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BENAMI TRANSACTIONS VS GENUINE TRANSFERS: LEGAL CHALLENGES UNDER THE TRANSFER OF PROPERTY ACT

Prem Kumar¹, Shreya Tripathi² & Tapasi Rout³

I. ABSTRACT

The present study deals with the issue of differentiating between benami transactions and true transactions under Indian property law. In this context, the two primary legislative acts, viz., the Transfer of Property Act, 1882 and the Benami Transactions (Prohibition) Act, 1988, are discussed. Whereas the Transfer of Property Act is a set of basic rules that include ownership, intention, and valid consideration, the concept of benami transactions introduces an inconsistency between legal ownership and beneficial ownership. The study highlights various differences between true transactions and benami transactions, focusing on intention, source of consideration, and possession as the key elements for the identification of one transaction from another. Moreover, several decisions made by judicial courts regarding benami transactions are analyzed in order to emphasise the difficulties faced while establishing the actual intention of the parties involved in a transaction through circumstantial evidence. It is important to note that the interplay between the Transfer of Property Act and the concept of benami transactions is associated with certain inconsistencies, which are highlighted in the study, namely flexibility vs. rigidity, recognition vs. prohibition. The study considers the potential challenges in distinguishing between true and benami transactions, including family arrangement, absence of documents, etc. Under the critical approach adopted by the research, an analysis will be made on whether the rigidity of the benami law goes against the equity principle in TPA and limits genuine transactions. This will help make the case for achieving balance in this issue. Ultimately, reform strategies are provided, such as setting clear guidelines, better documentation, alignment of laws, and protection of valid

¹ B.A LL. B (H), 4th Semester, Student at IILM University, Greater Noida (India). Email: prem.kumar.gnballb29@iilm.edu

² B.A LL. B (H), 4th Semester, Student at IILM University, Greater Noida (India). Email: shreya.tripathi.gnballb29@iilm.edu

³ B.A LL. B (H), 4th Semester, Student at IILM University, Greater Noida (India). Email: tapasi.rout.gnballb29@iilm.edu

transactions. The objective is to create a legal environment that facilitates genuine transactions and eliminates illegal benami transactions.

II. KEYWORDS

Transfer of Property Act, 1882, Benami Transactions, Genuine Transfer, Property Law in India, Ownership vs Beneficial Ownership

III. INTRODUCTION

"Benami transactions not only undermine the integrity of the financial system but also pose a threat to the rule of law." - Justice Mukul Mudgal

The law concerning the transfer of property in India mainly finds its basis in the provisions of the Transfer of Property Act, 1882 (TPA). It is an Act that deals with the transfer of rights in property by one living person to another. This law is premised upon certain principles of ownership, intent and lawful consideration.

Over time, however, Indian property law has also had to contend with a situation where transactions have been carried out in an unlawful manner, whereby property will be acquired in the name of one person while the payments are made by another. This has been termed the 'benami transaction'^{4,1}

In an effort to regulate these transactions, the Indian legislature enacted the Benami Transactions (Prohibition) Act, 1988. Despite this Act, a conflict still exists between some provisions of the Benami Law and those of the Transfer of Property Act.

In this research paper, the differences between a benami transaction and a genuine transaction, the purpose of TPA⁵, the conflict created by different laws and how this should be sorted out are analysed.

A. Research Objectives

The present study aims to analyse the legal distinction between benami transactions and genuine transfers under Indian property law. It seeks to examine the interplay between

⁴ Law Commission of India, *57th Report on Benami Transactions* (1973).

⁵ Transfer of Property Act 1882, S.53.

the Transfer of Property Act, 1882 and the Prohibition of Benami Property Transactions Act, 1988 (as amended), and to identify the challenges in determining the true nature of property transactions. Additionally, the study aims to evaluate whether the current legal framework strikes an appropriate balance between preventing misuse of benami arrangements and protecting legitimate transactions.

B. Research Questions

The paper seeks to address the following questions:

1. What are the essential legal differences between a benami transaction and a genuine transfer under Indian law?
2. How do the provisions of the Transfer of Property Act, 1882 interact with the Prohibition of Benami Property Transactions Act, 1988 (as amended)?
3. What are the practical and legal challenges in identifying and proving benami transactions?
4. Does the current benami law framework create conflicts with equitable principles underlying property law?

