



Benami Transactions Act

For Prelims: Benami Property, Benami Transaction, Benamidar, Money Laundering

For Mains: Provisions for Benami Transaction (Prohibition) Amendment Act 2016, Unconstitutional Provisions

Why in News?

Recently, [The Supreme Court of India](#) held that Section 3(2) of the [Benami Transactions \(Prohibition\) Act 1988](#) as unconstitutional on the grounds of being manifestly arbitrary.

- Section 3(2) prescribes the punishment for entering into benami transaction.
- The judges held that the Act which **was amended in 2016** can only be applied prospectively and **quashed all prosecutions or confiscation proceedings before the amended Act came into force.**

What did The Supreme Court Ruled?

- **Section 3(3) of 2016 Act:**
 - It **extended the three-year imprisonment to seven years and fine of up to 25% of the fair market value of the property**, if a person enters into any benami transactions.
 - **The Supreme Court ruled that “Concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings** for transactions entered into **prior to the coming into force of the 2016 Act (25th October 2016)**. As a consequence of the above declaration, **all such prosecutions or confiscation proceedings shall stand quashed**”.
- **Forfeiture of Benami Properties:**
 - The Supreme Court also held the **provision in the 1988 Act** regarding forfeiture of benami properties as **unconstitutional**, and added that the provision in the **2016 amended Act on the same can only be applied prospectively**.
 - As **it is not concerned with the constitutionality of independent forfeiture proceedings** contemplated under the **2016 Amendment Act** on the other grounds, it was leaving open the question to be decided in appropriate cases.
- **Prevention of Money Laundering Act (PMLA), 2002:**
 - A recent judgement of the Supreme Court upheld the provision of [PMLA](#) which allows authorities to **take possession of property before trial in exceptional cases**.
 - **The Supreme Court has said that such provision leaves the scope for arbitrary application.**

What do we know about the Benami Transactions (Prohibition) Amendment Act 2016?

- **About:**
 - The Act amended the Original Act (Benami Transaction (Prohibition) Act 1988) and

renamed it as **Prohibition of Benami Property Transaction Act, 1988.**

- **The Act defines a benami transaction as a transaction where:**

- a property is **held by or transferred to a person**, but has **been provided for or paid by another person**.
- the transaction is made in a **fictitious name**
- the **owner is not aware of denies knowledge of the ownership** of the property,
- the person providing the consideration for the property is **not traceable**.

- **Appellate Tribunal:**

- The Act provides for an **Appellate Tribunal** to hear appeals against any orders passed by the **Adjudicating Authority**.
 - Appeals against the orders of the Appellate Tribunal **will lie to the high court**.
- The special court should **conclude the trial within six months** from the date of filing of the complaint.

- **Authorities:**

- The Act **established four authorities to conduct inquiries or investigations** regarding benami transactions:
 - **Initiating Officer**
 - **Approving Authority**
 - **Administrator**
 - **Adjudicating Authority**
- If an Initiating 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 holding the property**.
- 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.
- The amended law empowers the specified authorities **to provisionally attach benami properties which can eventually be confiscated**.
- **Penalty:**
 - If a person is found **guilty of the offence of the Benami transaction** by the competent court, he shall be punishable with **rigorous imprisonment for a term not less than one year** but which may **extend to 7 years**.
 - He shall also be liable to a fine which may **extend to 25% of the fair market value of the property**.

What are some Important Terms under the Act?

- **Property:**

- **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.

- **Benami Property:**

- Any property **which is the subject matter of a Benami Transaction** and also includes the **proceeds from such property**.

- **Benamidar:**

- 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**.

- **Beneficial Owner:**

- A person, whether his identity is known or not, **for whose benefit the Benami Property is held by a Benamidar.**

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Q. With reference to the ‘Prohibition of Benami Property Transactions Act, 1988 (PBPT Act)’, consider the following statements: (2017)

1. A property transaction is not treated as a benami transaction if the owner of the property is not aware of the transaction.
2. Properties held benami are liable for confiscation by the Government.
3. The Act provides for three authorities for investigations but does not provide for any appellate mechanism.

Which of the statements given above is/are correct?

- (a) 1 only
(b) 2 only
(c) 1 and 3 only
(d) 2 and 3 only

Ans: (b)

Explanation:

- **Benami Property Transaction Act, 1988 (PBPT Act):**
 - The definition of a benami transaction has been widened to include a transaction made in a fictitious name, where the owner is not aware or denies knowledge of the ownership of the property or the person providing the consideration for the property is not traceable. **Hence, statement 1 is not correct.**
 - It provided for a Property of benami liable to acquisition or confiscation. **Hence, statement 2 is correct.**
 - Also, it provided for an appellate mechanism under the PBPT Act in the form of Adjudicating Authority and Appellate Tribunal. **Hence, statement 3 is not correct.**
- However, with a view to providing an effective regime for prohibition of benami transactions, the said Act was amended through the Benami Transactions (Prohibition) Amended Act, 2016.
- **Therefore, option (b) is the correct answer.**

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