

**58**

**STANDING COMMITTEE  
ON FINANCE  
(2011-2012)**

**FIFTEENTH LOK SABHA**

**MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

**THE BENAMI TRANSACTIONS  
(PROHIBITION) BILL, 2011**

**FIFTY-EIGHTH REPORT**



सत्यमेव जयते

**LOK SABHA SECRETARIAT  
NEW DELHI**

*August, 2012 / Sravana, 1934 (Saka)*

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THE BENAMI TRANSACTIONS  
(PROHIBITION) BILL, 2011

*Presented to Hon'ble Speaker on 26 June, 2012*

*Presented to Lok Sabha on 13 August, 2012*

*Laid in Rajya Sabha on 13 August, 2012*



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NEW DELHI

*August, 2012 /Sravana, 1934 (Saka)*

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## CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE .....	(iii)
INTRODUCTION .....	(v)

### REPORT

I. Background .....	1
II. Short title, extent and commencement .....	8
III. Prohibition of <i>Benami</i> Transaction .....	14
IV. Authorities .....	19
V. Attachment, Adjudication and Confiscation .....	23
VI. Appellate Tribunal .....	28
VII. Appeal to High Court .....	30
VIII. Offences and Penalties .....	31
IX. Miscellaneous .....	33

### APPENDICES

I. Minutes of the sittings of the Committee held on 9 January, 2012, 9 April, 2012, 18 May, 2012 and 7 June, 2012 .....	37
II. The <i>Benami</i> Transactions (Prohibition) Bill, 2011 .....	46

COMPOSITION OF STANDING COMMITTEE ON FINANCE  
(2011-2012)

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- 2. Shri R.K. Jain — *Director*
- 3. Smt. Meenakshi Sharma — *Deputy Secretary*

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\* Nominated to be the Member of the Standing Committee on Finance *w.e.f.* 4th May, 2012.

\*\* Nominated to be the Member of the Standing Committee on Finance *w.e.f.* 15th May, 2012.

## INTRODUCTION

1. I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Fifty-eighth Report on the *Benami* Transactions (Prohibition) Bill, 2011.

2. The *Benami* Transactions (Prohibition) Bill, 2011 introduced in Lok Sabha on 18 August, 2011, was referred to the Committee on 13 September, 2011 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Revenue).

4. Written views/memoranda were received from Bombay Chamber of Commerce and Industry (BCCI), Confederation of Indian Industry (CII) and National Institute of Public Finance and Policy (NIPFP).

5. The Committee, at their sitting held on 9 January, 2012 took evidence of the representatives of the Ministry of Finance (Department of Revenue).

6. At the sitting held on 9 April, 2012, the Committee heard the views of the representatives of the Confederation of Indian Industry (CII).

7. The Committee, at their sittings held on 18 May and 7 June, 2012 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to the Hon'ble Speaker/Parliament.

8. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Revenue) and the Confederation of Indian Industry (CII) for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

9. The Committee also wish to express their thanks to the Bombay Chamber of Commerce and Industry (BCCI), Confederation of Indian Industry (CII) and National Institute of Public Finance and Policy (NIPFP) for placing before them their considered views on the Bill in the form of memoranda.

10. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;  
15 *June*, 2012  

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25 *Jyaistha*, 1934 (*Saka*)

YASHWANT SINHA,  
*Chairman,*  
*Standing Committee on Finance.*



## REPORT

### I. BACKGROUND

#### **The *Benami* Transactions (Prohibition) Act, 1988**

1.1 The *Benami* Transactions (Prohibition) Act, 1988 (hereafter referred to as BTPA) was formulated by the Ministry of Law as a follow up of the 57th Report of the Law Commission. The Law Commission also examined implications of the provisions of the Indian Trusts Act, 1882 and other statutory modifications of the *benami* law as contained in the Code of Civil Procedure, the Transfer of Property Act, the Indian Penal Code and the Income Tax Act. This Report was submitted on 7th August, 1973 by the Law Commission after studying the *benami* system as operating in India and England. On 19th May, 1988 an Ordinance was promulgated to prohibit the right to recover property held *benami* and for matters connected therewith and incidental thereto.

1.2 Thereafter, the Law Commission was requested to take up the question of *benami* transactions for detailed examination and to give its considered views as early as possible so that a Bill to replace the Ordinance could be drafted on the basis of its recommendations and got passed by the Parliament. The Law Commission *vide* its 130th Report on August 14, 1988 recommended passing of appropriate legislation and accordingly, the *Benami* Transactions (Prohibition) Bill 1988, drafted after getting the Report, was piloted by the Ministry of Law and enacted by Parliament. It came into force on 19.05.1988. The Ministry of Finance was tasked with implementation of this Act. The Act defines *benami* transactions, prohibits them and further provides that violation of the Act is punishable with imprisonment and fine. The Act prohibits recovery of the property held *benami* from benamidar by the real owner. Properties held *benami* are liable for confiscation.

#### **Recommendations of Second Administrative Reforms Commission**

1.3 The Second Administrative Reforms Commission in its fourth Report presented in January, 2007 on Ethics in Governance *inter-alia* stated on prohibition of *Benami* Transactions as follows:—

“...unfortunately, in the last 18 years, Rules have not been prescribed by the Government for the purposes of sub-section (1)

of Section 5, with the result that the Government is not in a position to confiscate properties acquired by the real owner in the name of his benamidars. The wealth amassed by corrupt public servants is often kept in 'Benami' accounts or invested in properties in others' names. Strict enforcement of the *Benami* Transactions (Prohibition) Act, 1988, could unearth such properties and make property accumulation difficult for corrupt officers and also work as a deterrent for others. Steps should be taken for immediate implementation of the *Benami* Transactions (Prohibition) Act, 1988."

### **The *Benami* Transactions (Prohibition) Act, 1988 vis-à-vis the *Benami* Transactions (Prohibition) Bill, 2011**

1.4 The *Benami* Transactions (Prohibition) Act, 1988 came into force immediately after its enactment and still remains in force. The Act prohibited the *benami* transactions and thus curbed the practice of *benami*. To this extent the objective and purpose of bringing in the Act were fulfilled.

1.5 The Ministry in a background note furnished to the Committee stated that though the power to make rules was available to the Central Government under the *Benami* Transactions (Prohibition) Act, 1988, no rules could be prescribed due to procedural infirmities. During the process of formulating the rules for implementing certain provisions of the Act, it was found that the provisions of the aforesaid Act are inadequate to deal with *benami* transactions as the Act, *inter-alia*,—(i) does not contain any specific provision for vesting of confiscated property with the Central Government; (ii) does not have any provision for an appellate mechanism against an action taken by the authorities under the Act, while barring the jurisdiction of a Civil Court; (iii) does not confer the powers of the Civil Court upon the authorities for its implementation. To remove these infirmities, several consultations were held with the Ministry of Law and Justice. Later it was realized that it would not be possible to remove the infirmities by making some amendments but a fresh legislation shall be required to comprehensively deal with all the issues.

