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CRITICAL ANALYSIS OF BENAMI TRANSACTION ACT

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I. ABSTRACT

The Benami Transactions Act is an Indian legal framework enacted to combat the practice of purchasing property in another person's name to conceal ownership. In simple language, it deals with situations in which people hide their ownership of assets such as real estate, residences, or investments. This abstract provides a clear and brief description of the Benami Transactions Act's critical examination.

This critical examination delves deeply into the Act's significance in the prevention of corruption and illegal financial activity. The Act prohibits a dishonest behaviour by defining what constitutes a benami transaction and imposing fines on those who are involved in this. The Act also empowers the government to take benami properties, so prohibiting their exploitation.

The Benami Transactions (Prohibition) Act, 1988²(Jaiswal, 2024), commonly known as the Benami Transactions Act, was introduced to curb the practice of holding property under false names and prevent tax evasion in India. This paper examines the development, policy and impact an act, 1988 has been amended. with special emphasis on its 2016 amendments, which significantly expand the scope and effectiveness of the law.

It also examines implementation challenges, including identity issues, court complexity, and balancing enforcement and protection of legitimate interests Compared to circumstances pre- and post-reform. The paper further examines the challenges faced in the implementation of the Act, such as the burden of proof, retrospective application, and potential misuse by authorities.

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² Jaiswal, R., *Law relating to Benami Transactions & Prohibition Act, 1988*, PHYSICS WALLAH (15 August, 2024, 10:06 AM), <https://www.pw.live/exams/company-secretary/benami-transactions-prohibition/>.

Therefore, the Benami Transactions Act is very crucial in order to prevent financial frauds and corruption³ (gupta & Pandey, 2023). It is based on proper implementation and states how to overcome potential challenges. Individuals and the government can collaborate to maintain transparency and providing justice in property transfers by recognizing the scope and restrictions of this act.

II. KEYWORDS

1. **Benami Transaction:** A transaction in which a property is officially registered in the name of one person but is actually owned or paid for by another.
2. **Prohibition:** means “No, you can't do this.” It is necessary to create rules to prevent benami transactions.
3. **Adjudicating Authority:** These are wise judges who render impartial rulings on benami transactions.
4. **Confiscation:** is the process of taking away anything that was used in a complicated transaction. It implies taking away the property involved in a benami transaction.
5. **Prosecution:** This is similar to taking legal action against someone who made a shady agreement.
6. **Penalties:** are similar to consequences for wrongdoing. It can be a fine (money) or possibly going to jail in benami transactions.

III. INTRODUCTION

“The Benami Transactions (Prohibition) Act, 1988, as Amended by The Benami Transactions (Prohibition) Amendment Act, 2016.” (Ministry of Law and Justice, Government of India) was established to address the issue of “benami” real estate transactions. A “benami” transaction is one in which one person keeps the property while another person gives the consideration. These exchanges are regularly used in

³ gupta, S. and Pandey, A., *Benami transactions in India: A historical and legal perspective*, LEXOLOGY (15 August, 2024, 10:11 AM), <https://www.lexology.com/library/detail.aspx?g=576d7105-88af-4f9e-b5d9-b577443cded0>

illicit activities such as money laundering, piracy, falsification and adulteration of products.

“A benami transaction occurs when one individual professes to possess a piece of real estate, such as a house or land, but it is actually purchased or controlled by another person”. It resembles a secret whose actual owner has been hidden behind someone else's name⁴(T.N. Pandey, 2017).

These kinds of transactions can create problems when People try to hide money or are even engaged in some inappropriate behaviour. Therefore, the government adopted the Benami Transactions (Prohibition) Act as to prevent this problem creating conditions. This rule makes it easy to identify the true owner of a property and also responsible for taking necessary legal actions if someone tries to hide their ownership.

IV. PUNISHMENT UNDER BENAMI TRANSACTION ACT

- **Imprisonment and Fine:** Individuals found guilty of engaging in a benami transaction may face: -
 - Imprisonment ranging from 1 to 7 years,
 - In addition to a fine of up to 25% of the property's fair market value. (*Section 3 of the Benami Transactions (Prohibition) Amendment Act, 2016*).
- **Penalties for Misleading Information:** If an individual is required to provide information under this Act and is found to have given false or misleading information, they could be sentenced to: -
 - Imprisonment for 6 months to 5 years,
 - Along with a fine amounting to up to 10% of the property's fair market value. (*Section 54 of the Benami Transactions (Prohibition) Amendment Act, 2016*).

