



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

The Paradox of Adverse Possession in India: Property Rights, Judicial Inconsistency, and the Need for Reform

Adarsh Sahu¹, Ashmit Chouhan², and Sharad Khemka³

National Law Institute University, Bhopal

ABSTRACT :

Adverse possession occupies an uneasy place in the law of property. It allows a person who has occupied land without the owner's consent for the prescribed period to resist, and in some circumstances to perfect, a claim to title, and it does so at the expense of an owner whose only fault may be a failure to police his land in time. This paper examines how Indian law has structured, applied and justified that doctrine, and whether the present settlement can be defended in a constitutional order that treats property as a right under article 300A of the Constitution. Using a doctrinal and comparative method, it traces the statutory scheme in the Limitation Act 1963, the judicial formulation of the elements of adverse possession from *Karnataka Board of Wakf v Government of India* to *Ravinder Kaur Grewal v Manjit Kaur*, and the Supreme Court's repeated expressions of unease about the doctrine's consequences. It then compares the Indian position with that of England and Wales, where Parliament responded to *J A Pye (Oxford) Ltd v Graham* and the Strasbourg litigation that followed by replacing limitation-based extinction with a notice-and-objection procedure for registered land in the Land Registration Act 2002. The paper argues that Indian law suffers from an unstable mental element, an unsettled relationship with state property, and the absence of a registration system capable of alerting owners to competing claims. It concludes by recommending statutory codification of the elements of the doctrine, a clear legislative bar on pleas of adverse possession by the State against private owners, a graduated and notice-based model for digitised records, and a compensatory mechanism for deliberate occupiers.

Keywords: *adverse possession; limitation; article 300A; title registration; Limitation Act 1963; Land Registration Act 2002*

INTRODUCTION: THE RESEARCH QUESTION

Land outlasts its owners, and the law must therefore decide not only who owns it but for how long a claim of ownership may be asserted against a person who has, in the meantime, treated the land as his own. Every mature legal system answers that question through some rule of limitation or prescription. The common-law answer is adverse possession, a doctrine under which a person who occupies land without the owner's consent for the statutory period acquires an answer to the owner's claim and, in many systems, a title of his own. In India that answer is assembled from the Limitation Act 1963, which bars suits for the recovery of immovable property after twelve years in the case of private owners and thirty years in the case of the State, and which provides that on the expiry of the period the owner's right is extinguished.¹

The doctrine is controversial at the level of first principle. It permits a wrongdoer to profit from a continuing wrong, and it penalises an owner whose only fault may be inattention. The Supreme Court of India has said as much. In *Hemaji Waghaji Jat v Bhikhabhai Khengarbhai Harijan* the Court recorded its discomfort with a rule that can strip a true owner of valuable land in favour of a trespasser and invited the legislature to reconsider the law.² Yet the Court has continued to apply the doctrine, and in *Ravinder Kaur Grewal v Manjit Kaur* a three-judge bench confirmed that title acquired by adverse possession can found an affirmative claim as well as a defence.³ The result is a body of law in which judicial doubt about the doctrine's morality coexists with firm adherence to its operation.

This paper asks three questions. First, what must an occupier establish under Indian law, and how coherently have the courts articulated those requirements? Secondly, how does the constitutional status of property under article 300A of the Constitution of India bear on the doctrine, particularly where the State is either the claimant or the victim of adverse possession? Thirdly, what can Indian law learn from the reforms that England and Wales adopted for registered land after the House of Lords decided *J A Pye (Oxford) Ltd v Graham*⁴ and the case was carried to Strasbourg?⁵

The method is doctrinal and comparative. England and Wales are chosen as the comparator because the two systems share a common-law inheritance and because the English reform process produced an unusually full body of reasoned law reform material, notably the Law Commission's consultative

¹ Limitation Act 1963 (India) s 27 and sch, arts 64, 65 and 112.

² *Hemaji Waghaji Jat v Bhikhabhai Khengarbhai Harijan* (2009) 16 SCC 517.

³ *Ravinder Kaur Grewal v Manjit Kaur* (2019) 8 SCC 729.

⁴ *J A Pye (Oxford) Ltd v Graham* [2002] UKHL 30, [2003] 1 AC 419.

