

BENAMI TRANSACTIONS(PROHIBITION) AMENDMENT ACT, 2016



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INTRODUCTION



- An economic offence has multiple layers to it.
- The commission of a criminal act for pecuniary gains is merely the tip of the proverbial iceberg.
- A parallel economy largely run by anti-social elements or their agents often involves a copious number of cash transactions.
- The process of converting the proceeds of crime (black money) into legitimate money (white money) that can be freely used is called money laundering
- ‘Benami’ transactions have historically been perceived as an effective method to both conveniently hide as well as launder illicit money.

Legislative Measures

- (Prevention of Money Laundering Act),
- The Companies Act,
- The Information Technology Act and
- Benami Property (Prohibition) Act, 1998
- The Benami Transactions (Prohibition) Amendment Act, 2016



The Benami Transactions (Prohibition) Amendment Act, 2016



Benami transaction →

Transaction where a property is held by or transferred to a person, but has been provided for or paid by another person.

Amended → this definition to add other transactions which qualify as benami, such as property transactions where:

- (i) the transaction is made in a fictitious name,
- (ii) the owner is not aware of or denies knowledge of the ownership of the property, or
- (iii) the person providing the consideration for the property is not traceable

Exemptions



Cases will be exempt from the definition of a benami transaction.

These include cases when a property is held by:

- (i) a member of a Hindu undivided family, and is being held for his or another family member's benefit, and has been provided for or paid off from sources of income of that family;
- (ii) a person in a fiduciary capacity;
- (iii) a person in the name of his spouse or child, and the property has been paid for from the person's income; and the Bill defines benamidar as the person in whose name the benami property is held or transferred, and a beneficial owner as the person for whose benefit the property is being held by the benamidar.

Four authorities to conduct inquiries or investigations regarding benami transactions

- (i) Initiating Officer,
- (ii) Approving Authority,
- (iii) Administrator and
- (iv) Adjudicating Authority.



Role of Initiating Officer

- Officer believes that a person is a benamidar,
- he may issue a notice to that person.
- The Initiating Officer may hold the property for 90 days from the date of issue of the notice, subject to permission from the Approving Authority.
- At the end of the notice period, the Initiating Officer may pass an order to continue the holding of the property.



Role of Adjudicating officer & Administrator

If an order is passed to continue holding the property, the Initiating Officer will refer the case to the Adjudicating Authority.

The Adjudicating Authority will examine all documents and evidence relating to the matter and then pass an order on whether or not to hold the property as benami.

Based on an order to confiscate the benami property, the Administrator will receive and manage the property in a manner and subject to conditions as prescribed.



Appellate Tribunal and Punishments

Appellate Tribunal is established to hear appeals against any orders passed by the Adjudicating Authority. Appeals against orders of the Appellate Tribunal will lie to the high court.

The penalty for entering into benami transactions is imprisonment up to three years, or a fine, or both.

Penalty to rigorous imprisonment of one year up to seven years, and a fine which may extend to 25% of the fair market value of the benami property.

Penalty for providing false information to be rigorous imprisonment of six months up to five years, and a fine which may extend to 10% of the fair market value of the benami property.

Sessions courts would be designated as Special Courts for trying any offences which are punishable

Officers to assist authorities in the enforcement of the Act subject to (Sec. 20)

- Income Tax Authorities
- Customs and Central Excise Department Officers
- Narcotics Drugs and Psychotropic Substances Act Officers
- Officers of a recognised stock exchange
- Officers of Reserve Bank of India
- Police
- Officers of Enforcement under Foreign Exchange Management Act
- Officers of Securities and Exchange Board of India
- Officers of any 'body corporate' constituted or established under State or Central Act



Highlights of the Act:



Up to seven years' imprisonment and fine for indulging in benami transactions
Providing false information is punishable by imprisonment up to five years &

Properties held benami are liable for confiscation by government without
compensation

Officer may pass an order to continue holding the property and may
refer case to Adjudicating Authority

Relevant Miscellaneous Provisions

i. Religious and Charitable Trusts– Section 58 (1) exempt property in relation to charitable and religious trusts from the application of the Act.

ii. Special Courts– According to Section 50 (1) the Central Government in consultation with the High Court Chief Justice notify for designation of courts as Special Courts in order to try offences which are in violation of the

Act.