C. Research Methodology

The study adopts doctrinal and analytical research methodology. It is primarily based on an examination of statutory provisions, including the Transfer of Property Act, 1882 and the Prohibition of Benami Property Transactions Act, 1988 (as amended in 2016). The research further relies on judicial precedents to understand the interpretation and application of benami law. Secondary sources such as legal commentaries, journal articles, and scholarly writings have also been referred to for critical analysis.

IV. CONCEPT OF TRANSFER UNDER THE TRANSFER OF PROPERTY ACT

The Transfer of Property Act of 1882 deals with the transfer of property among living people. It forms the basic legal ground on which all rules relating to the conveyance of

property rights from one person to another are built. According to Section 5 of the Act⁶, a 'transfer of property' is an act by which a living person transfers property, either presently or in the future, to one or more other living persons, or himself and one or more other living persons. The key feature of a transfer of property is the voluntary passing of the right. There are some basic elements that should be found in real transfer of property under the TPA:

1. The transferor and transferee should be competent, meaning that they have the legal capacity to enter into a contract.
2. The transfer of property should be done through lawful consideration, except in some instances when no consideration is needed, as for instance in gifts; but even then, there is a need for legal formalities.
3. There should be an intention to make the transfer of ownership. Fourthly, there should be a transfer of interest in the property.

Section 8 of the Act⁷ reinforces this principle by adding that unless otherwise stated, the transfer shall convey all the interest that the transferor could convey in the property. This guarantees completeness and assurance in property deals, thus eliminating any doubt concerning the transfer of interests.

The TPA works on the basic principle that, in most cases, the one under whose name the property is registered is the rightful and true owner of the same, and there exists identity between the ownership and possession. This makes for reliable and secure property transactions.

Nonetheless, benami transactions constitute a serious challenge to this principle since, in such instances, the one who owns the property legally and whose name the property bears is not the one who benefits from the property.

⁶ Transfer of Property Act 1882, s 5

⁷ Transfer of Property Act 1882, s 8

V. UNDERSTANDING BENAMI TRANSACTIONS

A benami transaction can be defined as one where a property is transferred to the benamidar while the person paying for such property transfer is someone else, who is actually the beneficial owner of such property⁸. It can be noted that here the person whose name is on the property does not hold any ownership interest in the said property; rather, it is the person who paid money to obtain it that actually holds the property.

Benami transactions have been around in India for many years now, mainly in informal or family-based arrangements. However, with the passage of time, it has come to serve as an instrument through which wealth is concealed, taxes are avoided, and legal responsibilities are bypassed. This is why the Indian Parliament came up with the Benami Transactions (Prohibition) Act, 1988. This piece of legislation not only defines a benami transaction but also prohibits it, except in some rare situations. For example, a property registered in the name of one's own spouse/child, with the source of payment known, can sometimes be excluded from benami status.

The Prohibition of Benami Property Transactions Act, 1988 (as amended by the Benami Transactions (Prohibition) Amendment Act, 2016) (hereinafter referred to as the "Act") governs benami transactions in India. The 2016 Amendment significantly overhauled the original framework, expanding the statute from 9 to 72 sections and introducing a comprehensive regulatory and enforcement mechanism. Key provisions now include an expanded definition of benami transactions under Section 2(9), establishment of four authorities Initiating Officer, Approving Authority, Adjudicating Authority, and Appellate Tribunal and a detailed adjudication and confiscation regime along with stringent penalties under Chapter VII.

Section 3 prohibits entering into a benami transaction. The exceptions to the same are as follows "Under the Prohibition of Benami Property Transactions Act, 1988 (as amended in 2016), the earlier presumption relating to purchase in the name

⁸ Law Commission of India, *57th Report on Benami Transactions* (1973).

of a spouse or unmarried daughter has been omitted. The current legal framework is contained in Section 2(9), which provides specific exceptions where a transaction shall not be treated as benami, including property held by a Karta for the benefit of a Hindu Undivided Family, property held in a fiduciary capacity, and property held in the name of a spouse, child, sibling, or lineal ascendant or descendant, provided that the consideration for such property is paid out of known and traceable sources.”