V. OBJECTIVES OF THE ACT

⁴ T.N. pandey, *Amended to Benami Transaction Law*, TAXMANN (15 August, 2024, 10:15 AM), <https://www.taxmann.com/research/income-tax/top-story/10501000000013933/amended-to-benami-transaction-law--an-analysis-experts-opinion>

The Benami Transactions (Prohibition) Amendment Act's primary goals are as follows:

- 1. Benami Transactions Are Prohibited:** It states establishing a regulation which states, "You cannot hold benami transactions." It's similar to a "No Entry" sign that deters people from doing something illegal. The government wants to ensure that properties are owned by the true individuals and these individuals are not hidden under someone else's name. So, they passed a legislation stating, "No more benami transactions!" This allows them to catch and stop anyone who tries to do these acts. (*Section 3 of the Benami Transactions (Prohibition) Amendment Act, 2016*).
- 2. Adjudicating Authorities Establishment:** It makes necessary forming special organizations or teams to make choices regarding the benami transactions. When it comes to deciding who actually owns a particular property, these authorities will consider all of the facts and will make a fair conclusion. (*Sections 7 and 9 of the Benami Transactions (Prohibition) Amendment Act, 2016*).
- 3. To Permit Confiscation of Benami Properties:** This involves providing the government the authority to seize properties implicated in benami transactions. It's comparable to stating that "If you use tricky ways to own a property, the government can take it away." This is an important guideline because it discourages people from attempting to conceal their ownership of a property under someone else's name. It helps to ensure that properties are owned by the correct persons and are not being used for inappropriate purposes. (*Section 5 of the Benami Transactions (Prohibition) Amendment Act, 2016*).

VI. KEY PROVISIONS OF THE ACT

1. Definition of Benami Transaction

The Act expressly defines what constitutes a benami transaction. It states that a transaction is benami if it involves property owned by one party and the consideration is provided by another. (*Section 2(9) of the Benami Transactions (Prohibition) Amendment Act, 2016*).

2. Understanding Adjudicating Authorities

Adjudication authorities are the judges who are appointed to make fair decisions in cases related to benami transactions. When there's a dispute or question about who truly owns a property, these authorities carefully listen to all the evidence and facts. Then, they use their knowledge of the law to decide what's right. Their job is really important because they ensure that the rules of the Benami Transactions Act are followed correctly. (*Sections 7 and 9 of the Benami Transactions (Prohibition) Amendment Act, 2016*).

3. Confiscation of Benami Properties

It states “Taking Away Benami Properties” means that if someone is found to be involved in a benami transaction act, which conceals the true ownership of a property, the government has the ability to confiscate their property or to take that property⁵(Vaidya, 2019). This is done to discourage and prohibit persons from engaging in dishonest techniques to conceal their ownership of valuable assets. (*Section 5 of the Benami Transactions (Prohibition) Amendment Act, 2016*).

4. Prosecution and Penalties

In benami transactions, the government can take legal action against the person who did the illegal transaction, which can include going to court and facing charges. If the person is found guilty, they can be punished by paying a fine or even going to jail. (*Section 3 and Section 53 of the Benami Transactions (Prohibition) Amendment Act, 2016*).

VII. CRITICAL APPRAISAL

Critical analysis is closely inspecting anything in order to gain a thorough understanding of it. When we do a rigorous study of benami transactions, we want to know how well the regulations and laws are operating to prevent these complicated property transfers.

1. Simplification of Procedures

The legal procedures for seizing benami properties may be complicated. Simplifying these procedures could increase their accessibility and efficiency. The legal procedures

⁵ Vaidya, S., *Benami transactions and the law*, iPleaders (15 August, 2024, 10:20 AM), <https://blog.ipleaders.in/benami-transaction/>

for identifying and recovering benami properties can be complicated and time-consuming. Streamlining these processes can dramatically increase their accessibility and operational efficiency, making it easier for police to respond quickly. While the reforms have eased some processes, progress remains to be made on the bureaucratic barriers that often delay enforcement actions.

