
TITLE BY ADVERSE POSSESSION

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I. INTRODUCTION

“Man like a tree is the cleft of a rock gradually shapes his roots to the surroundings and when the roots have grown to a certain size, cannot be displaced without cutting at his life.”

-Justice Oliver Wendell Holmes

The abovementioned statement by Justice Holmes beautifully surmises the rationale behind the concept of adverse possession. Adverse Possession can broadly be said to be the doctrine under which a person in possession of land owned by someone else acquires valid title upon fulfilment of certain requirements as per law.

The doctrine of adverse possession rests broadly on the consideration that title should not long be in doubt, the society will benefit from someone making use of land which the owner leaves idle and that person who comes to regard the occupant as owner may be protected. It is based on the maxim, ‘*Vigilantibus Non Dormientibus Jura Subvenient*’, which means law and equity do not help those who sleep over their rights. 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. Non-use of property by the owner even for a long time would not affect his title. But the position will be altered when another person takes possession of the property and asserts his right over it and the person having title neglects to take legal action for years together.

The prescription of period of limitation for recovering possession the efflux of which negates the rights and interest of the true owner is the core and essence of the law of adverse possession. However, permissive possession or possession without a clear intention to exercise exclusive rights over the property is not considered as adverse possession. The essential requisites to establish adverse possession are that the possession of the adverse possessor must be neither by force nor by stealth or under the license of the owner. It must be adequate in continuity, in publicity and in the extent to show that the possession is adverse to the proper owner. It cannot be disputed that a person in possession of land in the assumed character of the 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 asserts his title by the process of law within the period prescribed by the provisions of the

statute of the limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.¹

Plea of adverse possession is not a pure question of law but a blended one of fact and law. The same title, which the true owner possessed is now passed on to the squatter by operation of the law of limitation. The squatter does not obtain any new title. The title acquired by him is the title that the true owner previously had before the same got extinguished by operation of law. The adverse possessor takes the place of the true owner, and becomes the owner of the property, acquiring the title to the property. This is the nature of the title of the adverse possession.

The conditions necessary to prove a claim of adverse possession are not given in any statutory provision but have been laid down extensively through case laws which have been dealt with in detail in this article. The objective of this article is to provide the readers with a comprehensive understanding of the present legal position regarding the concept of adverse possession in India.

II. HISTORICAL BACKGROUND

The origin of the doctrine of adverse possession cannot be traced with precision. The Code of Hammurabi which dates back to 2000 B.C. can be said to be the earliest record recognizing the doctrine. The Code consists of 282 Rules, Rule 30 of the said Code deals with the concept of Adverse Possession. It provides that if a man left his house, garden, and field and someone else took possession of his house, garden, and field and used it for three years and if the first owner returned and claimed his house, garden, and field, it shall not be given to him, but he who had taken possession of it and used it shall continue to use it.

The ancient Romans believed that a person who possessed land nurtured the spirit of the land and gained a greater “ownership” in the land than the title owner. Even today, there is a saying “...*possession is nine-tenths of the law*...” which had its origins in the concepts of adverse possession.

The earliest codification of adverse possession in English law is found in the Statute of Westminster, in 1275 AD, under which limited actions for the recovery of land could be made. In early England the best evidence of ownership was possession. The Statute of Limitations, 1639 AD set the period at 20 years within which an owner could sue for recovery of possession.

¹ Mantha Ramamurthi, *Law of Adverse Possession, Preface to eighth edition* pg v (Delhi law House, Delhi, 8th Edition, 2022)

The doctrine was evolved to prevent time-consuming legal disputes over property rights and wastage of land by forcing the owners to monitor their property or suffer the consequences of losing title. Today, the concept is recognized by almost all the major jurisdictions of the world though the limitation periods vary from country to country or even within a country.

