

# Analysis of Benami Transaction Prohibition Act 1988 in light of recent Supreme Court judgements and amendments

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**Abstract:** *This research paper delves into the legal intricacies surrounding recent Supreme Court rulings and amendments to the Benami Transaction Prohibition Act, offering a comprehensive analysis of their implications. Focusing on the evolving landscape of Benami transactions regulation, the study examines the legal implications of recent legislative amendments and scrutinizes key Supreme Court judgments interpreting the Act. Through a thorough review of legal texts, judicial precedents, and expert opinions, this paper elucidates the nuanced complexities of Benami transactions law, assessing the clarity, effectiveness, and constitutional validity of the amended provisions. By synthesizing insights from legal analyses and judicial pronouncements, this research contributes to a deeper understanding of the legal dynamics shaping Benami transactions regulation, offering valuable insights for policymakers, legal practitioners, and stakeholders involved in property transactions.*

**Keywords:** *Benami Transaction Prohibition Act 2016, Supreme Court rulings, Constitutional validity, Benami Sampati.*

## 1. INTRODUCTION :

The Benami Transaction Prohibition Act, a critical piece of legislation aimed at curbing fraudulent property transactions, has undergone significant amendments over the years to adapt to evolving challenges and enhance its efficacy. (1)

The Supreme Court of India, through its landmark judgment in M/s. Ganapati Dealcom Pvt. Ltd vs Union Of India & Anr on 7th October 2022, the apex court has quashed all prosecution and forfeiture proceedings pertaining to transactions entered into before October 25, 2016. The old benami law i.e. Benami Transactions Act of 1988 ("Benami Act") was amended on the said date by the Benami Transactions (Prohibition) Amendment Act, 2016 ("2016 Amendments") and the Supreme Court declared Section 3 and Section 5, introduced through this amendment, as unconstitutional. Concurrently, legislative amendments to the Act represent a proactive response by policymakers to address emerging challenges, close loopholes, and strengthen enforcement mechanisms in combating benami transactions.(2)

Against this backdrop, this research paper seeks to explore the synergy between recent Supreme Court judgments and amendments in the Benami Transaction Prohibition Act. By conducting a comprehensive analysis of significant judicial pronouncements and legislative reforms, the paper aims to shed light on the evolving legal landscape surrounding benami transactions. Specifically, it aims to assess how recent Supreme Court judgments have influenced the interpretation and enforcement of the Act, and how subsequent amendments have addressed judicial concerns or reinforced judicial mandates.

Furthermore, the paper endeavors to evaluate the clarity, effectiveness, and coherence of the legislative amendments vis-à-vis judicial interpretations, identifying areas of alignment, divergence, or potential conflict. Through this analysis, the paper aims to contribute valuable insights to policymakers, legal practitioners, and stakeholders involved in property transactions, facilitating a deeper understanding of the evolving regulatory framework and informing future directions in combating benami transactions.

## 2. STUDY :

Methodology:

The study employs mentioning salient features of Benami Transaction Prohibition Act in a comparative approach, juxtaposing recent Supreme Court rulings with the provisions of the Benami Transactions Prohibition Act 2016. Case analysis will focus on selected judgments that now have significant implications for the interpretation and enforcement of anti-benami laws.

Salient features in form of differences between the Benami Transaction Prohibition Act of 1988 (3) and the amended Benami Transaction Prohibition Act of 2016 (4) with detailed sections:

#### **Definition of Benami Transaction:**

Benami Transaction Prohibition Act 1988: Section 2(8) defines Benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person. property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

Amended Benami Transaction Prohibition Act 2016: as per section 4(9):

"benami transaction" means,—

(A) a transaction or an arrangement— (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 when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

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

(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;

#### **Penalties and Punishments:**

- Benami Transaction Prohibition Act 1988: Section 5 prescribes limited penalties for offenders, including imprisonment up to three years and/or a fine of up to 10% of the fair market value of the property.
- Amended Benami Transaction Prohibition Act 2016: Section 53 introduces enhanced penalties, including rigorous imprisonment ranging from one year to seven years, and a fine of up to 25% of the fair market value of the property.

