

**A STUDY ON THE EVOLUTION OF PROHIBITION OF BENAMI PROPERTY
TRANSACTIONS ACT FROM 1988 TO 2016**

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ABSTRACT

The Benami Transaction (Prohibition) Act, 1988 first came into power on 5th of September but illicit activities were undergoing due to many loopholes present in it. It was not until the amendment of the act in 2016 which came into power on 1st of November in the same year. The activities related to black money and money laundering were curbed to a great extent. After surgical strike on dark money, government has cautioned Benami property holders that his in this manner stride would be close by them. Benami property would be the real advance towards annihilating dark money and defilement. Benami transactions in its complete are actually quite difficult to annihilate from the general public, in light of the very idea of the connection between gatherings who go into such sort of transaction.

Benami transactions are sterilization themselves by not being controlled uniquely to transaction between genuine proprietor and benamidar, it has altered itself to numerous different structures like money laundering. Benami transaction is prototypical piece of exchange of property, pitiful path of crucial legislation like Prevention of Money Laundering Act, 2002 isn't sufficient yet its impact on Transfer of Property. The Benami

Transactions (Prohibition) Amendment Act, 2016 is a changed form of more established Benami Transactions (Prohibition) Act 1988. Benami transaction is affirmed out with the plan to cover the genuine wellspring of money. Benami Transaction attempted to control transactions; then again, it couldn't appreciate the substance of the Act to its fullest in light of the fact that it neglected to consider all types of Benami transactions. Benami transactions in item, it attempts to accomplish that is concealing the illicit wellspring of money. Benami transaction is expanded it can involve different types of managing dark money as sound like money laundering.

INTRODUCTION

Benami Transactions (Prohibition) Act, 1988 is an Act of the Parliament of India that precludes particular sorts of money related transactions. The act characterizes a 'benami' transaction as any transaction in which property is moved to one individual for thought paid by someone else. Such transactions were a component of the Indian economy, normally identifying with the buy of property (land), and were thought to add to the Indian dark cash issue. The act bans all benami transactions and gives the administration the privilege to recoup property held benami without paying any pay.

The act came into power on 5 September 1988. In spite of the fact that benami transactions are presently illicit, the act had restricted accomplishment in controlling them. Refreshed forms were in this manner gone in 2011 and 2016, looking to all the more completely uphold the prohibitions.

The Benami Transactions (Prohibition) Amendment Act, 2016 ("Amendment Act") came into force with effect from November 01, 2016. The Amendment Act seeks to amend the provisions of the Benami Transactions (Prohibition) Act, 1988 ("Principal Act") to curb the issues of black money and money laundering in the country.

The Amendment Act:

- a. has renamed the Principal Act as Prohibition of Benami Property Transactions Act, 1988 ("New Act");
- b. has tried to give a comprehensive definition of benami transactions clearly setting out the transactions to be excluded from the definition;
- c. provides for establishment of adjudicating authorities; setting up of appellate tribunal and power of Central Government to designate one or more Courts of Session as Special Courts for speedy and smooth trial of offences punishable under the New Act; and
- d. provides for attachment, adjudication, confiscation and vesting of benami property and has prescribed penalties and punishments in respect of the offences punishable

under the New Act.

1.1 Implications of a Benami Transaction:

1. Any property, which is the topic of benami transaction, will be subject to be seized by the Focal Government.
2. Benamidar will not be permitted to remove the benami property held by him to the valuable proprietor or some other individual acting for his sake.
3. Where any property is removed in repudiation of the arrangements under the act, the transaction of such property will be considered to be invalid and void.

Note: The arrangements in point (1) and (2) will not matter to an exchange made as per the arrangements of area 190 of the Fund Act, 2016."

4. Person(s) who go into any Benami transactions will be culpable with thorough detainment for a term which will not be short of what one year and will not surpass seven years.
5. Notwithstanding detainment, a fine of 25% of the honest estimation of the property will be payable.
6. The Act forbids recuperation of Benami property from the Benamidar by the genuine proprietor and where the Benamidar removes the property to the valuable proprietor, at that point the transaction for such re-move will be regarded to be invalid and void.
7. Properties that are held as Benami are at risk to be reallocated by the Legislature without instalment of any remuneration.
8. Any individual who is required to outfit data under the Act, purposely gives false data to any specialist or outfits any bogus record in any procedure under this Act, will be culpable with thorough detainment for a term which will not be under a half year but rather which may reach out to five years and will likewise be at risk to fine which may stretch out to 10% of the honest estimation of the property.