⁵ *J A Pye (Oxford) Ltd v United Kingdom* (2008) 46 EHRR 45 (GC) App no 44302/02.

document and final report on land registration.⁶⁷ The paper is confined to adverse possession of corporeal immovable property. It does not address acquisition of easements by prescription, which is governed in India by the Indian Easements Act 1882,⁸ nor customary or community tenures, which raise distinct questions.

The argument proceeds in nine further parts. Part 2 sets out the conceptual foundations of the doctrine and the competing justifications for it. Part 3 maps the Indian statutory framework. Part 4 analyses the elements of adverse possession as the Supreme Court has formulated them, and Part 5 considers the question whether the doctrine operates as a sword or only as a shield. Part 6 examines the doctrine in relation to the State and article 300A. Part 7 offers the comparative analysis of England and Wales. Part 8 critically evaluates the Indian position, Part 9 offers recommendations for reform, and Part 10 concludes.

CONCEPTUAL FOUNDATION OF ADVERSE POSSESSION

1. Possession as the root of title

The common law has never treated ownership as an absolute concept. Title is relative, and the person with the better right to possession prevails. It followed from this that a possessor, whatever the quality of his title, held something that the law would protect against everyone except a person who could show a superior right. The principle is stated in *Asher v Whitlock*, where a possessor's interest was held to be good against all but the true owner,⁹ and it was applied to land by the Privy Council in *Perry v Clissold*, which treated the possessor of land as having a title good against everyone except the true owner and as acquiring an indefeasible title once the true owner's remedy was barred.¹⁰ Pollock and Wright's classic study of possession in the common law, and Holmes's discussion of possession and ownership, supplied the intellectual setting in which these cases were decided.¹¹

Adverse possession is the point at which this relativity of title is carried to its conclusion. Because the owner's remedy against a possessor is time-limited, and because the limitation rule extinguishes the right as well as the remedy, the possessor's relative title hardens, at the end of the period, into one that no one can displace. Indian courts have recognised that possession is an independent source of legal protection and that a person in settled possession may maintain an action against a trespasser without proving title.¹² The doctrine of adverse possession is the long-stop of that regime.

2. Justifications

Four justifications are commonly offered. The first, and the oldest, is repose. Limitation rules exist because claims become harder to adjudicate as evidence decays, and because a legal system has an interest in bringing disputes to an end. This justification supports limitation of the owner's remedy but does not, by itself, explain why the possessor should acquire title rather than merely a defence. The second is the labour or use-based justification, which draws on the Lockean idea that a person who mixes his effort with land acquires a claim in it.¹³ On this view, land that is cultivated or built upon by an occupier is put to better use than land left idle by a remote owner, and the law should favour productive use.

The third justification is based on personhood. Radin argued that property bound up with a person's identity, such as a home, deserves stronger protection than property held purely as a fungible asset.¹⁴ Applied to adverse possession, the argument suggests that an occupier who has lived on and built a life around a plot for many years may have a stronger moral claim than an owner who has never visited it. The fourth is the security-of-title justification advanced by Ballantine, who argued that the doctrine protects the stability of titles generally by curing defects that would otherwise remain latent indefinitely, so that a purchaser can rely on long possession as evidence of ownership.¹⁵ Merrill refined the economic version of the argument, suggesting that adverse possession operates as a liability rule that corrects for the high costs of bargaining between a distant owner and an occupier who has invested in the land.¹⁶

⁶ Law Commission and HM Land Registry, *Land Registration for the Twenty-First Century: A Consultative Document* (Law Com No 254, 1998).

⁷ Law Commission and HM Land Registry, *Land Registration for the Twenty-First Century: A Conveyancing Revolution* (Law Com No 271, 2001).

⁸ Indian Easements Act 1882 s 15.

⁹ *Asher v Whitlock* (1865) LR 1 QB 1.

¹⁰ *Perry v Clissold* [1907] AC 73 (PC).

¹¹ Frederick Pollock and Robert Samuel Wright, *An Essay on Possession in the Common Law* (Clarendon Press 1888); Oliver Wendell Holmes Jr, *The Common Law* (Little, Brown and Co 1881) lecture VI.

¹² *Nair Service Society Ltd v K C Alexander* AIR 1968 SC 1165.

¹³ John Locke, *Two Treatises of Government* (Peter Laslett ed, CUP 1988) bk II ch V.

¹⁴ Margaret Jane Radin, 'Property and Personhood' (1982) 34 Stan L Rev 957.

