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# OUSTER AND ADVERSE POSSESSION: A CRITICAL REVIEW OF PROPERTY LAW AND CONSTITUTIONAL VALIDITY

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## ABSTRACT

The doctrines of **ouster** and **adverse possession** are fundamental to property law, particularly in determining ownership rights when disputes arise between co-owners or when land is occupied without the owner's consent. **Ouster** refers to the wrongful exclusion of a co-owner or rightful possessor from land, while **adverse possession** allows an individual to claim ownership of land after continuous, exclusive, and hostile use over a specified period. This paper critically examines these doctrines within the framework of constitutional law, focusing on their impact on property rights and their alignment with constitutional protections.

The analysis begins by discussing the traditional principles underlying adverse possession and ouster, exploring their legal implications in property disputes. Special attention is given to the tension between the rights of co-owners and the long-standing occupiers who seek to claim ownership through adverse possession. The paper then delves into the constitutional validity of adverse possession, evaluating how the doctrine might conflict with the **constitutional right to property** and whether it infringes upon individual ownership rights.

In particular, the paper investigates whether the loss of property through adverse possession or the act of ouster undermines constitutional protections of private property, such as **due process** and **equal protection** under the law. By critically analyzing case law and judicial interpretations, the study highlights the evolving legal and constitutional challenges posed by these doctrines and the balance between individual rights and public policy interests in land use.

Ultimately, the paper offers a comprehensive critique of the constitutionality of adverse possession and ouster, considering whether these doctrines should be reformed or upheld in modern legal systems. The analysis provides insight into the broader questions of property rights, justice, and the role of the state in regulating land ownership.

## Introduction

The doctrine of adverse possession has long been a contentious issue in property law, balancing the rights of legal owners against those of long-term possessors. Rooted in the principle that ownership should not remain dormant, adverse possession allows a trespasser to claim legal title to land after uninterrupted, exclusive possession for a statutory period. However, this principle raises critical legal and constitutional questions, particularly concerning the right to property under modern legal frameworks.

One of the most debated aspects of adverse possession is its interplay with the doctrine of ouster, where a co-owner is excluded from property use by another. While adverse possession serves the purpose of preventing neglect and ensuring land utilization, it also challenges fundamental property rights, often leading to claims of unjust deprivation. This article critically examines the legal framework of adverse possession and ouster, assessing their constitutional validity in light of fundamental rights, judicial interpretations, and evolving legal doctrines.

By analyzing case laws, statutory provisions, and constitutional perspectives, this article aims to explore whether adverse possession remains a justifiable legal principle in contemporary jurisprudence or if it conflicts with the fundamental right to property and due process.

### Adverse Possession and Ouster Among Co-Owners

Adverse possession is a legal principle where a person can gain ownership of a property by occupying it **openly, continuously, and without permission** for a specific period. However, in cases of co-ownership, the law assumes that if one co-owner is in possession, they are holding it on behalf of all co-owners unless there is **clear proof of exclusion**. The Supreme Court in **P. Lakshmi Reddy v. L. Lakshmi Reddy**<sup>1</sup> explained that merely staying on the property or enjoying its profits does not mean a co-owner has taken ownership through adverse possession. For adverse possession to apply, the co-owner in possession must **openly claim full ownership and completely deny the rights of the other co-owners**, and this denial must be **known to the excluded co-owners**. Simply holding onto the property for a long time is not enough; there must be a **clear and open act showing that the co-owner intends to exclude others permanently**.

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<sup>1</sup> AIR 1957 SC 314

## Establishing Ouster in Co-Ownership Disputes

Ouster means that one co-owner has **actively and openly denied the rights of the other co-owners** and has taken full control of the property. Just staying in possession alone is **not enough** to prove ouster unless there is **a clear and undeniable act that prevents the other co-owners from exercising their rights**. The Supreme Court in **Vidya Devi @ Vidya Vati (Dead) v. Prem Prakash & Others**<sup>2</sup> laid down three conditions that must be met to establish ouster:

1. **Hostile intent**, meaning the co-owner in possession must claim sole ownership and refuse to acknowledge the rights of others.
2. **Long and uninterrupted possession**, meaning the person claiming ownership must have been in full control of the property without any interference from the excluded co-owner.
3. **Exclusive control over the property**, meaning the excluded co-owner must have been clearly aware that they were being denied their right to use or share the property.

If these conditions are not fulfilled, the law continues to assume that all co-owners have a right to the property, and mere possession by one does not exclude the others.

