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LEGAL ANALYSIS OF CLIMATE DISPLACEMENT: ADVERSE POSSESSION AND EASEMENT REMEDIES IN INDIA

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1. Abstract

This research examines the legal precarity of communities forced into internal migration by environmental crises. Within the Indian context, these displaced groups encounter systemic barriers when intersecting with conventional property rights regimes. India currently lacks a dedicated statutory text for ecological migrants, forcing internally displaced persons (IDPs) to occupy land without formal titles. Consequently, they must navigate antiquated private property doctrines, particularly adverse possession under the Limitation Act 1963 and prescriptive easements under the Indian Easements Act 1882. A key finding from this research shows how the requirement of animus possidendi (hostile intent) fails to consider that climate migration is driven by the need to survive and therefore they won't fit into these existing legally-defined property types. Also, lengthy statutory timeframes create uncertainty for IDPs regarding societal acceptability on how they utilize the land, making them vulnerable to prolonged periods of tenure insecurity and arbitrary eviction. This research analyses the constitutional tension between the Right to Property (Article 300A) and the Right to Life (Article 21). It also references significant prior rulings that support suggestions for shortening the limitation period by statute, creating equitable climate easements, and establishing specialized tribunals to protect human rights during critical times of increased environmental destruction.

Keywords: Climate Displacement, Adverse Possession, Indian Easements Act 1882, Limitation Act 1963, Animus Possidendi, Article 21, Tenure Security, Internally Displaced Persons.

ISSN: 2582-6433

2. Introduction

2.1 History of Law

Since the codification of the 1882 Indian Easements Act and 1963 Limitation Act, Anglo-Indian courts have combined property management systems with migratory rights.[1] Historically, the legal doctrines of prescriptive easements and adverse possession provide a practical means for resolving ambiguities in land tenure issues, deterring the pursuit of old claims and maximizing the economic value of land.[2] Under common law in India, informal possession of an immovable property or asset for a long period uninterrupted by an act of the formal owner permitted informal possession to extinguish the formal owner's title. This transfer gave full ownership to someone who only had a factual claim before, as part of a plan to help farming and develop agricultural land. However, the provisions and legislative schemes created under this framework were intended to apply to conditions based upon environmental stability and hostile land encroachments and hence, are not equipped to effectively deal with the consequences of people moving as a result of ecological disasters.

2.2 Background of the Issue

Climate change, which used to be a global environmental issue, has now become a worldwide catalyst for mass migration of people from their homelands in the Indian subcontinent. From rising sea levels in the Sundarbans to flash floods in the Himalayan valleys and systemic desertification and drought in the arid regions of Rajasthan and Karnataka, extreme climate change has produced a record-breaking number of people displaced internally due to climate-induced migration.

As a result of climate change, tens of thousands of ecological migrants, often referred to as 'climate refugees', are being forced to evacuate from their homes and move to places that will sustain them. Just like political refugees, internally displaced persons (IDPs) have not crossed any international borders; instead they have migrated internally through vulnerable coastal and rural areas to urban, semi-urban, and safe inland areas. The displaced communities have, therefore, settled on lands that are vacant, privately held or publicly owned, in buffer zones or other locations, primarily out of survival necessity. Since there is no statutory framework in India that protects the socio-economic and land rights of climate migrants, displaced

[1] John G. Sprankling, "Environmental Critique of Adverse Possession," Cornell Law Review 79, no. 4 (1994): 818-822.

[2] Formally codified as the Indian Easements Act, 1882 (Act No. 5 of 1882) and the Limitation Act, 1963 (Act No. 36 of 1963).

ISSN: 2582-6433

populations have to rely on antiquated private property laws, most notably the doctrines of adverse possession or easement remedies, to secure housing and provide access to basic utilities.

3. Legal Framework Governing the Aspect: Laws, Constitution & Legislation

The Indian Constitution is composed of a mix of constitutional guarantees, which are fundamental and constitutional rights, statutory limitation periods, and statutes specifically governing easements.