¹⁵ Henry W Ballantine, 'Title by Adverse Possession' (1918) 32 Harv L Rev 135.

¹⁶ Thomas W Merrill, 'Property Rules, Liability Rules, and Adverse Possession' (1984) 79 Nw U L Rev 1122.

3. Criticisms

Each justification attracts a response. The repose rationale proves too little, since it explains a limit on the remedy but not the transfer of title. The labour and personhood rationales presuppose an occupier who has in fact developed the land or made it a home, yet the doctrine applies equally to an occupier who has done nothing more than hold a strip of unused land. Waldron's account of private property as a system of exclusive rights emphasises the point that the value of ownership lies partly in the owner's freedom to choose when and whether to use his land; a rule that penalises an owner for non-use sits uneasily with that conception.¹⁷ The economic rationale, for its part, has been turned in opposite directions. Fennell argues that the efficiency case supports rewarding even the knowing occupier, because the law should not make the doctrine depend on a state of mind that is hard to prove and that deters beneficial use.¹⁸ Others respond that rewarding deliberate trespass undermines the exclusion rights on which the whole property system depends.

THE STATUTORY TEXT AND UNDERSTANDING

Two constitutional provisions frame the doctrine. Article 300A, inserted by the Constitution (Forty-fourth Amendment) Act 1978 when the fundamental right to property was removed from Part III, provides that no person shall be deprived of property save by authority of law.¹⁹ The Supreme Court has held that the expression 'authority of law' requires a valid law enacted by a competent legislature, and that executive action unsupported by such a law cannot deprive a person of property.²⁰ The second provision is entry 13 of the Concurrent List, which assigns civil procedure, including limitation, to both Parliament and the State legislatures.²¹ Parliament has therefore full competence to amend the Limitation Act 1963 for the whole of India, an important point for the reform proposals made below.

The Limitation Act 1963

The central statutory provisions are collected in Table 1. Section 3 of the Limitation Act directs that a suit instituted after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Article 65 prescribes twelve years for a suit for possession of immovable property based on title, and provides that the period runs from the time when the possession of the defendant becomes adverse to the plaintiff. Article 64 prescribes the same period for a suit for possession based on previous possession and not on title, running from the date of dispossession. Article 112 prescribes thirty years for suits by or on behalf of the Central Government or a State Government, running from the time when the period would begin to run against a like suit by a private person.²²

The effect of section 27 is that the owner's substantive right, and not merely the remedy, is lost once the period expires. Because the extinguishment of one party's right necessarily leaves the property without any other claimant who can resist the occupier, Indian courts have long accepted that the occupier acquires a title by operation of law. That position was confirmed in *Ravinder Kaur Grewal*, discussed in Part 5.²³ The Act also contains provisions that postpone the running of time, of which the most important for present purposes is section 6, which extends the period for a person under a legal disability such as minority or unsoundness of mind when the right to sue accrues.²⁴

THE CRITICAL DISTINCTION: INVOKING SECTION 9 VERSUS BEING BOUND BY IT

The statute prescribes a period but does not define adverse possession. The elements have been supplied by the courts, and the Supreme Court's formulation has remained fairly stable even if its application has varied. Four elements can be identified: factual possession accompanied by the requisite intention, hostility to the owner's title, open and continuous possession for the full statutory period, and proper pleading and proof.

Factual possession and the intention to possess

The leading statement is that of the Supreme Court in *Karnataka Board of Wakf v Government of India*, where the Court said that a person who pleads adverse possession must show on what date he came into possession, what the nature of his possession was, whether the factum of possession was known to the other party, how long the possession continued, and whether it was open and undisturbed.²⁵ The Court there also stated the classical requirement that possession must be adequate in continuity, in publicity and in extent, so as to show that it is possession adverse to the competitor, and it spoke of possession that is *nec vi, nec clam, nec precario*, that is, not by force, not by stealth and not by permission.

The requirement of an intention accompanying the physical act is expressed in Indian decisions through the Latin phrase *animus possidendi*. In *T Anjanappa v Somalingappa* the Court held that mere possession, however long, does not by itself confer title, and that the possession must be open and hostile enough to be capable of being known by the parties interested in the property.²⁶ This accords with the English formulation by Slade J in *Powell v*

¹⁷ Jeremy Waldron, *The Right to Private Property* (Clarendon Press 1988).