2. CONCEPTUAL DEFINITIONS

2.1 "BENAMI"

According to the Act [sec_2(4)], "An individual made, held, done, or transacted in the name of (another person) —used in Hindu law to designate a transaction, contract, or property that is made or held under a name that is fictitious or is that of a third party who holds as ostensible owner for the principal or beneficial owner."

2.2 "BENAMI PROPERTY"

According to the Act [sec_2(8)], “Any property which is the subject matter of a benami transaction and also includes proceeds from such property.”

2.3 “BENAMIDAR”

According to the Act [sec_2(10)], “A person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.”

2.4 “BENEFICIAL OWNER”

According to the Act [sec_2(12)], “A person, whether his identity is known or not known, for whose benefit the property is held by the benamidar. He is the person who receives the income for his own use and enjoyment and assumes the risk and control, ie, the person enjoys and assumes all the attributes of ownership and exercise complete discretion over the disposition of the income.”

2.5 “BENAMI TRANSACTION”

2.5.1 A Benami Transaction means, - ● a transaction or an arrangement-

2.5.2 where a property

- is transferred to, or is held by, a person, and
- the consideration for such property has been provided, or paid by, another person; and

2.5.3 the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration

3. Declaration of Benami property

3.1 Issuing a show cause notice:

In the event that, upon the material accessible to the Initiating Officer, he has motivation to accept that any individual is a benamidar in regard of a property, he may issue a notice to the individual to show cause why the property ought not be treated as benami property inside the time determined in the notice. He should record the reasons recorded as a hard copy.

3.2 Effect of Alienation after notice:

On the off chance that any individual, in the wake of accepting a show cause see from the Initiating Officer in regard of any property, endeavors to estrange that

property, such an exchange will be held invalid and void.

3.3 Provisional Attachment:

On the off chance that the Initiating Officer has motivation to accept that the property held is a benami property and the advised individual may estrange such property during the period indicated in the notice, he may, by request recorded as a hard copy, join temporarily the property in the way as might be endorsed, for a period not exceeding ninety days from the date of issue of notice. Before appending the property, he should look for the endorsement of the Approving Authority. This temporary connection can proceed by a request gone by the Initiating Officer.

3.4 Reference to Adjudicating Authority:

Where the Initiating Officer passes a request proceeding with the temporary connection of the property or then again passes a request temporarily joining the property, he will, inside fifteen days from the date of the connection, draw up an announcement of the case and allude it to the Adjudicating Authority.

3.5 Attachment and Confiscation:

After giving notification (inside a time of 30 days of getting reference) and a consequent sensible chance of hearing to the benamidar the Adjudicating Authority may pass a request either denying or affirming the request for Attachment. The Adjudicating Authority will, in the wake of giving a chance of being heard to the individual concerned, make a request appropriating the property held to be a benami property. Where a request for appropriation has been made, every one of the rights and title in such property will vest in the Central Government, free from all encumbrances and no pay will be payable in regard of such reallocation. An intrigue from the request for the Adjudicating Authority can be made to the Appellate Tribunal built up under the Act, inside 45 days of the date of such request.

3.6 Administration:

The Administrator will have the ability to get and deal with the property, in connection to which a request for seizure is made. He is engaged to accept such measures as are vital for overseeing such property. He additionally has the forces to implement ownership by giving sensible notice to the occupier of such property.

4. Exceptions of the Benami Transaction Act

The Amendment Act, unlike the 1988 Act, provides certain exceptions to the definition of benami transactions under Section 2(9) and in this regard, property held by the following categories of persons have been exempted from the purview of 'benami transactions, thus providing legitimate relaxations to certain types of transactions

1. A Karta or a member of a Hindu undivided family. Provided such property is held for his benefit or the benefit of other members in the family
2. A person standing capacity for the benefit of other person
3. An individual purchase Property in the name of his spouse or child
4. Any person in the name of his brother or sister or lineal ascendant or descendant.

