

Comparison of the 2010 and the 2016 Enemy Property (Amendment) Ordinances

The Enemy Property (Amendment and Validation) Ordinance was promulgated on January 7, 2016. The Ordinance amends the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It has retrospective effect from the time of commencement of the 1968 Act.

The central government had designated some properties belonging to nationals of countries like Pakistan and China as ‘enemy properties’ after the conflicts in 1962, 1965 and 1971. It took over these properties, and vested them in the ‘Custodian of Enemy Property for India’, an office instituted under the central government. However, since 1968 there have been several court judgements ordering divestment of property from the Custodian. To negate these judgements, the central government issued an Ordinance on July 2, 2010, which subsequently lapsed on September 6, 2010. Though two Bills were introduced to replace this Ordinance, they could not be passed by Parliament.

The table below compares the amendments made by the 2016 Ordinance, with those made by the 2010 Ordinance, to the 1968 and the 1971 Acts.

Table 1: Comparison of the changes made by the 2016 Ordinance to the Enemy Property Act and the Public Premises Act with the 2010 Ordinance

Enemy Property Act, 1968/ Public Premises Act, 1971	Enemy Property (Amendment and Validation) Ordinance, 2016	Enemy Property (Amendment and Validation) Ordinance, 2010
Retrospective application		
	<ul style="list-style-type: none"> Retrospective effect from the date of commencement of the 1968 Act; transfers and divestments of enemy property that had taken place before promulgation of Ordinance are deemed ineffective if they violate its provisions; all such properties will continue to vest with the Custodian. 	<ul style="list-style-type: none"> Same as the 2016 Ordinance.
Definition of ‘enemy’ and ‘enemy property’		
<ul style="list-style-type: none"> Enemy’ or ‘enemy subject’ or ‘enemy firm’ is any country or person who was designated an enemy of India, but does not include a citizen of India. 	<ul style="list-style-type: none"> Includes: (i) legal heirs of enemies even if they are citizens of India or of another country which is not an enemy; (ii) enemies and enemy firms which have changed their nationality; and (iii) enemy firms which have partners who are citizens of India or another country which is not an enemy. 	<ul style="list-style-type: none"> No amendment to the Act.
<ul style="list-style-type: none"> ‘Enemy property’ means any property belonging to or managed on behalf of an enemy; includes any property held by an enemy immediately before his death if he dies in India (excluding Jammu & Kashmir). 	<ul style="list-style-type: none"> Includes property held by an enemy before his death even if he dies outside India; clarifies that property of an enemy will continue to be considered enemy property even after his death, or winding up of business, or change of nationality, etc.; also, enemy property includes all rights, titles and benefits arising out of the property. 	<ul style="list-style-type: none"> No amendment to the Act.
Enemy property to continue vesting in custodian		
<ul style="list-style-type: none"> All property vested in the Custodian of Enemy Property for India by the central government before the coming into force of the Enemy Property Act, 1968 will continue to vest with it. 	<ul style="list-style-type: none"> Enemy property will continue to vest in the Custodian in case of: (i) the enemy’s death; (ii) if the legal heir is an Indian or citizen of a country that is not an enemy; (iii) winding up of 	<ul style="list-style-type: none"> Similar, except that it clarifies that the central government may divest the property from the Custodian.

