

The Doctrine of Adverse Possession: The Slender of Dynamics in the Vacillating Stance over the Transfer of Property.

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1. Synopsis

Introduction

“Man, like a Tree in the Cleft of a Rock, Gradually Shapes His Roots to His Surroundings, and When The Roots Have Grown to a Certain Size, Can’t be Displaced Without Cutting At His Life.”¹

– Oliver Wendell

Holmes

Men are social animals with unlimited wants, who may go forth till the highest of degrees to fulfill their needs and desires, possessing all of which is capable of being possessed, thereby, going beyond limits. However, the heavenly orb in which men thrive, does not have much to offer. The pneuma is permeated with sparsely scattered finite

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¹ Letter from Oliver Wendell Holmes to William James (Apr. 1, 1907), in *The Mind And Faith Of Justice Holmes: His Speeches, Essays, Letters And Judicial Opinions*, 417, 417-18 (Max Lerner ed).(1943).

resources with men being curbed on the quantum of resources that each of them own.

Being a bundle of rights, property has been the greatest benison for the human being, from which began the urge to conquer the whole nine yards. It is from this land and the allied resources, that men created the extraordinarily stupendous of the inventions, known to mankind today. With the evolving times, men have been exposed to progressively accelerating resources, thereby creating a need to subjugate an increased quantum of these resources. With property being the cradle of a significant amount of opulence, holding property has been seen as a symbol of power, authority and independence. Consequently, the greed for property, burgeoned over the course of times, unfolding the ravel of stark challenges, with mankind conquering property, of that which he not only rightfully ought to deserve but also of that which does not belong to them in any sense.

Thus, transpiring the concept of Adverse Possession, wherein an individual, who is in the possession of a property owned by another, may acquire a title of authority and possession of the property, upon having met certain requirements as stipulated by the relevant statutes, while the former should have been able to prove the possession and habitanacy in the property for a significantly consecutive time period, as prescribed by the specific provision.

The Doctrine of Adverse Possession has been prevalent in practice, since time immemorial, having been engendered to hamper the

proceedings for any legal disputes, which have appeared to be consuming much of the time and resources. With the Code of Hammurabi, specifying the certitude that if men left their assets, possessions and other belongings to another, who was in the subsequent possession of the same, for a set consecutive period; in the case of which the new owner would be ‘legally’ entitled to retain such assets, possessions and other belongings.²

While the doctrine of adverse possession evolved at an entirely divergent time period, with a significantly distinctive economical and legal set up, the concept has been carried forward, even to the 21st Century, with a scrupulous state of enforcement. In India, prior to independence, the property of the private landowners had been encroached upon by the authoritative institutions, with almost no compensation being provided. With an increasing importance being regarded to property rights, countries such as the United States of America, surprisingly, reduced the stipulated time period to acquire land by the means of adverse possession. This signaled the owners to become the watchdog of their properties or to face the music. This was intended to reduce the wastage of property, at a time of sporadically sparse registration and documentation.

² Sridevi Shanker, PRL Junior Civil Judge, *Adverse Possession Versus Right To Property*, pp 1- 15 (2020), available at <https://districts.ecourts.gov.in/sites/default/files/ADVERSE%20POSSESSION%20By%20Smt%20SRIDEVI%20SHANKER%20PrI%20JCJ%20SIRICILLA.pdf> last visited 24 November, 2022.

Nevertheless, with the evolving time, the statute pertaining to adverse possession has not been altered a tad, thereby, maneuvering it to the perpetrator's advantage. The present research focuses on highlighting the paradoxical nature of the purported legal theft of the property, by the means of adverse possession, in addition to bringing forth the adversities entailed within the practice. Penultimately, it scrutinizes the adversities inherently intrinsic to adverse possession, critiquing the same and proposing the need for its reformation.

Research Questions

What is the foundational legitimacy in the underlying principles that govern the Doctrine of Adverse Possession?

What are the adversities that are innate to adverse possession?

Is the doctrine of adverse possession relevant in the 21st century?

