

Legislative Brief

The Enemy Property (Amendment & Validation) Bill, 2016

The Bill was introduced in Lok Sabha on March 8, 2016 and passed by it on March 9, 2016.

Subsequently, Rajya Sabha referred the Bill to a Select Committee. The report is expected on May 6, 2016.

Recent Brief:

[The Prevention of Corruption \(Amendment\) Bill, 2013 and proposed 2015 amendments](#)
March 23, 2016

Mandira Kala

mandira@prsindia.org

Anviti Chaturvedi

anviti@prsindia.org

April 29, 2016

Highlights of the Bill

- ◆ The Bill amends the Enemy Property Act, 1968, to vest all rights, titles and interests over enemy property in the Custodian.
- ◆ The Bill declares transfer of enemy property by the enemy, conducted under the Act, to be void. This applies retrospectively to transfers that have occurred before or after 1968.
- ◆ The Bill prohibits civil courts and other authorities from entertaining disputes related to enemy property.

Key Issues and Analysis

- ◆ The Act allows transfer of enemy property from the enemy to other persons. The Bill declares all such transfers as void. This may be arbitrary and in violation of Article 14 of the Constitution.
- ◆ The Bill prohibits civil courts from entertaining any disputes with regard to enemy property. It does not provide any alternative judicial remedy (eg. tribunals). Therefore, it limits judicial recourse or access to courts available to aggrieved persons.

PART A: HIGHLIGHTS OF THE BILL

Context

When wars broke out against China in 1961, and Pakistan in 1965 and 1971, properties belonging to nationals of these countries were taken over by the central government under the Defence of India Acts, 1962 and 1971. These properties were designated as “enemy property” and vested in an office of the central government, the Custodian of Enemy Property. The Enemy Property Act, 1968 was enacted to regulate enemy property.

Over the years, several disputes regarding powers of the Custodian and rights of enemies over enemy property went to the courts. In a 2005 decision, the Supreme Court held that the Custodian was a trustee of enemy property responsible for its management, and the ownership lay with the enemy and his legal heirs.¹ To negate this decision, an Ordinance was promulgated in 2010, which subsequently lapsed. On January 7, 2016, an Ordinance with a similar purpose was promulgated. The Enemy Property (Amendment and Validation) Bill, 2016 was then introduced and passed in Lok Sabha. It is currently being examined by a Select Committee of Rajya Sabha. Meanwhile, the Ordinance amending the 1968 Act was re-promulgated on April 2, 2016.²

Key Features

The Bill amends the Enemy Property Act, 1968, to vest all rights and titles over enemy property in the Custodian, and negate ownership rights of enemies. Some of its provisions have retrospective effect from 1968.

Enemy Property Act, 1968	Enemy Property (Amendment and Validation) Bill, 2016
Definition of enemy	
<ul style="list-style-type: none"> ▪ Any country, person or firm which was designated an enemy of India under the Defence of India Acts, 1962 and 1971. It does not include a citizen of India. 	<ul style="list-style-type: none"> ▪ Retrospectively amends the definition from 1968 to include: (i) legal heirs of enemies even if they are citizens of India; (ii) enemies who have changed their nationality; (iii) enemy firms which have partners who are Indians, etc.
Vesting of enemy property in the Custodian	
<ul style="list-style-type: none"> ▪ Enemy property vested in the Custodian under the Defence of India Acts, 1962 and 1971, will continue to vest under the 1968 	<ul style="list-style-type: none"> ▪ Adds retrospectively from 1968: (i) enemy property will continue to vest in the Custodian even if the enemy dies, or the