3.1 Indian Constitution 1950

- **Article 300A:** Following the 44th Amendment, which was passed in 1978, the right to property was removed from the list of fundamental rights and is now recognized as a constitutional right under Article 300A of the Indian Constitution. Article 300A requires that "no person shall be deprived of his property without the authority of law".[3] For climate migrants who are occupying or using the land, this amendment provides a shield against arbitrary removal by the state without a statutory basis; it also provides protection for registered landowners from confiscation without compensation.
- **Article 21:** The Supreme Court of India has consistently expanded the scope of Article 21 (Right to Life & Personal Liberty) to include the right to shelter, the right to earn a livelihood, and the right to a clean environment.[4] For those who have become ecologically displaced, their right to occupy or use land is directly related to their ability to survive. This can create constitutional tensions between the owner's economic property rights according to Article 300A and the migrant's survival rights pursuant to Article 21.[5]

3.2 The Limitation Act, 1963

Under the Limitation Act of 1963, there is a precise set of statutory provisions which apply to make a claim of adverse possession. The Limitation Act provides for the following related to claims of adverse possession:

- Under **Article 65** of the Schedule, an owner must initiate a recovery suit for immovable property within a strict 12-year window from the moment the defendant's occupation

[3] Right to Property, Indian Constitution, art. 300A
[4] Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.
[5] Right to Property, Indian Constitution, art. 21A

ISSN: 2582-6433

becomes adverse[6]. The 12-year limitation period commences when the possession of the defendant becomes adverse to the plaintiff. If the true owner does not file a suit to have the climate migrant ejected from that piece of property within the 12-year period, their ownership interest in that piece of property will have been extinguished by Section 27 of this Act and the Climate Migrants will be able to claim ownership of that property.[7]

- **Article 112** extends the limitation period to 30 years where the land encroached upon belongs either to the Central Government or a State Government.

3.3 The Indian Easements Act, 1882

When communities displaced by climate change move to live near other communities, they will frequently need access to pathways, water, and drainage.

Section 15 of the Indian Easements Act 1882 requires an uninterrupted, open, and peaceable enjoyment of resources like water or paths for a minimum of 20 years to secure an absolute prescriptive right**.** For a climate-displaced community, surviving day-to-day on informal land, remaining undisturbed for two decades is statistically improbable[8].

4. International Framework Governing Proprietary Status

Since India does not have a specific domestic law for environmental migrants, international human rights treaties set out the framework to advocate that domestic courts interpret property and easement laws in favor of those who are displaced.

4.1 The Guiding Principles developed by the United Nation for Internal Displacement (1998)

The UN Guiding Principles on Internal Displacement provide specific protection for individuals uprooted by natural or man-made disasters.

Principle 18: This United Nations framework obligates member states to secure essential livelihood necessities, placing particular emphasis on providing habitable shelter to uprooted populations.[9] Concurrently, Principle 29 imposes a legal duty on municipal administrations to either facilitate the recovery of lost assets or provide equitable settlement alternatives.

[6] The Limitation Act, 1963, sch. art. 65
[7] The Limitation Act, 1963, sec. 27.
[8] The Indian Easements Act, 1882, sec. 15.
[9] United Nations Commission on Human Rights, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 (Geneva: UN, 1998), Principle 18.

ISSN: 2582-6433

4.2 The Peninsula Principles on Climate Displacement within States (2013)

This framework addresses the issue of internal displacement due to climate change.

Principle 13 (Land Acquisition and Provision): This principle pushes governments to proactively designate secure, ecologically viable territories for community resettlement. [10]Crucially, it emphasizes that states must engineer formal legal mechanisms to guarantee land tenure, rather than leaving displaced groups to navigate antiquated, adversarial systems like adverse possession.

4.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

India's ratification of the ICESCR binds it to Article 11, which codifies the universal human right to habitable shelter and a decent standard of living.[11] This has been further clarified by the UN Committee on Economic, Social and Cultural Rights in General Comment No. 4 and No. 7, wherein it has made it clear that states need to secure legal tenure for everyone to ensure that there is no forced eviction.

5. Judicial Precedents (Case Laws)

The Indian judicial system has developed the principles of adverse possession and easements. It has shifted its focus from considering informally occupying communities as mere trespassers to considering whether there has been a sufficient continuous possession.