Research Objectives

The objectives sought to achieve through this research is the analysis of the existing law pertaining to adverse possession and thereby deciphering its relevance in the 21st century socio- economic developmental stance. Owing to its prejudicial nature toward the real and legitimate owner of a property, thereby going against the principle of equity and international human rights standards, it only becomes climacteric, to evaluate the legitimacy of the law on adverse possession and consequently seek to bring forth coherent reforms.

Significance of the Study

The present study is crucial in understanding the root cause of the unjust allocation of property, thereby depriving the true owner of his rights. It seeks to critically analyze the law pertaining to adverse possession in India. Owing to the increasing adversities posed by the acquisition of property by the means of adverse possession, it becomes pertinent to note that the law in the 21st century, is misused by the multitude, which has proven to be detrimental to the real owners of the property. Thus, it becomes significant to evaluate the serious lacunas in enforcing the law, consequently, seeking to propound for reformative practices, lest another property be lost by the machinery of the figuratively legalized theft of land.

Scope and Limitation of the Study

The doctrine of adverse possession has been in place since the birth of civilization, transcending territories and jurisdictions. Beginning with the quest to conquer land, adverse possession seldom has a legitimate and rational basis. The law has evolved into a deleterious act that has been authorized by the legislative authorities, thereby failing to do justice. Despite having been borrowed from foreign legislations that have modified the specific law based on the dynamic nature of the social, political and economic conditions, the Indian law on adverse possession seems to be stagnant, stuck in the imperial times. The present study is thus limited to understanding the rationale behind the practice of adverse possession in India, thereby evaluating its efficacy,

with a background of the foundational Limitations Act of 1963; in the light of equity and justice. Consequently, it argues for a complete revamp of the law pertaining to adverse possession, in India.

Research Methodology

This is a doctrinal research, involving the analysis of primary as well as secondary sources.

Chapterization

The first chapter of this research outlines the verity of adverse possession in India.

The second chapter deals with the previous literature in place, pertaining to adverse possession and the existing lacuna in the law.

The third chapter expounds on the current status of the practice of adverse possession in India.

The fourth chapter analyzes the frivolous nature of adverse possession in the current scenario and the existing derelictions in its practice.

The fifth chapter scrutinizes the urgent need for reformation of the law relating to adverse possession.

The concluding chapter propounds leaving no room for the acquisition of property by the means of adverse possession, over the concluding remarks and ultimately, suggesting reformative actions.

2. Review of Literature

The articles and research that have been reviewed have been taken from credible databases. These portals provide the recent studies that have been done pertaining to the field. The following includes a few reviews of the research that had been done in the area of adverse possession of property and the allied repercussions, in furtherance to the consequent excursus.

Shivam Goel, in his research titled “Doctrine of Adverse Possession: Article 65 of the Limitation Act, 1963” (2018), expounds on the inherently intrinsic ambiguities within the incongruousness in the suit for a lawful title and adverse possession. Further, it illustrates the stance of adverse possession through specific landmark cases pertaining to clandestine nature, through the mechanism by which the property of the former owner is taken into possession. Owing to the fact that the arbitrary nature of adverse possession boots out and ousts the original owner of their property, the study propounds for the eradication of the hostile yet legitimate practice. Thus, the pleader of an adverse possession must distinctly establish the facts under the aegis of which such a possession is being claimed, on the ground that the

claim in question, predominantly weighs the facts over the question of law, necessitating the rationality of the same.³

Manav Bhalla, in his research titled “Adverse Possession: Right or Theft? - Analysis of Property Law” (2021), critically scrutinizes the postulation of adverse possession, thereby critiquing its subsequent implementation within the property laws of India. Mooting on the archaic concept, the author specifically highlights the numerous instances of a potential squander of this provision, given the social, political as well as the economic scenario of the country. While the research does not call for the complete uprooting of the provision of adverse possession, it denounces this mechanism of a legal theft of land owing to its immorality. Nevertheless, the need of the hour is for justiciable alterations in the existing provision for adverse possession. This comes in place, considering the fact that a complete expunging of this provision could possibly thwart legitimate owners from having to fight for their land, which would have been abandoned under unforeseen circumstances.⁴

Sridevi Shanker, in her research report titled “Adverse Possession versus Right to Property” (2020), propounds on the verity of the origin of adverse possession across jurisdictions and its relevance in India.