¹⁸ Lee Anne Fennell, 'Efficient Trespass: The Case for "Bad Faith" Adverse Possession' (2006) 100 Nw U L Rev 1037.

¹⁹ Constitution of India 1950 art 300A; Constitution (Forty-fourth Amendment) Act 1978.

²⁰ *K T Plantation Pvt Ltd v State of Karnataka* (2011) 9 SCC 1.

²¹ Constitution of India 1950 sch VII, list III, entry 13.

²² Limitation Act 1963 (India) s 3 and sch, arts 64, 65 and 112.

²³ *Ravinder Kaur Grewal* (n 3).

²⁴ Limitation Act 1963 (India) s 6.

²⁵ *Karnataka Board of Wakf v Government of India* (2004) 10 SCC 779.

²⁶ *T Anjanappa v Somalingappa* (2006) 7 SCC 570.

McFarlane, which requires both a sufficient degree of physical custody and control and an intention to exercise such custody and control on one's own behalf and for one's own benefit,²⁷ a formulation approved by the Court of Appeal in *Buckinghamshire County Council v Moran*.²⁸ Both systems therefore start from the proposition that occupation of land is not enough: the occupier must also act as the person who is entitled to deal with the land.

Hostility and the absence of permission

The second element is hostility, which the Indian cases express by requiring that the possession be adverse to the title of the true owner. Possession that is derived from the owner's licence, or from a tenancy or a relationship of trust, is not adverse, because it is consistent with the owner's title. Time begins to run only when the occupier asserts a claim inconsistent with that title and brings the assertion to the owner's attention, or when the nature of the occupation makes the claim obvious. The corresponding English rule is the same in substance: the intention to possess on one's own behalf, which *Powell* and *Moran* require, cannot coexist with occupation that depends on the owner's permission.²⁹

The requirement of hostility has been read in Indian law to imply some awareness that the title belongs to another. The consequence is that the occupier who claims to have honestly believed himself the owner may find his position more difficult than the occupier who deliberately set himself up against the owner. This feature, to which Part 8 returns, is anomalous and is difficult to reconcile with the moral intuitions which the Supreme Court itself invokes when it criticises the doctrine.

Continuity, publicity and the starting point

Possession must also continue without interruption for the entire period. A single act of entry, or sporadic acts of use, will not suffice, and the owner's resumption of possession, or the institution of a suit that is not barred, stops the clock. The publicity requirement serves the owner's interest in being given a fair opportunity to discover the adverse claim and to react to it; it is the closest that the common-law doctrine comes to a notice requirement. In *Anjanappa* the Court stressed that the claimant must show that his possession was open and hostile, so that the true owner could have discovered the encroachment with reasonable diligence.³⁰ The starting point is fixed by article 65, which counts the twelve years from the time when possession becomes adverse, and the question when that moment arrived is a question of fact that the claimant must establish.

Pleading and proof

The final element is procedural. A person who claims title by adverse possession must plead the plea and prove the facts on which it rests. In *Chatti Konati Rao v Palle Venkata Subba Rao* the Court emphasised that the plea must be specific and that the claimant bears the burden of proving each of the necessary facts.³¹ The burden is a heavy one, since the claimant must establish the date on which his possession became hostile and the continuity of that possession thereafter, and the courts have refused relief where the pleading was vague or the claimant's account of his own entry was inconsistent with the plea. The courts have also treated the plea with some wariness because it sits awkwardly with a claim to ownership on other grounds, so that a party who asserts a title by purchase and in the alternative a title by adverse possession must take care to frame the second claim in a manner that does not concede the weakness of the first.

SWORD OR SHIELD

A long-running question in Indian law was whether adverse possession could be used only defensively, to resist a suit by the owner, or could found an independent action by the occupier. The orthodox view in some earlier decisions was that adverse possession is a shield, available when the owner sues, but that an occupier who is dispossessed after the period has expired must sue on his possession, not on the title that the period had given him. The difficulty with that view is that it denies effect to the very extinguishment that section 27 prescribes.

The Supreme Court resolved the question in favour of the occupier. In *Gurdwara Sahib v Gram Panchayat Village Sirthala*, the Court held that a person who has perfected his title by adverse possession can seek a declaration and an injunction and is not confined to defending himself,³² and in *Ravinder Kaur Grewal* a three-judge bench affirmed that approach. The Court reasoned that once the owner's right is extinguished under section 27, the occupier's title is complete and may be asserted against anyone, including a third party who dispossesses him, and that article 65 supplies the limitation for a suit based on that title.³³ The decision did not, however, silence the criticism of the doctrine voiced in *Hemaji*, and the Court's unease about the doctrine's effect on true owners has shaped its rhetoric on the subject without changing its outcome.