In India, the concept of adverse possession was first recognized by the Privy Council in the case of *Perry vs. Clissold* (1907) AC 73. It was held as follows: “*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 forever extinguished and the possessory owner acquires an absolute title.*”

III. THE DOCTRINE OF ADVERSE POSSESSION

The Doctrine of Adverse Possession encompasses the acquisition of valid title to the property by a trespasser in possession of land owned by someone else as long as certain requirements of the law are met and the adverse possessor is in possession of the property for a sufficient period of time as defined by the statute of limitations.² It is the process by which title to another’s land is acquired without his permission. Adverse possession is a possession that is opposed to the interest of the real owner of the property. It is possession in denial of the title of the true owner.³

Adverse possession is a well-defined method of gaining legal title over real property by the actual, open, hostile, and continuous possession of it to the exclusion of its true owner for the period prescribed by the law.⁴ In the case of *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Ors.*,⁵ the Hon’ble Supreme Court described the concept of adverse possession as follows;

“Adverse possession in one sense is based on the theory or the presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation

² An analysis of laws related to Adverse Possession: Threat to real owner, available at <https://www.indialegallive.com/special-story/an-analysis-of-laws-related-to-adverse-possession-threat-to-real-owner/> (last visited on June 08, 2023).

³ Supra note 1 at 8-9.

⁴ *Id.*

⁵ AIR 2009 SC 103

of which right to access the Court expires through efflux of time. As against rights of the paper owner, in the context of adverse possession, there evolves a set of competing rights in favour of adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish the person who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of rights or colour of title."

A situation lasting for a long period creates certain expectations and it would be unjust to disappoint those who trust in them.

A. Adverse Possession vis-à-vis The Limitation Act, 1963

The law of adverse possession is contained in the Limitation Act, 1963 (Hereinafter referred to as, 'the Act'). Section 3 of the Act says that the Court will not take cognizance of any suit, which is barred by limitation even if the issue of limitation is not taken as a defence. Thus, the law of limitation bars remedy but not the right. But section 27 of the Act contains provision regarding adverse possession which is an exception to the general principle of law of limitation . It reads, "*if a person fails to file suit for recovery of possession, within a period of limitation, his right to recover the possession of that property also extinguishes*". If such situation occurs, the ownership of true owner over the property is extinguished. But at the same time property cannot be left ownerless. It must be in name of any other person or any other person must be entitled to have right over it. This situation gives birth to the concept of adverse possession. If any person possesses any property, adverse to the interest of true owner and true owner fails to file a suit for recovery of possession within a period of limitation, then the person in possession becomes owner of property by way of adverse possession.

Article 65 of Schedule I of the Act prescribes a limitation of a period 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 the possessory title. Article 64 governs suits for possession

based on the possessory right. Twelve years from the date of disposition is the starting point of limitation under Article 64. Article 65 as well as Article 64 are to be read with section 27.

B. Essentials of the Doctrine

The requirements of law that must be fulfilled by an adverse possessor to obtain title, primarily include:

1. Possession over certain Property:

There must be certain property, which may be movable or immovable.

2. Possession must be hostile:

Possession must be hostile if title is to mature from adverse possession. Hostile possession means that the claimant must occupy the land in opposition to the true owner's rights. One type of hostile possession occurs when the claimant enters and remains on land under the colour of title. Colour of title is the appearance of title as a result of a deed that seems by its language to give the claimant valid title, but in fact, does not because some aspect of it is defective. If a person, for example, was suffering from a legal disability at the time he or she executed a deed, the grantee-claimant does not receive actual title. But the grantee-claimant does have the colour of title because it would appear to anyone reading the deed that good title has been conveyed. If a claimant possesses the land in the manner required by law for the full statutory period, his or her colour of title will become actual title as a result of adverse possession.

3. Possession must be with intent to oust the real owner:

In order to establish title by adverse possession, *Animus possidendi* is necessary. Person holding property by way of adverse possession must publish his intention to deny the right of the real owner. In the case of *Bhimrao Dnyanoba Patil v. State of Maharashtra*⁶, It has been held that, unless enjoyment of the property is accompanied by adverse animus, mere possession for a long period even over a statutory period, would not be sufficient to mature the title to the property by adverse possession.