³ Goel, Shivam, Doctrine of Adverse Possession: Article 65 of the Limitation Act, 1963 (December 8, 2018). Available at SSRN: <https://ssrn.com/abstract=3298121> or <http://dx.doi.org/10.2139/ssrn.3298121> last visited 23 November, 2022.

⁴ Bhalla, Manav *Adverse Possession: Right or Theft? - Analysis of Property Law*, JCLJ pp 77- 85, (2021) available at <https://www.juscorpus.com/wp-content/uploads/2021/06/17.-Manav-Bhalla.pdf> last visited 25 November, 2022.

Discussing the provision of the Limitation Act of 1963, that governs the concept of adverse possession, it highlights the conditions under which one may claim the adverse possession of a given property. In furtherance to this, it also stresses on the party who ought to take the burden of proving the same and consequently, the documents that are permissible as concrete proofs in the Court of law. However, the report deciphers and disseminates how this antediluvian concept, contravenes the principles of equity. Thereby, calling for the revamping of the existing law.⁵

Arnav Ghai and Puneet Maharishi, in their research article titled “Analysis of the Concept of Adverse Possession” (2021), emphasizes on the claims underlying the notion of adverse possession. It specifically prioritizes the instances of its conceivable prospective misuse by the Government and other stakeholders, which could create serious economical as well as environmental perils, encompassing the society. While the research additionally highlights the possible surge in the claim for adverse possession, in consequence to the economic exploitation of the property. Furthermore, the author stresses on several methods by the means of which the government may impede the illogical claim for adverse possession with the concealed motive of economically exploiting the land at hand. Ultimately, it brings forth the

⁵ Sridevi Shanker, PRL Junior Civil Judge, *Adverse Possession Versus Right To Property*, pp 1- 15 (2020), available at <https://districts.ecourts.gov.in/sites/default/files/ADVERSE%20POSSESSION%20By%20Smt%20SRIDEVI%20SHANKER%20PrI%20JCJ%20SIRICILLA.pdf> last visited 24 November, 2022.

concept of “sole ownership” which propounds for making the original owner, as the sole owner of a property, with no room for someone external to the property, to plead for adverse possession. Where no credible alterations are made to the existing the same would be a trump card, being used to an ace in the hole.⁶

Pradeep Kumar Mani, in his research article titled “Adverse Possession: A Critique” (2020), criticizes the conception of adverse possession, as having been sprung up from a cracked foundation. While considering it as amalgamation of law and fact, it is blamed to have evolved in a state of absolute inconsistency. With the times changing, coupled with a rapid increase in the course of development, the archaic statutes are also required to be altered in accordance with the changing needs and conditions. While the Courts have also claimed for the adverse possessions to be hostile in nature, the act per se is paradoxical. While the law-making authorities, including the Parliament may strive for extending the period after which the possession may be claimed, which may subsequently decrease the burgeoning claims, thereby calling for rationality and legitimacy in association with the land to be acquired⁷.

⁶ Arnab Ghai, Puneet Maharishi, *Analysis of the Concept of Adverse Possession*, *IJLLR* 2(1) (2021), accessed on <https://www.ijllr.com/post/analysis-of-the-concept-of-adverse-possession>, last visited 25 November, 2022.

⁷ Pradeep Kumar Mani, ‘Adverse Possession: A Critique’ 43 (Ujala) (2020), available at <https://ujala.uk.gov.in/files/ch06.pdf>, last visited 22 November 2022

3. The Doctrine of Adverse Possession: The Anatomy Of The Legal Theft Of Land

States across continents have been in a frenzy, when times have stated for the glance at the impersonated claim for the possession under the pretext of having occupied the property for a specific period of a significantly long time. Adverse possession is seldom connoted with one's own property. It has incessantly been until the doomsday, with regard to the possession of the property belonging to another. The state of affairs becomes such, that the legitimately true owner loses his rights over the property, owing to the failure to act over vacating any trespassers or individuals who have occupied the said property, without any legal, logical and rational basis, within a stipulated statutory period. Upon the lapse of the stated statutory period, the legitimate owner is thwarted from attempting to initiate any legal proceeding to retrieve his property. Consequently, the encroacher gains an authority and title over the property, which is apparently legal.