- ***Improvement so far:*** The number of benami property cases has increased since the amendment in 2016, which means the Act has empowered authorities to take action but complex legal procedures often delay property acquisition and litigation it is brought to the floor of the court, indicating the need for further simplification.

2. Strengthening Investigating Agencies

Giving investigative agencies more tools and resources will help them do their duties better. These investigating teams serve as super sleuths in benami transactions. Their role is to determine who is genuinely involved in a real estate deal. Research agencies play an important role in identifying anonymous businesses. Equipping these units with more advanced equipment, materials and training could greatly increase their effectiveness in identifying and analysing these complex issues These units act as front-line detectives on the battlefield fighting in benami transactions, tasked with identifying the true owner behind suspicious property transactions

- ***Improvement so far:*** While the number of studies has increased, challenges remain. Appraisal firms often face challenges in identifying assets that they actually own, especially when the deals involve on-site assets or offshore companies that can be provided by strengthening these companies with better technologies and resources their ability to control these issues has improved.

3. Integration with Other Laws

Combining benami transactions with other laws includes ensuring that they all work together perfectly. By integrating these laws, we ensure that they work in tandem and

complement one another. This helps catch anyone who may be seeking to engage in illicit property transfers⁶(Khanwalkar, 2022).

The integration of the Benami Transactions Act with other related laws, such as the Prevention of Money Laundering Act (PMLA), and the Taxation Act will result in a more unified regulatory framework. This integration will allow all relevant laws to work in harmony, removing any loopholes that allow individuals to use the system. For example, if benami transactions are also linked to money laundering, the joint application of both laws could lead to more extensive and severe penalties being attracted.

- **Improvement so far:** Efforts have been made to harmonize the Benami Act with other financial laws, but gaps remain. For example, proper regulation within the agencies responsible for enforcing these laws can effectively curb serious financial crimes involving benami. Increased information sharing and collaborative research between agencies can further strengthen these efforts.

VIII. OVERALL EFFORTS AND REMAINING CHALLENGES

The amendments to the Benami Transactions (Prohibition) Act have undoubtedly strengthened the legal framework against benami transactions, resulting in improved notice and action. According to official reports, thousands of properties have been identified as benami and several cases are under investigation. However, there are many challenges:

- ❖ **Continued Proliferation:** Despite stringent regulations, benami transactions continue, especially in expensive real estate markets. Complicated representation and ownership structures often make it difficult to identify the true owners.

⁶ Khanwalkar, V., *Explained: The benami act, 2016, and changes brought by Supreme Court, The Benami Act, 2016, and changes brought by Supreme Court*, DECCAN HERALD (15 August, 2024, 10:26 AM), <https://www.deccanherald.com/india/explained-the-benami-act-2016-and-changes-brought-by-supreme-court-1138840.html>

- ❖ **Judgment Backlog:** The legal system is burdened with a backlog of cases, slowing down benami sales litigation. This delay can undermine the deterrent effect of the law.
- ❖ **Public Unawareness:** Many individuals, especially in rural areas, are still unaware of the consequences of benami transactions. There is a need for more public awareness campaigns and to educate people about the dangers of legislation.
- ❖ **Statistics:** According to Income Tax Department data, more than 1,600 benami properties worth over ₹4,300 crores were attached under the Act by 2022. However, only a few of these cases resulted in final foreclosures, it showed the need for expeditious legal proceedings.
- ❖ **Recommendations:** Further integration of financial and property law is needed to improve the Act. Additionally, streamlining the judicial system, increasing public awareness and further strengthening investigative agencies will help close existing gaps.

IX. SOME IMPORTANT SECTIONS RELATED TO BENAMI TRANSACTIONS UNDER THE BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016

1. Section 2(9) - Benami Transaction:

In short, it refers to any transaction where:

- **Property is owned by one person:** A person other than the actual owner or the person who conceived the property and transfers or holds property
- **Unregistered transaction:** The real owner or person considering the property is not the person in whose name the property is registered
- **Fraudulent purpose:** The transaction is made to evade legal obligations, avoid paying taxes, or to establish the identity of the true owner.