Section 4⁹ provides that no suit or claim shall be maintained to enforce rights with respect to benami properties. The exceptions to the same are: -

“(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

Section 5¹⁰ provides that the benami properties shall be acquired by the authority without any compensation or payment in return.

There are various distinguishing characteristics of benami transactions. First, there is a clear distinction between the ownership of the property, that is, the person who holds the legal title, and its beneficiary, whose name is not mentioned on the property deed. Second, these transactions usually do not have adequate documentation or details about the source of funds. Third, the purpose behind benami transactions is not always legal.

The legal implications of entering into benami transactions are serious. First, the law empowers the government to seize such property. The person who was the true owner loses his right over the property forever. Second, anyone who indulges in such

⁹ Benami Transactions (Prohibition) Act 1988, s 4.

¹⁰ Benami Transactions (Prohibition) Act 1988, s 5.

transactions can be imprisoned or fined under the law. Third, the law prohibits the true owner from exercising any rights over such property.

Therefore, it is important to note that while the Transfer of Property Act of 1882 focuses on regulating property transactions based on intent and ownership, the law dealing with benami transactions is solely concerned with regulating illegal property transactions.

VI. DISTINCTION BETWEEN BENAMI AND GENUINE TRANSFERS

A proper understanding of the concept of benami transactions requires an adequate knowledge of what constitutes a genuine transfer. Though the distinction between genuine transfer and a benami transaction may be very simple, the topic still raises very complex issues that are faced in practice. Unlike a genuine transfer of property recognized under the Transfer of Property Act, 1882, a benami transaction violates the Benami Transactions (Prohibition) Act, 1988.

A genuine transfer of property is marked with identity of legal and beneficial owners, i.e., both the title and possession are held by the same person who has the intention of transferring the property. In such transactions, the transferee owns the property legally, actually uses it, and pays the consideration himself. All genuine transfers are lawful and thus allowed according to the TPA.

Unlike a genuine transfer of property where the transferee is both the legal and beneficial owner and pays the consideration, a benami transaction involves two distinct persons: the benamidar, in whose name the property is held and who is the ostensible owner, and the beneficial owner, who provides the consideration and derives the actual benefit from the property. In such cases, it becomes clear why the intention is different from what should be in a lawful transfer.

The need for intent was clearly recognized by the Supreme Court in the case of *Thakur Bhim Singh v. Thakur Kan Singh*¹¹. In this case, the Supreme Court provided certain criteria that are considered important in determining whether the transfer of property

¹¹ *Thakur Bhim Singh v Thakur Kan Singh* (1980) 3 SCC 72 (SC).

was made in a benami fashion or not. These include the source of payment for the transaction, possession of the property in question, the relationship between the parties involved, and custody of the documents relating to title deeds.

It was held that it is the person who asserts that the transaction is a benami that would have to prove it. Intentions in such cases cannot be determined based on the form of the transaction, but from the surrounding circumstances.

In *Jaydayal Poddar v. Bibi Hazra*¹², it was reiterated by the Supreme Court that the true criterion was the intention of the person who provided the purchase money.

Therefore, even though there exists a clear differentiation between these two kinds of transactions, they remain difficult to distinguish from each other.

VII. ROLE OF TPA PROVISIONS IN ADDRESSING BENAMI-LIKE SITUATIONS

Despite the lack of any specific statutory law on benami transactions in India under the Transfer of Property Act, 1882, some clauses in the act implicitly address issues that arise in cases of discrepancies between ostensible and actual ownership. Some clauses become more pertinent when examining the intricacies of benami transactions.

A. Section 41 – Transfer by Ostensible Owner

Section 41¹³ states that when a person who is an ostensible owner transfers the property with the consent (either expressed or implied) of the real owner for consideration, such a transaction will not be considered null and void, provided that the transferee acts in good faith and exercises due diligence while ascertaining the transferor's authority.

This clause highlights two significant aspects:

1. An individual who is an ostensible owner might not be the real owner of the property.

¹² *Jaydayal Poddar v Bibi Hazra* (1974) 1 SCC 3 (SC).

¹³ Transfer of Property Act 1882, s 41.

2. The transferee, being a bona fide purchaser, should be legally protected.

In the case of *Hardev Singh v. Gurmail Singh*¹⁴, the Supreme Court of India reiterated that protection under Section 41 is available only when the transferee has acted honestly and after due inquiry.