1.6 Further, matters of procedure relating to its administration, notice of hearing to parties concerned, service of notice and orders, powers of the competent authority relating to gathering of evidence etc. have to be provided; and the word 'wife' needed to be replaced with the word 'spouse' and property purchased in the name of certain other family members is to be allowed under the Act.

1.7 In view of the circumstances stated above, a comprehensive legislation, in place of the *Benami* Transaction (Prohibition) Act, 1988 has

become necessary in order to prohibit holding property in *benami* and restrict right to recover or transfer property held *benami* and also to provide a mechanism and procedure for confiscation of property held *benami*. It is, therefore, the Government felt necessary to repeal the *Benami Transactions (Prohibition) Act, 1988* and enact a new comprehensive legislation to deal with *benami* transactions. As the procedural infirmities have been taken care of, it shall be possible to make rules for effective implementation of the Act.

### **Salient features of the *Benami Transactions (Prohibition) Bill, 2011***

1.8 The *Benami Transactions (Prohibition) Bill, 2011*, *inter-alia*, provides for the following, namely:—

- (i) it prohibits *benami* transactions by any person, except in the case of *benami* transactions entered into in the name of spouse, brother or sister or any lineal ascendant or descendant;
- (ii) it provides that *Benami* property arising out of prohibited *Benami* transaction is liable to confiscation by the Central Government and such property shall vest absolutely in the Central Government without paying any compensation;
- (iii) it prohibits right of the *benamidar* to recover property held *benami*;
- (iv) it provides that the Initiating Officer, the Approving Authority and the Administrator shall be the authorities for the purposes of the Bill;
- (v) it provides that the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money-Laundering Act, 2002 shall respectively be the Adjudicating Authority and the Appellate Tribunal for the purposes of the Bill and any person aggrieved by an order of Adjudicating Authority may prefer an appeal to the Appellate Tribunal;
- (vi) it provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court on any question of law;
- (vii) it enables the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Bill;

- (viii) it provides penalty for entering into prohibited *benami* transactions and for furnishing any false documents in any proceeding under the Bill;
- (ix) it provides for transfer of any suit or proceeding in respect of a *benami* transaction pending in any Court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal as provided in the Bill;
- (x) it also proposes to make consequential amendments in the Prevention of Money-Laundering Act, 2002.

### **Relevance of United Nations Convention against Corruption**

1.9 India ratified the United Nations Convention Against Corruption (UNCAC) in the year 2011. Questioned on addressing the International Convention against Corruption adopted by the General Assembly of the United Nations to prevent corruption and black money through the Bill, the Ministry stated as follows:—

“The United Nations Convention Against Corruption (UNCAC) is primarily to promote and strengthen measures to prevent and combat corruption more efficiently and effectively. However, some provisions of the Convention may be relevant in the context of this Bill. Such provisions are quoted below:—

“Article 23. Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
  - (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

- (b) Subject to the basic concepts of its legal system:
  - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
  - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.”

“Article 31. Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:
  - (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
  - (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

The provisions contained in the Bill to some extent help in achieving the aforesaid directives of the UNCAC as prohibition of *benami* transactions would be a deterrence against concealment or disguise of the ownership as such property is liable for confiscation under the *Benami* Transactions (Prohibition) Bill, 2011.”

## **The Prevention of Money Laundering Act, 2002 and The *Benami* Transactions (Prohibition) Act, 1988**

1.10 On being pointed out the desirability of comprehensive legislation to check the unaccounted money by amalgamating the two Acts *viz.* (i) the Prevention of Money Laundering Act, 2002; and (ii) the *Benami* Transactions (Prohibition) Act, 1988, the Ministry in a written reply stated as follows:—

“The objectives of the Prevention of Money Laundering Act, 2002 and the *Benami* Transactions (Prohibition) Bill, 2011 are not the same. PMLA deals with money laundering which involves disguising financial assets so that they can be used without detection of the illegal activity that produced them. Thus, PMLA is restricted only to proceeds of crime, *i.e.* property obtained as a result of criminal activity relating to scheduled offences.

The *Benami* Transactions (Prohibition) Bill operates on a different plane. It is not restricted to proceeds of crime only because its objective is to prohibit a *benami* transaction so that the beneficial owner would be compelled to keep the property in his own name only and the legal complexities owing to the apparent ownership not being the real ownership, could be avoided. The prohibition would apply irrespective of the nature or source of the funds invested in the property. Thus, the *Benami* law applies equally to both a property acquired through proceeds of crime and a property acquired through legitimate means and hence its scope is wider than PMLA. Though, a *benami* transaction could be used to disguise the real ownership of a property to prevent detection of the illegal activity that produced it, but that may not always be the case. This is because a *benami* transaction could be entered into for several other purposes also like defrauding creditors, avoiding payment of taxes or social reasons.

In view of the above, the *Benami* Transaction (Prohibition) Bill has been proposed as a separate legislation and not as a part of the PMLA. Further, except for the common institutional set up for adjudication and appeal, there is no overlap with the provisions of the law regarding money laundering and hence there is no scope of any confusion in this regard.”

1.11 In this regard, the Ministry further added:—

“The PMLA deals with money laundering which involves disguising financial assets so that they can be used without detection of the

illegal activity that produced them. It is possible that the property obtained as proceeds of crime may be disguised by holding it in the name of a *benamidar*. The *Benami* Transactions (Prohibition) Act, 1988 has made all such transactions illegal. To this extent the BTPA has been useful in prevention of money laundering.”

**1.12 The Committee note that an Ordinance was promulgated on 19th May, 1988 to prohibit the right to recover property held *benami* and for matters connected therewith and incidental thereto. The Ordinance was replaced with the *Benami* Transactions (Prohibition) Act, 1988. The purpose of bringing out the Ordinance in curbing *benami* transactions was lost over the years as no rules for implementation of the *Benami* Transactions (Prohibition) Act, 1988 were framed. The Committee fail to understand as to why the Government went into a slumber after promulgation of Ordinance in a hurry and enactment of law to prohibit *benami* transactions. The Committee are perturbed to note that the Act was kept in “cold storage”, even as the recommendations for immediate implementation of the *benami* law were made by Second Administrative Reforms Commission (ARC) way back in January, 2007. It is, thus, evident that the Government was not sincere in operationalising of the *benami* law. The Committee would expect that at least now the Government will bring in this long overdue legislation with due seriousness and implement it at the earliest.**

**1.13 Even after taking such an unduly 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 Committee are surprised to find that the Bill needs modification with a view to harmonizing it with the observations/recommendations of the Second ARC on prohibition of *benami* transactions, and the United Nations Convention Against Corruption (UNCAC). Moreover, certain specific shortcomings in the clauses have been noticed during the course of Committee’s deliberations in some provisions of the Bill as introduced. These have been dealt with in detail in the later sections of this Report. The Committee recommend enactment of the Bill without any further delay subject to the observations made/modifications suggested in this Report.**

1.14 The long title of the Bill reads as follows:—

“A Bill to consolidate and amend the law relating to *benami* transactions, prohibit holding property in *benami* and restrict right to recover or transfer property held *benami*, and provide mechanism and procedure for confiscation of property held *benami* and for matters connected therewith or incidental thereto.”