5. Penalty for Benami Transaction (SEC-53)

Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction. [Sec-53(1)] Whoever is found guilty of the offence of benami transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term which shall not be less than 1 year, but which may extend to 7 years and shall also be liable to fine which may extend to 25% of the fair market value of the property. [Sec-53(2)] Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 5 years and shall also be liable to fine which may extend to 10% of the fair market value of the property

6. Purpose and Objectives of Study

1. This paper will describe the common causes of unordered implication of 1988 act and how the government planned strategies to amend it in 2016 that constructively managed the conflict.
2. This paper will discuss the amendments of benami transactions act 2016 and compare it to the 1988 act.
3. The intent of the act is to discover the gaps filled in the 2016 act which were lacking previously.

7. REVIEW OF LITERATURE:

CASE 7.1: -RESEARCH PAPER 1 (BENAMI TRANSACTION ACT IN REAL ESTATE ON BLACK MONEY)[A.Subhashini, M. Yokesh (2018)]

7.1.1 Introduction

Benami transactions is commonly accepted in India is that 'where a person buys property with his own money but in the name of another person or buys property in his own name but subsequently transfers it into the name of another person, without any intention in either case to benefit such other person. The transaction is called 'benami' and the person in whose name the transaction is effected is called 'benamidar'. While mainly these accounts are created for immovable assets like land and building but it can also be done for movable assets like shares, bonds, etc. Shares of companies are often purchased or applied for and allotted in the names of persons other than the real owner who furnishes the consideration. The people put the name of their wife and children to get exemption from tax and finally converting into black money. The Benami Transactions (Prohibition) Act, 1988 came into existence due to these factors.

7.1.2 Objectives

- To study about the benami transaction act in real estate on black money
- To analyze the impacts based on transaction act on black money
- To study about the uplifted prohibition act on benami transaction
- To analyze the billing process on benami transaction act

7.1.3 Conclusion

The number of landless poor is reduced and land that is in excess is distributed into parts to them for cultivation. Guarantee the land rights to the marginalized poor i.e. scheduled caste and tribes, women and minorities respecting the principles of social equity, empowerment and inclusion. Card indexing system for prohibiting fictitious transfers in benami names should be introduced.

CASE 7.2: - RESEARCH PAPER 2 (DETERRENCES OF BENAMI TRANSACTIONS ACT) [Radheshyam Prasad (2018)]

7.2.1 Introduction

Benami transaction is a method by which a person becomes the virtual owner of a property through the power of attorney although legally the property is not reported as bought or sold. Consequently, the taxes due to the Government at the time of such transactions are not paid. In simple terminology, benami transactions are transactions where property is purchased in the name of one person but the consideration for the said purchase is paid by other person therefore the former will be the nominal owner and the latter will be the real owner of the property. The Privy Council in the case *Pether Perumal v Muniandy* 4 held that the person who lends his name for the purchase of property and has ostensible title, i.e., the benamidar is nothing but an alias for the real owner who has beneficial ownership of the property. A transaction or arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious will come under benami transaction.

7.2.2 Objectives

- An Act to prohibit Benami transactions and the right to recover property that is held in benami
- This Act aims to act as a deterrent to prohibit people from entering into benami transactions as well as given the right to the Government to confiscate benami properties.

7.2.3 Conclusion

At present, each and every person is supposed to disclose all the black money to the Government of India. This has been a special measure taken by the government to catch people with a lot of black money and benami property. The core aim of the Act is to route the unaccounted money into the financial system; seize benami properties and prosecute/punish those who are involved in transaction of such properties. However, the law extends immunity under the Income Declaration Scheme to those who make a declaration in respect of their benami properties. Amendment of law will bring transparency in the residential market with minimized risk and boosting of residential transactions. This in turn will bring down the prices of real estate as the rich investors who had black money and gave more in order to get it in cash will be minimized drastically. Thus, the amended Act, if 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 people from illegally evading taxes.

CASE7.3: -RESEARCH PAPER 3 (Benami Transactions-Genesis and Analysis) [Sneha Bhawani (2016)]

7.3.1 Introduction

The term “Benami” has its origin from the Persian language which implies “without a name”. According to Merriam Webster Dictionary the term “benami” implies “made, held, done, or transacted in the name of (another person) —used in Hindu law to designate a transaction, contract, or property that is made or held under a name that is fictitious or is that of a third party who holds as ostensible owner for the principal or beneficial owner”. In simple terminology, benami transactions are transactions where property is purchased in the name of one person but the consideration for the said purchase is paid by other person therefore the former will be the nominal owner and the latter will be the real owner of the property.

