



## Adverse Possession

**For Prelims:** [Law Commission of India](#), [Adverse possession](#), Limitation Act, 1963, [Supreme Court](#), Hammurabi Code.

**For Mains:** Major Provisions of the Limitation Act, 1963, Historical Development and Legal Framework of Adverse Possession.

### Why in News?

The **22<sup>nd</sup> Law Commission's** recent report provides a thorough examination of **adverse possession and its implications in property law and** recommended that no changes are necessary in the existing provisions under the **Limitation Act of 1963**.

- The concept of adverse possession stems from the idea that **land must not be left vacant but instead, be put to judicious use.**

### What is Adverse Possession?

- **About:**
  - [Adverse possession](#) refers to the acquisition of property through hostile, continuous, uninterrupted, and peaceful possession.
  - The concept aims to prevent long-standing doubts over land ownership and to benefit society by allowing someone to make use of idle land left by the owner.
    - It also provides protection to **individuals who have regarded the occupant as the rightful owner of the property.**
- **Historical Development and Legal Framework:**
  - **Historical Basis:** The concept of "**title by adverse possession**" dates back to the **Hammurabi Code in 2000 BC.**
    - Its development continued through statutes of limitation in England, with the **Property Limitation Act of 1874 being a significant milestone.**
  - **Introduction to India:** The law of limitation was introduced in India through the "**Act XIV of 1859**" and underwent significant changes with the enactment of the **Limitation Act in 1963.**
- **Major Provisions of the Limitation Act, 1963:**
  - **Burden of Proof:** The **1963 Act shifted the burden of proof of adverse possession to the claimant**, thereby strengthening the position of the true owner.
  - **Acquisition of Ownership:** 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.**
    - To claim adverse possession, the possession must be open, continuous, and adverse to the rights of the true owner for the required statutory period.
- **Main Ingredients of Adverse Possession:**
  - The [Supreme Court](#), in the **2004 case of Karnataka Board of Wakf v Government of India**, outlined the essential elements for proving adverse possession.

- Claimants must establish the **date of possession, the nature of possession, awareness of possession by the true owner, the continuity of possession,** and that the possession was open and undisturbed.
- In the 1981 ruling in ***Kshitish Chandra Bose vs. Commissioner of Ranchi***, the **top court delineated the requirements of openness and continuity.**
- **Criticism and Recommendations:**
  - **Criticism of Current Law:** In the **2008 case of Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others**, the Supreme Court criticised adverse possession as being unduly harsh on the true owner and benefiting dishonest trespassers.
    - The court urged the **government to reconsider and amend the law**, recognizing the necessity for a fresh perspective on adverse possession.
  - **Reference to Law Commission:** In response to the court's recommendation, the [Ministry of Law and Justice](#) referred the matter to the Law Commission in **2008** for examination and a subsequent report.

## What are the Arguments Against Adverse Possession?

- **Promotes False Claims:** Adverse possession **promotes false claims** and burdens the judicial system with avoidable litigation.
- **Lack of Consent:** Adverse possession allows someone to acquire property without the consent or knowledge of the true owner.
  - This is considered unfair and unethical, as it disregards the owner's rights and denies them the opportunity to make decisions about their own property.
- **Inequitable Outcome:** Adverse possession can lead to **unjust outcomes, especially when the true owner is unaware of the adverse possessor's occupation.**
  - The true owner may suddenly discover that their property has been taken away by someone who had no rightful claim to it, resulting in a loss of property and often emotional distress.

## What is Law Commission of India?

- The Law Commission of India is a **non-statutory body** constituted by the Government of India from time to time, with **definite terms of reference to carry out research in the field of law.**
  - It works as an **advisory body to the Ministry of Law and Justice.**
  - The **first Law Commission of independent India was established in 1955** for a three-year term.
- The **Law Commission of India has submitted 277 reports so far** on various topics ranging from civil law, criminal law, constitutional law, family law, personal law, environmental law, human rights law, etc.
- It is currently in its 22nd term and its chairman **is Justice Rituraj Awasthi** (Former Chief Justice of Karnataka HC)

[Source: IE](#)