This hostile takeover has its roots in the Doctrine of Laches, wherein neglecting or abandoning to do an act, that which ought to have been done, could possibly result in being barred from further proceeding toward pursuing a claim for the same. Thus, an unreasonable delay without a logical justification, could result in a disadvantageous situation, as posed by the means of adverse possession. Therefore,

adverse possession regard prescriptive rights of an individual, in relation to the use of the land of another⁸.

While the Law of Property, i.e., the Transfer of property Act of 1882 does not explicitly mention the doctrine of adverse possession, owing to its irrelevancy in the same; the practice of and the action for adverse possession has been stipulated in the Limitation Act of 1963. This specific statute provides for the timescales within which an action may be taken for the breach of law.⁹

In India, when an individual does not take an action for the recovery of the possession of his land, for a consecutive period of 12 years, the present right ceases to exist with the property being up in the air. The same has been stipulated under Article 65 in the Schedule I of the Act. Withal, the doctrine of adverse possession states that the particular land or property in state cannot be suspended in abeyance, indefinitely. Thus, with the rightful owner dodging his rights owing to the inaction, another individual must be regarded as the owner of the land. Wherefor, the prescribed period of 12 years, commences immediately when the possession becomes averse to the true owner.¹⁰

⁸ Brian Gardiner, 'Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws' (1997) 8(1) Indiana International & Comparative Law Review 120, accessed at <https://journals.iupui.edu/index.php/iiclr/article/view/17807>, last visited 24 November, 2022.

⁹ Limitation Act of 1963

¹⁰ Sridevi Shanker, PRL Junior Civil Judge, *Adverse Possession Versus Right To Property*, pp 1- 15 (2020), available at <https://districts.ecourts.gov.in/sites/default/files/ADVERSE%20POSSESSION%20>

Furthermore, Section 3 of the Act entails that a suit cannot be filed once the limitation period for the said suit has ended, thereby extinguishing the right of the property owner to file a suit.¹¹

Subsequently, Section 27 of the Act expands upon the consequences of not filing a suit for possession of the property, by extinguishing the right to ownership of such property. These provisions together formulate the source from which the right to adverse possession emanates.

The very act of possession by such an antagonistic means appears to be hostile and irrational. However, the Privy Council, in *Perry v. Clissold* (1907)¹², had upheld the indisputability about the annihilation of a legitimate owner's right to the property, in the absence of an assertion over his title through the operation of law, within the prescribed period of time; with the possessory owner being conferred the absolute title over the property. Although not binding on the Supreme Court's decisions, the case had been upheld by the judges in the case of *Nair Service Society v. K.C. Alexander* (1968)¹³. The inimical decision has been applauded by the multitude, howbeit, as every statute has its own innate loopholes, which are prone to be contrived in a maleficent

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¹¹ *Id* 5

¹² *Perry v Clissold* (1907) AC 73, para 79

¹³ *Nair Service Society Ltd v KC Alexander* AIR 1968 SC 1165

manner, the doctrine of adverse possession has been metamorphosing with its possessed maleficence.

A striking feature, with regard to adverse possession is the intention to possess the property or the *animus possidendi*. Additionally, the possession must be known to the world, including the actual owner. Such a notoriety in the possession, places the owner on notice of the land being lost unless he or she seeks to recover possession of it within a certain time. Additionally, such possession must be exclusive in nature, with any physical improvements and modifications in the property, being the traces, holding an evidentiary value of the exclusive possession.

