The Enemy Property Ordinance

Why in news?

\n\n

\n
- The Enemy Property (Amendment and Validation) Ordinance has been recently promulgated for the fifth time.
\n
- President Pranab Mukherjee approved it although he had reservations about its repeated re-promulgation.
\n

\n\n

What is an enemy property?

\n\n

\n
- After the wars against China in 1962 and Pakistan in 1965 and 1971, the government took over the properties and companies of such persons who had taken Pakistani and Chinese nationality.
\n
- The Centre designated these properties as “enemy properties”.
\n
- Later the Enemy Property Act, 1968 was passed to vest all such immovable and movable property in a ‘Custodian’.
\n
- The maximum numbers of such properties are in Uttar Pradesh.
\n

\n\n

What is the value of the enemy property?

\n\n

\n
- Pakistan had sold or disposed of property belonging to Indians nationals and firms in 1971, while in India such property is in the hands of a Custodian.
\n
- The immovable properties belonging to Pakistani nationals in India number

9,280.
\n
- The total value is estimated to be around Rs. 1.04 lakh crore, with shares in companies valued around Rs. 2,600 crore.
\n
- Investments in gold, jewellery, bank accounts, deposits and government securities are also with the Custodian.
\n
- There are 149 properties belonging to Chinese nationals in India.
\n

\n\n

What is the need for the ordinance?

\n\n

\n
- The son of a person whose property in India had been taken over after he emigrated to Pakistan wanted it to be returned to him on the ground that he was a citizen of India.
\n
- He also stated that the property concerned was no more enemy property after his father’s death.
\n
- The Supreme Court ruled in 2005 that the Custodian did not have any title to the property and was only a trustee managing it.
\n
- This ruling meant that legal heirs of erstwhile owners of enemy property, if they were Indian citizens, could get it back.
\n
- Therefore the Centre promulgated an ordinance in 2010 so that these properties would continue to be with the Custodian.
\n
- The ordinance lapsed then, and was issued afresh in January 2016. Since then, it has been issued again repeatedly.
\n

\n\n

What are the provisions of the ordinance?

\n\n

\n
- The Ordinance amends several provisions of the Enemy properties Act, 1968 retrospectively.
\n

\n\n

\n

- **Definition of enemy -** The 1968 Act defined an ‘enemy’ as a \n\n
  \n
  1. Country and its citizens that committed external aggression against India (i.e., Pakistan and China).
     \n
  2. Legal heirs of enemies even if they are citizens of India or of another country which is not an enemy
     \n
  3. Nationals of an enemy country who subsequently changed their nationality to that of another country, etc.
     \n

\n
\n

\n\n

\n

- **Vesting of enemy property -** The properties of these enemies will continue to vest with the Custodian even after\n\n
  \n
  1. The enemy’s death,
     \n
  2. If the legal heir is an Indian or citizen of a country that is not an enemy,
     \n
  3. Enemy changes his nationality to that of another country, etc.
     \n

\n
\n

\n\n

\n

- **Power of sale -** It allows the Custodian to sell or dispose of enemy property.
  \n

\n\n

\n

- **Transfers by enemies -** It prohibits all transfers by enemies and renders transfers that had taken place before or after the commencement of the 1968 Act as void.
  \n

\n\n

\n

- **Bar of jurisdiction -** It bars civil courts and other authorities from

entertaining cases against enemy properties.
\n

\n\n

\n

- **Powers of the Custodian -** It removes the duty of the Custodian to maintain the enemy and his family.
\n
- The Custodian is allowed to carry out selling, mortgaging or leasing fixing and collecting rent, license fee, etc. from enemy property, and and evicting unauthorised occupants from such properties.
\n

\n\n

Why it could not take the form of normal legislation?

\n\n

\n

- The Bill was passed in the Lok Sabha in March 2016, but the Rajya Sabha sent it to a Select Committee.
\n
- Six members of the Select Committee have opposed\n
\n
1. The declaration of Indian legal heirs of enemies as enemies too,
\n
2. The bar on their inheriting the property,
\n
3. The vesting of the title in the Custodian.
\n

\n
\n

\n\n

\n\n

Source: The Hindu

\n