7.3.2 Objectives

- All kinds of property must be covered by benami transactions
- The new law must declare that entering into benami transactions is an offence except when a father or husband transfers property in the name of his daughter or wife.
- Acquisition of properties in the same procedure as provided in Chapter XXXA of the Act, 1961

7.3.3 Conclusion

On cautious exam, the Amendment Act, 2016 seems to be promising enough to cope with the criminal infirmities that existed inside the Act. The right implementation through the govt might cause monstrous deterrent effect inside the society. As for example, on the one hand the provision of confiscation of benami residences sufficiently creates danger within the minds of human beings; and alternatively the availability of exemption to people who claim their benami residences seems to be a rewarding incentive. Thus, if the new amended regulation isn't handicapped by using non-implementation then it is able to ship shivers down the backbone of these who've entered into such unlawful transactions and also prevent human beings from illegally evading taxes.

CASE 7.4: -RESEARCH PAPER 4 (BENAMI TRANSACTION: FROM THE OLD CONCEPT TO THE NEW BILL) [Nishi Shah (2016)]

7.4.1 Introduction

Purchase or holding of properties in the name of the other is known as a Benami Transaction in India. This custom has been recognized by India Courts for a long time. Literally, the word “benami” means ‘Without Name’. The essential legal characteristic of these transactions is that there is no intention to benefit the person in whose name the transaction is made. The name of that person, popularly known as ‘Benamidar’, as Privy Council pointed out, is simply an alias for that of the person beneficially interested. The Benamidar has the ostensible title to the property standing in his name; but the beneficial ownership of the property does not vest in him but in the real owner. The principle underlying the benami transaction is that where a property is acquired in the name of one person but the purchase price is paid by another, a presumption would arise that the transaction was one for the benefit of the person providing the purchase money.

7.4.2 Objectives

- The Act concentrated on prohibition of the benami transactions and thus curbed the practice of benami.
- To provide penalty for entering into prohibited benami transactions and for furnishing any false documents in any proceeding under the Bill.

7.4.3 Conclusion

The Ordinance which was promulgated on 19th May, 1988 to prohibit the right to recover the property that was held benami and for the incidental matters was eventually replaced with the Benami Transactions (Prohibition) Act, 1988 in order to curb Benami transactions. But this Act lost its purpose over a period of time as no rules for implementation of this Act were made. Further, new bill on Benami Transaction Act was introduced in 2011. Even after taking such a long time for introducing the Benami Transactions (Prohibition) Bill, 2011 to repeal the Benami Transactions (Prohibition) Act, 1988 with a view to enacting a comprehensive legislation to deal with benami transactions, the Bill has failed to live up to the mark and provide for speedy and Effective Changes.

8. RESEARCH METHODOLOGY:

The Research we are conducting is purely from secondary data.

8.1 What is Secondary Data?

Secondary data is the data that have been already collected by and readily available from other sources. Such data are cheaper and more quickly attainable than the primary data and also may be available when primary data cannot be obtained at all.

Secondary data are collected by a party not related to the research study but collected these data for some other purpose and at different times in the past. If the researcher uses these data, then these become secondary data for the current users. These may be available in written, typed or in electronic forms. A variety of secondary information sources is available to the researcher gathering data on an industry, potential product applications and the marketplace. Secondary data is also used to gain initial insight into the research problem.

8.2 SOURCES OF SECONDARY DATA:

8.2.1 PUBLISHED SOURCES:

1. information collected through censuses or government departments like housing, social security, electoral statistics, tax records
2. internet sources and books
3. Newspapers and Periodicals.
4. Reports submitted to economists, re-search scholars, universities and various educational and research institutions.

8.2.2 UNPUBLISHED SOURCES:

The statistical data needn't always be published. There are various sources of unpublished statistical material such as the records maintained by private firms, research workers, etc.

They may not like to publish or release data to outside sources.

8.3 TYPES OF SECONDARY DATA:

8.3.1 Quantitative Market Research:

It focuses more on obtaining statistics that is helpful in getting an overview of the complete topic. Quantitative research is mostly conducted in social sciences using the statistical methods used above to collect quantitative data from the research study. In this research method, researchers and statisticians deploy mathematical frameworks and theories that pertain to the quantity under question.