**1.15 The Committee find that there is no reference in the Bill to the mandate derived from United Nations Convention Against Corruption (UNCAC). The Committee, therefore, desire that the reference to this UNCAC may be made in the Bill to make it clear that the various provisions of the Bill have an international basis.**

## II. SHORT TITLE, EXTENT AND COMMENCEMENT

2.1 Clause 1, *inter-alia* seeks to extend the provisions of the Bill to the whole of India except the State of Jammu and Kashmir.

**2.2 The Committee, keeping in view the economic gravity involved in *benami* transactions, desire the Government to extend the provisions of the Bill to the State of Jammu and Kashmir also in consultation with the State Government.**

2.3 Clause 1 (3) of the Bill reads “It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision”.

**2.4 The Committee desire the Ministry that adequate care should be taken so that the relevant and linked provisions are notified simultaneously.**

### **Clause 2(g): *Benami* Transactions**

2.5 This clause defines “*benami* transactions”.

2.6 Clause 2(g) provides as under:—

“*benami* transaction means,—

(A) a transaction or arrangement—

- (a) where a property is transferred to, or is held by, a person for a consideration provided, or paid by, another person; and
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person providing 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; or

(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, agent, director of a company or legal adviser, 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;

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

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

2.7 The Definition of *benami* transaction as provided in the *Benami Transactions (Prohibition) Act, 1988* is given below:—

“*Benami* transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person.”

2.8 Exclusions from *benami* transaction as per the *Benami Transactions (Prohibition) Act, 1988* are given below:—

“(i) Purchase of property by any person in the name of his wife or unmarried daughter.

(ii) Prohibition of the right to recover property held *benami* does not apply—

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

2.9 The rationale for the proposal in the *Benami* Transactions (Prohibition) Bill, 2011 as given by the Ministry is furnished below:—

“The exclusions from the applicability of *benami* law are similar except that in the case of purchase of property by any person in the name of his wife or unmarried daughter, which was excluded in BTPA, 1988, it has now been included as a non-prohibited *benami* transaction (instead of as an exclusion from the definition).”

2.10 In this regard, the Ministry further added as follows:—

“From the stand point of the transferor, it is wholly immaterial as to from where the consideration comes. The transferor is concerned with the payment of consideration for the transfer and once it is received by him from and on behalf of the transferee, in reality or ostensibly he would have no regard for any other matter. The circumstances in which another person pays or provides the consideration to the transferee for being passed on to the transferor may be manifold. A person may provide consideration money to the transferee out of charity or under some jural relationship such as creditor and debtor or the like. The final relationship between such other person and the transferee has nothing to do or may have nothing to do with the jural relationship between the transferor and transferee. The intention of the other person paying or providing the consideration is in substance the main factor to be considered and is of great importance. If that other person really intends that he should be the real owner of the property, then only the transferee may be characterized as a *benamidar*, whether the transferee is a fictitious person or a real person having no intention to acquire any title by means of the transfer. It was perhaps for this very reason that intention of the person actually paying or providing consideration to the transferee was incorporated as an essential element in the provisions of section 82 of the Indian Trusts Act. It would appear to be unreasonable to rest the provisions relating to *benami* transactions on the payment or provision of consideration alone by a person other than transferee. To have such a provision in a sweeping language may make the Act unworkable in actual implementation. The actual payment or provision of consideration has been made the dominant factor, but by itself it may have no real substance unless the person providing the consideration does so with the intention of actually benefiting himself.

In view of the above, it is proposed that the payment alone by the other person should not be the only consideration for deciding a

*benami* transaction rather intention of the other person paying or providing the consideration should be considered for deciding a *benami* transaction. Therefore, to hold a transaction or an arrangement as *benami*, it is proposed to provide an additional test that the *benamidar* should be holding the property for the benefit of the person providing the consideration. It is also proposed that property held by a coparcener of a Hindu undivided family for the benefit of the coparcener in the family and property held by a person standing in fiduciary capacity be excluded from the definition of *benami* transaction.

2.11 The National Institute of Public Finance and Policy (NIPFP) submitted the following views in regard to Clause 2(g):—

“An exception has been carved out where a property is held by a person standing in a fiduciary capacity. Most of the lawyers will act in a fiduciary capacity. In fact, a legal advisor has been specifically included in the exception. Thus, properties held and managed in tax heavens by lawyers will be out of the ambit of the Act.

Most of the *benami* properties will be held either in the name of near relatives or by lawyers .....acting in a fiduciary capacity. Leaving all these categories out will severely restrict the operation of the Act to only those cases where properties are held in the name of trusted employees, servants, etc. It is therefore doubtful if the Act in its present form will achieve the avowed objective of prohibiting the holding of property in *benami*.”

2.12 To a specific query as to if a person has given a loan to another person, and that is the consideration paid for the property, how such cases would be treated under the provisions of the Bill, the CII in a post-evidence reply stated as follows:—

“Payment should be defined in the bill and if the substance of transaction shows that the nature of the transaction shows its irreversibility then such unsecured loans may be included in such definition. However, the proposed bill must also include safeguards such that bonafide transactions are not unnecessarily subject to harassment and do not find themselves trapped within the fold of malafide *benami* transactions.”

**2.13 The Committee believe that definitions in any legislation is important for effective implementation and achievement of the objectives enshrined in the Acts. However, the Committee are unhappy to note that the present Bill fails miserably on this count. For instance, the relevant terms such as “transaction”, “arrangement”, “consideration**

provided or paid” have not been defined in the Bill. Further, the terms namely, “trustee”, “executor”, “partner”, “agent”, “director of a company or legal adviser” have neither been defined nor added by way of explanations in the Bill. Though some of these terms have been widely used in other laws and many of these terms have been used without specifically defining them, the Committee feel that specific definition of these terms in context of the Bill will remove ambiguity and leave no scope for misinterpretation and obviate delegated legislation. The Committee, therefore, recommend the Government to review the definition clauses of the Bill, so as to include proper definitions for every relevant term in the Bill itself.