Two consequences follow. First, the occupier's title does not depend on a judicial declaration; it arises at the end of the period by operation of law, and a decree merely confirms it. Secondly, because title arises in this way, there is no moment at which the public record changes. A revenue entry or a registered conveyance will continue to name the former owner until the occupier obtains a decree and has it recorded, which creates a gap between the legal position and the apparent position. That gap is the root of several of the practical difficulties discussed in Part 8, since a purchaser from the record owner has no means of learning that the vendor's right was extinguished years earlier.

²⁷ *Powell v McFarlane* (1979) 38 P & CR 452 (Ch D).

²⁸ *Buckinghamshire County Council v Moran* [1990] Ch 623 (CA).

²⁹ *Powell* (n 31); *Moran* (n 32).

³⁰ *T Anjanappa* (n 30).

³¹ *Chatti Konati Rao v Palle Venkata Subba Rao* (2010) 14 SCC 316.

³² *Gurdwara Sahib v Gram Panchayat Village Sirthala* (2014) 1 SCC 669.

³³ *Ravinder Kaur Grewal* (n 3).

PRACTICAL IMPLICATIONS: WHAT THIS MEANS FOR PRACTITIONERS

The State as the owner against whom time runs

The 1963 Act treats the State differently from private owners. Article 112 gives the Central and State governments thirty years in which to sue for possession, and the period is counted from the time when it would begin to run against a private owner. The rationale is that public authorities hold land on behalf of the community, that their officers are not always positioned to detect encroachment, and that the loss falls ultimately on the public. The extended period nevertheless leaves public land exposed to long-term occupation, and the Supreme Court has recognised in several cases that a public body may lose its title to an occupier who satisfies the requirements of the doctrine. *Gurdwara Sahib* is an illustration, since it was a dispute with a village panchayat in which the Court accepted that an occupier could assert title acquired by adverse possession against a public body.³⁴

The State as the occupier

The more troubling situation is that in which the State takes possession of private land without following the process of acquisition and then, when the owner sues many years later, pleads adverse possession. The Supreme Court addressed this in *Vidya Devi v State of Himachal Pradesh*, where the State had taken possession of land for a road decades earlier without acquiring it. The Court rejected the State's plea of adverse possession, held that a welfare State could not appropriate the land of a citizen and then rely on the passage of time to cure its own illegality, and emphasised that the right to property, although no longer fundamental, retains the status of a constitutional right and a human right under article 300A.³⁵

The decision reasons from article 300A and the requirement of authority of law that the Court had articulated in *K T Plantation*.³⁶ The State may deprive a person of property only through a law, and executive entry without acquisition is not such a law. To allow the State to rely on a limitation provision after the event would be to give retrospective authority to what was unlawful when done. The reasoning is persuasive, but it also exposes an inconsistency in the law. A private trespasser who enters land without any lawful authority can obtain title after twelve years, whereas the State cannot do so even after thirty. The distinction rests on the special character of the State's constitutional obligations, not on any difference in the nature of the possession, and it suggests that the Court regards the State's wrong as more serious than that of a private trespasser. That is a defensible view but one that ought to be reflected in the statute, rather than being left to a line of decisions on the particular facts.

Does article 300A limit the doctrine itself?

It is natural to ask whether article 300A can be used to challenge the doctrine of adverse possession as a deprivation of property. The answer is likely to be negative. Section 27 of the Limitation Act is itself a law enacted by Parliament, and its operation therefore satisfies the requirement of authority of law. What the Constitution does not require is that the legislature adopt the best possible rule. The more productive use of article 300A is therefore as an interpretive principle, as in *Vidya Devi*, that guides the courts in deciding how the statutory rule is to be applied, particularly against the State, and as a source of normative argument in favour of legislative reform.