It involves gathering of numeric data and includes the following:

- Surveys to collect information.
- Existing financial scenario or trend.
- Phone or online questionnaire, etc.

8.3.2 Qualitative Market Research:

It focuses more on collecting attitudes and views on a particular event or a topic from people of diverse backgrounds and thoughts. Analysis of qualitative data involves an altogether different approach as it takes long hours for interpretation due to the nature of data involved. It involves the following:

- Views and attitudes of existing and potential customers towards the event or company's services or products.
- Demography of audience.
- Identification of the size of market.

The research we conducted has used quantitative data with all the statistical information relating to Benami Transactions Act (1988 to 2016).

1. LIMITATIONS OF THE ACT

A benami transaction is one where the property is held in one individual's name, however the assets for securing have been given by someone else, for whose advantage the property is held. Consequently, the property isn't held for the sake of the genuine proprietor, yet in another person's name.

The vast majority are under the feeling that these arrangements apply just to people attempting to shroud their properties, and not to certifiable properties procured out of uncovered assets. That isn't valid; even a property procured utilizing revealed assets in an authentic exchange might be treated as benami. Certain special cases have been given—property held by an individual in the interest of his or her life partner or tyke, by a karta or individual from HUF (Hindu Undivided Family) for the HUF, by an accomplice for the benefit of the organization firm, by a chief in the interest of an organization, by a trustee in the interest of the recipients of a Trust.

Property can be held for the sake of a sibling or sister or some other lineal ascendant or relative, just in the event that it is held together with the genuine proprietor. Subsequently, owning a property and holding it for the sake of a girl in-law, or for the sake of a grandkid, isn't reasonable. Luckily, including the name of a life partner for accommodation, however the whole assets are being paid by the acquirer, does not draw in the arrangements of this law.

Also, many a times a pool of friends may gather money for acquisition of land and purchase it to make profits after resale. So, the land has to be in the name of all the friends

for land to be legal.

The expectation of the law is exceptionally clear, and commendable—to guarantee that people gaining undisclosed properties don't hold them in the names of their relatives or companions. This is one of the prongs in the assault against black money and defilement. Lamentably, the law does not limit itself to instances of properties procured out of undisclosed assets. It applies to all situations where the property is held in someone else's name, except if it is secured by one of the special cases.

9. CONCLUSION:

From correlation of the 1988 Act with the 2016 Act, it turns out to be evident that 1988 Act didn't have any system or procedure of seizure/obtaining of the benami property and along these lines, no benami property could be procured by the administration. Then again, the 2016 Act is an extensive law which not only accommodates the system and procedure for connection and reallocation of the benami property, yet has additionally enacted the authoritative structure for appropriate usage of such arrangements. The 2016 Act has enlarged the ambit of benami Transaction, however the equivalent additionally orders for progressively stringent discipline. By the 2016 Act, the Administration of India has made its goals richly certain that the benami transactions happened during the interceding time of 1988 to 2016 are not going to be saved.

Notwithstanding, so as to ensure the bonafide buyer of the benami property, from the scrutiny of the Area 27 condition (3) and (4) of the 2016 Act, it tends to be seen that the 2016 Act has barred the benami properties which has been bought by the bonafide buyer for satisfactory thought, before the issuance of notice by the Starting Official, from the extent of appropriation under the 2016 Act.

It creates the impression that accidentally, the Parliament while changing the 1988 Act did not make any alteration in sub provision 3 of Segment 1 of the 1988 Act, which manages the diverse powerful date of areas 3, 5 and 8 of the 1988 Act from the remainder of the segments of 1988 Act. As, no correction has been made in sub condition 3 of Segment 1 of the 1988 Act under the 2016 Act, indistinguishable peruses from under:

"The arrangements of segments 3, 5 and 8 will come into power without a moment's delay, and the rest of the arrangements of this Act will be considered to have come into power on the nineteenth day of May, 1988".

Because of the presence of the aforementioned arrangement in the 2016 Act, all things considered, superfluous perplexity will win on the date of use of the areas of 2016 Act, in this way causing baseless suit and strange understandings with regards to the relevance of the 2016 Act.

There is no uncertainty that 2016 Act has been enacted to reinforce the endeavors of the Legislature to control the parallel economy and annihilate the dark cash, and this

enactment has a few teeth to manage the threat of benami transactions.

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