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LEGAL FICTIONS IN PROPERTY LAW: A JURISPRUDENTIAL ANALYSIS OF ADVERSE POSSESSION IN INDIA

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ABSTRACT

This paper takes a thorough look at India's adverse possession doctrine as arbitrarily designed in the Limitation Act of 1963, thoughts of legal frame of reference. It points out the significant flaws in this doctrine as a fair and reliable legal mechanism. By analysing landmark court cases—the study reveals how the doctrine often strays from fundamental legal principles, encourages arbitrary practices, and unintentionally rewards wrongful possession while acting as a means of legal resolution. The analysis equate in various legal theories to assess whether adverse possession genuinely aligns with the moral and practical expectations of a just legal system. The findings indicate that the current framework is frequently unclear, unpredictable, and morally inconsistent, which can result in misuse and unjust outcomes. The paper concludes with practical recommendations for reforming the doctrine, aiming to ensure it resonates with modern ideals of justice and fairness, while still effectively tackling land disputes

Keywords: legal fiction, adverse possession, possessor, ownership, property law and jurisprudence

INTRODUCTION:

Legal assumptions are formed to avoid land disputes that pooled those days in England. But giving to non-entitled did not serve the moral purpose of law, but this concept still stands without an initiative to change. This concept still remains in so many nations but only the elements determining the decree or criteria in an act varies. Property is considered as an important value to humans, it does not just owning a property but a solid point in views of many scholars or jurist. Some jurists considered it as a "Symbol of Freedom" while others saw it as "Privilege", while the very ancient jurist thought it as a "Vital Criteria to Participate in Government activities". Interestingly, it also became a key factor for the class struggle.

Adverse Possession is one such concept which was the subject to argument from time to time among the jurist of their periods. However, at the same time the court's interpretation in common law was also evolved. Determining what are essentials and what not.

In India, this is dealt by the Limitation Act, 1963ⁱ. The owner of the property loses his title merely because a possessor he knows lives for a certain period. But the possessor is nowhere licensed, made an agreement or mode of rent to live there.

The purpose of this paper is to highlight speculative ideas of the various jurist regarding the adverse possession.

REVIEW OF LITERATURE:

21 U.S. 543, 5 L. Ed. 681, 1823 .S. 8 Wheat. 543

Adverse possession in India isn't a home-grown idea; it actually made its way here during the colonial era. This concept was introduced through the Limitation Act of 1877, which took inspiration from the English common law notion of "hostile possession" as a means to claim ownership. This legal framework played a significant role in the colonial takeover of land, aligning closely with the "doctrine of discovery" (as highlighted in this case from 1823)ⁱⁱ.

D'Errico, P. (2006). Conquest by Law: How the Discovery of America Dispossessed Indigenous People of Their Land. By Lindsay G. Robertson. American Indian Culture and Research Journal, 30(1).

Here, the author's panorama explains the fallout of dispossession of true owners of the land, which dismissed indigenous populations as "fierce savages" unworthy of land ownershipⁱⁱⁱ.

The Santhal Parganas Act [Act No.14 of 1949]

The Santhal Parganas Act of 1855^{iv}, further solidified this concept, using adverse possession as a tool to displace tribal communities under the attempt of ensuring "title certainty." By the late 19th century, this doctrine had transformed into a mechanism of oppression, with its supposed rationale—a penalty for neglect—serving as a legal facade for colonial land grabs.

Knauer, N.J. (2009). Legal Fictions and Juristic Truth, Temple University

The 12-year prescription period set by the Limitation Act of 1877, which carried over into the Limitation Act of 1963, was a strategic decision: long enough to erase indigenous claims but

short enough to encourage swift land development. Colonial courts, including the Privy Council, accepted this narrative without question, viewing it as a means to stabilize titles rather than confronting the ethical dilemmas involved. This created a legal paradox where the law rewarded trespassers while penalizing those who simply held onto their land, all in the name of "efficiency."^v

After India gained independence, this colonial legacy remained intact without addressing its injustices. Codified as Section 27 of the Limitation Act of 1963, which upheld the 12-year rule, and the judiciary continued to enforce it, even as its moral failings became more apparent. Early Supreme Court rulings (like in *S.M. Karim v. Bibi Sakina*)^{vi} established five strict criteria for adverse possession—*nec vi, nec clam, nec precario, continuity, and exclusivity*—but overlooked the negative implications for those who had been wronged.

Prasanna, S. & Lavanya, P. (2023). Adverse Possession in Indian Property Law: Case Studies and Reform. *ILE Property and Land Law Review*, 1(1), 17–25.

By the 1970s and 80s, the social consequences of this fiction became increasingly difficult to overlook. Urban sprawl, with slums emerging on public land, was dismissed as "productive use," while rural dispossessions—where small farmers lost their land to more powerful neighbours—were largely ignored^{vii}. Tribal lands, which were supposed to be protected under the *Samatha v. State of Andhra Pradesh* ruling from 1997^{viii}, remained vulnerable due to gaps in enforcement. Gender inequalities were still a pressing concern: women, who were excluded from land records, found it nearly impossible to assert or defend their land rights. The Law Commission's early reports^{ix}, highlighted these issues but failed to suggest any meaningful reforms, proposing only minor tweaks—a significant missed opportunity to address the colonial roots of this fiction.