CRITICAL ANALYSIS OF INDIAN POSITION

An unstable mental element

The most striking feature of the Indian case law is the unsettled treatment of the occupier's state of mind. The formulations in *Karnataka Board of Wakf* and *Anjanappa* speak of hostility and of possession that is open to the owner's knowledge. These can be read in two ways. On the first reading, which accords with *Pye*, the law is concerned only with the objective character of the occupier's conduct and his intention to possess to the exclusion of all others; his belief about title is irrelevant. On the second reading, hostility entails a claim that is made with knowledge of the owner's superior right, so that the honest occupier who thinks he owns the land cannot satisfy the test. Some Indian judgments appear to adopt the second reading.

The second reading has the perverse consequence that it favours the deliberate over the innocent, and it conflicts with the sentiment, repeated by the Supreme Court in *Hemaji*, that the law should not reward the wrongdoer.³⁷ A court that wishes to discourage bad faith would more naturally ask for good faith, as many civil-law systems do by prescribing a short period for the possessor who acts in good faith under a colourable title and a longer period for others. Equally, a court that accepts Fennell's argument would prefer the objective test of *Pye*. The present Indian law adopts neither course with clarity, and the absence of statutory guidance leaves litigants uncertain about which standard applies.

The absence of a title register

The second difficulty is structural. India does not operate a system of title registration. Instead, the Registration Act 1908 provides for the registration of deeds, which gives notice of a transaction without guaranteeing the title that the transaction purports to convey. Revenue records, for their part, are

³⁴ *Gurdwara Sahib* (n 36).

³⁵ *Vidya Devi v State of Himachal Pradesh* (2020) 2 SCC 569.

³⁶ *K T Plantation* (n 20).

³⁷ *Hemaji* (n 2).

maintained for fiscal and administrative purposes, and the Supreme Court has said that mutation of a name in those records neither creates nor extinguishes title.³⁸ The Court has also emphasised that conveyances must be effected by registered instrument if title is to pass.³⁹

In such a system, the passage of time plays a larger role in establishing title than it does in a register-based system, because a purchaser who wishes to verify the vendor's title must investigate a chain of documents going back over a period and must otherwise rely on possession as evidence. This is an argument for the doctrine: it cures defects of title that cannot otherwise be investigated. But it is also an argument against its present form. The absence of a register that records possession-based claims means that an owner has no systematic means of learning that someone has set up a claim against him, and a purchaser has no systematic means of learning that a vendor's title has been extinguished. The English reform cannot simply be transplanted, because it presupposes a register, but the underlying logic, that extinction of title should be linked to notice to the owner, is relevant to any system that aspires to move towards title registration.

Protection of vulnerable and absent owners

The doctrine's costs are not distributed evenly. The owners most likely to lose land by adverse possession are those least able to monitor it: persons who live far from the land, heirs who hold undivided shares in a family property of which they have never taken possession, and owners who lack the resources to survey boundaries or to litigate. Section 6 of the Limitation Act protects persons under a legal disability, but it does not extend to the adult who is simply absent or unaware, and the equivalent protection for those who have been defrauded or mistaken is narrowly confined.⁴⁰ The point is analytical and not empirical, since the paper does not claim to measure the incidence of such losses, but it suggests that the case for a notice requirement is strongest precisely where owners are least capable of self-protection.

Constitutional coherence

The third problem is the inconsistency of treatment between the State as occupier and the private occupier, discussed in Part 6. *Vidya Devi* treats the State's own illegality as a bar to the plea of adverse possession and rests on the human-rights status of the right to property,⁴¹ but there is no equivalent protection for the private owner against a private trespasser, who may in the same circumstances obtain title. If the right to property is a human right deserving protection from the passage of time when the State is the wrongdoer, it is not obvious why it deserves no such protection when the wrongdoer is a private person. The answer may be that the State owes duties that a private person does not, and that is a respectable position; but then the same logic should be recognised in the legislative text and should extend to calibrating the State's own protection under article 112, in order to avoid both the over-protection of public land and the under-protection of private land.

RECOMMENDATIONS

The foregoing analysis supports five proposals for reform, which are offered as a package, because each addresses a different aspect of the same difficulty.

First, Parliament should codify the elements of adverse possession in the Limitation Act, by inserting an explanation to article 65 that defines adverse possession by reference to factual possession, an intention to possess exclusively, and the absence of permission, and that provides expressly whether the occupier's belief regarding title is relevant. A legislative definition would remove the interpretive uncertainty identified in Part 8.1. The choice between the *Pye* approach and a good-faith requirement is a policy decision, but the legislature should make it expressly. This paper favours a graduated model, with the present twelve-year period retained for the occupier who acts in good faith under a colour of title, and a longer period for the occupier who knows that the land belongs to another. A longer period for knowing occupiers responds to the moral objection without abandoning the doctrine's role in resolving long-standing occupation.