4. Possession must be continuous and uninterrupted

All elements of adverse possession must be met at all times through the statutory period in order for a claim to be successful. The prescribed period of limitation is the amount of time the claimant must hold the land in order to successfully claim

⁶ 2003 (1) Bom. L.R. 322; 2003(1) All MR 565; 2003 (2) LJSoft 131

title by adverse possession.⁷ For such prescribed period, possession must be continuous and uninterrupted. But it is not necessary to establish possession at every moment of the requisite period.

5. Possession must be open and notorious:

An adverse possessor must possess land openly for the entire world to see, as a true owner would. Secretly occupying another's lands does not give the occupant any legal rights.

Clearing, fencing, cultivating or improving the land demonstrates open and notorious possession, while actual residence on the land is the most open and notorious possession of all. The owner must have actual knowledge of adverse use, or the Claimant's possession must be so notorious that it is generally known by the public or the people in the neighbourhood. The notoriety of the possession puts the owner on notice that the land will be lost unless he or she seeks to recover possession of it within a certain period of time.

6. Actual Possession:

In order to constitute adverse possession, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him. It is not sufficient to show that some acts of possession have been done.

7. Exclusive Possession

Adverse possession will not ripen into title unless the claimant has had exclusive possession of the land. Exclusive possession means sole physical occupancy. The claimant must hold the property as his or her own, in opposition to the claims of all others. Physical improvement of the land, as by the construction of fences or houses, is evidence of exclusive possession.

C. Nature of Possession

Possession in the eye of law consists of the fact of the physical occupation and the mental act of holding the subject of possession to the exclusion of others. The unity of these two elements, namely, occupation and *animus possidendi* is recognised as constituting "possession" in the eyes of law. The physical element is not necessarily connected with any bodily contact with the subject of possession. Physical occupation implies the physical power or possibility of dealing with the subject immediately.

⁷ Effect of Claim of Adverse Possession In Declaratory Suits, available at: <https://districts.ecourts.gov.in/sites/default/files/Subject%20-%20II.pdf> (last visited June 08, 2023)

The concept of adverse possession contemplates hostile possession *i.e.*, possession which is expressly or impliedly in denial of the title of the true owner. For possession to be adverse, it must be possession by a person who does not acknowledge the other's right and, in fact denies the same. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the possession claimed. In order to determine whether the act of a person constitutes, adverse possession, 'animus in doing that act' is a crucial factor. Adverse possession commences in wrong and is aimed against right. A Person is set to hold the property adversely to the real owner when that person is in denial of the owner's right excluding him from the enjoyment of his property. Possession is not said to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title that is, trustees, guardians, bailiffs or agents, such person cannot set up adverse possession. Burden is on the defendant to prove in affirmative.⁸

D. Kinds of Adverse Possession

Adverse possession is of 2 kinds.

- a. Possession that is adverse from the beginning, or
- b. Possession that became so subsequently.

If a trespasser takes possession of A's property, and retains it against him, his possession is adverse *ab initio*. But if A grants a lease land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property although the true owner is ignorant of the adverse possession being in occupation.⁹ Forcible possession for more than the statutory period establishes adverse possession.

⁸ *Supra* note 1.

⁹ *Id.*

IV. CASE LAWS ON ADVERSE POSSESSION

*1. Bhimrao Dnyanoba Patil and others v. State of Maharashtra and Others*¹⁰.

The Hon'ble Bombay High Court in the above case, differentiated between permissive possession and adverse possession. Under paragraph 9 of the Judgement, The Bombay High Court has held that;

8. *...The permissive possession will always continue to be permissive till and until the licensee asserts and proves the assertion of adverse possession. Such assertion and the proof in that regard should necessarily be for a continuous period of twelve years. The Apex Court in **Sheodhari Rai v. Suraj Prasad Singh** reported in AIR 1954 SC 758 has clearly held that where possession is proved in its origin to be permissive, it will be presumed that it continued to be of the same character until and unless something occurred to make it adverse. The Supreme Court has further held in **State Bank of Travancore v. A.K. Panicker** reported in AIR 1971 SC 996 that there must be open and explicit disavowal and disclaimer brought to the knowledge of the owner. Mere possession for however length of time does not result in converting the permissive possession into adverse possession, as has been ruled by the Supreme Court in **Thakur Kishan Singh v. Arvind Kumar** reported in AIR 1995 SC 73. The permissive possessor has necessarily to prove some overt act on his part indicating assertion of hostile title. It is well said that permissive possession and hostile animus operate in conceptually different fields, and the permissive possession does not become adverse by a mere change in the mental attitude of the person in possession and it is for such person to prove from which date the permissive possession became hostile.*

¹⁰ AIR 2003 Bom 80.