#### **Provisional Attachment and Confiscation:**

- Benami Transaction Prohibition Act 1988: Limited provisions for provisional attachment and confiscation of benami properties.
- Amended Benami Transaction Prohibition Act 2016: Sections 24 to 29 empower authorities to provisionally attach and confiscate benami properties, with stringent procedures and safeguards in place.

#### **Adjudicating Authorities:**

- Benami Transaction Prohibition Act 1988: No specific provisions for adjudication of benami properties.
- Amended Benami Transaction Prohibition Act 2016: Sections 6 to 9 provide for the establishment of Adjudicating Authorities and Appellate Tribunal for hearing and adjudicating benami transactions and related matters.

#### **Burden of Proof:**

- Benami Transaction Prohibition Act 1988: Onus of proving benami transactions lies on the prosecution.
- Amended Benami Transaction Prohibition Act 2016: Section 94 shifts the burden of proof from the prosecution to the accused, requiring them to prove that the transaction is not benami in nature.

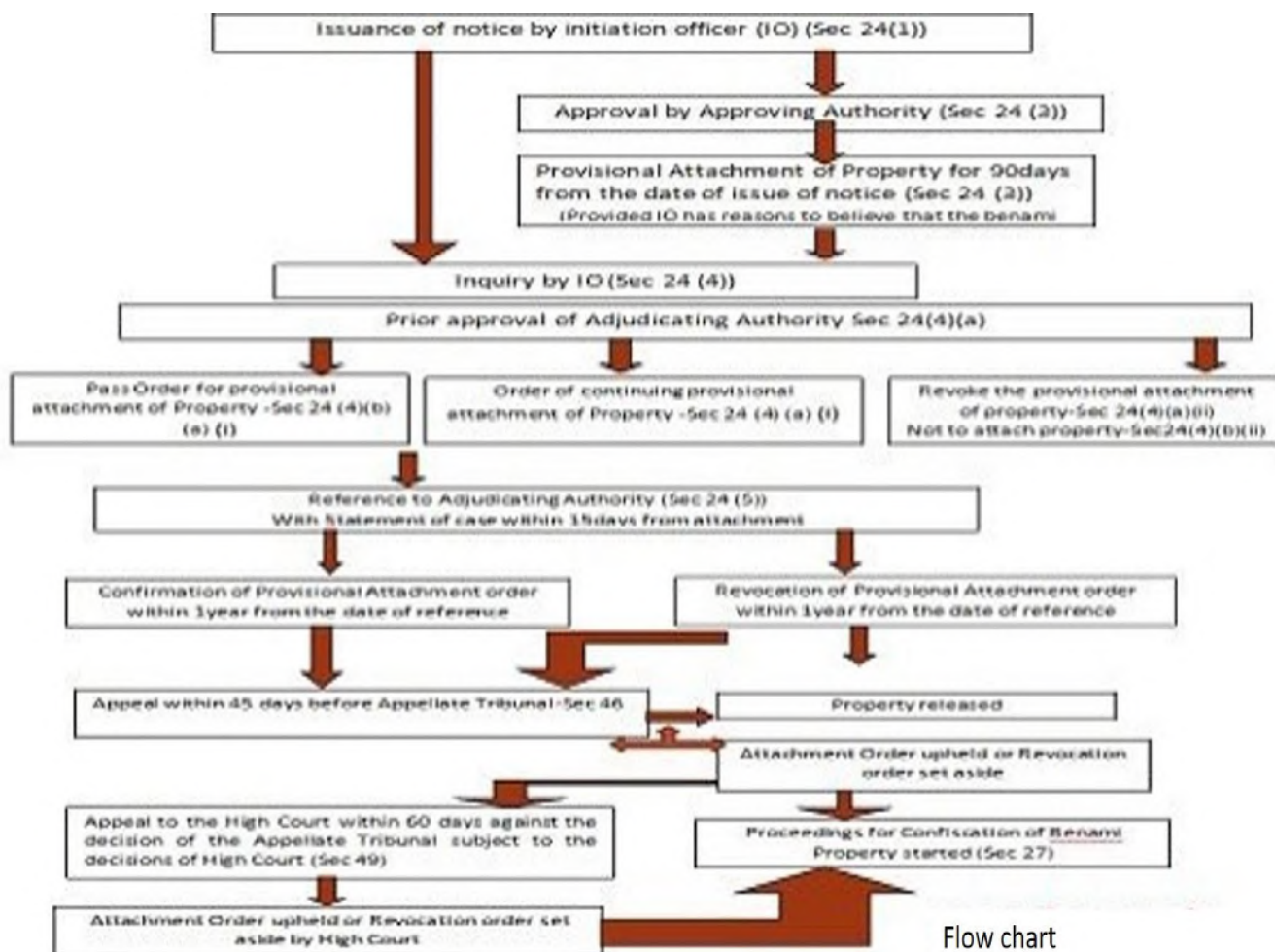
**Enhanced Enforcement Mechanisms:**

- Benami Transaction Prohibition Act 1988: Limited enforcement mechanisms for detecting and prosecuting benami transactions.
- Amended Benami Transaction Prohibition Act 2016: Strengthened enforcement mechanisms, including the establishment of Benami Prohibition Units (BPUs) for intelligence gathering and investigation.

**Extent of Coverage:**

- Benami Transaction Prohibition Act 1988: Limited scope, mainly focusing on transactions involving real estate.
- Amended Benami Transaction Prohibition Act 2016: Expanded coverage to include transactions involving other types of properties such as movable assets, bank accounts, and financial instruments.

**Flow chart of the process:**



Flow chart

**Difference Chart:**

Benami Transactions Prohibition Act 1988(w.e.f 19/05/1988)	Benami Transactions Prohibition Act 2016(w.e.f. 1/11/2016)
Total Sections are 9	Total Sections are 72
Acquisition of property	Confiscation of property
No enforcement authority	Income Tax authorities notified as enforcement authority
Imprisonment for 3 years OR fine OR both	Rigorous imprisonment for a period not less than 1 year but upto 7 years AND Fine upto 25% of Fair market value
It punished the transfer of “title” to property	It punishes transfer of “title” and “possession” of benami property

Very limited definition of benami transaction that to related with immovable or movable property	A very Wide definition including transaction or arrangement even for future
Doesn't give any procedure of how to deal	A detailed procedure of attachment of property and placing it in front of tribunal
Onus of proving benami transactions lies on the prosecution	Section 94 shifts the burden of proof from the prosecution to the accused, requiring them to prove that the transaction is not benami in nature

### Landmark Supreme Court Judgements and High Court Judgements

1. M/s Ganpati Dealcom Pvt Ltd Vs Union of India/Supreme court/2022(5)
<p><b>Judgement</b></p> <p>Court held that the amendments to the Prohibition of Benami Property Transactions Act, 1988 brought by the Benami Transactions (Prohibition) Amendment Act, 2016 do not have retrospective effect. Section 3(2) of the unamended Act is unconstitutional, rem forfeiture provision under section 5 of the unamended Act of 1988, prior to the 2016 Amendment Act, was unconstitutional, The authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the Act as amended in 2016</p>