The principle enshrined in Section 41 is derived from the rules established by the Privy Council in the landmark case of *Ramcoomar vs. McQueen*¹⁵, which held that:

“A fundamental principle of natural justice is that if a person allows another to present himself as the owner of a property, and a third party, relying on this representation, buys the property in good faith, the original person cannot later claim ownership based on a hidden or secret title.”

Relevance to Benami Transactions: However, though both section 41¹⁶ and benami transactions share the concept of legal and actual ownership being separate, while section 41 allows for the transfer of property from ostensible owners to bona fide transferees, benami legislation attempts to prevent the use of such arrangements. This makes the two issues almost overlap, where differentiation is not always easy.

B. Section 53 – Fraudulent Transfer

Section 53 of the TPA¹⁷, the transfer of property with the intention of evading liability towards creditors, is voidable by the creditor. The purpose of this provision is to curb fraudulent property transactions.

As stated in the case of *Abdul Shukoor Sahib v. Arji Papa Rao*¹⁸, the Supreme Court ruled that there must be proof that the intention to commit fraud existed, and this could be determined from the surrounding circumstances

¹⁴ *Hardev Singh v Gurmail Singh (Dead) by LRs* (2007) 2 SCC 404 (SC).

¹⁵ *Ramcoomar Koondoo v McQueen* (1872) 11 BLR 46 (PC).

¹⁶ Transfer of Property Act 1882, s 41.

¹⁷ Transfer of Property Act 1882

¹⁸ *Abdul Shukoor Sahib v Arji Papa Rao* AIR 1963 SC 1150.

Relevance to Benami Transactions: It is common practice for benami transactions to be employed as a means to keep assets out of reach of creditors and prevent the repayment of debts.

Therefore, several cases of benami transactions can be classified as part of fraudulent transfers. Nevertheless, whereas Section 53 is aimed at the intention to defraud creditors, the Benami Act applies to the concealment of ownership irrespective of whether the situation is related to creditors or not.

C. Section 43 – Feeding the Grant by Estoppel

Section 43¹⁹ encompasses the principle of “feeding the grant by estoppel”, which states that when a person acts fraudulently or negligently in claiming authorization to transfer particular property and ends up with a beneficial interest in that property, the transfer shall apply to the interest held by the transferee.

In *Jumma Masjid, Mercara v. Kodimaniandra Deviah*²⁰, the Supreme Court ruled that this principle stems from equity and protects a transferee from the denial of transfer by the transferor once he gains title to the property.

Relevance to Benami Transactions: This clause adds another layer of difficulty in establishing who owns what. It is possible that an individual who did not possess any right to convey property will obtain a legal title sometime down the line, rendering the transaction legitimate. This could also indirectly affect benami transactions when the actual owner is unknown during the transfer period.

These clauses illustrate how the Transfer of Property Act fails to ban benami transactions but recognizes situations where there is a question about the ownership, fraudulent activity, or an imperfect title. The subsequent implementation of stringent benami rules has resulted in conflict between the lenient provisions of the TPA and the hard-line nature of current laws, which require judicial intervention.

¹⁹ Transfer of Property Act 1882, s 43.

²⁰ *Jumma Masjid, Mercara v Kodimaniandra Deviah* AIR 1962 SC 847.

VIII. JUDICIAL APPROACH TO BENAMI TRANSACTIONS

The judiciary has played an important role in distinguishing benami transactions from genuine transfers, especially in situations where statutory provisions are insufficient to determine the true nature of a transaction. Courts have constantly emphasized that the substance of the transaction must prevail over its form, and that the real test lies in uncovering the intention behind the arrangement.

A. Key Case: *Thakur Bhim Singh v. Thakur Kan Singh*

In this seminal judgment, the Supreme Court has laid down certain important guidelines to determine the nature of the benami transaction.²¹ Acknowledging the inherent complexities of proof in benami transactions, the Court laid down certain important pointers:

1. The source of the funds used in purchasing the property
2. The nature of the property purchased and how it is possessed
3. The intention of the parties
4. The relationship between the parties
5. The custody of the title deeds

The Court has categorically held that no one of these pointers is conclusive, and an overall assessment of all facts is required. Importantly, however, the Supreme Court held that:

“The burden of showing that a transaction is benami lies on the person who asserts it.”

