

# Legislative Brief

## The Enemy Property (Amendment and Validation) Second Bill, 2010

The Bill was introduced in the Lok Sabha on November 15, 2010 by the Ministry of Home Affairs. The Bill was referred to the Standing Committee on Home Affairs (Chairperson: Shri M. Venkaiah Naidu). The Committee is expected to submit its report by July 15, 2011.

### Recent Brief:

The Judicial Standards and Accountability Bill, 2010  
March 18, 2011

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### Highlights of the Bill

- ◆ The Bill seeks to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
- ◆ The Bill provides for continued vesting of enemy properties in the Custodian of Enemy Property until divested by the government.
- ◆ Under the Bill, property “vested in the custodian” includes titles, rights and interest in or benefit arising out of the property.
- ◆ Any enemy property divested through a court order will be re-vested in the Custodian unless the owner or heir can furnish proof that he is a citizen of India by birth.

### Key Issues and Analysis

- ◆ The Bill discriminates between citizens on the basis of birth, which may violate Article 15 of the Constitution.
- ◆ The Bill allows the Custodian to collect money on a property even after divesting it.

## PART A: HIGHLIGHTS OF THE BILL

### Context

After the 1962 conflict with China and 1965 war with Pakistan, certain properties belonging to nationals of those countries were designated as “enemy property”. These properties were seized by the central government and managed by the Custodian of Enemy Property, appointed under the Enemy Property Act, 1968. There are 3,329 such properties across the country, with 2,462 in Uttar Pradesh alone.<sup>1</sup>

Since 1968, several court judgments have been given on the basis of the Act ordering the divestment of property from the Custodian.<sup>2</sup> To negate these judgments, the Government of India issued the Enemy Property (Amendment and Validation) Ordinance 2010 (since lapsed). The Government then introduced a Bill to replace the Ordinance, which was not passed. The current Bill was introduced on November 15, 2010, and the earlier Bill was withdrawn.

### Key Features

The Principal Act defines “enemy” as a person or country which was an enemy under the Defence of India Rules, 1962. “Enemy property” is any property for the time being belonging to, held, or managed on behalf of an enemy. These properties are vested in the Custodian of Enemy Property, appointed under the Act.

### Transfer of Property Titles to the Custodian

- The Bill provides for continued vesting of enemy properties in the Custodian until they are divested by the central government. This applies regardless of whether the enemy subject or enemy firm dies, becomes extinct, winds up business, or changes nationality. It further extends to cases where the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy.

- The Supreme Court ruled in 2005 that under the Act an enemy subject is not divested of his right, title and interest in the property and that vesting of properties is temporary.<sup>2</sup> The Bill clarifies that “vested in the custodian” includes titles, rights and interest in or benefit arising from the property.

### Transfer and Divestment of Enemy Property

- The Bill inserts a provision in the Act specifying that no enemy property shall be transferred (a) through oral will or gift, (b) by concealment of enemy nationality, (c) without permission if transfer requires the permission of the Reserve Bank of India or other authority, or (d) without the permission of the Custodian.
- Under the Act, the Custodian may sell property vested in him. The Bill allows the Custodian to issue a certificate of sale to the buyer, which shall serve as valid and conclusive proof of ownership.
- Under the Act, the central government may direct the Custodian to divest enemy property to the owner or any other specified person. The Bill amends the Act such that the central government may direct the Custodian to divest enemy property only to the owner or lawful heir (if the owner is dead). The heir must provide proof through a succession certificate or similar declaration from a court of law.
- Any enemy property which was divested from the Custodian shall be re-vested in the Custodian unless the divestment was made by an order of the central government. If a property was divested through a court order, the owner or heir may retain the property only by furnishing proof to the satisfaction of the central government that he is (a) a citizen of India by birth, and (b) owner or heir to the property under legal succession laws.

### Role of Courts

- The Bill permits courts to decide whether a property vested in the Custodian is enemy property or not. However, it explicitly prohibits courts from ordering divestment of enemy property from the Custodian.

### Power of Eviction

- The Bill amends the Public Premises (Eviction of Unauthorised Occupants) Act 1971 to (a) declare enemy properties vested in the Custodian to be public premises and (b) appoint the Custodian, Deputy Custodian, and Assistant Custodian “estate officers” in respect to enemy property. The amendments empower the Custodian to evict unauthorized occupants of enemy property.

## PART B: KEY ISSUES AND ANALYSIS

### Constitutional Validity

- Clause 14 The Bill requires legal heirs of enemy property to be citizens of India by birth to be eligible to retain property divested to them. This appears to be contrary to Article 15 of the Constitution, which prohibits discrimination “against any citizen on grounds only of religion, race, caste, sex, **place of birth**, or any of them.”

### Receipt of Income by the Custodian After Divestment

- Clause 9 The Bill inserts a new provision, which states that in the case a property is divested, any income received by the Custodian in respect to that enemy property is not liable to be returned to the divestee. This implies that even after divestment, the Custodian may continue to receive income from the property. This goes against the Supreme Court judgment that such control should be temporary. In 2001, the Supreme Court noted that “vesting is limited to the extent of possession, management, and control over the property and is temporary.”<sup>2</sup> Therefore, receiving income from the property after divestment may be considered to be arbitrary.

#### Notes

1. Lok Sabha Unstarred Question No. 91 of 22 February 2011.
2. See *Union of India & Another vs Raja Mohammed Amir Mohammed Khan* on 21 October, 2005. AIR 2005 SC 4383.

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