than the period available to private individuals, would violate Article 14 of the Constitution of India. The Supreme Court rejected this contention and held that the generally accepted basis that statutes of limitation are designed to effectuate a beneficent public purpose does not militate against there being a rational basis

⁶⁰ AIR 1961 SC 1704.

for a distinction being drawn between the claims of the State and the claims of the individuals.

10.8. It is apposite to note here that in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others*, *State of Haryana v. Mukesh Kumar and Others* and *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others*, the Supreme Court did not refer to Article 111 and 112 of the Limitation Act.

10.9. Providing the maximum period of thirty years under the Limitation Act for a suit under Articles 111 and 112 of the Limitation Act, 1963 would dispel the possible difficulty that may arise for recovering possession of lands belonging to the local authorities and the Government, which were encroached upon or otherwise came into the possession of private individuals, to the extent dealt with under Articles 111 and 112. It is not advisable to change the provisions of the Limitation Act to the extent of taking away the provisions relating to adverse possession in respect of lands belonging to the local authorities and the Government, in view of the clear language employed in Section 27 read with Articles 64, 65, 111 and 112. The apprehension voiced in *Ravinder Kaur Grewal v. Manjit Kaur*, is to a great extent, dispelled by Article 111. The fundamental principles on which the Limitation Act is based and the fact that the Limitation Act is an act of repose, as well as the settled principles of law over the years, would lead us to arrive at the above conclusion and opinion.



Regarding the Questions posed by the Law Commission in the Consultation Paper

- 10.10. There cannot be any justification for taking the view that 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. It is also not just and proper to deny the plea of adverse possession to a naked trespasser entering the land without good faith. Articles 64 and 65 of the Limitation Act do not make a distinction between a trespasser and a person who got possession on the discontinuance of possession by the owner. Under Article 65 of the Limitation Act of 1963, the date of dispossession of the owner is not relevant. The date of dispossession is relevant only under Article 64 of the 1963 Act. Under Article 65 of the 1963 Act, the owner who was dispossessed need prove his title only and he need not prove dispossession or discontinuance of possession since the thrust is on the proof of adverse possession. This itself is a sufficient protection for the owner (when compared with the 1908 Act) when he sues on title. There cannot also be any distinction between a trespasser and bonafide purchaser from such trespasser. If the nature of dispossession is made a subject of enquiry in a case, the owner of the land would be put to much prejudice and the required object of protecting the owner of the land would not be achieved. Such an enquiry would be a boon to the persons claiming adverse possession. Even if the entry into the land by the person claiming adverse possession was bonafide, so long as the owner sues for possession under Article 65, the owner would not be deprived of his right and he would not be put to plead or defend any fact other than title; and the

person claiming adverse possession would not get any benefit based on any bonafides.

10.11. The Limitation Act, 1963 does not contemplate any compensation being paid to a trespasser making improvements in the property. Making such a provision in the law would be detrimental to the interests of the owner. If a trespasser is to be paid compensation for the improvements made by him, that will result in depriving the legitimate rights of the true owner since he would be made liable to pay huge compensation for extensive improvements made by a powerful trespasser. That would result in defeating the legitimate rights of the owner to recover possession of his land.

10.12. There cannot also be any distinction between an owner who did not evince interest in the land or the other way about, since an owner who did not take care of his land at one point of time may do otherwise at a later point of time. The owner can sell the land to a person interested in the land for a good price. Sometimes, the legal representatives of the owner may be inclined to properly take care of the land and improve it.

10.13. It is also not advisable to make any provision for compensating the owner by the adverse possessor. After coming into wrongful possession, the adverse possessor may be interested to retain the land even after paying compensation to the owner. The process of fixing compensation may provide an opportunity to him to question the quantum of compensation and to protract the litigation to the

prejudice of the owner who lost possession and who wants to recover possession of his land.

10.14. There is also no justification to enlarge the period of 12 years under Articles 64, 65, 111 or 112. Under the 1908 Act also, the period of limitation was 12 years for a suit under Article 142 (Article 64 of the 1963 Act) and Article 144 (Article 65 of the 1963 Act). The period of limitation under the 1908 Act was 60 years under Article 146-A (Article 111 of the 1963 Act) and Article 149 (Article 112 of the 1963 Act) and it was reduced to 30 years, consequent on the policy decision to reduce the maximum period of 60 years for several articles to 30 years for all of them. Under the 1963 Act, the maximum period for any suit is not more than 30 years.