## Presumption of Joint Possession in Co-Ownership

The law always presumes that **all co-owners have an equal right to possess and use the property**, even if one co-owner is physically in control of it. Just because a co-owner is **not living on the property or receiving income from it does not mean they have lost their right to it**. The Supreme Court in **Neelavathi & Others v. Natarajan & Others**<sup>3</sup> ruled that when a co-owner files for partition, the question of adverse possession does not arise **unless the person in possession can prove that the other co-owner was completely excluded by a definite and open act**. This means that simply using the property alone does not make someone the sole owner unless they have clearly denied the rights of the other co-owners **in a way that cannot be ignored**. Courts have repeatedly held that unless there is strong evidence of exclusion, co-owners continue to have rights over the property, no matter how long one of them has been in possession. The Madras High Court in **Puniyavathi & Another v. Pachiammal & Others**<sup>4</sup> examined the burden of proving adverse possession. The Court held that in a family property dispute, a co-owner must provide specific evidence that their possession was exclusive

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<sup>2</sup> AIR 1995 SC 1789

<sup>3</sup> AIR 1980 SC 691

<sup>4</sup> A.S. No. 251 of 2011

and hostile to the knowledge of the other co-owners. The judgment followed the precedent set by the Supreme Court in **Vidya Devi's case** and stated that mere possession for a long duration does not establish adverse possession unless coupled with clear and hostile acts denying the rights of the other co-owners.

In **D.V. Jegannathan & Others v. P.R. Srinivasan & Others**<sup>5</sup> the Madras High Court addressed the issue of revenue records and long possession. The Court held that mutation of revenue records, payment of taxes, long possession, or management of the property by one co-owner does not by itself establish ouster or adverse possession unless it is accompanied by a clear and unequivocal act of exclusion. The Court reiterated that co-ownership carries with it a presumption of joint possession, which cannot be displaced by mere non-participation by one of the co-owners.

### **Constitutional Validity of Adverse Possession: Judicial Scrutiny and Recent Verdicts**

The constitutional validity of adverse possession in India has been a subject of extensive judicial scrutiny, particularly concerning the right to property under Article 300A of the Indian Constitution. In the landmark case of *State of Haryana v. Amin Lal*<sup>6</sup>, the Supreme Court unequivocally held that the State cannot claim adverse possession over a citizen's private property, emphasizing that such actions would undermine constitutional rights and erode public trust in the government. This judgment reinforces the principle that while adverse possession serves to prevent the neglect of land, it must not infringe upon the fundamental property rights guaranteed by the Constitution. The Court's stance reflects a commitment to ensuring that doctrines like adverse possession are applied in a manner consistent with constitutional protections, thereby safeguarding citizens from arbitrary deprivation of their property.

### **Law Commission's View on Adverse Possession**

The **193rd Law Commission Report** examined adverse possession under **Article 65** and **Article 112** of the **Limitation Act, 1963**, affirming that a person in open, continuous, and hostile possession for **12 years (private land)** or **30 years (government land)** can claim ownership. The Commission referred to *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai*

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<sup>5</sup> (1999) 3 LW 742

<sup>6</sup> 2024 LiveLaw (SC) 900

*Harijan* (2009), where the Supreme Court criticized the doctrine, emphasizing the need for a fresh look. While the **19th Law Commission** had supported retaining the law, stating that it balances owners' rights and legal certainty, concerns were raised about its **misuse by land mafias and powerful interest groups**. The Commission **opposed compensation** for dispossessed owners, arguing it could prolong litigation. However, dissenting voices highlighted the lack of consultation with relevant government bodies and questioned the moral justification for retaining adverse possession laws.

## Conclusion

The doctrines of **adverse possession and ouster** continue to be contentious in modern property law, balancing the **utilization of land** against the **constitutional right to property**. While adverse possession serves the practical purpose of preventing land from remaining unused and ensuring stability in land ownership, it also raises **serious concerns about justice and fairness**, particularly when it leads to the involuntary deprivation of rightful owners.

From a **constitutional perspective**, adverse possession challenges the principles of **due process and property rights under Article 300A**, as it allows ownership to be transferred without formal consent or compensation. The **Supreme Court's evolving stance**, particularly in *State of Haryana v. Amin Lal*, reflects an increasing emphasis on protecting citizens from arbitrary loss of property. Furthermore, the **Law Commission's analysis** underscores the **potential for misuse** of adverse possession laws by **land mafias and powerful entities**, making its continued application questionable in the present legal framework.

However, **abolishing adverse possession entirely** could create its own set of problems, such as **landowners neglecting property indefinitely** and contributing to inefficient land use. Instead of outright repeal, a **balanced approach**—such as **reducing the statutory period, requiring stronger proof of good faith, or introducing compensation mechanisms**—may better serve **society's interests while upholding constitutional values**.

Ultimately, **the principle of adverse possession needs reform** to align with contemporary notions of **justice, fairness, and constitutional protections**. A system that prioritizes **property security while discouraging unjust enrichment** would ensure that the law serves both **public interest and individual rights** in an equitable manner.