



CIVIL

Understanding the Enemy Property Act, 1968

AUTHOR Rahul Sundaram

PUBLISHED 27 January 2025

The **Enemy Property Act, 1968**, is an Indian law that deals with properties belonging to individuals or entities classified as “enemies.” This classification is based on the relationship between India and certain countries during times of war or conflict. The Act aims to regulate such properties left behind by individuals who migrated to these countries after conflicts like the 1965 India-Pakistan war and the 1962 Sino-Indian war to ensure they are managed and disposed of effectively while safeguarding national interests.

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When India goes to war with another country, citizens and businesses of that country are labelled as “enemies.” Properties in India that belong to these “enemies” are referred to as “enemy property.” This law also includes properties owned by legal heirs or successors of enemies, even if they have become Indian citizens or belong to non-enemy nations. Such properties remain under the control of a government-appointed official called the **Custodian of Enemy Property**.

The Custodian is a key figure under this Act. Appointed by the Central Government, the Custodian is responsible for managing and protecting enemy properties. These responsibilities include collecting rents, recovering debts, selling assets, and even continuing businesses owned by enemies. The funds or proceeds from these actions are directed to the **Consolidated Fund of India**, ensuring they benefit the nation.

The Act states that once a property is declared enemy property, it cannot be transferred or claimed back by the original owner or their heirs. Even if the enemy or their successors have changed their citizenship or nationality, the property remains under the Custodian's control. Any unauthorized attempt to transfer such property is considered void under the law.

The Enemy Property Act also provides immunity to these properties from being seized or sold by civil courts or other authorities. The law ensures that no legal action can override the authority of the Custodian or the Central Government. This protects enemy properties from disputes or claims by third parties.

Amendments to the Act in 2017 introduced stricter rules. These amendments clarified that legal heirs, even if they are Indian citizens, cannot inherit enemy property. The government also gained enhanced powers to sell enemy properties, with the proceeds going into the national treasury. Additionally, the amendments validated all previous actions taken by the government or the Custodian regarding enemy properties.

The law provides mechanisms for those aggrieved by decisions under the Act. For example, individuals who believe their property was wrongly declared as enemy property can appeal to the High Court. However, such appeals must be made within a specific time frame, and civil courts cannot interfere in these matters.

The Enemy Property Act ensures that properties once held by enemies do not pose a threat to national security or lead to complications. It allows the government to utilize these assets for the greater public good, maintaining control over them even decades after conflicts have ended. This law plays a crucial role in preserving national interests and ensuring that such properties are managed responsibly and transparently.

Here is a rundown summary of the various provisions of the act

The Enemy Property Act, 1968 – Section-Wise Explanation

The **Enemy Property Act, 1968**, consists of various sections that detail its scope, definitions, the role of the Custodian, the treatment of enemy properties, and the penalties for violations. Below is a simplified explanation of the Act, section by section:

Section 1: Title, Extent, and Application

This section names the Act as the **Enemy Property Act, 1968**, and specifies that it applies to the entire country. It also extends to Indian citizens and corporations outside India. The Act came into force on **July 10, 1968**.

Section 2: Definitions

This section provides key definitions:

- **Enemy** includes individuals, firms, or countries classified as enemies under the **Defence of India Acts** of 1962 and 1971.
- **Enemy Property** refers to assets owned, controlled, or managed by enemies or their legal heirs, regardless of nationality changes.
- **Custodian** is the government-appointed official responsible for managing enemy property.

Section 3: Appointment of Custodian

The Central Government appoints a **Custodian of Enemy Property for India** along with Deputy Custodians and Assistants. They are tasked with administering enemy property across specified areas.

Section 4: Appointment of Inspectors

Inspectors are appointed to ensure compliance with the Act. They can investigate, inspect properties, and assist in managing them.

Section 5: Vesting of Enemy Property

All enemy properties previously vested under the **Defence of India Rules, 1962 and 1971**, automatically remain with the Custodian. Even if the enemy dies, changes nationality, or winds up their business, the property remains classified as enemy property.