This point is extremely important because it makes arbitrary and baseless claims impossible and raises the standard of proof for establishing a benami transaction.

B. Another Important Case: *Suraj Lamp & Industries Pvt Ltd v. State of Haryana*

While it may be a case pertaining more to the validity of property transfer by means of GPA, it has relevance in the context of benami and disguised transactions.²² The Supreme

²¹ *Thakur Bhim Singh v Thakur Kan Singh* (1980) 3 SCC 72 (SC).

²² *Suraj Lamp & Industries Pvt Ltd v State of Haryana* (2012) 1 SCC 656 (SC).

Court examined the widespread use of instruments such as GPA, Agreement to Sell, and Will to effect informal transfers and held that such arrangements do not convey legal title. As per the Court's findings:

“A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property.”

This ruling underscore judicial concern with attempts to circumvent formal legal requirements and conceal real ownership structures.

C. Recent Development: Ganpati Dealcom Pvt. Ltd. v. Union of India

In a significant constitutional development, the Supreme Court in *Ganpati Dealcom Pvt. Ltd. v. Union of India* (2022) examined the validity and retrospective application of the 2016 Amendment to the benami law.²³ The Court held that the amended provisions, particularly those relating to confiscation and enhanced penalties, cannot be applied retrospectively to transactions entered into prior to the amendment coming into force. It was observed that such retrospective application would violate constitutional protections against ex post facto penal laws under Article 20(1).

This judgment is crucial in understanding the transition from the limited framework of the 1988 Act to the expanded regime post-2016. It clarifies that while the legislature has strengthened the regulatory mechanism, such changes must operate prospectively, thereby safeguarding legal certainty and fairness. The ruling also highlights the judicial attempt to balance stringent anti-benami measures with fundamental rights, which is central to the broader conflict between regulatory rigidity and equitable principles discussed in this paper.

²³ *Ganpati Dealcom Pvt. Ltd. v. Union of India*, (2022) 7 SCC 1.

D. Another Important Case: Jaydayal Poddar v. Bibi Hazra

This is perhaps one of the leading judgments on benami transactions.²⁴ The Supreme Court re-emphasized the principle that the intent of the person who furnishes the purchase price is the most important point.

“The essence of a benami transaction is the intention of the person who advances the purchase money.”

The Supreme Court further held that the burden of proving the transaction as benami was upon the party who alleged it, and it had to be proved by concrete evidence.

These statements clearly indicate that the court gives a great deal of importance to the intention and circumstances of the case to distinguish a truth from a false transaction.

IX. PRACTICAL CHALLENGES IN DISTINGUISHING BENAMI AND GENUINE TRANSFERS

It is quite challenging to differentiate between real transactions and benami transactions in property law, despite all the efforts made by the legislature and judicial precedents to provide guidance in this matter.

A. Difficulty in Proving Intention

One of the major obstacles in this regard is proving the intentions of those involved, since it is a fundamental element of determination whether the transaction is a benami transaction or not. Proving someone's intention is extremely difficult because it cannot be easily proved from any document or otherwise.

In Jaydayal Poddar v. Bibi Hazra²⁵, the Supreme Court noted that intention had to be determined from the facts and circumstances of a particular case, thus leaving room for unpredictability.

²⁴ *Jaydayal Poddar v Bibi Hazra* (1974) 1 SCC 3 (SC).

²⁵ *Jaydayal Poddar v Bibi Hazra* (1974) 1 SCC 3 (SC).

B. Family Transactions

It is also quite common in India that property may be bought in the name of a spouse, children or relatives because of various reasons. It will be very difficult to differentiate between those situations and benami transactions.

The Supreme Court in *Valliammal v. Subramaniam*²⁶ has acknowledged that it would be very hard to determine true ownership of a property when family ties come into the picture. In some cases, the contribution of money and possessions may be misleading.

C. Overlapping Legislation

The second major difficulty is caused by the overlapping nature of the Transfer of Property Act, 1882 and the Benami Transactions (Prohibition) Act, 1988. Although there is some latitude regarding ownership in TPA, benami transactions cannot be justified in any form or manner. This leads to ambiguity and confusion while applying these acts to particular situations.

