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## **Adverse Possession vs. Rights to Property**

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### **Abstract**

Property law in India encompasses a wide range of factors that impact an individual's rights regarding property. One particularly contentious issue in this domain is Adverse Possession, a principle that enables an individual to assert ownership of land by openly, consistently, and exclusively occupying it for a specific duration, typically twelve years. This paper explores the concept of Adverse Possession, its historical origins, its rationale, and its significance in contemporary society. It juxtaposes Adverse Possession against inherent property rights, emphasizing the legal uncertainties and disparities linked to the doctrine. The paper pinpoints major deficiencies in the existing legal structure, such as a lack of clarity, excessively lenient terms, and potential injustices, and suggests various solutions. These solutions encompass clearer legal directives, reassessment of the statutory timeframe, mandatory notification to property holders, demonstration of intent by claimants, and the encouragement of mediation. Ultimately, the paper advocates for legislative adjustments and alternative dispute resolution mechanisms to foster a more fair property law landscape in India.

**Keywords:** Property, Adverse Possession, ownership, mediation, ownership, Right to property

### **Introduction**

In India, property law is a dynamic and multidimensional topic that encompasses a range of components that have a direct influence on an individual's ability to hold, use, and dispose their property. In the realm of property law, there exist two matters of contention that warrant our attention: the intricate concept of Adverse Possession and its consequential impact on the rights associated with property ownership. This comprehensive analysis shall meticulously examine the concept of adverse possession, the underlying justification for its adoption, its pertinence in the present-day society, the existing shortcomings afflicting the legal framework, and prospective remedies to address these apprehensions.

### **Definition**

A legal doctrine known as Adverse Possession allows an individual to assert ownership over the property of another after having it openly, consistently, and exclusively for a specified duration of time—usually twelve years in India. As per the concept, a trespasser or squatter may legitimately acquire legal title to the property if they satisfy certain requirements.

### **Rationale for the Selection of the Topic**

The rationale behind the choice of this subject matter is the escalating incidence of property disputes and the imperative to reconcile safeguarding the rights of property proprietors with considering the concerns of individuals who have been in possession for a significant duration.

Adverse possession, which was originally designed to prevent property disputes, has frequently generated contentious legal disputes and raised doubts regarding its impartiality and equity.

### **Differentiating Between Adverse Possession and Property Rights**

The fundamental differentiation between adverse possession and property rights resides in the specific circumstances within which these legal concepts are operative. The assertion is made that property rights, being inherent and vested, are bestowed upon the rightful proprietor of the land at the precise moment of acquisition. The aforementioned rights possess the capacity to be lawfully sold, leased, or transferred, thereby conferring upon the owner absolute dominion and control over their property within the confines delineated by the law. However, it is important to note that adverse possession is invoked in circumstances where an individual asserts their entitlement to the property by virtue of their prolonged occupation and utilisation of said land, all the while the rightful owner remains inactive or oblivious to said occupation. In the aforementioned circumstances, it is plausible that adverse possession may conceivably result in the abrogation of the lawful proprietor's entitlements. It is imperative to underscore that the prerequisites for adverse possession exhibit variability contingent upon the jurisdiction in question. The duration prescribed by statute, the requisite measures to establish adverse possession, and the capacity to assert a claim may exhibit substantial disparities contingent upon the legal framework of a particular jurisdiction. Notwithstanding the various circumstances, it is imperative to note that the adverse possessor is obligated to satisfy specific prerequisites in order to obtain lawful acknowledgment of their entitlements to the aforementioned property.

### **Importance in the Contemporary Era**

Modern India has witnessed an increase in the frequency of property disputes due to urbanization, migration, and complex land ownership regulations. Adverse Possession remains a pertinent subject due to its direct impact on property proprietors, whose rights may be violated by occupiers or encroachers. As urban property becomes more valuable and scarce, the legal framework governing Adverse Possession is being reviewed.

### **Legal ambiguities and gray areas**

One of the primary shaky grounds in the field is the absence of clear legal provisions regarding when Adverse Possession may be utilized. Determining the parameters of "open" and "exclusive" possession could pose a challenge, potentially resulting in an overly lenient standard for establishing adverse possession. In addition, there are circumstances in which Adverse Possession violates the principles of justice and equity, such as when the rightful proprietors of the property are absent due to valid reasons, such as being unaware of the intrusion.

**The following factors contribute to the perception that the status quo is incapable of meeting these challenges:**

- a) **Insufficient Clarity:** The inconsistent interpretations by courts can be attributed to the ambiguous prerequisites for establishing adverse possession within the existing legal framework.
- b) **Conditions That Are Excessively Lenient:** The 12-year statute of limitations for pursuing adverse possession claims may prove insufficient to protect property owners in cases of intentional encroachment.
- c) **Inequitable Outcomes:** Adverse possession legislation can lead to unjust outcomes where the rightful proprietor of the property is deprived of legal recourse and suffers property loss.
- d) **Encouragement of Trespass:** The current legislative framework might unintentionally foster a motivation among trespassers to exploit the system for personal gain.