2. In Mangathai Ammal (Dead) through LRs v. Rajeswari (Civil Appeal Number 4805 of 2019 Order dt. 9.5.2019)(6)
<p><b>Judgement</b></p> <ul style="list-style-type: none"> <li>It was held that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, rests on the person asserting to be so.</li> <li>The Court also followed the principles enunciated in the case of Thakur Bhim Singh v. Thakur Kan Singh (1980) 3 SCC 72.</li> <li>The Court expressed the view that the payment of part sale consideration cannot be the sole criteria to hold the sale/transaction as benami. The intention of the person who contributed the purchase money is determinative of the nature of transaction. The intention of the person, who contributed the purchase money, has to be gathered and decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing their actions in bringing about the transaction and their subsequent conduct etc</li> </ul>
3. Smt P. Leelavathi (D) by Lrs v. V. Shankarnarayana (D), Civil Appeal No. 1099 of 2008 Order dt.9-4-2019 (SC)(7)
<p><b>Judgement</b></p> <ul style="list-style-type: none"> <li>Merely because some financial assistance was given by someone to acquire a property, that would not make the transaction a benami transaction.</li> <li>Providing some money for acquisition of a property cannot be the sole determining factor. The Court has to strictly evaluate the attendant facts and circumstances of the case and go beyond the source of fund to decide whether a transaction benami or not. It was held that consideration cannot be sole criterion although the same may be one of the essential ingredients of benami transaction.</li> <li>It was observed that the factum of benami should be proved beyond doubt.</li> <li>The burden of proof that the apparent purchaser is not the real owner lies on the person asserting so. He should adduce legal evidence of a definite character which would prove the benami nature of the transaction. In the alternative, if the evidence adduced by the plaintiff is based on circumstantial evidence, the same should be unerring and reasonable to prove the nature of transaction to arrive at any inference. The Court relied on the tests laid down in Jayadaya Poddar's case.</li> <li>It was observed that intention of the parties is key to decide the nature of transaction. In the case before the Court, the father provided financial assistance to both the plaintiff and defendants for various purposes in acquiring properties by them. In a case of such type, the intention has to be proved beyond doubt.</li> <li>It was observed that the intention behind a benami transaction is shrouded in a thick veil. Such a veil although cannot be pierced so easily, the same would not relieve the party who wishes the court to believe that the transaction is benami, from discharge of onus.</li> </ul> <p>With all the above observations, the Court dismissed the case of the plaintiff.</p>
4. Thakur Bhim Singh (Dead) Through LRs v. Thakur Kan Singh [1980] 3 SCC 72(8)
<p><b>Judgement</b></p> <ul style="list-style-type: none"> <li>The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;</li> </ul>