D. Risk of Misuse

In addition to this, there is always a chance that the authorities will incorrectly classify the transaction as benami, especially in instances where there is a complicated financial deal involved. This would result in the harassment of genuine property holders, unnecessary legal proceedings, and even hardships.

It has been highlighted in numerous court cases that the onus of proof of such transactions is placed upon the individual making the claim, as demonstrated in the case of *Thakur Bhim Singh v. Thakur Kan Singh*.²⁷

²⁶ *Valliammal (D) by LRs v Subramaniam* (2004) 7 SCC 233 (SC).

²⁷ *Thakur Bhim Singh v Thakur Kan Singh* (1980) 3 SCC 72 (SC).

E. Insufficiency of Documentation

Lastly, many property deals in India have taken place through informal transactions with insufficient documentation, and payments are also untraceable. As a result, there is a lack of consideration, from which it would be easy to distinguish whether it is benami or not.

Lack of sufficient documentation makes it even more confusing and difficult for the judiciary to make an informed decision on these matters.

X. CONFLICT BETWEEN TPA AND BENAMI LAW

Various problems and inconsistencies can arise due to the interaction between the provisions of the Transfer of Property Act, 1882 and the Benami Transactions (Prohibition) Act, 1988. Despite being within the realm of property transfer laws, the purposes and ideologies behind both these Acts remain quite different, hence leading to conflicts between them.

A. Principle vs. Prohibition

As mentioned above, TPA is a principle-based act, which places much emphasis on the intention behind the transaction as the criterion for validating or invalidating it. In other words, the concept of ownership can be flexible, as TPA aims to protect the legitimate nature of transactions based on equity.

On the contrary, benami transactions are strictly prohibited because of potential misuse. The intentions are not considered important here, while the main goal is to prevent any fraudulent transactions in real estate.

B. Recognition vs. Criminalisation

Provisions like Section 41 (Transfer by Ostensible Owner) under the Transfer of Property Act, 1882 recognise situations where the ostensible owner is not the real owner, yet transactions entered into in good faith for consideration are protected. This reflects an equitable and pragmatic approach aimed at safeguarding bona fide purchasers and maintaining transactional certainty.

However, the Prohibition of Benami Property Transactions Act, 1988, as amended in 2016, significantly intensifies this position by introducing a stringent enforcement framework. The Amendment not only prohibits benami transactions but also criminalizes them through the introduction of penal provisions under Chapter VII, including imprisonment and monetary penalties. Additionally, it empowers authorities to provisionally attach, and ultimately confiscate properties involved in such transactions without compensation.

This transformation creates a more acute conflict with the TPA framework. Transactions that may otherwise receive protection under the equitable doctrines of the TPA particularly those involving ostensible ownership or informal familial arrangements may now attract strict penal consequences if they fall within the expanded definition of benami under Section 2(9). The shift from a primarily prohibitory regime to a punitive and enforcement-driven model under the 2016 Amendment thus deepens the tension between flexibility in property transactions and the State's objective of preventing misuse of property structures

C. Flexibility vs Rigidness

TPA gives some level of flexibility in making property transactions. It considers various factors like intention, relationships and the situation surrounding the case before reaching decisions. Such flexibility is necessary in countries like India, where dealing with properties is more familial in nature.

Benami law, on the contrary, applies strict limitations with very few exceptions. Benami law has as its main aim the control of fraudulent activities like tax evasion and money laundering.

D. Legal Uncertainty

This intersection of the two systems often causes legal ambiguity. Courts may encounter difficulties when trying to determine whether the case at hand requires application of the

broad and flexible norms of the TPA or the restrictive provisions of the benami legislation.

The lack of clear instructions on how to balance these norms may give rise to contradictory court decisions, protracted litigation, and even confusion amongst the parties involved. Such ambiguities have detrimental effects on legal certainty and property transactions.

XI. CRITICAL ANALYSIS

The interaction between the Transfer of Property Act of 1882 and the Benami Transactions (Prohibition) Act of 1988 creates several interesting issues to consider²⁸. Although the objective of the law seems to be well justified, its implementation poses significant concerns.

A. Is Benami Legislation Excessively Restrictive?

The Benami Transactions legislation relies on a restrictive and prohibitive approach with harsh sanctions such as confiscation and imprisonment. Although this approach works effectively in combating tax evasion and other forms of corruption, it may have adverse side effects.