METHODOLOGY OF STUDY:

The core motto of this paper is to determine whether the law of adverse possession consists or cogitate jurist's stand. We have thoroughly gone through various research articles with a series of law commission reports in addition to the crime records and the collective ideas of foreign jurists criticizing it. We have selected precedents of Supreme Court reports which supports ours claim. We analysed the value of the legal fiction specifically about adverse possession on its quality to be a just law. The question which we are analysing is whether an adverse possession needs to be changed. Finally we have listed out the ambiguity in this concept.

Our work picks up from defining the legal statute which comes under assumptions of law and moving forward by proof reading, what jurist had said and ensuring it in existing law. Then sorting out the ambiguity in reality. Firstly, we will analyse how far this concept meets the expectation of a just law. Ironically it turns out to match with crimes.

Adverse possession a legal fiction:

It considers twelve years of trespass as a demonstration of ownership. It is based on three pillars, hostility (occupation against the owners of the property), continuity (uninterrupted possession), and openness (occupation visible). But as was the case of *Kattilthekketil George v. Kerala* (2018)^x. Courts frequently go beyond these definitions--sporadic use is considered continuous use and passive occupation is considered hostile occupation.

One thing to convey here is to first identify similarities of this provision with any other crime and for that, we have narrowed down our sight to two specific matching criminal elements. Hence it is adverse possession which makes a retrogress effect in the value of true ownership. Then, hostility is another cruel term, it directly says enmity to the true owner, the paradox to note is 'opposition to real owner' this statement is made because the possessor is in no way legit to claim it nor through inheritance or any legal mode of transfer, much importantly claiming other's thing as self-entitled is openly shown by living there without consent or permission of owner. These entire factors derive the plinth idea about adverse possession. This is a measure of how much this is a crime rather than a limitation provision.

Immense is the setup of the contradiction; the possessor starts as an intruder no desire to own and finishes as the lawful owner. This metamorphosis is based on a fiction: time is the only person who will turn the wrongful possession into the title.

Adverse possession can be seen as theft dressed up as law. It ticks all the boxes for theft—dishonest intent, unlawful taking, and permanent deprivation—but it cleverly uses the legal fiction of time to make the wrong seem right. According to IPC Section 378, theft involves taking someone else's movable property without their consent; adverse possession is similar in that it allows someone to knowingly occupy immovable property without the owner's permission.

A prime example is the case of *Ravinder Kaur Grewal v. Manjit Kaur* (2019)^{xi}, where the possessor was aware of the dispute yet still managed to claim title. The key distinction here is the 12-year limitation period (Limitation Act, 1963), which effectively turns trespass into ownership—a form of state-sanctioned theft where time serves as the alibi.

PHILOSOPHIES AND JUDGEMENTS:

Jeremy Bentham in his book “*The Principles of Morals and Legislation*”^{xii} criticized adverse possession as a legal fiction that rewards "theft" and undermines utilitarian principles greatest happiness for the greatest number. He argued that it discourages vigilance among property owners and creates uncertainty in land titles. He criticized the "Constructive Notice" as "fiction upon fiction", as it assumes owners should have known about encroachments, even if they had no actual knowledge. This aspect was emerged in the case, *Nair Service Society Ltd. v. K.C.Alexander*^{xiii}. The person who is claiming adverse possession should show that his possession was “actual, open, notorious, exclusive, hostile, continuous and uninterrupted and was obtained without any force”

Friedrich Karl von Savigny in his book “*System of Modern Roman Law*”^{xiv} defended adverse possession as a necessary legal tool to prevent stale claims and ensure legal certainty. His reason was that longer the possession more the land was productive. He believed, "Prescription adverse possession is not a mere arbitrary rule but a necessary consequence of the nature of property rights, which must be capable of being securely enjoyed" .This was well said In the case of *Secretary of State for India v. Dabendra Lal Khan*^{xv}, the Privy Council observed that, the standard requirement of the law of adverse possession is “nec vi – without force or not by force, nec clam – without secrecy or not by stealth, nec precario – without permission or not by license of owner. Thus the possession must be continuous, public and the owner must know that the possession is adverse.

John Stuart Mill in his book “*Principles of Political Economy*”^{xvi} saw adverse possession as a practical necessity to avoid endless disputes over land - However, he criticized it for favouring malicious possession of the rightful’s property. He made critique of "Hostile Possession" is misleading. The court expressed that adverse possession needs to be a hostile possession and not mere possession which is clearly stated in the case of *T.Anjanappa&Ors. V. Somalingappa&Anr.*^{xvii} That adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner.