Secondly, the legislature should provide that the State may not plead adverse possession against a private owner in respect of land that it has taken without lawful acquisition. This would codify *Vidya Devi* and would convert a rule that now depends on the Court's reading of article 300A into a clear statutory rule. The provision should be accompanied by a re-examination of article 112, with a view to determining whether public land of a communal or public-utility character, such as grazing commons, roads and water bodies, warrants a longer or an absolute protection against private encroachment, since the loss of such land harms a community rather than an individual.

Thirdly, as land records are digitised and title registration extended, India should adopt a notice-based procedure for registered land modelled on the Land Registration Act 2002, so that an occupier who has completed the relevant period must apply to be recorded, the owner must be notified, and the application will be refused if the owner objects and takes the steps necessary to recover possession. The details would require adaptation, since the Indian record systems do not yet guarantee title, but a notice requirement is feasible even for a system that records possession and presumptive title. Because land is a State subject while the registration of deeds and the transfer of property other than agricultural land fall within the Concurrent List, the scheme would require co-ordination between Parliament and the States.⁴² The Law Commission of England and Wales' reasoning in its report on land registration offers a useful template for the policy analysis.⁴³

³⁸ *Sawarni v Inder Kaur* (1996) 6 SCC 223.

³⁹ *Suraj Lamp* (n 27).

⁴⁰ Limitation Act 1963 (India) ss 6 and 17.

⁴¹ *Vidya Devi* (n 39).

⁴² Constitution of India 1950 sch VII, list II, entry 18 and list III, entry 6.

⁴³ Law Com No 271 (n 7).

Fourthly, Parliament should consider a compensatory mechanism for the owner who loses land to a knowing occupier. Merrill's analysis suggests that a liability rule can reconcile the claims of the two parties, by allowing the occupier to take title on payment of a sum fixed by reference to the value of the land.⁴⁴ The proposal is controversial, since it converts the doctrine into a compulsory purchase by a private person, but it has the merit of ensuring that the owner is not left without any remedy, and it can be confined to cases of deliberate occupation where the moral objection to the doctrine is strongest. Fifthly, the protection afforded by section 6 of the Limitation Act should be reviewed. The existing categories of disability reflect a mid-twentieth century view of vulnerability, and the legislature should consider whether further categories, such as owners who have been absent from the jurisdiction for reasons beyond their control, ought to receive the benefit of an extended period. Until Parliament acts, the courts should maintain a strict approach to pleading and proof, requiring the occupier to establish each of the elements with precision, as the Supreme Court did in *Karnataka Board of Wakf and Chatti Konati Rao*.

CONCLUSION

Adverse possession is both entrenched and contested in Indian law. The statutory scheme in the Limitation Act 1963 is clear in its operation: after twelve years, or thirty in the case of the State, the owner's right is extinguished and the occupier acquires title. The judicial elaboration of the doctrine, from *Karnataka Board of Wakf* to *Ravinder Kaur Grewal*, has given the occupier a robust title that can be asserted offensively and defensively, while at the same time the Supreme Court has repeatedly expressed unease at the consequences for owners.

The comparison with England and Wales shows that the doctrine can be reformed without being abandoned. The Land Registration Act 2002 retained the idea that long occupation should eventually be recognised, but it recognised that the justification for the doctrine is weakest where an owner has had no notice of the claim. The Strasbourg court's decision in *Pye v United Kingdom* confirms that a time-bar rule is consistent with a property guarantee, which suggests that article 300A is unlikely to be an obstacle to the doctrine, but also that the choice of rule is for the legislature and should be made in the light of sound policy.

India's own difficulty is that the doctrine operates in a legal environment lacking the registration infrastructure that supports the English reform. For that reason the most immediately achievable reforms are the codification of the doctrine's elements, the express exclusion of State pleas against private owners, and a graduated treatment of good-faith and knowing occupiers. The notice-based model and the compensatory mechanism are longer-term proposals that depend on the progress of land record reform. Whatever the pace of change, the existing position, in which the Supreme Court disapproves of a rule that it nevertheless applies, is unsatisfactory, and the task of resolving it belongs to Parliament.

⁴⁴ Merrill (n 16).