It would also be difficult for people to engage in legitimate transactions – particularly within the family context – due to the possibility of them being taken as benami transactions. Buying properties for one’s spouse or child to plan for the future can attract attention, whether their intentions were bona fide or not.

B. Does It Violate Principles of TPA?

As was seen earlier, TPA is an equitable statute, wherein good faith is one of the important factors. Thus, the benami law may run contrary to some of the tenets of the TPA.

²⁸ Law Commission of India, *57th Report on Benami Transactions* (1973).

For example, in the case of transfer of possession by a TPA court, intention will be considered. In this way, a property will still be transferred if the person intends to give it to someone else despite having purchased it himself. The benami statute²⁹, however, has strict requirements, thus violating the principles of TPA.

C. Is Their Sufficient Clarity?

The difference between the benami transaction and a legitimate one is not entirely clear despite efforts made by legislators to establish it. In fact, the use of indicators, such as intent, source, and possession of property, often leads to a situation where it is hard to distinguish between different kinds of cases.

Consequently, this causes problems including:

1. More litigation
2. Difficulties with enforcement
3. Uncertainty on the part of property owners

Additionally, divergent views in courts add to the complexity of the problem and make it more difficult to understand when a particular act is legal.

D. Striking a Balance

One of the main issues that has to be addressed here is finding a proper balance between freedom of property transactions and their transparency. Although it is important to make sure that there is no fraud in any transaction, excessive regulation is likely to undermine the process.

In particular, overregulation may result in:

1. Limiting the opportunities to structure transactions
2. Increasing compliance requirements
3. A decrease in the effectiveness of transactions in the property market

²⁹ Benami Transactions (Prohibition) Act 1988

The current framework, though well-intentioned, reflects a tension between control and flexibility. A more nuanced and harmonised approach is required to ensure that the law effectively targets illegitimate practices while safeguarding the principles of fairness and autonomy in property transactions.

XII. RECOMMENDATIONS FOR IMPROVEMENT

In order to efficiently tackle the problems emanating from the interaction of the Transfer of Property Act, 1882 and the Benami Transactions (Prohibition) Act, 1988, some sensible measures are required.

First, there needs to be an objective definition of what constitutes a benami transaction and how it differs from an actual transfer of property. This will minimise confusion since basing arguments on the intentions of parties may lead to inconsistencies.

Next, there is a need to increase documentation. There could be mandatory disclosures about where the money used in buying or selling property originates. Also, the digitisation of land titles can be considered.

Furthermore, harmonisation of the two Acts would be helpful in solving the problems at hand. The rules under the TPA have to be consistent with the Benami Law.

Also, there must be safeguards for those conducting legitimate transactions. Measures need to be put in place so that innocent property owners are not prosecuted. There should also be clear guidelines concerning the standard of proof in such cases.

Promotion of public awareness and adherence to legal norms by education simplifies procedures and ensures that citizens are aware of the laws and comply with them, thus avoiding accidental violation of laws.

XIII. CONCLUSION

The difference between benami transactions and legal transfer of property is inherent in the Indian property law itself and determines the legal validity and legitimacy of ownership rights and property dealings. While the Transfer of Property Act allows easy

and fair transfer of property based on intention and consent, the Benami Transactions Act is a stringent measure that aims at the eradication of benami structure and the use of properties in illegal activities.

Co-existence of these two legal measures results in an interesting relationship of both confrontation and complementarity. While these acts have contrasting aims, the TPA is designed for enabling and regulating legitimate transfer of property, the BTA³⁰ has opposite intentions, the spheres of competence of these laws largely overlap and result in ambiguity and uncertainties.

Such a dichotomy calls for balancing. Excess rigidity may hamper actual transactions and cause apprehension amongst legitimate proprietors, while flexibility may be exploited by those engaged in such illicit practice. Consequently, it may be seen that the efficiency of such laws largely hinges upon attaining a proper balance between transparency and accountability, and freedom and flexibility in transactions involving property matters.

A balanced approach, coupled with clear legislation, better documentation, and uniform judicial interpretation, is needed to address this issue. Not only will this lead to greater clarity in law and a reduction in litigation, but it will also serve to protect genuine transactions and prevent misuse through benami transactions.

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³⁰ Benami Transactions (Prohibition) Act, 1988

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