Moreover, the stated possession must imply the dispossession of the actual owner. Dispossession by the purported pseudo owner, with the intent to acquire the property for themselves, would be considered admissible for the purpose of adverse possession. However, a mere non-usage by the original owner does not constitute dispossession. Dispossession must be actual with the person dispossessing holding a physical control and exercise of ownership, thereby marking him as an occupier.

While the pleading and claim for adverse possession, is an amalgamation of the question of law and the question of fact. The same had been regarded by the court in the case of *Karnataka Board of Waqf v. Government of India and Ors.* (2004)¹⁴, requiring for certain details

¹⁴ Karnataka Board of Wakf Vs Govt. of India (2004)10 SCC 779

pertaining to the possession, include the date and nature of the same; the period of continued possession and its knowledge to the original owner of the party.

The plea for adverse possession goes against the principles of equity and succeeds upon ousting the rights of the true owner. Moreover, the plea over the title and the adverse possession are inconsistent with each other, with the latter commencing only when the former is renounced. Additionally, the burden of proof is upon the individual intending to claim the title by the means of adverse possession. Consequently, as stipulated under Articles 142 and 144 of the Act, the plaintiff to the suit, being the original owner of the property, was required to prove the authoritative title and physical possession of the property in hand for an antecedent period of 12 years. Nevertheless, as of the present scenario, the onus of proving possession has shifted to the person claiming title by the means of adverse possession.¹⁵

Ultimately adverse possession is seen to have imbibed the spirit of the equitable principle, through *Nec vi, nec clam, nec precario*; i.e., without force, without secrecy, without permission. The same had been followed in the case of *S M Karim v. Mst. Bibi* (1964)¹⁶.

4. Adverse Possession: A Conundrum or A Panacea?

¹⁵ Takwani C. K. *Civil Procedure With Limitation Act*, (2017)

¹⁶ *S M Karim v Bibi Sakina* AIR 1964 SC 1254, para 5

Being a corollary to the statute of limitations, adverse possession is entrenched to the fact that older claims become harder to prove, with the loss of documents, faded memories and with the quietus having transpired upon the witnesses. If a claim would never expire, then a legitimate buyer of property may find herself having to defend against a claim that an action or event that happened 30 or 40 years ago should deprive her of the property that she possesses today. Since it is unfair to expect people to preserve evidence forever and to always anticipate that any action in the past could give rise to a claim today, the law puts a time limit on most types of claims. In addition, the “true” owner of the property is obviously quite negligent for allowing a lengthy period of limitations to expire before taking an action to protect his or her property.¹⁷ While this brings forth the element of equity in adverse possession, the provision is treacherous, gnarled with loopholes, that would possibly be used to the disadvantage of the original owner.

Owing to the paucity in the presence of land, the title of a property must not remain estranged for an exceptionally long period of time. It must thus be in the claim of an individual, with the subsequent benefit to the society. While it only seems justiciable to make the protector and the occupant of the land, as the owner, having resided on the same, for a significantly long period of time. With the original owner not having been vigilant enough to reclaim his rights over the property, the law may accordingly, not come to his rescue. Thus, adverse possession

¹⁷ Foundations of Law, *Acquisition by Adverse Possession (2021)*, accessed at <https://lawshelf.com/coursewarecontentview/acquisition-by-adverse-possession/>, last visited 25 November, 2022.

seeks to correct errors in conveyancing. Penultimately, the disputes such as these, ought not to continue for eternity, thereby providing for a bar, through the limitation period.¹⁸

However, prone to exploitation, owing to the scanty documentation and registration of property in India, owners, specifically in the rural India, have been ousted of their legitimately owned land, on which they have thrived upon for decades together. These owners have been defenceless, being at the mercy of the authoritative state parties, such as the Bodo tribe, who had been dislocated from their traditionally owned land.¹⁹

Nevertheless, this legalized theft of land has been condemned by jurists and judges across territories, owing to the irrational basis and unjust enrichment. The gatekeeper and watch dog of the legislation has become adventurous in enforcing the laws and thereby amassing properties.