**2.14** The Committee note that the Second Administrative Reforms Commission in its fourth Report presented in January, 2007 on Ethics in Governance *inter-alia* stated on the subject of prohibition of *Benami* Transactions that the wealth amassed by corrupt public servants is often kept in ‘*Benami*’ accounts or invested in properties in others names. The Committee are, however, dismayed to note that instead of strengthening the *Benami* Transactions (Prohibition) Act, 1988, the Government enlarged the scope of exemptions from the purview of the *Benami* Transactions. The Committee also find credence in the view expressed by the National Institute of Public Finance and Policy (NIPFP) on exemption being proposed for a number of categories, as it would severely restrict the operation of the proposed law, thereby affecting the achievement of the avowed objective of prohibiting the *benami* transactions. The Committee are of the view that the proposed exemptions under Clause 2 (A)(b) should be pruned and there should be no exemption other than purchasing property by any person in the name of his/her spouse or unmarried daughter on the lines of the *Benami* Transactions (Prohibition) Act, 1988. Otherwise with such a long list of exemptions, the very purpose of the proposed measure would be defeated. The Committee, therefore, recommend the Government to amend Clause 2(A)(b) suitably by taking this aspect into consideration.

#### **Clause 2(j): Fair Market Value**

**2.15** According to this clause, “fair market value” in relation to a property means:—

- “(i) the price that the property would ordinarily fetch on sale in the open market on the relevant date; and
- (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act.”

2.16 Determination of “relevant date” is important in arriving at fair market value of the property.

**2.17 The Committee note that the term “relevant date” has neither been defined nor provided by way of an explanation in the Bill. They would expect that Clause 2 (j) of the Bill will be accordingly amended.**

### **Clause 2(p): Property**

2.18 Clause 2(p) reads as follows:—

“property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property and where the property is capable of conversion into some other form, then the property in such converted form.

2.19 Some provisions of the UNCAC relevant to Clause 2(p) are given below:—

“Article 31. Freezing, seizure and confiscation

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of proceeds.
5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to this article, in the same manner and to the same extent as proceeds of crime.”

**2.20 The Committee are of the view that the definition of “property” in Clause 2(p) of the Bill is loosely worded and leaves much scope for misinterpretation. For instance, it is not clear as to whether the *benami* property or proceeds thereof that have been transformed or converted, in part or in full, into other property be treated as property. The Committee feel that there is a need to bring in more clarity by modifying Clause 2(p) for achieving convergence**

**with the UNCAC. The Committee, therefore, desire that the definition of the term “property” is, accordingly, rephrased.**

### III. PROHIBITION OF BENAMI TRANSACTION

#### **Clause 3: Prohibition of *Benami* Transaction**

3.1 This clause contains provisions relating to prohibition of *benami* Transactions.

Clause 3 (1) reads as under:—

“(1) No person shall, on and after the commencement of this Act, enter into any *benami* transaction.

Clause 3 (2) reads as follows:—

Nothing contained in sub-section (1) shall apply to a *benami* transaction entered into by any person, being an individual, in the name of his—

- (a) spouse;
- (b) brother or sister; or
- (c) any lineal ascendant or descendant.”

3.2 Giving such a wide exception could be dangerous as most *benami* properties are reportedly purchased in the name of one of these relatives and thus may escape confiscation. Asked to justify the exemptions provided under Clause 3(2), the Ministry in a post-evidence reply informed the Committee as under:—

“In the *Benami* Transactions (Prohibition) Act, 1988 [BTPA], *benami* transactions in the name of relatives, except in the name of wife or unmarried daughter, are prohibited (section 3 of BTPA). In the proposed *Benami* Transactions (Prohibition) Bill, 2011 [BTPB], *benami* transactions except in the name of spouse, brother or sister or any lineal ascendant or descendant are prohibited (clause 3 of BTPB). This means that properties subject to such transactions in the name of such relatives would not be liable for confiscation. However, such transactions are included in the definition of “*benami* transaction”. Therefore, deterrence in the form of prohibition of right to recover the property and prohibition to re-transfer the property by the *benamidar* to the beneficial owner would still be applicable for such transactions (clauses 5 and 6).

The reasons for not prohibiting *benami* transactions with close relatives are following:—

- (i) Cases of joint ownership of property with relatives, *i.e.* where a person acquires a property but, holds it in joint name with a relative is an extremely common occurrence in India. Such single or joint ownership with a female relative is also being encouraged as a conscious social policy by State and Central Government by reducing the rate of stamp duty, if the sole owner or one of the owners, is a female relative. Prohibiting such transactions would cause hardship.

The provisions regarding property held with relatives in the *Benami* Transactions (Prohibition) Bill (BTPB) strike a balance by allowing property transactions involving relatives, while at the same time, not allowing the beneficial owner from claiming at a later date that he never intended the transferee (blood relation or spouse) to become owner of the property. It recognizes that the transfer of a property to a person, for a consideration provided or paid, by another person but with the intention that the property is held for the benefit of the person providing the consideration is a *benami* transaction. However, it does not prohibit such transactions in the case of transfer to blood relations, but such transaction still remains a *benami* transaction. It does provide a deterrent, because in case of a *benami* transaction with a relative (and with any other person), the beneficial owner is prohibited from filing or defending any suit for enforcing right of recovery of the property on the ground that he is the real owner (clause 5).

If any unaccounted money is used in a transaction with relatives as above, action can be taken under the Income Tax Act and the PMLA (if the transactions arise from proceeds of crime).”

3.3 In view of the above, when asked as to whether the Ministry considered the implications of the exemption where a *benami* property has been registered in name of family members, without their approval, a written reply as furnished by the Ministry is given below:—

“Registering a property in the name of a family member is allowed under the BTPB as it is not a prohibited *benami* transaction. Therefore there would not be any incentive to register a property in the name of family members without their approval. Also, such transactions can generally be made only with the signature of the transferee,

hence this would be a case of fraud for which the provisions of the CrPC would be attracted.

As mentioned, under the provisions of the proposed Bill, purchase of property for own benefit but recorded in the name of family members as listed in clause 3(2) of the Bill is not a prohibited *benami* transaction. Since such a transaction shall still qualify to be a *benami* transaction (though not a prohibited one), all of the following provisions shall apply—

- (a) No suit, claim or action to enforce any right in respect of a *benami* property against the person in whose name the property is held can be made on behalf of a person claiming to be the real owner of such property. [Clause 5(1)]
- (b) No defence based on any right in respect of a *benami* property, shall be allowed in any suit, claim or action by a person claiming to be the real owner. [Clause 5(2)]
- (c) A *benami* property shall not be allowed to be retransferred to the beneficial owner. (Clause 6)

These provisions would deter the person from registering the property, while remaining its beneficial owner, in name of family members with or without their approval.”