	business; (iv) change of nationality, etc.	
	<ul style="list-style-type: none"> ▪ Laws and customs governing succession to property will not apply to enemy property. ▪ Adds a provision which requires the Custodian to issue a certificate declaring a property to be enemy property. 	<ul style="list-style-type: none"> ▪ No similar provision. ▪ Same as the 2016 Ordinance.
<i>Powers of the Custodian</i>		
<ul style="list-style-type: none"> ▪ Custodian may take measures to preserve enemy property, and may maintain enemies or their families in India from the income derived from the property. ▪ For the above-mentioned purposes, the Custodian may: (i) carrying on enemy's business; (ii) make contracts on behalf of the enemy; (iii) sell, mortgage, lease or otherwise dispose of the enemy property; (iv) make payments to the enemy or his dependents; etc. ▪ Under the Public Premises Act, 1971, estate officers are appointed by the government to evict unauthorised occupants, remove illegal construction, etc. from public premises; public premises include premises belonging to, or leased by the central government, state government, or a government company, or a public university, etc. ▪ Custodian has the power to summon people to get information regarding enemy property, and call for documents. ▪ Custodian will levy fees equal to two per cent on income derived from the property (for example, dividends, interest and profits), or on sale or transfer or divestment of property. 	<ul style="list-style-type: none"> ▪ Removes the duty to maintain the enemy or his family in India. ▪ Adds the power to: (i) fix and collect rent, license fee and other charges with respect to the enemy property; and (ii) evict unauthorised occupants and trespassers, and remove unauthorised construction. ▪ Includes enemy property within the definition of public premises; also, the Custodian will be considered the estate officer for enemy properties. ▪ In addition, provides that the Custodian will have the powers of a civil court with respect to the following: (i) discovery and inspection of documents; (ii) summoning persons; (iii) calling for documents; and (iv) examining witnesses and documents. ▪ Increases fees to five per cent. 	<ul style="list-style-type: none"> ▪ No amendment to the Act. ▪ Same as the 2016 Ordinance.
<i>Sale of enemy property</i>		
<ul style="list-style-type: none"> ▪ Custodian has the power to sell enemy property only if it is required in the interest of: (i) preserving the property, or (ii) maintaining the enemy or his family. 	<ul style="list-style-type: none"> ▪ Custodian has the power to dispose or sell enemy properties; it may do so within a time period specified by the central government irrespective of any court judgements to the contrary; in this regard, the Custodian may take the help of police; the sale proceeds will be deposited in the Consolidated Fund of India. ▪ The central government may: (i) issue guidelines for disposal of property; (ii) give binding instructions to the Custodian; (iii) direct that another Ministry or Department of the government will dispose of an enemy property instead of the Custodian; and (iv) deal with and utilise the enemy property in any manner it considers fit. 	<ul style="list-style-type: none"> ▪ No similar provision. ▪ The central government may direct the Custodian to sell or dispose of enemy property vested in it; it may also make rules in this regard.

	<ul style="list-style-type: none"> In case of sale of immoveable enemy property, the Custodian may issue a certificate of sale in favour of the buyer; this certificate will be a proof of ownership. Income earned by the Custodian from an enemy property will not be returned even if the property is sold or transferred. 	<ul style="list-style-type: none"> Same as the 2016 Ordinance. Similar to the 2016 Ordinance, except it provides that income will need to be returned if the central government so orders.
<i>Divestment of enemy property by the central government from the Custodian</i>		
<ul style="list-style-type: none"> The central government may order for enemy property to be divested from the Custodian and returned to the owner or other person. The central government may make rules regarding how the property may be returned. 	<ul style="list-style-type: none"> The central government may order for an enemy property to be returned to the owner only if: (i) a person aggrieved by the order declaring a property to be an enemy property applies to the government; and (ii) the property is not an enemy property. Rule-making power in this regard removed. Income earned by the Custodian from such an enemy property will not be returned even if the property is returned. 	<ul style="list-style-type: none"> No amendment to the Act. No amendment to the Act. Similar to the 2016 Ordinance, except it provides that income will need to be returned if the central government so orders.
<i>Transfer of enemy property by enemy</i>		
<ul style="list-style-type: none"> Transfer of enemy property by an enemy may be void if it is against public interest or if it was intended to evade vesting of property in the Custodian. 	<ul style="list-style-type: none"> Prohibits all transfers of enemy properties by enemies. 	<ul style="list-style-type: none"> The following transfers will not be permissible: (i) transfers through oral wills or oral gifts; (ii) involving concealment of enemy's nationality; (iii) transfers without the permission of Reserve Bank of India or any other competent authority (where such permission is required); and (iv) without the Custodian's permission.
<i>Penalty</i>		
<ul style="list-style-type: none"> A fine up to Rs 500 for, (i) not complying with the Custodian's order summoning people or documents; and (ii) not submitting their returns relating to enemy property. 	<ul style="list-style-type: none"> Fine increased to Rs 10,000. 	<ul style="list-style-type: none"> Same as the 2016 Ordinance.
<i>Bar of jurisdiction</i>		
	<ul style="list-style-type: none"> Civil courts will not entertain any cases against an enemy property, or actions of the central government, or the Custodian. 	<ul style="list-style-type: none"> Civil courts will not have the jurisdiction to order divestment of property from the Custodian; however, courts may examine whether a property is enemy property.
<i>Power to remove difficulties</i>		
	<ul style="list-style-type: none"> Central government may pass orders to remove difficulties in the implementation of the Ordinance for a period of two years. 	<ul style="list-style-type: none"> No similar provision.

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