The Supreme Court in *Annasaheb vs B.B.Patil* (1995)²⁰, has termed adverse possessions to be hostile takeovers, with the legitimate owner being denied of his claim to the title in his property. The fact that the courts have been reiterating the notion of mere possession not

¹⁸ Pradeep Kumar Mani, 'Adverse Possession: A Critique' 43 (Ujala) (2020), available at <https://ujala.uk.gov.in/files/ch06.pdf>, last visited 22 November 2022

¹⁹ Chandan Kumar Sharma, 'Assam: Tribal Land Alienation' (2001) 36(52) Economic and Political Weekly accessed at <https://www.epw.in/journal/2001/52/commentary/assam-tribal-land-alienationgovernments-role.html>, last visited 25 November, 2022.

²⁰ *Annasaheb vs B.B.Patil* AIR 1995 SC 895

amounting to adverse possession, while the possession has expressly been adverse to the real owner of the property. Further, in case of the claim of ownership by adverse possession, the same ought to be made only by the means of a defence, when arrayed as a defendant, in the proceedings against them. Inasmuch, when the plaintiff is found to be in adverse possession, they may not seek a declaration to the effect that such possession would be matured into ownership. Thus, the plea for adverse possession is solely available to the defendant, against the plaintiff, as mentioned under Article 65 of the Limitation Act of 1963²¹.

Moreover, it is germane enough to consider how the right to property has evolved as a human right. While the Indian Law of adverse possession has been borrowed from that of the English Law, the latter has undergone significant changes, since its inception, transforming and modifying based on the changing times and needs. As a matter of fact, property has been regarded as a crucial human right, according to the English laws. However, despite developing socially, economically and politically, the Indian law is very much stuck in the 20th century. Although the right to property is not a fundamental right, it is a Constitutional right as guaranteed under Article 300. Withal, being a human right in the welfare state, the right to proper housing is also guaranteed by the United Nations in the Universal Declaration of Human Rights, under Article 17. The same ought not to be deprived by, except in accordance with the relevant provisions as established by

²¹ Limitation Act of 1963

the law.²² Nevertheless, what is murky is the morality and equity in the procedure that has been established through adverse possession. The practice is undoubtedly pseudo straight in nature and is a misnomer of what it originally seeks to achieve.

Furthermore, the law appears to be a threat to the existence of the privately owned lands, that have been in place to protect and preserve the natural ecosystem. The pre- development ideology that is engraved in the law is seen to have consumed the natural land of the inhabitants, thereby, not only resulting in the loss of their lands but also in the exhaustion of such resources.

5. Adverse Possession: Time To Re- Define.

The Dire Need For An Overhaul.

While the law-making authorities may find it to be a task to endeavour out and decipher if the law on adverse possession of property is a defender of rights or perhaps a sword that is struck hard on its endemic owner. By the same token, the people of the land are ineluctable with no two say in the ludicrous nature of the law, which ought to be quashed. The law is but a an outlandish gray matter, that has been deviating from its original ideal of preventing the abeyance of land, while permitting men to claim their right of “seisin” from the ancestry

²² Bhalla, Manav *Adverse Possession: Right or Theft? - Analysis of Property Law*, JCLJ pp 77- 85, (2021) available at <https://www.juscorpus.com/wp-content/uploads/2021/06/17.-Manav-Bhalla.pdf> last visited 25 November, 2022.

or that by freehold, further, allowing a squatter to assert his possessory rights; to having evolved in favour of such squatters and legally validating their action.²³

For the Supreme Court, in *Hemaji Waghaji vs. Bhikhabhai Khengarbhai* (2009)²⁴ and *State of Haryana Vs. Mukesh Kumar* (2011)²⁵, have called for the reconsideration of the law on adverse possession, describing it to be disproportionate, irrational and illogical, while being prejudicial toward the real owner. The practice has strongly been perceived to be a machinery for obtaining the title to a property that may not legitimately belong to one.²⁶

The efficacy of laws and legal principles, when reconciled against the values of the legal system, which nourishes it, must tend to stabilize the platform that fuels its existence by serving the communal welfare and meeting the ends of justice. The sanctity of a legal system which infatuatedly fervours to balance rights with wrongs, justice with inequity, and innocence with guilt, discovers itself waning from the illumination of its inherent values with nothing but futile endeavours surrounding its setback and instances of travesties venturing around to