3.4 To a specific query asked by the Committee as to whether exemptions provided under Clause 3(2) would help or hinder the pursuit of *benami* transactions, the CII submitted a post-evidence reply as follows:—

“Section 3 (2) of the Bill excludes certain specified transactions from the purview of prohibition altogether. *Benami* transactions in India have been prevalent for more than 2 centuries in recorded judicial history. The motive of such *benami* transactions should be the ideal barometer to exclude such transactions. Providing an automatic immunity on account of transactions specified under Section 3(2) is likely to cause some *benami* transaction which should otherwise lead to confiscation slip through the net.

Transactions under Section 3 (2) sometimes may be carried out with ulterior motives, like (a) desire to defeat the creditors; (b) desire to defeat the operation of law under government’s service rules or (c) desire to defeat the reach of revenue.

.....these transactions carried out with a malafide intention should be expressly excluded and no protection of law should be provided in such cases.”



3.5 The CII in their post-evidence reply stated as follows:—

“The *Benami* Transactions (Prohibition) Bill, 2011 should provide for creation of a Registry for compulsory registration and maintenance of record of the *benami* transactions. This would ensure transparency and facilitate to take care of the diverse future situations in which the *benami* transactions, which may be otherwise quite legitimate but yet fall outside Clause 2(g) (b) or Clause 3(2) of the Bill, may become necessary. In this regard, the concept underlying the provisions of Section 187 C of the Companies Act, have served a very useful purpose and can be adapted in the Bill.”

3.6 Asked to furnish the Government’s views on the suggestions made, the Ministry informed as under:—

“Section 187C of the Companies Act provides for disclosure of relevant particulars when shares are held in the name of a person who does not hold the beneficial interest in such shares. The disclosure is required to be made both by the ostensible owner as well as by the beneficial owner.

Under the provisions of the proposed Bill, when property is held by a Karta or a member of HUF for benefit of members of HUF or when property is held by a person standing in a fiduciary capacity for the benefit of another person (including a trustee, executor, partner, agent, director of a company or legal advisor, a depository participant or any other person as may be notified), the transaction is not included in the definition of “*benami* transaction”. Further, a *benami* transaction in the name of spouse, brother or sister or any lineal ascendant or descendant is not proposed to be prohibited. All other *benami* transactions are proposed to be prohibited.

Registering the *benami* transactions would not be feasible as the persons engaging in *benami* transactions would never disclose such information because they would be liable for all the legal consequences under the proposed Bill.”

**3.7 The Committee are not inclined to agree to the Ministry’s view on *benami* transactions in the name of the close relatives being treated as non-prohibitive. The Committee are of the view that placing a transaction under non-prohibitive list amounts to helping a culprit whose primary goal is to get the property out of the legal net. The argument regarding deterrence advanced by the Ministry does not satisfy the Committee. The Committee feel that this long list of**

exempted and non-prohibitive transactions does not go well with the real objective of the proposed law *viz.* to curb the menace of *benami* transactions. The Committee would like the Government to look into the entire gamut of exempted as well as non- prohibitive list of transactions and make it minimal as far as possible so that no unscrupulous element could circumvent the provisions of the law. At the same time, they also desire that income-tax authorities and authorities under the Prevention of Money Laundering Act, 2002 should act in a coordinated manner with registration authorities so that any illegal transaction could be tracked.

#### **Clause 4: Property held *benami* liable to confiscation**

3.8 Clause 4 of the Bill which provides for property held *benami* liable to confiscation reads as under:—

“Any property, which is subject-matter of *benami* transaction, not being a *benami* transaction referred to in sub-clause (2) of clause 3, shall be liable to be confiscated by the Central Government.”

**3.9 The Committee observe that Clause 4 on “Property held *benami* liable to confiscation” is silent on applicability of the Clause to agricultural land, which is a State subject. The Committee desire that necessary clarification may be provided in the enabling Clause, specifying the manner of confiscating the *benami* property involving agricultural land after examining the constitutional/legal position.**

#### **Clause 6: Prohibition to re-transfer property in benamidar**

3.10 Clause 6 of the Bill provides for prohibiting re-transfer property in benamidar.

Clause 6 reads as follows:—

“No person, being benamidar shall re-transfer the *benami* property held by him to the beneficial owner or any other person acting on his behalf.”

**3.11 The Committee note that the proposed Clause 6 is not explicit as to whether this infringes the provisions of the Transfer of Property Act, 1882. It also needs to be clarified whether Clause 6 directly or indirectly confers ownership of such *benami* property on benamidar. The Committee desire that Clause 6 of the Bill may be amended accordingly.**

#### IV. AUTHORITIES

##### **Clause 9: Power of authorities regarding summons, production of documents and to give evidence, etc.**

4.1 Clause 9 reads:—

- “(1) The authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
- (a) discovery and inspection;
  - (b) enforcing the attendance of any person and examining him on oath;
  - (c) compelling the production of books of account and other documents;
  - (d) issuing commissions;
  - (e) receiving evidence on affidavits; and
  - (f) any other matter which may be prescribed.
- (2) For the purposes of this Act, any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with such requisition or direction.”

4.2 The Ministry justified the proposed Clause 9 on the ground that the powers of civil court were not prescribed under the *Benami* Transactions (Prohibition) Act, 1988. Therefore, the Government felt necessary to provide powers of civil court to various authorities under the *Benami* Transactions (Prohibition) Bill, 2011 so that they can effectively discharge their duties.

4.3 The National Institute of Public Finance and Policy made the following suggestion in regard to the proposed Clause 9(1)(b):—

“In order to find out information about *benami* deals, the authorities need to have the power of calling for information from banks. It is therefore suggested that in section 9(1)(b) dealing with the power of authorities regarding summons etc., “enforcing the

attendance of any person including any officer of a banking company and examining him on oath may be substituted.”

4.4 It is noticed that Section 11(b) of the Prevention of Money Laundering Act, 2002 empowers the Adjudicating Authority to enforce the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath.

**4.5 Keeping in view the provisions under section 11(b) of the Prevention of Money Laundering Act, 2002 and suggestion made for empowering the authorities to summon the banks, the Committee recommend that Clause 9(1)(b) should be suitably amended to include “any officials of a banking company or a financial institution or a company”. The words “banking company”, and “financial institution” may also be defined in the Bill.**

#### **Clause 10: Power to call for information**

4.6 Clause 10 of the Bill reads as under:—

“The Initiating Officer or the Adjudicating Authority shall have power to require any officer or authority of the Central Government or State Government or a local authority or any person or authority who is responsible for registering and maintaining books of account and other documents containing a record of any transaction relating to any property or any other person to furnish such information in relation to such persons, points or matters as in his opinion will be useful for or relevant to the purposes of this Act.”