Act. However, vesting is not defined under the Act.	legal heir is an Indian, etc.; (ii) succession laws will not apply to such property; and (iii) 'vesting' implies that all rights and titles over the enemy property will be with the Custodian.
Powers of Custodian	
<ul style="list-style-type: none"> ▪ Can sell enemy property only in some circumstances (eg. for maintaining the enemy or his family). ▪ Does not provide the Custodian the power to evict unauthorized occupants, remove illegal construction, etc. 	<ul style="list-style-type: none"> ▪ Can dispose or sell enemy property within a time period specified by the central government under any circumstances. ▪ Amends the 1968 Act and the Public Premises Act, 1971 to provide the Custodian power to evict, etc.
Transfer of enemy properties by enemies	
<ul style="list-style-type: none"> ▪ Permitted unless it is against public interest or was intended to evade vesting of property in the Custodian. 	<ul style="list-style-type: none"> ▪ Prohibits all such transfers retrospectively. Any such transfers conducted before or after 1968 are deemed to be void.
Bar against jurisdiction of civil courts	
<ul style="list-style-type: none"> ▪ No bar against jurisdiction of courts. 	<ul style="list-style-type: none"> ▪ Civil courts will not hear disputes related to enemy property.

Sources: Enemy Property Act, 1968; Enemy Property (Amendment and Validation) Bill, 2016; PRS.

PART B: KEY ISSUES AND ANALYSIS

Transfers of enemy property to be void with effect from 1968 and before

The 1968 Act allows the enemy to transfer or sell enemy property except if this transfer is against public interest, or intended to evade vesting of property in the Custodian. The Bill replaces this provision to state that the enemy will be deemed not to have the right to transfer enemy property, *before or after 1968* (i.e., with retrospective effect). This implies that if the enemy has sold enemy property to any other person, such sale will be deemed to be void. Consequently, if person who bought enemy property from the enemy has subsequently sold the property, such transfer will also become void. Therefore, the Bill takes away ownership rights retrospectively. It may be argued that this provision is arbitrary, and in violation of Article 14 of the Constitution. Article 14 guarantees right to equality and protection from arbitrary actions of the state.³

The Supreme Court has held that while the legislature may enact laws retrospectively, it should not ignore the 'march of events' and the constitutional rights accrued over a significant period of time.⁴ Doing so may be arbitrary and unreasonable, and therefore a violation of Article 14.⁴ Applying this principle, it could be argued that Clause 6 of the Bill may violate Article 14. This is because it takes away ownership rights of all persons who have bought and sold enemy property in a bona fide manner at any point of time.

Limited judicial recourse for aggrieved persons

The Bill amends the 1968 Act to prohibit civil courts and other authorities from entertaining any disputes with regard to enemy properties. This includes disputes related to actions of the Custodian or the central government. Further, it does not provide any alternative judicial remedy (eg. tribunals) to entertain such disputes. The only judicial remedy that may be available is writ remedy to approach High Courts under Article 226 of the Constitution.⁵ Writ remedy is an extraordinary remedy available to all persons for enforcing their constitutional and legal rights, or to compel public authorities to discharge their relevant duties.⁵ However, it is unclear whether this remedy will be available to *all* aggrieved persons with regard to enemy property.

For example, an enemy property was sold by X to Y. Under Clause 6 of the Bill, Y will lose ownership rights over the property as these rights will be vested in the Custodian. Y may want to approach the courts to seek compensation from X. However, this remedy may be unavailable as the new Section 18B of the Bill prohibits civil courts from entertaining disputes with regard to enemy property. In such cases, the only judicial recourse left for Y could be under Article 226. However, remedy under Article 226 "cannot be exercised to enforce purely private contracts entered into between parties".⁵ This could leave Y without any judicial recourse.

1. Union of India vs Raja Mohammed Amir Mohammad Khan, AIR 2005 SC 4383.

2. Enemy Property (Amendment and Validation) Second Ordinance, 2016, <http://www.prsindia.org/billtrack/the-enemy-property-amendment-and-validation-second-ordinance-2016-4262/>.

3. Article 14 of the Constitution; DD Basu (2007), "Commentary on the Constitution of India", Volume 1, Pg. 969-972.

4. State of Gujarat vs Raman Lal Keshav Lal Soni and Others, AIR 1984 SC 161.

5. Article 226 of the Constitution; DD Basu (2010), "Commentary on the Constitution of India", Volume 6, Pg. 6480-6484.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.