

INTRODUCTION TO
**Prohibition of Benami Property
Transaction Act 1988**

AMENDMENTS IN 2016

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All India Law – 72 section

Received assent of the President on

the 10-8-2016

Notification that Act will come into

Force from 1-11-2016

Authorities/Tribunal as under PMLA

appointed on 1-11-16

**The Prohibition of Benami
Property Transactions Rules,
2016
come into force on 1-11-16**

HISTORY

Earlier 1988 Benami Transaction

Prohibition Act – 9 Sections

No Rules for 28 years

Implementation, acquisition

proceedures not strong

Not one case in 28 yrs

AMENDMENT IN 2016

Why amendment after 28 years &

Why not new Act ??

Article 20 of Constitution – penal provision cannot be retrospective

No acquisition now ...but even no penal action could be taken - Hence

AMENDMENT IN 2016

**If new Law would have been
enacted in 2016 & Old Law
repealed then all Benami
violations in last 28 years would
have been condoned
Hence only amendments done**

Sec.3 - Prohibition ,
Sec.5 - Confiscation &
Sec.8 – Adj Auth from 1-11-16
Rest all sections applicable
from 19-5-1988

Corruption – Heavy
Taxes/Compliance – Crime
Lead to Black Money
Lead to Money Laundering
And to
Benami Transactions

DOES IT CLASH WITH PMLA
Money Laundering - Proceeds of
crime arising from Scheduled
offences of about 29 laws &
Benami Act is not only related to
property from proceeds of crime
Both will work in tandem

Offence of Money Laundering

Whosoever directly or indirectly attempts to
Indulge in OR knowingly assists OR
knowingly is a party OR is actually involved
in any Process OR activity connected with
the Proceeds of crime AND projecting it
as Untainted property , shall be guilty of
Money laundering

Money laundering is carried
out in

3 stages

Placement

Layering and

Integration

Money laundering is in fact a new
kind of Benami Transaction

**Benami Act not applicable
to Jammu & Kashmir
Govt can exempt
Charitable/religious trust
from Benami Act u/s 58**

Comparison of Old & New Act

Sec 1(1):

Before Amendment	After Amendment
This Act may be called the Benami Transaction (Prohibition) Act, 1988	This Act may be called the Prohibition of Benami Property Transaction Act, 1988

Sec. 3

NO PERSON SHALL ENTER INTO

BENAMI TRANSACTIONELSE

OLD OFFENCES (19-5-88 TO 1-11-16) -

JAIL UPTO 3 YRS OR FINE

AFTER 1-11-16 – JAIL FROM 1 TO 7 YRS

& FINE UPTO 25% OF FMV Sec 53

Sec. 3(1) – No person shall enter into any benami transaction

Sec. 3(2) – Whoever enters into any benami transaction shall be punishable for max 3 yrs or with fine or both any benami transaction

Sec. 3(3) rws 63 – Whoever enters into any benami transaction after 1-11-16 shall be punishable for min 1 to max 7 yrs & fine

Sec 2(24):- DEFINATION OF PERSON

Person shall include-

- (i) An individual;
- (ii) A Hindu undivided family;
- (iii) A Company;
- (iv) A Firm;
- (v) An association of persons or a body of individuals, whether incorporated or not
- (vi) Every artificial person, not falling under sub-clauses (i) to (v)

MEANING OF PERSON DERIVED FROM INCOME TAX ACT, 1961 {Sec 2(31)} by excluding Local Authority

Sec 2(8) "benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property

Before Amandement	After Amandement
"Property" means assets of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.	"Property" means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property.

Transaction or Arrangement

words and expressions used herein and not defined in this Act but defined in the Indian Trusts Act, 1882, the Indian Succession Act, 1925, the Indian Partnership Act, 1932, the Income-tax Act, 1961, the Depositories Act, 1996, the Prevention of Money-Laundering Act, 2002, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the same meanings respectively assigned to them in those Acts.’.

Section 2(37) of the act provides that the meaning of transaction & arrangement may be taken from the other Act wherein transaction has been defined as

1. Supply of goods or services or property in exchange for money or other consideration
2. Two or more parties to the transaction

Sec 2(9): Benami Transaction

Before Amendment	After Amendment
Benami Transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person	Benami Transaction means: A transaction or an arrangements- a) 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 b) The property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except where the property is held by

Benami Transaction

(B). A transaction or an arrangement in respect of a property carried out or made in a fictitious name

(C). A transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of such ownership

(D). A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious

POWER OF ATTORNEY & BENAMI TRANSACTIONS

FOLLOWING NOT A BENAMI TRANSACTION

Any transaction under Sec 53A of
Transfer of Property Act 1882 if :
Consideration given by buyer though
possession still by seller

Stamp duty & Registration done

ANALYSIS OF POA DEALS - 53A

Mr. A buys property from Mr. B (owner) such that A takes POA from B and pays B consideration. Physical possession with A but property still in name of B.