Section 6: Prohibition of Transfer

This section nullifies any transfer of enemy property by an enemy or their heirs. Such transfers are considered void, regardless of when they occurred.

Section 7: Payment of Money to Custodian

Any payments, such as dividends or rents due to an enemy, must be paid to the Custodian. These funds are then managed as per the Act's provisions.

Section 8: Powers of the Custodian

The Custodian has extensive powers, including:

- Managing enemy properties.
- Recovering debts owed to enemies.
- Selling or leasing properties with government approval.
- Evicting unauthorized occupants from enemy properties.

Section 8A: Sale of Enemy Property

The Custodian, with prior approval from the Central Government, can sell enemy property. The sale proceeds must be deposited in the **Consolidated Fund of India**. Detailed reports of sales must be submitted to the government.

Section 9: Exemption from Attachment

Enemy properties cannot be seized, attached, or sold under any civil court decree or order by other authorities.

Section 10: Transfer of Securities

The Custodian can sell or transfer securities held by enemies. Companies are required to cooperate and register such transfers, even if the original documents are missing.

Section 10A: Certificate of Sale

When enemy immovable property is sold, the Custodian issues a **Certificate of Sale** as proof of ownership. This certificate is valid even without original title deeds.

Section 11: Powers to Summon and Demand Documents

The Custodian can summon individuals, examine them, and demand documents related to enemy property. These powers are equivalent to those of a civil court.

Section 12: Protection for Compliance

If any person complies with an order from the Custodian, they cannot be held liable for legal action resulting from such compliance.

Section 13: Validity of Custodian Actions

Actions taken by the Custodian, such as the vesting of property or payment of funds, cannot be invalidated even if the classification of the enemy changes or is disputed.

Section 14: Proceedings Against Companies

For companies with assets classified as enemy property, no legal proceedings can be initiated under the **Companies Act, 1956**, without the Custodian's written consent.

Section 15: Returns on Enemy Property

The Custodian can require individuals or organizations to submit returns (information) related to enemy properties. Non-compliance is punishable under the Act.

Section 16: Registers of Returns

The Custodian maintains registers of all submitted returns, which are open for inspection, subject to reasonable fees and conditions.

Section 17: Levy of Fees

The Act allows the Custodian to levy fees (usually 5%) on the income, sale proceeds, or other monetary transactions involving enemy property. The fees are credited to the government.

Section 18: Transfer in Certain Cases

This section allows individuals to appeal to the Central Government if they believe their property was wrongly classified as enemy property. If found valid, the government can order the return of such property.

Section 18A: Non-Return of Income

Income earned from enemy property by the Custodian will not be returned to the enemy or their heirs, even if the property is sold or transferred.

Section 18B: Exclusion of Civil Court Jurisdiction

Civil courts are barred from entertaining lawsuits related to enemy property or actions taken by the Custodian or the Central Government.

Section 18C: Appeals to High Court

Aggrieved parties can appeal decisions of the Central Government to the High Court within **60 days** of receiving the order.

Section 19: Protection of Actions

Actions taken in good faith under the Act by the Custodian or the government are protected from legal proceedings.

Section 20: Penalties

Violations of the Act, such as unauthorized payments to enemies or failure to submit returns, are punishable by fines or imprisonment.

Section 21: Offences by Companies

If a company commits an offence under the Act, its responsible officers, such as directors or managers, can be held liable unless they prove lack of knowledge or due diligence.

Section 22: Overriding Effect

The Act overrides any conflicting provisions in other laws, including those related to property succession.

Section 22A: Validation

This section retroactively validates all actions taken under the Act, including amendments made in 2017.

Section 23: Rule-Making Powers

The Central Government can make rules to implement the Act, covering aspects like returns, fees, and inspections.

Section 24: Continuation of Orders

Orders issued under the **Defence of India Rules** of 1962 and 1971 continue to remain valid under this Act.

Section 25: Repeal and Saving

The Act repeals the earlier **Enemy Property Ordinance, 1968**, but actions taken under it remain valid.

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