10.15. The well settled principle over decades is that there can be adverse possession even in respect of the property belonging to the Government. When a private individual gets a period of 12 years under Articles 64 or 65 to file a suit for possession, the Government would get 30 years, in view of Article 112. The Government, with its machinery, would be able to protect their property in a better manner than the private individual. The Government cannot be extended with any premium for their laxity, if any, in bringing a suit for possession even within the larger period of 30 years. There is also no justification for abolition of adverse possession in relation to Government property. There cannot be any greater leniency in favour of the Government than that is provided under Article 112 of the Limitation Act, 1963.



10.16. In respect of Non-Resident Indians, no special safeguard is required in the matter of adverse possession, for filing a suit under Article 64 or Article 65. There are ways and means for Non-Resident Indians to protect their property. The technological development, to a great extent, would be a beneficial factor in favour of them too.

10.17. Section 1 of the Limitation Act provides for the short title, extent and commencement. Sub section (2) of Section 1 of the Limitation Act was as follows: “It extends to the whole of India except, the State of Jammu and Kashmir.” The words “except the State of Jammu and Kashmir” were omitted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019). Therefore, it is expedient to delete the words “including the Government of the State of Jammu and Kashmir” from Article 112.



11. RECOMMENDATIONS

11.1. The Law Commission is of the considered view that there is no reason or justification to enlarge the period of limitation provided under Articles 64, 65, 111 or 112.

11.2. However, it is expedient to delete the words “including the Government of the State of Jammu and Kashmir” from Article 112, in view of the omission of the words “except the State of Jammu and Kashmir” from sub-section (2) of section 1 of the Limitation Act, 1963 by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019).

The Commission recommends accordingly.



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[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

[Dr. Niten Chandra]

Member (*Ex-Officio*)



[Dr. Reeta Vasishta]

Member (*Ex-Officio*)



[Mr. M. Karunanithi]

Part-time Member



[Prof. (Dr.) Raka Arya]

Part-time Member

ANNEXURE - I

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*¹, 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".² The

¹(2004) 10 SCC 779

² 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 defendants 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 possession³. When the title to property of the previous owner is extinguished, it passes on to the possessor and the

³ U.N. Mitra's Law of Limitation & Prescription, 13th 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 remedy⁴. 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*⁵:

"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."

⁴ Valliamma Champaka vs Sivathanu Pillai (1964) 1 MLJ, 161 (FB)

⁵ (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*⁶. 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*,⁷ *"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

⁶ AIR 1968 SC 1165

⁷ AIR 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 (retd.) S.A. Kader – “Law of Adverse Possession in India – Recent Trends Unsettling the Law”⁸ the learned author pointed out that the attempted distinction made in *P.T. Munichikkanna Reddy vs. Revamma*⁹ 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*¹⁰:

“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*¹¹, 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*).¹² In other words,

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

⁹ (2007) 6 SCC 59

¹⁰ 2003 1AC 419

¹¹ ILR 9 Mad. 175

¹² 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.¹³

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*,"¹⁴ "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

¹³ William B Stoebeuck, "*The Law of Adverse Possession in Washington*", (1960) 35 Wash. L. Rev. 53.

¹⁴ 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*¹⁵ and *State of Haryana Vs. Mukesh Kumar*¹⁶, 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*¹⁷, 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

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*¹⁸ and the European Court of Human

¹⁸(2000) 3 WLR 242

Rights (ECHR) in *J.A. Pye (Oxford) Ltd. vs. United Kingdom*¹⁹ 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 30th 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

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.²⁰ Most countries do maintain the doctrine of adverse possession in respect of registered land. (e.g., UK, Australia, US and Newzealand) and Courts

²⁰See 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 1st Protocol²¹ 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?

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, 2nd Floor, ILI Building, Bhagwan Das Road, New Delhi-110 001 within a month. The e-mail/Website particulars are given below:

Website: <http://lawcommissionofindia.nic.in>
e-mail: lci-dla@nic.in