**Proposed Solutions: Several measures could be implemented to mitigate the complications arising from Adverse Possession**

- a) **Legal Guidelines Defined More Precisely:** In order to mitigate uncertainty, adverse possession ought to be defined with greater precision and detail in the law.
- b) **Timeframe Review:** The 12-year requirement may be reassessed to ensure that it strikes a balance between protecting property owners and preventing squatters from gaining unfair advantage.
- c) **Mandatory Notice:** Establish a requirement for squatters to furnish legal notice to property owners, enabling them to take timely action in safeguarding their rights.
- d) **Proof of Intent:** In addition to establishing possession, the claimant is now required to provide evidence of an intention to evict the legitimate proprietor.
- e) **Advocate for Mediation:** In order to resolve property disputes, advocate for alternative dispute resolution methods and prioritize dialogue over litigation.

**Analysis**

**Adverse Possession's Historical beginnings and Incorporation:** The notion of adverse possession has evolved throughout time, with its beginnings in the Code of Hammurabi about 2000 BC. When problems between private individuals arose, it was utilized as a mechanism to establish property rights in early England. In India, the principle is adopted into the English legal system. Adverse Possession has a long history and has affected many parts of property law.

**The Adverse Possession Law in India:** Adverse Possession, according to Indian law, allows someone who isn't the lawful owner of a piece of property to claim it by having exclusive, continuous, and continued possession for a certain period of time—usually 12 years. This idea, which is established in Article 65 of Schedule I of the Limitation Act of 1963, tries to protect the rights of persons who have been in adverse possession for an extended length of time.

**Limitation Act of 1963 and Related Provisions Function:** The Limitation Act of 1963 is an essential piece of legislation that offers further information on adverse possession. Section 3 of the Act prohibits the court from hearing claims that are barred by statute of limitations, emphasizing the importance of adhering to specified deadlines. Section 27 states that a person's rights are terminated if they do not act to reclaim possession within the time frame specified. The Limitation Act, however, restricts the remedy rather than the right. This is a key aspect of the idea because it underlines the need of timely legal action by the rightful owner.

**Judgmental Declarations and Pertinent Cases:** The fundamentals of Adverse Possession have been further elucidated by a number of key court rulings. Establishing a fundamental precedent is the Privy Council's declaration 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". The Supreme Court has affirmed the validity of this concept by upholding Privy Council rulings, even though they are not binding on the court. A prominent instance is "Rajbir Kaur & Ors. vs. S Chokesiri & Ors.," in which the Supreme Court determined that adverse possession is an admissible method of obtaining property ownership.

**Crucial Components in the Adverse Possession Claim:**

In order to prove Adverse Possession, the claimant has to fulfil a certain requirements-

- **Actual Possession:** Adverse possession refers to using the land in real life with the intention of holding it exclusively. Without real ownership, tax payments or mere claims are inadequate.
- **Open and infamous Use:** Adverse possession has to be obvious and apparent to the rightful owner in order to qualify as open and infamous. The claimant's ownership must be so well-known to the public or the area that the owner must really know about the unfavourable usage.
- **Exclusive Possession:** In contrast to all other claims, the claimant must have exclusive physical possession of the property and consider it as their own.
- **Hostile Possession:** The possession must be hostile, which means it must conflict with the rights of the rightful owner. When a claimant enters and stays on property under colour of title, that is, when it seems they have legitimate ownership because of a flawed deed, this is one kind of hostile possession.
- **Continuous Possession:** During the statutory term, adverse possession must be maintained continuously and without interruption. The statute of limitations differs based on the jurisdiction and ownership type (public or private).

**Legal Difficulties and Ambiguities:** Adverse Possession has difficulties and uncertainties despite its historical importance and legal backing:

- **Doctrine Ambiguities:** When the doctrine is applied ambiguously, it might give rise to diverse interpretations and possible conflicts.

- **Inadequate Protections:** In situations involving deliberate invasion, property owners may not get enough protection from the 12-year statute of limitations.
- **Justice and Fairness:** Adverse Possession may sometimes result in situations that seem unfair, especially when the legal owner is absent for valid reasons.

**Significance in the Modern Era:** Due to urbanization and rising property disputes, adverse possession is a topic of great importance in contemporary India. This theory has become a difficult subject requiring attention from property owners and the legal system due to the rising scarcity and value of land.

**Suggested Remedies:** Several approaches may be taken into consideration in order to overcome the difficulties and uncertainties surrounding Adverse Possession:

- **Clearer Legal rules:** By improving the legislation, it is possible to provide precise and thorough rules for what has to be done in order to prove adverse possession.
- **Timeframe Review:** To achieve a fair balance between property owners and those in possession, re-examine the 12-year requirement.
- **Mandatory Notice:** In order to provide for the prompt protection of property rights, squatters must give property owners formal notice.
- **Proof of Intent:** Establish a provision requiring the claimant to demonstrate that they intend to take the genuine owner's property.
- **Promote Mediation:** To settle property disputes, promote alternative dispute resolution procedures and favour discussion over litigation.

## **Conclusion**

Adverse possession is a critical problem in Indian property law. Maintaining property owners' rights while caring for the interests of those in possession is a delicate balancing act. There are flaws in the current legal system that lead to injustices, ambiguities, and unexpected outcomes. To ensure justice and fairness in property disputes, legislative clarifications and amendments, as well as a push for alternative dispute resolution mechanisms, are required to establish a more equitable property law environment in India.

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