The Interpretation of the Judiciary on Benami Transactions

Om Prakash Sharma v Rajendra Prasad Shewda & Ors

the Supreme Court made reference to a landmark precedent known as *Jaydayal Poddar (Deceased) through L. Rs. & Anr v Mst. Bibi Hazra & Ors* and laid down certain important factors produced below:-

“(1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and 6) the conduct of the parties concerned in dealing with the property after the sale.”



Adverse Impact



- Legislation has taken the first step towards eradicating the wide spread corruption in the real estate sector by enacting the Act.
- However, there was no visible impact because no action was taking against the people who resorted to such illegal activities.
- It cannot be under-emphasized that the adverse impact of benami transactions on the economy of our nation is immense.
- There is an immediate requirement to do work at the grass root level to eliminate the existence of such transactions in its entirety.

Recent Incidents in Banking Sector

State Bank Of India → (2016-2017)

Allegation- 2000 accounts opened during demonization at Bareilly, UP

Approximately Rs. 8 Crore deposited

A Ray of Hope

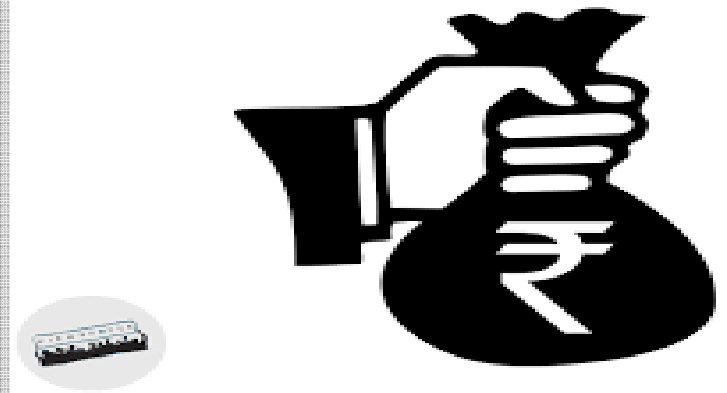


the proper implementation by the executive would cause immense
adverse impact in the society.

For instance, on one hand the provision of confiscation of benami
properties sufficiently creates threat in the minds of people; and on the
other hand the provision of exemption to those who declare their
benami properties appears to be a lucrative incentive.

Thus, if the new amended law is not handicapped by non-
implementation then it can send shivers down the spine of those who
have entered into such illegal transactions and also prevent the people
from illegally evading taxes

Recommendations



The prevention and prohibition of benami transactions is imperative for the healthy economic growth of the country.

It is conceded that there are provisions in the Income Tax Act, 1961 to deal with tax evasion and undisclosed wealth but requisite amendments to the same to curb stashing of unaccounted investment under benami names would result in achieving the object of the Act

The requirement of digitalisation of land records and accordingly it would require amendments in the Transfer of Property Act, 1882 and the Registration Act, 1908 to provide for registration of immovable properties, linking of Aadhar Card and PAN numbers of parties who purchase the property, providing relevant registration data to the tax authorities

The application of the Act must be extended to all properties located abroad

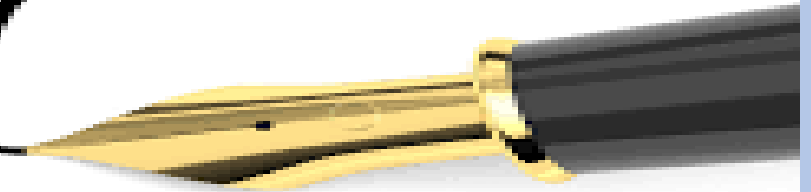
Conclusion

The successful prevention and curbing of the benami transactions is possible only when the political will of the executive to productively implement the newly amended law is materialised.

Also, if the mentioned recommendations are reflected in the rules then it shall pave the way for fulfilment of the object and purpose of the law on prohibition of benami transactions



Thank
you



REFERENCES:

- http://www.bjp.org/images/pdf_2014/full_manifesto_english_07.04.2014.pdf [2] 130th Law Commission Report, available at-
<https://indiankanoon.org/doc/26445461/>
- <http://www.merriam-webster.com/dictionary/benami>
- <http://policy.mofcom.gov.cn/english/flaw!fetch.action?id=573d04ab-7dbc-460c-9af6-5ae1d28ecc29> –
- <http://taxguru.in/corporate-law/benami-transactionsgenesis-analysis.html#sthash.fZ5vyxUm.dpuf>