5.1 Ravinder Kaur Grewal v. Manjit Kaur (2019)

The Supreme Court clarified the operational boundaries of this doctrine by evaluating whether possessory rights could be asserted proactively. The bench ruled that adverse possession functions as both a shield against eviction and an offensive sword. In other words, a plaintiff may claim adverse possession not merely in order to defend itself against charges of trespassing but also as a reason to sue another individual.[12] Any party that has obtained possession and perfected its title due to Article 65 of the Limitation Act is free to file a suit for declaring ownership and recovering possession after dispossession. This precedent gives a chance to climate-displaced persons with continuous possession for more than twelve years to claim possession offensively.

[10] Displacement Solutions, the Peninsula Principles on Climate Displacement within States (Victoria: Displacement Solutions, 2013), Principle 13.
[11] International Covenant on Economic, Social and Cultural Rights, December 16, 1966, United Nations Treaty Series, vol. 993, p. 3, art. 11.
[12] Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 1.

ISSN: 2582-6433

5.2 Amrendra Pratap Singh v. Tej Bahadur Singh (2004)

It should be noted that the term "adverse possession" in this case refers to a hostile possession, i.e., one that expressly or implicitly opposes the title of the owner.[13] Adverse possession cannot be nec vi, nec clam, nec precario (not by force, not secretly, and not with the permission of the owner). Such a holding places significant obstacles in the way of proving adverse possession for climate migrants since their presence in the occupied land is not motivated by the intention to occupy it.

5.3 Olga Tellis v. Bombay Municipal Corporation (1985)

The landmark *Olga Tellis* ruling expanded the constitutional architecture of Article 21 by explicitly linking the right to life with economic sustenance.[14] The apex court affirmed that the government cannot arbitrarily dismantle informal habitations or disrupt livelihoods and habitation from people without proving that the process is justified and proper in law.

5.4 PT Munichikkanna Reddy vs. C. Ramachandra Reedy (2007)

In this decision, the apex court decoupled mere chronological longevity of land occupation from actual legal title perfection. The ruling established that a squatter must exhibit a clear, conscious state of mind—*animus possidendi*—aimed at actively excluding the true titleholder, a standard that presents a steep hurdle for survival-seeking migrants because climate migrants seek sanctuary rather than hostile hostility, the standard set in PT Munichikkanna Reddy inadvertently criminalizes survival.[15]

6. Controversy, Analysis, Loopholes

Conceptual, Institutional, and Statutory Challenges Associated with Climate Displacement Cases and Traditional Property Remedies Are Discussed in Technical Detail Below:

The Incompatibility between Climate Displacement and Animus Possidendi**.** The essential prerequisite under the doctrine of adverse possession is animus possidendi—that the occupier intends to exercise exclusive ownership rights against the real owner.[16] In contrast, individuals displaced by climate-related changes are occupying uninhabited land out of necessity and as a matter of survival rather than with an intention to commit a land-grabbing offence. Since they

[13] Amrendra Pratap Singh v. Tej Bahadur Singh, (2004) 10 SCC 65.
[14] Olga Tellis, AIR 1986 SC 180 (see supra note 4).
[15] PT Munichikkanna Reddy v. C. Ramachandra Reddy, (2007) 6 SCC 59.
[16] Sprankling, "Environmental Critique of Adverse Possession," 830 (see supra note 1).

ISSN: 2582-6433

lack hostile intent at the start, prudent property owners can claim that the occupants have no more rights than those of casual licensees or trespassers, thus breaking up the continuity of the 12-year statutory period.[17]

As articulated by Sprankling (1994), traditional adverse possession principles inherently incentivize land development and exploitation. Consequently, this structural framework is fundamentally incompatible with modern ecological crises and the realities of involuntary climate migration.

Lengthy Statutory Periods vs. Urgent Human Needs the limitations provided by law through the Limitation Act (12 years for private lands, 30 years for public lands) and Indian Easements Act (20 years) do not fit into the requirements that climate IDPs require at such an important time. A displaced population cannot wait until decades have passed in their state of legal vulnerability to ensure the acquisition of legal ownership and formalized access to water, sunlight, and pathways.