2. Amrendra Pratap Singh v. Tej Bahadur Prajapati and Ors.¹¹

In this case, the Hon'ble Supreme Court has settled a complex question of law which is whether a non-tribal can acquire title by adverse possession over the property belonging to tribal? The Court has held as follows:

27. A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to Para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India, A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogenous reading.

3. Karnataka Board of Wakf v. Government of India and Ors.¹²

The Apex Court under paragraph 10 of the judgement has made certain important observations and has held as under;

11. ...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 a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show

¹¹ 2004 (13) AIC 771, AIR 2004 SC 3782

¹² 2004 (20) AIC 153.

that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v. Bibi Sakinal [1964] 6 SCR 780 , Parsinni v. Sukhi (1993) 4 SCC 375 and D N Venkatarayappa v. State of Karnataka AIR 1997 SC 2930). Physical fact of exclusive possession and the animus posited 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 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma AIR 1996 SC 869).

The Court has also made another important observation under para 12 that the plaintiff, while filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. Whenever the plea of adverse possession is raised, it is inherent in the plea is that someone else was the owner of the property. Therefore, the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

4. P.T. Munichikkanna Reddy and Ors. v. Revamma and Ors.¹³

The Hon'ble Supreme Court of India has laid down some principles regarding Adverse Possession under paragraph 37 of the said judgement as under;

37. Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and wilful neglect but also on account of possessor's positive intent to dispossess.

¹³ AIR 2007 SC 1753

Therefore, it is important to take into account before stripping somebody of his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the paper-owner of the property. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus, the period for prescription does not commence.

5. L.N. Aswathama and Ors. v. P. Prakash¹⁴.

The Hon'ble Supreme Court has under para 7 of the Judgement reiterated that pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. It was held as under;

17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence.

6. Gurudwara Sahib v. Gram Panchayat Village Sirthala and Ors.¹⁵

The Supreme Court has observed that defendant can use this adverse possession only as a shield/defence, and it cannot seek a declaration to the effect that such adverse possession has mature into ownership . Under Para 7 of the Judgement the Court has held as under:

¹⁴ (2009) 13 SCC 229

¹⁵ 2013 (11) SCALES 64.

7. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the Plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the Appellant and Appellant is arrayed as Defendant that it can use this adverse possession as a shield/defence.

7. Ravinder Kaur Grewal and Ors. v. Respondent: Manjit Kaur and Ors.¹⁶

In this significant ruling, the three-Judge Bench comprising of Hon'ble Mr. Justice Arun Mishra, Justice S. Abdul Nazeer and Justice M.R Shah has settled the question of law regarding whether a person claiming the title by virtue of adverse possession can maintain a suit Under Article 65 of Limitation Act, 1963 (for short, "the Act") for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the Defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a Defendant whose title has been extinguished by virtue of the Plaintiff remaining in the adverse possession or in case of dispossession by some other person?

The Court under Para 64 has overruled the case of Gurudwara Sahab v. Gram Panchayat Village Sirthala 2013 (11) SCALES 64 and decision relying on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (2017) 9 SCC 579 and Dharampal (dead) through LRs v. Punjab Wakf Board (2018) 11 SCC 449 and under para 59 held as under:

59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the Plaintiff as well as a shield by the Defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained Under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession,

¹⁶ (2019) 8 SCC 729

he can be evicted by the Plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the Plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a Plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a Plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

9. *Darshan Kaur Bhatia v. Ramesh Gandhi*¹⁷

The Hon'ble Supreme Court in this case reiterated the position regarding adverse possession as laid down in *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.*- 2019 (8) SCC 729, Setting aside the trial court's rejection of the plaint and the High Court's order confirming the same relating to the suit claiming title based on adverse possession.