**4.7 The Committee note that unlike the Prevention of Money Laundering Act, 2002, the proposed Act has no separate chapter dealing with obligations of any officer or authority of the Central Government or State Government or a local authority to render assistance for all or any of the purposes specified in sub-clause (1) of clause 9, particularly for registering and maintaining books of account and other documents and furnishing information under Clause 10. The Committee also note that the term “record/documents” has not been defined in the Bill. Similarly, the manner and procedures to be prescribed for maintaining books of account and other documents as well as furnishing of information in such a way that it provides all information particularly source of property to facilitate unearthing *benami* transactions have also not been indicated in Clause 10.**

**4.8 The Committee further note that in Notes on clauses of the Bill, it has been mentioned that Clause 10 seeks to provide that the**

**Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to call for information. However, the word “Approving Authority” has been found missing in Clause 10. The Committee would expect the Government to make amendments accordingly.**

4.9 The inherent difficulty of tracking the source of money in a *benami* transaction continues to be the main challenge and this has not been addressed even in the *Benami* Transactions (Prohibition) Bill, 2011. In this regard, the Ministry informed the Committee as under:—

“Tracking the source of money in a *benami* transaction is a challenge because by its very nature a *benami* transaction is known only to the parties who are part of the arrangement and none of them would disclose such a transaction as both the benamidar and the beneficial owner are offenders under the *benami* law. Since it is a collusive transaction, the detection of such transaction would usually happen if there is a dispute between the parties. However, there are various other laws like Income- tax Act, Prevention of Corruption Act and Prevention of the Money Laundering Act which deal with source and nature of the money involved in various transactions.”

4.10 On the same issue, the CII in a post-evidence reply stated as under:—

“The Bill has specified a robust mechanism for enforcement. However the Bill imposes sole reliance on revenue department for enforcement of the provisions of the bill. Under Section 10 of the Bill, the power to call for records or other documents from other authorities..... This makes the detection process reactive and rest with the Initiating Officer alone.

The Bill should consider certain “point of occurrence of transaction” detection mechanism to detect *benami* transactions. An example of which could be to obtain mandatory references from authorities concerned (contemplated under Section 10 of the Bill) with registration of various types of properties whether movable or immovable. Suspicious transactions meeting certain defined characteristics should be strictly and mandatorily be reported to the Initiating Officer.

In continuation to above suggestion, Initiating Officer should entertain applications from affected parties (*e.g.* Creditors defeated through *Benami* transaction) to recognize and initiate investigations into *Benami* transactions provided there is some *prima facie* evidence in existence.”

**4.11 The Committee agree with the concern of the Ministry that tracking the source of money in a *benami* transaction is a challenge. In this regard, Committee would suggest that such constraint could be addressed by creating an in-built mechanism in the proposed Act whereby suspicious transactions are mandatorily referred to the Initiating Officer or Approving Authority. Clause 10 may be modified accordingly.**

#### **Clause 11: Power of authority to impound documents**

4.12 Clause 11(1) provides as under:—

“Where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of such books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain such books of account or other documents for a period not exceeding three months from the date of attachment made by the Adjudicating Authority under sub-section (3) of section 15.”

4.13 Clause 11(3) reads as follows:—

“On the expiry of the period specified under sub-section (1), the books of account and other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or Adjudicating Authority permits retention of such books of account and other documents beyond the said period.”

**4.14 The Committee note that the word “attachment” is not defined in the Bill whereas under clause 11(3), books of account or other documents are proposed to be retained from the date of attachment made by the Adjudicating Authority under sub-section (3) of section 15, though the retention of such documents should be done normally only after obtaining the approval of the Adjudicating Authority, not the Approving Authority. Further, Clause 11(1) is not clear as to whether the Initiating Officer or Approving Authority could on their own impound and retain books of account or other documents without an order from the Adjudicating Authority. The Committee are of the view that if the records are relevant for filing of appeal, the Approving Authority may be empowered to retain the documents until filing of an appeal or for a stipulated period from the date of confiscation order issued by the Adjudicating Authority. Similarly, a maximum time-limit may be prescribed for Adjudicating Authority also for**

**retaining the (impounded) documents under Clause 11(3). The Committee would recommend that Clause 11(1) and (3) may be suitably amended.**

## V. ATTACHMENT, ADJUDICATION AND CONFISCATION

### **Clause 13: Notice and Attachment of property involved in prohibited *benami* transaction**

5.1 Clause 13 (1) to (3) reads as follows:—

- “(1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person, not being a person referred in sub-section (2) of section 3, is a *benamidar* in respect of a property, he may, after recording reasons in writing, issue a notice to such person to show cause within such time as may be specified in the notice why such property should not be treated as *benami* property.
- (2) Where a notice under sub-section (1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be served upon such other person who is a beneficial owner.
- (3) Where the Initiating Officer is of the opinion that the person in possession of the property held *benami* may alienate such property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally such property in the manner as may be prescribed.”

**5.2 The Committee note that it is not clear as to whether the manner of attachment of property involved in money-laundering as provided in the Second Schedule to the Income-Tax Act, 1961 (43 of 1961) would also be applicable for the purposes of Clause 13(3) of the *Benami* Transactions (Prohibition) Bill, 2011, and desire that, suitable inclusion/amendment may be made in Clause 13 (3) of the Bill.**

5.3 Clause 13(4) reads:—

“The Initiating Officer, after making such inquires and calling for such reports or evidence as he deems fit and taking into account

all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

- (a) where the provisional attachment has been made under sub-section (3),—
  - (i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the date of the order made by the Adjudicating Authority under sub-section (3) of section 15; or
  - (ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;
- (b) where provisional attachment has not been made under sub-section (3),—
  - (i) pass an order provisionally attaching the property till the date of order made by the Adjudicating Authority under sub-section (3) of section 15; or
  - (ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.”

**5.4 The Committee note that Initiating Officer gets prior approval of Approving Authority at every stage during the process of implementing certain provisions of the proposed Act [(Clauses 12, 13(3), 13(4)(a) and 13(4)(b)(ii)]. However, prior approval of Approving Authority is not taken by the Initiating Officer for passing an order provisionally attaching the property under Clause 13(4)(b)(i). The Committee, therefore, recommend that Clause 13(4)(b)(i) may be suitably amended to get prior approval of Approving Authority so that uniformity in procedure relating to provisional attachment of property is ensured.**

5.5 Clauses 13(1) and 13(4)(a) (ii) of the Bill appear to be contradictory to each other as the initiating officer who has recorded reasons in writing for attachment has also been given power to revoke the provisional attachment order with the prior approval of approving authority. Asked to clarify as to whether the power to revoke the provisional attachment be conferred on appellate authority, the Ministry in a written response *inter-alia* stated as follows:—

“The provisional attachment proposed to be made by the Initiating Officer under clause 13(3) is a precautionary measure so that a



person holding a *benami* property would not be able to dispose of such property when he comes to know that proceedings are being initiated under the proposed Bill. In case, the Initiating Officer is satisfied that the property is not a *benami* property, he shall, with prior approval of the Approving Authority, revoke the provisional attachment. If he is of the view that it is a *benami* property, then, only if the Approving Authority concurs, the attachment would be allowed to continue. Such a case would be referred to the Adjudicating Authority within 15 days. Therefore, the decision to revoke or to continue the provisional attachment would be taken only with prior approval of the Approving Authority. Thus, a check has been introduced as the decision would be subject to overview of the Approving Authority..”