6.1 The Interruption Loophole

According to Section 15 of the Indian Easements Act and Article 65 of the Limitation Act, the commencement of any kind of legal notice, symbolic act of eviction, or actual disturbance by the actual owner shall cause an interruption to the continuity of possession user rights. Landowners can easily execute intermittent legal notices or symbolic acts of disturbance to systematically reset the statutory clock for migrants.

6.2 Public Land Exclusion and Environmental Regulations

Due to immediate survival pressures, environmentally displaced groups typically seek refuge on state-owned terrains, such as coastal strips, riparian zones, or forest peripheries. However, because Article 112 mandates a 30-year statutory horizon against public property, acquiring a perfect title is practically unattainable. Also, environmental laws, which include the CRZ notifications and the Forest Conservation Act, have priority over private rights. Thus, there exists a contradiction whereby, despite having fulfilled the conditions for an adverse possession or easementary enjoyment under private law, the migrant is evicted according to environmental public law.[18]

[17] Ravinder Kaur Grewal, (2019) 8 SCC 1 (see supra note 11).
[18] Alessandra Jerolleman et al., People or Property: Legal Contradictions, Climate Resettlement, and the View

ISSN: 2582-6433

7. Suggestions for Analysis to Improve Implementations

To overcome these kinds of legal complications, the property laws of India, along with its climate policy laws, need to move away from the inflexible property laws and towards more flexible, human rights-based tenancy models.

7.1 Statutory Compression of Limitation Periods for Climate IDPs

It is suggested that the Central Government bring about an amendment to the Limitation Act, 1963, wherein a special class will be created for climate-displaced people. The limitation period to perfect ownership of a piece of land that is not used by the registered owner can be reduced to 5 years. In the case of prescriptive rights to water and roads, the period can be reduced to 3 years.

7.2 Recognition of "Equitable Climate Easements"

The courts must make use of their equitable jurisdiction to introduce the notion of a new category of user rights that is called Equitable Climate Easements. In this context, while relocation of a community becomes imperative due to any climate emergency, it must be legally guaranteed that the displaced community shall continue to have unencumbered access to the neighboring water body and pathways without waiting for the 20 years required under the Indian Easements Act.

7.3 Implementation of Rolling Land Banks and Land Titling Programs

As per the Peninsula Principles, the States, including the Karnataka Government, must create their own regional Climate Displaced Land Banks.[19] Rather than waiting for the migrant population to illegally occupy land and then facing a lawsuit, the state government must take the initiative to acquire unutilized private land or non-ecologically productive public land, which will then be provided to the displaced populations via long-term leases.

7.4 Creation of Special Environmental Tenancy Tribunals

In order to avoid legal stalemates in civil courts due to disputes between IDPs and owners related to climate IDPs, it is essential that there are Environmental Tenancy Tribunals for hearing cases of eviction, adverse possession, and easements regarding IDPs. This will be done by balancing the rights provided by Article 300A with those in Article 21.

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from Shifting Ground (Cham: Springer International Publishing, 2024), 45-52.

[19] The Peninsula Principles, Principle 13 (see supra note 9).

ISSN: 2582-6433

8. Conclusion

With respect to the rising number of climate-induced internal displacements in India, the inadequacies of conventional property doctrines such as the Indian Easements Act, 1882, and the Limitation Act, 1963, are clearly illustrated. Both these Acts have been formulated based on common law principles, which have prevailed for several decades, viewing any form of occupation of property in an adverse light without considering global environmental issues. Asking individuals to meet the stringent conditions of animus possidendi or having to wait several decades to exercise any right is unjust. While it has been noted that the judiciary has been proactive in interpreting property doctrines and making amendments in cases such as Ravinder Kaur Grewal, merely changing interpretations will not help. For addressing this problem, the following suggestions may be made – enactment of legislation to reduce statutory periods of limitation applicable to displaced people, creation of new property laws that provide for climate easements, as well as government-administered land administration systems that consider the needs of climate-displaced people and their constitutional rights.

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ISSN: 2582-6433

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