- If it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary;
- The true character of the transaction is governed by the intention of the person who has contributed the purchase money;
- The question as to what was his intention has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their actions in bringing about the transaction and their subsequent conduct etc.;
- The Court while referring to other decisions laid emphasis on the source of purchase money and intention of the parties to the transaction in order to determine the question of benami and
- The conduct of the parties concerned in dealing with the property after the sale

5. Jayadayaal Poddar (Deceased) through LRs v. State of Bihar v. Mst. Bibi Hazira and Others 1974 AIR 171(9)

#### Judgement

It led down some useful and basic guiding principles to decide whether a transaction is benami or not.

- the source from which the purchase money came;
- the nature and possession of the property after the purchase;
- motive, if any, for giving the transaction a benami colour;
- the position of the parties and the relationship, if any between the claimant and the alleged benamidar;
- the custody of the title deeds after the sale;
- the conduct of the parties concerned in dealing with the property after the sale;

6. Sree Meenakshi Mills Ltd. v. CIT 1957 AIR 49(10)

#### Judgement

The observations of the Court were:-

- The question of benami is purely a question of fact and not a mixed question of law and fact as the same does not involve the application of any legal principle.
- It was observed that-  
“In this connection, it is necessary to note that the word ‘benami’ is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. This is the class of transactions which is usually termed as benami.”
- “But the word ‘benami’ is also occasionally used, perhaps not quite accurately, to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these, two classes of transactions is that whereas in the former there is an operative transfer resulting in the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer, X or B. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid.”

Secondly, methodology involves qualitative analysis via Questionnaire being answered by 6 CAs and 4 Advocates(SCI) thereby giving judicial opinions, statutory provisions related, and legal commentary to discern patterns, inconsistencies, and lacunae in the legal framework

### 3. RESULTS & FINDINGS :

As per 10 questionnaire replies, all 10 respondents were familiar of Benami Prohibition Transaction Act 2016 since its amendment took place in 2016. Out of 6 chartered accountants 5 were handling benami transaction cases either in ITAT or in front of DCIT. Out of 4 advocates 2 were handling BPTA cases in MP High Court. All 10 respondents were aware of M/s Ganpati Dealcom Pvt Ltd Vs Union of India rulings of apex court where certain sections of BPTA were declared unconstitutional. 6 out of 10 respondents mention that old act was a paralysed act with no specifications or details. 4 respondents say that new amendment is draconian and has too many loop holes. All 10 respondents feel that retrospective effect of new Act is not justifiable. 5 respondents elucidated that only properties were attached and cases are in trial only with no final judgement or conclusion. 3 respondents gave a suggestion that legislation must be brought by government to curb wrong use of Act by department to harass.