10. *Krishnamurthy S. Setlur (D) by L.Rs. v. O.V. Narasimha Setty (D) by L.Rs.*¹⁸

The Hon'ble Apex Court while upholding that the Plaintiff can claim title to the property based on adverse possession upheld the observations in the judgement of *Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.* (2019) 8 SCC 729 under para 15 of the judgement.

11. *Mahesh Mandal and Ors. v. Deep Narayan Yadav and Ors.*¹⁹

The single bench of Hon'ble High Court of Jharkhand, comprising of Hon'ble Mr Justice Anil Kumar Choudhary, has noted the concept of adverse possession and elaborated on its ingredients. The Court held under para 18 as under:

18. ...It is also a settled principle of law that a person who claims adverse possession should show: (a) on 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.

¹⁷ 2022 LiveLaw (SC) 246

¹⁸ 2019 (13) SCALES 84

¹⁹ 2023 (1)J.L.J.R. 56

V. NEED FOR CHANGE

The concept of adverse possession involves transfer of title to property in dispute as a result of failure and inaction on the part of the true owner to enforce his rights within the prescribed time. It is a penalty on the true owner of the property in the form of extinguishment of his title to that property. In other words, adverse possession commences against the wrong and it is maintained against the right.²⁰

The concept of adverse possession exists to cure potential or actual defects in real estate titles by putting a statute of limitation on possible litigation over ownership and possession. A landowner could be secure in title to his land; otherwise, long lost heirs of any former owner, possessor or lien holder of centuries past could come forward with legal claim on the property. Since independence of our country we have witnessed registered documents of title and more proper, if not perfect, entries of title in the government records. The situation having changed, the statute calls for a change.²¹

Adverse possession allows the trespasser, a person guilty of a tort or even a crime in the eyes of the law to gain legal title to land that he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to the legal title is logically and morally speaking baffling.

In the recent case of *P.T. Munnichikna Reddy versus Revamma*²², Hon'ble Supreme Court had an occasion to deal with the concept of adverse possession. The Court while acknowledging the widening dimension of human rights, observed that now property issues are also being raised within the contours of human rights.

The Court held "*The activist approach of the English Courts is quite visible from the judgements of Beaulane Properties Ltd. v. Palmer 2005 (3) WLR 554 and JA Pye (Oxford) Ltd v. United Kingdom [2005] ECHR 921. The court herein tried to read the Human Rights position in the context of adverse possession.*"²³

On two occasions, the Supreme Court of India has expressed its reservations on concept of adverse possession and made certain suggestions/recommendations, giving way to an improved or suitable version of the concept, if at all, it remains a part of our statute books.

²⁰ Preface to Seventh Edition pg-viii.

²¹ Andrew Dickal, "Making sense out of nonsense: A response to adverse possession by governmental entities." Published in Nevada Law Journal, Spring (2007), [also cited in State of Haryana v. Mukesh Kumar and others, 2011 10 SCC 404]

²² (2007) 6 SCC 59

²³ *Id.*, at 12.

1. *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Ors*²⁴

The Division bench of Hon'ble Supreme Court in this case, criticized the law on adverse possession and has termed it irrational, illogical, and wholly disproportionate. Under Para 34 and 35 of the Judgement, it was held as under;

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 had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a 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 loose its possession only because of his inaction in taking back the possession within limitation.

2. *State of Haryana v. Mukesh Kumar and Ors.*²⁵

The Division bench of Hon'ble Supreme Court comprising of Hon'ble Justice Dalveer Singh and Justice Deepak Bhandari made certain recommendations regarding the law of adverse possession. Under Paragraphs 39,40 and 41 of the Judgement, the Hon'ble Court has held;

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, 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

²⁴ AIR 2009 SC 103

²⁵ (2011) 10 SCC 404.

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 hostile.

Also under para 51, Court has expressed serious concerns over the entire concept of adverse possession and recommended suitable amendments. The Judgement has held as under:

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 or 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.