Sec 53A of TOP Act 1882

BENAMIDAR Sec. 2(10)

Means any a Person or
Fictitious person in whose
name the property is
transferred or held & includes a
person who lends his name

TRANSFER Sec. 2(29)

Includes Sale, Purchase,
or any other form of transfer
of right, title, possession or
lien – Valuation not relevant

Sec.4

**REAL OWNER OR ON HIS BEHALF
ANYONE, CANNOT FILE SUIT OR
ANY ACTION / CLAIM AGAINST
BENAMIDAR OR ANY OTHER
PERSON , NOR CLAIM ANY
DEFENCE**

Sec.5

**ANY PROPERTY BEING SUBJECT
MATTER OF BENAMI TRANSACTION
WILL BE CONFISCATED BY GOVT
NO COMPENSATION**

Sec.6

**BENAMIDAR CANNOT RE-
TRANSFER PROPERTYBACK TO
REAL OWNER OR ON HIS
BEHALF TO ANYONE**

X giving Rs.2 lacs cash to B to
deposit in B's a/c so as to
return it back later to X

X buying a car with his money,
in the name of his cousin
brother, but for X's use

X buying a flat in the name of his Nana, Mama, chacha, with his (X's) funds - & sons wife

X investing in IPO with his funds, but in name of his brother and shares come to sole demat a/c of brother

Mrs. X states in search u/s 132
that she does not know about
any Residential flat (or some
assets) in her name

Memory issues

Mr. X issues a cheque
directly from his a/c to buy
something in name of Mr. Y
Will it be benami ??

Intention of the person paying
the consideration is extremely
vital to determine Benami
effects

Bank issues cheque directly
to seller of house , as home
loan for Mr. X in who's
name house is bought.

Is it benami ??

Initiating Officer – ACIT/DCIT

Approving Authority – JCIT

Adjudicating Authority – CIT &

Joint Secretary to Govt of India –

Benches – As per PMLA 1-11-16

Administrator – TRO from 1-11-16

Appellate Tribunal - PMLA Benches

The Authorities shall have all the powers vested in a civil court under CPC (Code of Civil Procedure) while trying a suit with respect to discovery and inspection, Enforcing the attendance of any person, For examination under oath, compelling Production of books of accounts/ documents, issuing commission, receiving Evidences on affidavits & for any other Prescribed matters.

Sec. 23 - IO has , after obtaining approval of Approving Authority JCIT, power to conduct any inquiry or investigation regarding any person, place, document, property, in respect of any relevant matters under this Act

Sec. 24 - Initiating Officer ACIT/DCIT, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue/serve a SCN to the person why the property should not be treated as benami property. Notice also to Beneficial owner if known

Sec. 24 - IO can provisionally attach with permission of Approving Authority JCIT - Else after inquiries & in 90 days of notice either continue attachment or release.

Then IO refers case to Adjudication Authority in 15 days from continuation of attachment

Sec. 26 - Notice issued by Adj Auth
AA in 30 days of reference by IO

-to a benamidar,

-to a beneficial owner,

-any interested party

-any person who made a claim in
respect of the property – Reply to be
given in 30 days

Endeavour - Notice to be served on all
persons holding the property

Adj Authority will issue notice ,
give opportunity , appreciate
evidence , hear all concerned &
then pass orders u/s 26(3) treating
it as Benami property or Not
Such order will be passed in 1 year
Any new property can be pulled up
AA can strike out names

Adj Authority will pass order u/s
26(3) confiscating or releasing
property – For confiscation
procedure prescribed – Rule 6
Management with Administrator
TRO-1 – Take possession in 7 days
Title goes to Govt free from
encumbrances

Sec. 27(2) - Nothing contained herein will apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice by IO u/s 24 without buyer having knowledge of the benami transaction – Read Sec 57 Put in Agreement

Any right of any third person
created in such property with a
view to defeat the purposes of this
Act shall be null and void

Administrator (TRO) then takes
possession of the property unless
appeal to Tribunal filed

Appellate Tribunal - Sec 30-48
Not bound by CPC but powers
of CPC – Natural Justice –
Evidence on Affidavits – Review
of decisions (Sec.113 of CPC)
Aggrieved person or IO can file
appeal in 45 days of AA order

Appellate Tribunal

Chairperson

2 members -

Judicial Member

Administrative Member

Sec 48 - Authorised Representatives
to appear before tribunal includes;
any employee, banker, **person who**
has passed any accountancy
examination recognised in this
behalf by the CBDT or any
Practising Advocate or asprescribed

Sec. 49 - Appeal to the
High Court

- within 60 days, Qts of law

Sec. 50 - Special Court for
offences – Cr PC applies

Prosecution – CBDT permission

Sec. 55

Sec. 53 – Prosecution on
Benami transaction ONLY if
defeating any law, or avoid
payment of Statutory dues or
payment to creditors. Benamidar,
owner, abets inducing Min 1 yr to
7 yrs + Fine upto 25% FMV

Sec. 54 – Giving false info or
false docs.

Min not less 6 months to 5 yrs
+ Fine upto 10% FMV

Nothing in the act can render any
Person liable to punishment if
he proves that the contravention
Took place without his knowledge.

Notwithstanding anything in the
Code of Criminal Procedure, 1973 an
Offence under this Act shall be
Non-cognizable (Sec.61)

Sec. 45

No Civil Court shall have
jurisdiction in matters
concerning authorities & no
injunction by such courts

Sec. 58 The Central
Government may, by
notification, exempt any
property relating to charitable
or religious trusts from the
operation of this Act - NONE

The Provision of Benami Act is in addition to and not in derogation to other laws. This Act shall have effect notwithstanding anything inconsistent in any other laws Proceedings to continue or to be initiated against legal heirs (No Jail)

THANKS