2. Section 3 - Prohibition of Benami Transactions:

This section prohibits anyone from entering into a benami transaction, where one party owns property but another pays. Benami defines transaction as the purchase of property in the name of another for any illegal purpose to conceal the identity of the real owner or to evade laws and regulations.

3. Section 4 - Prohibition of the Right to Recover Property Held Benami:

Section 4 of the Benami Transactions (Prohibition) Act, 1988 entitled "Prohibition of right of recovery of benami mortgaged property", states:

- **No right of possession:** A person holding property benami (i.e. in the name of another person) cannot claim any right to possession of the property or assert any right in respect thereof
- **No Court Case:** The courts are barred from entertaining any case or proceedings relating to recovery of benami property.

4. Section 5 - Property held Benami Liable to Confiscation:

Section 5 of the Benami Transactions (Prohibition) Act, 1988 states that any property held benami (i.e. in the name of someone other than the person who actually paid for it) shall be acquired by the Central Government. Simply put, the government has the power to seize and confiscate a property if it is found to hold benami. This provision is intended to prevent and punish the practice of holding property in the name of another to evade the law.

5. Section 24 - Notice and Attachment of Property Involved in Benami Transaction:

If the subordinate officer has reasonable grounds to believe that a property is included in a benami transaction, notice may be served on the benamidar (the person in whose name the property is registered) and the beneficiary (the person to whom the property is transferred) to explain why the property should not be treated as benami.

The Initiation Officer may also temporarily attach the property for 90 days from the date of the notice, to prevent transfer or removal of the property during the investigation.

6. Section 26 - Adjudication of Benami Property:

Under Section 26, the judiciary is responsible for determining whether a property is "benami" (held in the name of another but beneficially owned by another) The process begins when the subordinate officer first inquires, and he refers the matter to the judges. The government then serves notice on the parties concerned, hears their arguments, analyses the evidence and finally decides whether the property in question is benami.

7. Section 27 - Confiscation and Vesting of Benami Property:

Section 27 of the Benami Transactions (Prohibition) Act, 1988 deals with acquisition and possession of Benami property. It said that once an order is issued declaring the property as benami, the government will take possession of the property. All the acquired assets are in the hands of the Central Government, without any encumbrances. No compensation is paid for the seized property, and any claim by the actual owner or beneficiary is barred.

8. Section 53 - Penalty for Benami Transaction:

Under Section 53, engaging in benami transactions to evade laws or engage in other illegal activities is severely punished The penalties include:

- **Imprisonment:** A person involved in benami transactions can face rigorous imprisonment up to 7 years.
- **Penalty:** Apart from imprisonment, one can also pay a penalty which may extend up to 25% of the fair market value of the property in the benami case.

9. Section 64 - Protection of Action Taken in Good Faith:

This section ensures that no suit, suit, or other legal proceeding can be brought against any person for anything done or intended to be done in good faith under the Benami Communications Act or any law made thereunder. The purpose is to protect

individuals or authorities from legal influence if their actions in good faith and in accordance with the Act have unintended consequences⁷(Mittal, 2024).

10. Section 67 – Act to have Overriding Effect:

This section ensures that the provisions of the Benami Transactions Act take precedence over any other law, contract, or document that may conflict with or conflict with the Act.

X. FEW LANDMARK CASE LAWS RELATED TO BENAMI TRANSACTIONS

1. *Sree Meenakshi Mills Ltd. v. CIT 1957 AIR 49*⁸

The issue in this case was whether or not certain share transactions were benami transactions. The court stressed that in a benami transaction, the genuine owner differs from the person in whose name the property or asset is held. It emphasized the significance of determining the true owner behind the legal façade. The decision in this case was crucial in defining legal rules and procedures for dealing with benami transactions. It helped to shape the legal framework and understanding of similar transactions in India.

2. *Thakur Bhim Singh (Dead) Through LRs v. Thakur Kan Singh [1980] 3 SCC 72*⁹

In this case, Thakur Bhim Singh claimed legal ownership to a tract of land in this lawsuit. The defendant, Thakur Kan Singh, on the other hand, claimed to be the true owner and had been in possession of the land for a long time. The court thoroughly analysed the evidence presented by both sides. They took into account papers, evidence, and other relevant factors. Finally, the court ruled in Thakur Bhim Singh's favour, stating that he was the rightful owner of the land.