5.6 Questioned on safeguards proposed in the Bill to protect the genuine investors, the Ministry in a reply stated as follows:—

“The intent behind the proposed Bill is to bar the practice of *benami* so that there is no legal complexity due to the apparent ownership being different from the real ownership. A genuine investor is expected to make investment in his own name only and therefore there would be no question of any harassment in this regard. The Bill prescribes detailed procedure with adequate checks and balances and opportunity for appeal so as to avoid any injustice in a genuine case. The following provisions are proposed to avoid injustice in a genuine case:—

- (i) The show cause notice under clause 13(1) can be issued only after recording reasons in writing.
- (ii) The provisional attachment can be extended further only with prior approval of Approving Authority.
- (iii) A reference to the Adjudicating Authority, which shall be an independent authority under PMLA, is mandatory and has to be made within 15 days from attachment of the property.
- (iv) The Adjudicating Authority is empowered to *suo motu* strike out the name of any party improperly joined.
- (v) It shall be mandatory for the Adjudicating Authority to pass a speaking order within one year.
- (vi) Any person aggrieved by an order of the Adjudicating Authority may prefer an appeal to the Appellate Tribunal established under PMLA.

- (vii) Any question of law arising out of an order of the Appellate Tribunal can also be raised as an appeal to the High Court.”

5.7 On the same issue, the CII in a post-evidence reply informed the Committee as under:—

“Section 2 (g)(A)(b) and Section 3 (2) attempts to prevent genuine transactions to be classified as *benami*. The application of these sections will prevent punishment of any genuine or *bonafide* transactions. However, there is a lot of discretion bestowed on the initiating officer to pursue specific cases. This leave room for harassment.”

**5.8 The Committee observe that Clauses 13(1) and 13(4)(a) (ii) of the Bill appear to be contradictory to each other as the initiating officer who has recorded reasons in writing for attachment has also been given power to revoke the provisional attachment order with the prior approval of approving authority. Such provision of empowering the Initiating Officer to revoke the provisional attachment of property is prone to misuse. The Committee would, therefore, recommend that an appropriate authority other than the Initiating Officer may be designated for recommending revocation of provisional attachment to Approving Authority. Further, adequate checks and balances may be prescribed for checking the use of discretionary powers bestowed on the Initiating Officer so that genuine transactions are not subjected to avoidable harassment.**

#### **Clause 15: Adjudication of *benami* property**

5.9 Clause 15 of the Bill provides for adjudication of *benami* property.

Clause 15(1) reads as under:—

“On receipt of a reference under sub-section (5) of section 13, the Adjudicating Authority shall serve notices, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following person, namely:—

- (a) the person specified as a benamidar therein;
- (b) any person referred to as the beneficial owner therein or identified as such;
- (c) any interested party, including a banking company;
- (d) any person who has made a claim in respect of the property.”

5.10 It is noticed that section 8 of the Prevention of Money Laundering Act, 2002 provides the Adjudicating Authority to serve a notice of not less than thirty days on such calling upon him to indicate the sources of his income etc.

**5.11 The Committee note that unlike section 8 of the Prevention of Money Laundering Act, 2002, no time-limit has been prescribed for serving a notice by the Adjudicating Authority to the person concerned under Clause 15(1) of the Bill. The Committee desire that necessary amendments may thus be made for this purpose.**

#### **Clause 16: Confiscation and Vesting of *benami* property**

5.12 Clause 16 of the Bill relates to confiscation and vesting of *benami* property by the Adjudicating Authority.

Clause 16(1) reads as under:—

“Where any property is attached under sub-section (3) of section 15, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a *benami* property.”

5.13 The “Adjudicating Authority has been defined in Clause 2 (a) of the Bill which reads as under:—

“Adjudicating Authority means the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002.”

**5.14 Clause 16 of the Bill is silent on the rules and procedures to be prescribed for manner of confiscating *benami* property by the Adjudicating Authority. It is also not clear as to whether all the powers conferred on the Adjudicating Authority by or under the Prevention of Money Laundering Act, 2002 and rules and procedures prescribed thereunder should also be applicable for the purposes of the proposed Act. The Committee would expect that suitable amendments are made in Clause 16(1) of the Bill.**

#### **Clause 17: Management of Properties**

5.15 Clause 17 provides for management of properties confiscated under this Act which reads as under:—

“(1) The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation

under sub-section (1) of section 16 has been made, in such manner and subject to such conditions, as may be prescribed.

- (2) The Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of an Administrator.
- (3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 16.”

5.16 Asked to clarify as to whether the Administrator proposed under Clause 17 is the final authority, and how the property would be disposed of before the final decision is taken, the Ministry submitted their written response as follows:—

“For disposal of the acquired property the Administrator shall be governed by the rules that may be prescribed in this regard. The disposal of property shall be undertaken only after all opportunities of appeal available under the proposed Bill are exhausted and the order for confiscating the property has attained finality.”

**5.17 The Committee note that contrary to the reply of the Ministry, Clause 17(1) is silent on the rules to be prescribed for disposal of the acquired property by the Administrator. The Committee also note that the rank of officers to be notified to perform the functions of an Administrator has not been mentioned in Clause 17(2). The Committee would recommend that Clause 17(1) and (2) may be amended accordingly. The Committee also desire that upkeep and proper maintenance of the properties acquired by the Administrator must be ensured.**

## VI. APPELLATE TRIBUNAL

### **Clause 19: Establishment of Appellate Tribunal**

6.1 Clause 19 of the Bill provides for establishment of Appellate Tribunal.

Clause 19 reads: “Subject to the provisions of this Act, the Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002 shall be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the powers conferred on it by or under this Act.”

6.2 Asked to furnish the reasons for utilizing the existing Appellate Tribunal set up under section 25 of the Prevention of Money Laundering Act, 2002 for the purposes of the *Benami* Transactions (Prohibition) Bill, 2011, the Ministry in a written reply submitted as follows:—

“The Appellate Tribunal established under section 25 of the Prohibition of Money Laundering Act, 2002 is proposed to be the Appellate Tribunal for the purpose of this Bill. This has been proposed as the Appellate Tribunal under the PMLA is an existing and running institution and can be entrusted with additional work. This way we shall be making effective use of existing resources and the time and money required in creating a new set-up can be avoided.”