VI. LAW COMMISSION OF INDIA REPORT

The Hon'ble Supreme Court in *Hemaji waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others*,²⁶ and *State of Haryana v. Mukesh Kumar and Others*,²⁷, observed that there is an urgent need for a fresh look regarding the law of adverse possession. The Hon'ble Court did not approve the theory of a trespasser being able to perfect title by adverse possession. It recommended the Union of India to seriously consider and make suitable changes in the law of adverse possession.²⁸

However, the Law Commission of India in its 280TH Report, while being cognizant of the abovementioned judgments, supported the law of adverse possession. The Commission, headed by former Karnataka High Court Chief Justice Ritu Raj Awasthi, opined that the law is for the benefit of the public at large and cannot be termed colonial.

Notably, disregarding the Hon'ble Supreme Court's advice to consider abolishing 'bad faith' adverse possession, the Law Commission has categorically stated that there is no justification for making the doctrine available only to those who do not dishonestly enter the land with full consciousness that they were trespassing into another's land. The Commission further added that it was also not just and proper to deny the plea of adverse possession to a naked trespasser entering the land without good faith.²⁹

On the issue of compensation to be paid to landowners, the Commission stated,

*"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."*³⁰

²⁶ AIR 2009 SC 103

²⁷ (2011) 10 SCC 404

²⁸ Law Commission of India, 280th Report "The Law on Adverse Possession" Pg no-3 (May 2023)

²⁹ Law Commission Says No Need To Reconsider Law On Adverse Possession; Disagrees With Supreme Court, available at: <https://www.livelaw.in/top-stories/law-commission-report-supreme-court-adverse-possession-no-justification-for-introducing-any-change-229927?infinite-scroll=1> (last visited 06th June, 2023).

³⁰ *Id.* at 56.

Further, the Commission also stated that there was no justification to enlarge the prescribed period of limitation.

However, the recommendations contained in the Report did not find favour with the Law Ministry. As per the Secretaries of the Department of Legal Affairs and the Legislative Department who are ex- officio members of the Commission, the Report was drawn up without consulting the relevant Ministries of the Government of India and States from where useful inputs could have been received. In the absence of their inputs the benefit of broad-based deliberations have been avoidably curtailed.

It was stressed that empirical data from judicial records show that the law has not promoted the cause of the adverse possessor, and serves no purpose.³¹

"Courts have seldom ruled in favour of adverse possession because of the contradictory requirement of the nature of possession to be peaceful as well as hostile and notorious. However, because of the mere existence of such a law the true owners have been subjected to avoidable and expensive litigation running over generations by unscrupulous persons who are not averse to fraud and forgery."

The dissenting members underscored that the law of adverse possession promotes false claims that ultimately do not stand judicial scrutiny. The claim that the law helps protect the rights of the poor was refuted with the point that all states have laws for the welfare of the landless.

³¹Adverse possession: Law Commission says it is for benefit of public; Law Ministry members say it enables land mafia, available at: <https://www.barandbench.com/news/adverse-possession-law-commission-of-india-report-ministry-dissent> (last visited on 7th June 2023).

VII. CONCLUSION

In conclusion, it may seem paradoxical that the law attempts to punish a title holder who is unconscientious by rejecting its claim, but on the other hand, the same law honours a wrongdoer and an offender by confirming his title by unlawful ownership, if his possession meets the requirements. Ordinarily transfer of ownership of a property, is affected by proper registration, stamp fees and duties but when it comes to adverse possession, transfer of property is a natural consequence of certain common law requirements, as long as they are met for 12 years. The Hon'ble Apex Court in *Hemaji* (2009) and *Mukesh Kumar* (2011), has opined in stark disapproval of it, but the Law Commission of India in its 280th Report seeks to analyse and explain as to how despite popular perception to the contrary, it can still be understood to be moral.³² Adverse Possession 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 most pressing concern of law which is not who is the owner but rather that the office of owner is filled instead of lying vacant.³³ And, recent trends show that Adverse possession is very much a part of Indian Statutes and will continue to operate as is.

³² The Law on Adverse Possession, Supplementary Note, 2 (May 2023)

³³ Larissa Katz, "Exclusion and Exclusivity in Property Law" 58 University of Toronto Law Journal 275, 306 (2008).