⁷ Mittal, Y., *As civil suit to enforce claim in Benami property is barred, criminal proceeding by 'real' owner also impermissible: Supreme Court*, Live Law (15 August 2024, 10:35 AM), <https://www.livelaw.in/supreme-court/as-civil-suit-to-enforce-claim-in-benami-property-is-barred-criminal-proceeding-by-real-owner-also-impermissible-supreme-court-258616>

⁸ Meenakshi Mills, Madurai vs The Commissioner Of Income-Tax, Madras on 26 September, 1956, <https://indiankanoon.org/doc/698518/> (last visited Aug 15, 2024).

⁹ Thakur Bhim Singh (Dead) By Lrs And Anr. vs Thakur Kan Singh on 21 December, 1979, <https://indiankanoon.org/doc/159739558/> (last visited Aug 15, 2024).

XI. CONCLUSION AND SUGGESTIONS

The Benami Transactions (Prohibition) Act, 1988, and subsequent amendments, particularly the Benami Transactions (Prohibition) Amendment Act, 2016, were enacted to curb the menace of benami transactions in India. Truth and ownership are hidden. The Act provides a legal framework to identify, investigate and punish benami transactions.

The 2016 amendments significantly strengthened the original law by implementing harsher penalties, increased police powers and an effective system for acquisition of benami properties but the law faces many implementation challenges, such as difficulties in disclosing benami transactions, slow pace of investigation and the burden of judicial and administrative procedures¹⁰(taxguru_in & Ankitha, 2020).

We can conclude that it is a significant statute intended to prevent suspicious property deals. It seeks to ensure that properties are owned by the correct persons, who are the actual owners of that particular property and not hidden under someone else's name. While the law represents a tremendous step forward, there are a few areas that may be improved.

Therefore, the Benami transactions act allows us to confirm that properties are owned honestly and that no one can hide behind sophisticated transactions. By implementing some suggestions, the Benami Transactions Act can be more effective in curbing illicit transactions¹¹ (Staff, 2023) and help achieve the broader goal of financial transparency and accountability in India around.

➤ **Streamlining research processes:**

The search process under the Anonymous Act should be more efficient. The formation of special investigation teams with trained professionals can speed up the detection and management of benami transactions.

¹⁰ taxguru_in and Ankitha, *Benami Transactions (prohibition) amendment act, 2016- brief analysis*, Tax Guru (15 August, 2024, 10:50 AM), <https://taxguru.in/corporate-law/benami-transactions-prohibition-amendment-act-2016-brief-analysis.html>

¹¹ Staff, U.W., *Understanding benami transactions and their implications*, Subhash Ahlawat, (15 August, 2024, 11:05 AM), <https://subhashahlawat.com/blog/benami-transaction>.

➤ **Awareness and Education:**

A public information campaign should be conducted to educate the public on the implications of benami transactions and the legal consequences they may face. This will prevent people from engaging in such activities.

➤ **Judicial Reform:**

Fast track courts can be set up to deal with benami transactions to ensure timely justice. The law is effective by shrinking the judicial process.

➤ **Technical Integration:**

The benefits of technologies such as data analytics and artificial intelligence can help identify suspicious behaviour. Combining property databases with financial records can help cross-reference and identify properties that may be benami.

In conclusion, the Benami Transactions Act represents a major step forward in combating illegal property transactions and ensuring that property belongs to its rightful owners. However, there is room for improvement to increase its effectiveness. By streamlining the investigative process, increasing public awareness, implementing judicial reform, and leveraging technology, the Act can achieve its goals of financial transparency and accountability well.

Continued efforts to address these challenges are critical to the greater socio-economic interests of the country. Strict enforcement of the Benami Transactions Act will not only ensure transparency of property ownership but also contribute to the broader goal of curbing corruption in India and creating a healthy financial environment.

End Notes

¹Source: <https://blog.ipleaders.in/benami-transactions-prohibition-act-1988/>

²Source: <https://www.drishtias.com/daily-updates/daily-news-analysis/benami-transactions-act>

³Source: <https://byjus.com/free-ias-prep/benami-transactions-prohibition-amendment-act-2016/>