

Adverse Possession: What is It, What Has the Law Commission said About It

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Why in News?

- The Law Commission, in its 280th report, said that there is no justification for introducing any change in the law relating to adverse possession.

What is Adverse Possession?

- Adverse possession is the legal process whereby a **non-owner occupant of a piece of land gains title and ownership of that land after a certain period of time.**
- The concept of adverse possession stems from the idea that land must not be left vacant but instead, be put to judicious use.
- Essentially, adverse possession refers to the hostile possession of property, which must be “**continuous, uninterrupted, and peaceful.**”

Legality of Adverse Possession in India

- The concept originally dates back to 2000 BC, finding its roots in the **Hammurabi Code**.
 - The Hammurabi code of laws, a collection of 282 rules, established standards for commercial interactions and set fines and punishments to meet the requirements of justice.
 - It is a **Babylonian legal text** composed during 1755–1750 BC.
- First legal statute was the Statute of Westminster, 1275 in England.
- The first attempt to bring the law of limitation to India was the “Act XIV of 1859”, which regulated the limitation of civil suits in British India.
- After the passage of the **Limitation Act in 1963**, the law on adverse possession underwent significant changes.

What Provisions Did the Limitation Act, 1963 Bring With It?

- The 1963 Act fortified the position of the true owner of the land, as he now had to merely prove his title, while the burden of proof of adverse possession shifted to the person claiming it.
- Under the Limitation Act, 1963, **any person in possession of private land for over 12 years or government land for over 30 years can become the owner of that property.**

Supreme Court on Adverse Possession

- In the 2004 Apex Court ruling in ***Karnataka Board of Wakf v Government of India***, the court dealt with the ingredients of adverse possession
- W.r.t. a person who claims adverse possession, these were the judgements made by the Court –
 - on what date he came into possession,
 - what was the nature of his possession,
 - whether the factum of possession was known to the other party,

- how long his possession has continued, and
- his possession was open and undisturbed.
- However, in a series of decisions, the SC recommended that the government seriously consider the issue of “adverse possession” and make suitable changes.

Why Did the Supreme Court Suggested Changes?

- A two-judge SC bench, in its 2008 ruling in ***Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others***, observed that the law of adverse possession “ousts an owner on the basis of inaction within limitation” and is “irrational, illogical, and wholly disproportionate”.
- The court said that the law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who has illegally taken possession of the property.
- Adding that the law should not benefit the illegal action of a “rank trespasser” who had wrongfully taken possession of the true owner’s property, the court said that it also “places a premium on dishonesty”.
- Following this, on December 19, 2008, a reference was made to the Law Commission by the Ministry of Law and Justice, requesting it to examine the matter and furnish its report on the same.

Law Commission’s Opinion on Adverse Possession

- The **22nd Law Commission**, in its report, has said that there is no justification for introducing any change in the law relating to adverse possession.
- The Law Commission’s rationale is that “*society will benefit from someone making use of land the owner leaves idle,*” and “*persons who come to regard the occupant as owner may be protected.*”
- The report said that 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.
- However, **two of its ex officio members filed a dissent note stating that the law does not stand judicial scrutiny** and “promotes false claims under the colour of adverse possession”.

What Did the Dissent Note Say?

- Citing troubles that true owners have been subjected to, the note said that the already overburdened machinery of the courts is further saddled with avoidable work, much to the misery of the litigants.
- “*If the law of adverse possession is struck off from the Limitation Act it will not hinder anybody’s right nor will it cause any neglect of land resources,*” the note reads.
- The fact that **land prices are skyrocketing in both rural and urban areas defeated the Commission’s argument that land is not put to proper use,** the note said.
- “In an over-populous country like India where land is scarce, the law of adverse possession only promotes false claims under the colour of adverse possession which ultimately does not stand judicial scrutiny,” the note contended.

Q1) Is Law Commission of India a statutory body?

The Law Commission of India is a non-statutory body, constituted by the Government of India from time to time.

Q2) When was the first Law Commission of India established?

The first Law Commission was formed in **1834** as a result of the **Charter Act, 1833** under the chairmanship of **TB Macaulay**.

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