²³ Pradeep Kumar Mani, 'Adverse Possession: A Critique' 43 (Ujala) (2020), available at <https://ujala.uk.gov.in/files/ch06.pdf>, last visited 22 November 2022

²⁴ *Hemaji Waghaji v Bhikhabhai Khengarbhai* AIR 2009 SC 103

²⁵ *State of Haryana v Mukesh Kumar* 2011 (10) SCC 404

²⁶ Bhalla, Manav *Adverse Possession: Right or Theft? - Analysis of Property Law*, JCLJ pp 77- 85, (2021) available at <https://www.juscorpus.com/wp-content/uploads/2021/06/17.-Manav-Bhalla.pdf> last visited 25 November, 2022.

hinge itself with the central notion of equity.²⁷ This is the crude satire of the doctrine of adverse possession. In a bid to balance the competing considerations, this principle adopts a defensive approach towards the interests of a patient possessor against those of a tardy owner. Here, the right to ownership in land has been regarded by *res communis*.²⁸

Owners are typically deprived of their land, through the operation of the domestic law on adverse possession, which contravenes Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."²⁹ The courts around the world are taking an unkind view towards statutes of limitation overriding property rights.

²⁷ Journal On Property Law, (1), pp- 75 (2015), accessed at <https://www.banthialawfirm.com/Journal/PropertyLawJournalV2.pdf>, last visited 25 November, 2022.

²⁸ Sanjay Jog, Law Commission seeks views on fate of Adverse Possession, BUSINESS STANDARD (2012), accessed at http://www.business-standard.com/article/economy-policy/law-commission-seeks-views-onfate-of-adverse-possession-112090902015_1.html last visited 25 November, 2022.

²⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, accessed on <https://www.unhcr.org/4d93501a9.pdf>, last visited 25 November, 2022.

Adverse possessors have appeared to be the reapers of a bundle of competing rights, as against the registered owners. Mere carelessness and sluggishness at the end of the real title holders must not cost them their property. The present law has thus proven to be unjust toward the registered owners. Accordingly, the law on adverse possession must be revamped, incorporating modifications that strike a balance between the competing interests and ensuring equity and justice in allocating property amongst the contradicting interests.

6. Suggestions and Conclusive Remarks

Possessions of men are often lent for times uncertain, being posed over demand, in the instant hour. As paradoxically incongruous it is, the doctrine of adverse possession, over the course of this research, has sought to induce the wrong-doer with rewards of the property, while punishing the real owner by depriving them of their own property. A society close to utopianism would undoubtedly assert the converse of this scenario. Although not proximate enough, the need of the hour, is an urgent modification to the law on adverse possession. The existing law is wholly irrational, lacking a concrete foundation. Laws must not seek to benefit individuals who venture out to acquire property in a cloak-and-dagger manner. The legislative authorities must alter the law by doing away with adverse possession with a malafide intention. Priority must be given to individuals with an established authority and association with the land. While registration and documentation, together with sole ownership, would go a long way in thwarting

illegitimate owners proceeding to claim title of possession. Furthermore, the limitation period for claiming the land could be extended up to 30 – 40 years. This would ensure that only most passively acquiescent of the owners would lose their title to the property. Additionally, any acquisition without a just compensation, goes against the principles of equity. Thus, adverse possession must entail a compensatory amount over the acquisition of the property, which may be mutually agreed up on by both the parties. Lest a property be detached from its owner; the laws must attempt to assist the real owners in protecting their property from unreasonable turpitude invasions. Not all instances of delay and inaction can be rooted to a supine engagement at the owner's end. This seldom amounts to sufficient reasonable justification of depriving the owner of his land. It is about time to overhaul the doctrine of adverse possession, according to the evolving demands of the socio- economic condition of the society and consequently scrutinize each case based on the factual circumstances, thereby, deciding on settling the property interests on the basis of equity and humanitarianism.

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