Hans Kelsen in his book "Pure Theory of Law"^{xviii} analysed adverse possession as a legal norm that extinguishes old rights and creates new ones based on time and possession. He criticized it as it conflicts with the principle of natural justice due to its moral ambiguity. Then he critiqued Prescriptive Title because he saw it as a legal technique to avoid chaos but noted that it lacks a moral foundation. It was held clearly in the case of Hemaji Waghaji vs bhikhabhai Khengarbhai^{xix}, Supreme court held that adverse possession was completely irrational and unfair to the owner of the property. The possessor carried out an illegal task and completely dishonest would reap the benefit of adverse possession leaving the owner helpless. HLA Hart in his book "The Concept of Law"^{xx} regard it as a secondary rule in legal systems, which resolve uncertainties in property rights - He argued that it balances stability and change in legal systems. He criticized tacking because letting today's occupier stand on yesterday's shoulder, so the clock never resets on the road to ownership. He questioned whether adding time periods from different possessors are fair, as it may reward collusion among squatters. "The rule of adverse possession is a remedy for the unsettled primary rules, ensuring to limit the deluged land - litigation. It was held in the case of State of Haryana v. Mukhesh Kumar & Ors^{xxi}, the Apex Court showed its disagreement on the law of adverse possession. It commented that "the law of adverse possession was archaic and should be seriously looked into. It added that in adverse possession, a trespasser who is actually guilty was able to gain legal title over the property. The court found the legal system rewarding an illegal act baffling." Robert Nozick in his book "Anarchy, State, and Utopia"^{xxii} opposed adverse possession as a violation of property rights as it undermines the moral basis of proprietorship and encourages stealth. This man was a critique of all legal fictions and saw adverse possession as state-sanctioned theft, contradicting his "Entitlement Theory of Justice". Adverse possession is a legalized form of theft, where the state arbitrarily transfers property from one person to another without consent". The court says that the person has no rights to possess adversely until the owner made any default in the possession of the property which is stated clearly in the case of Amarendra Pratap Singh v Tej Bahadur Prajapati^{xxiii} as: "A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter's title."

Wesley Hohfeld in his book "Fundamental Legal Conceptions as Applied in Judicial

Reasoning^{xxiv} scrutinized adverse possession through his ideology of legal rights and duties. He argued that adverse possession extinguishes the original owner's right and creates a new right for the possessor which is not by any just acquisition or transfer. He was a strong critique of "Laches" and labelled it as a procedural defence, not a substantive right, and its application in adverse possession can be unpredictable. Adverse possession operates as a legal mechanism to transfer lawful rights from one person to another, independent of consent but on the passage of time and the fulfilment of certain conditions. This was affirmed in the case of Ravinder Kaur, mentioned earlier in this work.

We now want to decipher the term 'Ownership'. Issues here are What is guaranteed in owning something, when utilisation and possession by someone challenges your title. Other than conventional classification of immovables like land, consider a garden with trees and plants and abandoned land or old buildings these are prone to this claim. So if someone claims they use better than prior holder, would that approve the grab as legit?.

RECOMMANDATION:

We are recommending some ideas to rectify the fault to some height here. For adverse possession, the Supreme Court has notified the central government to reduce the policy recommendation regarding the adverse possession. As a result some reports were made in the law commission but the results are not yet achieved.

A Bill may be passed in the parliament about changing property laws and this type of legal doctrines. Rules and regulations should be duly made by department of law and justice cooperating it Indian judiciary is so large to classify but data in India is so confidential and not transparent and ways to get it takes so much time and money in fact when you search about the number of cases in India pending in Supreme Court you can just civil and criminal distinction and no further classification. There should be official data open to all citizens about this.

Adverse possession's legality should be reinterpreted by Courts which will create a new precedent for a new definition setting landmark. The only difference between this and theft are passage of a certain period and mobility of property. So scrutinizing is well wished Again in one of the law commission's reports, which recommended the Government of India to clear very obsolete laws. Major property laws like Transfer of Property Act 1882 and The Easements act, 1882 and 13 other laws falls under this recommendation that needs to be updated. As law

commission had suggested to amend these property laws which in proportion impliedly creates the necessity to amend the relating clauses in the Limitation Act, 1963.

There is no proper committee to watch these land grabbing and unjust acquisitions. We know that accuracy can't be expected all time but at least it can be informed to related people to alert them.

As there is no single centralized act regarding land matters some States have made their own state specific law but most have not done yet. This makes it totally dependent on centuries old laws.

Some safeguards to the true owners include giving notice to the possessor to quit from their property and when refused they may sue for injunction.

Another compromisable method is to make a contract like license, lease or rental agreement allowing him to stay.

Lands should be completely digitalized. People should get updated to their boundaries with new survey numbers, but this is not enough. They should know information about the title owner and the possessor which he/she ought to know. Accessible only through a unique identification basis.

CONCLUSION:

Hence, our paper is aimed to explore this very deep legal fiction in the context of property law and ascertain the qualities of a true law. By making a comparison of early scholar's thoughts we can understand the vagueness in each of the precedents. So the conscience of the court could not make it due to varied circumstances and unchanged law. We hope this is concerned by appropriate authorities and may it be studied in accordance with the global standards and especially in the U.K to sort out the errors. Better law and updating will prevent major injustice. This pure study intends to rewire the connection between safeguarding rights of the true owner and preventing a crime.

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