### 4. CONCLUSION :

It would be churlish not to acknowledge the fact that amendment of benami transaction prohibition act 2016 is a starting point to curb the black money in properties. BPTP Act of 1988 was mere a namesake legislation with no clear details of how to go about it. Supreme Court in recent 2022 ruling of BPTP Act 2016 certain sections as unconstitutional cleared the air that something violative of fundamental right will not be tolerated at any cost, it's a good step. Though the amended Act is draconian to some extent but with its proper scrutiny via SC and further amendments it will reach a consensus. India has still a long way to go where officers will not misuse the Act but it's a good step to start.

*Declaration by Authors*

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**Conflict of Interest:** The authors declare no conflict of interest.

**REFERENCES :**

1. Article on deccan herald “explained the benami act 2016 and changes brought by supreme court”<https://www.deccanherald.com/india/explained-the-benami-act-2016-and-changes-brought-by-supreme-court-1138840.html>  
can be accessed on 15<sup>th</sup> march 2024
2. <https://tax.cyrilamarchandblogs.com/2022/09/supreme-court-strikes-down-the-old-benami-law-as-unconstitutional/>  
can be accessed on 15<sup>th</sup> march 2024
3. Bare act of BPTP 1988 [https://dea.gov.in/sites/default/files/Benami%20Transaction Prohibition %20Act1988.pdf](https://dea.gov.in/sites/default/files/Benami%20Transaction%20Prohibition%20Act1988.pdf)  
can be accessed on 15<sup>th</sup> march 2024
4. Bare act of BPTP 2016  
<https://www.indiacode.nic.in/bitstream/123456789/1840/4/a1988-45.pdf>  
can be accessed on 15<sup>th</sup> march 2024
5. Judement “M/s Ganpati Dealcom Pvt Ltd Vs Union of India”[https://itatonline.org/digest/uo-i-v-ganpati-dealcom-pvt-ltd-2022447-itr-108-sc/#:~:text=Ganpati%20Dealcom%20Pvt.-,Ltd.,%2F%20289%20Taxman%20177%20\(SC\)&text=Court%20held%20that%20the%20amendments,do%20not%20have%20retrospective%20effect.](https://itatonline.org/digest/uo-i-v-ganpati-dealcom-pvt-ltd-2022447-itr-108-sc/#:~:text=Ganpati%20Dealcom%20Pvt.-,Ltd.,%2F%20289%20Taxman%20177%20(SC)&text=Court%20held%20that%20the%20amendments,do%20not%20have%20retrospective%20effect.)  
can be accessed on 15<sup>th</sup> march 2024
6. Judement “In Mangathai Ammal (Dead) through LRs v. Rajeswari”[https://www.the-laws.com/Encyclopedia/browse/Case?CaseId=009102903100&Title=MANGATHAI-AMMAL-\(DIED\)-Vs.-RAJESWARI-And-OTHERS](https://www.the-laws.com/Encyclopedia/browse/Case?CaseId=009102903100&Title=MANGATHAI-AMMAL-(DIED)-Vs.-RAJESWARI-And-OTHERS)  
can be accessed on 15<sup>th</sup> march 2024
7. Judement “Smt P. Leelavathi (D) by Lrs v. V. Shankarnarayana (D)”<https://itatonline.org/digest/p-leelavathi-d-smt-by-lr-v-v-shankarnarayana-rao-d-by-lrs-manu-sc-0497-2019-2019-scc-online-sc-489/#:~:text=The%20High%20Court%20held%20that,the%20High%20Court%20for%20reconsideration.>  
can be accessed on 15<sup>th</sup> march 2024
8. Judement “Thakur Bhim Singh (Dead) Through LRs v. Thakur Kan Singh [1980]”<https://main.sci.gov.in/jonew/judis/4636.pdf>  
can be accessed on 15<sup>th</sup> march 2024
9. Judement “Jayadaya Poddar (Deceased) through LRs v. State of Bihar v. Mst. Bibi Hazira and Others”<https://indiankanoon.org/doc/385942/>  
can be accessed on 15<sup>th</sup> march 2024
10. Judement “Sree Meenakshi Mills Ltd. v. CIT 1957 ”  
<https://indiankanoon.org/doc/698518/>  
can be accessed on 15<sup>th</sup> march 2024