**6.3 The Committee are of the view that it would be unreasonable to expect from the Appellate Tribunal functioning under the Prevention of Money Laundering (PML) Act, 2002 to expedite and dispose off a large number of cases falling under both the PML Act, 2002 and the proposed Act in a time-bound manner, that too without any corresponding increase in the existing sanctioned strength of the Tribunal. The Committee, therefore, recommend the Government to set up an Appellate Tribunal exclusively for speedy disposal of the cases under the proposed Act.**

#### **Clause 20: Appeals to Appellate Tribunal**

6.4 Clause 20 empowers any person to prefer appeal to Appellate Tribunal.

Sub-clause (1) of Clause 20 reads as follows:—

“Any person aggrieved by an order of Adjudicating Authority may prefer an appeal in such form and along with such fee, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under clause 15 within forty-five days from the date of such order.”

6.5 It is noticed that section 26 of the Prevention of Money Laundering Act, 2002 enables the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, to prefer an appeal to the Appellate Tribunal.

**6.6 The Committee note that section 26 of the Prevention of Money Laundering Act, 2002 enables a Director of the Central Government to prefer appeal before the Appellate Tribunal. However, the proposed Act does not have such provision, as a result the Initiating**

**Officer or Approving Authority would lose an opportunity of filing an appeal before the Appellate Tribunal under Clause 20(1) against the order of the Adjudicating Authority. Further, it is not clear as to whether an appeal could also be filed against the order passed by the Adjudicating Authority under Clause 16(1) related to confiscating the property held to be a *benami* property. The Committee, therefore, recommend that Clause 20(1) should be suitably amended in this regard.**

6.7 Sub-clause (4) of Clause 20 provides as under:—

“The Appellate Tribunal, as far as possible, may hear and decide such appeal within a period of two years from the last date of the month in which the appeal is filed.”

**6.8 As the aggrieved party has further opportunity of filing an appeal to High Court, the Committee recommend that the time-limit for disposal of appeals by the Appellate Tribunal may be reduced to one year from the proposed period of two years.**

## VII. APPEAL TO HIGH COURT

### **Clause 24: Appeal to High Court**

7.1 Clause 24 of the Bill provides for appeal to High Court which *inter-alia* reads as follows:—

- “(1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within one hundred and twenty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.
- (2) The High Court may entertain any appeal after the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-section (1).”

7.2 It is noticed that section 42 of the Prevention of Money Laundering Act, 2002 allows any person aggrieved by any decision or order of the Appellate Tribunal to file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal. Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

**7.3 The Committee would like the Government that in line with section 42 of the Prevention of Money Laundering Act, 2002, the period of time of filing appeal to the High Court under Clause 24 (1) and (2) should be reduced to sixty days for speedy disposal of cases.**

## VIII. OFFENCES AND PENALTIES

### **Clause 27: Penalty for *benami* transaction**

8.1 Clause 27 of the Bill deals with the penalty for *benami* transaction which reads as follows:—

- “(1) Where any person enters into a *benami* transaction, not being a *benami* transaction referred to in sub-section (2) of section 3, 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 such *benami* transaction, shall be guilty of the offence of *benami* transaction.
- (2) Whoever is found guilty of the offence of *benami* transaction referred to in sub-section (1) shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.”

### **Clause 28: Penalty for false information**

8.2 Clause 28 provides for penalty for false information which reads as under:—

“Any person who wilfully gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or with fine which may extend to ten per cent. of the fair market value of the property”.

8.3 The consequences of entering into a *benami* transaction as per the Benami Transactions (Prohibition) Act, 1988 as furnished by the Ministry is given below:—

- “(a) Prosecution for entering into a *benami* transaction resulting with imprisonment for a term which may extend up to three years or with fine or with both.

- (b) All properties held *benami* shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.

8.4 The rationale for the above modified proposal in the *Benami Transactions (Prohibition) Bill, 2011* as furnished by the Ministry is given below:—

“Prosecution has been widened to include an abettor in the case of a *benami* transaction.”

8.5 Questioned on the reduction of upper-limit of imprisonment to two years in the Bill from three years in the *Benami Transactions (Prohibition) Act, 1988*, the Ministry furnished a written reply as under:—

“In the *Benami Transactions (Prohibition) Bill, 2011*, it is proposed that the offence of *benami* transaction shall be punishable with imprisonment for a term which shall not be less than 6 months, but which may extend to 2 years. Under the provisions of the Criminal Procedure Code (CrPC), if the offence is punishable with imprisonment of upto 2 years, the accused is subjected to a summons trial. The trial of a summons case reduces the time by half as compared to a regular trial as there are no separate proceedings for framing of charges before proceeding with trial. It only requires the particulars of the offence to be conveyed to the accused. Thus, the upper limit of tenure of imprisonment has been kept at 2 years so as to enable a summons trial for offences which will expedite the prosecution proceedings as procedures in a summons trial are simpler and less time consuming. This will help in speedy disposal of cases.”

8.6 On the same issue, the CII in a post-evidence reply informed the Committee as follows:—

“....the point of indifference between (a) entering into a *benami* transaction, and (b) carrying out a legally acceptable transaction, needs to be calibrated so that the cost of carrying out a *benami* transaction is higher than the benefit of doing a *benami* transaction.

This bill proposes three components of punishment, namely; (i) Confiscation of the property under Section 4; (ii) Imposition of 25% of Fair Market Value of the property as a fine under Section 27 (2); and (iii) a jail sentence of 6 months extending upto 2 years under Section 27 (2).



On the other hand, the cost of carrying out a *non-benami* transaction using one's own income on a post-tax basis involves a maximum income tax of 33% payable on the individual's income to buy the property in one's own name.

A comparison of the two scenarios above suggests that the punishment needs to be made stiffer. The Bill should consider increasing the quantum of fine and jail term from 2 years to 3 years to increase the disincentive to enter into a *benami* transaction.”

**8.7 As regards punishment for prohibited *benami* transactions, the maximum punishment of imprisonment of two years as proposed in the Bill is lesser than the maximum punishment of imprisonment of three years under the existing Act *i.e.* the *Benami* Transactions (Prohibition) Act, 1988. The Committee do not find any merit in the reasons advanced by the Ministry for reduction of period of imprisonment. The Committee are of the strong view that procedures/proceedings in prosecuting the cases should not compromise with the quantum of punishment they deserve. Moreover, the proposed Act has a number of provisions for speedy disposal of cases like Appellate Tribunal and Special Courts. As pointed out by the Second Administrative Reforms Commission, stiffer punishment should be provided so that it would work as a deterrent for others. The Committee, therefore, recommend that the maximum punishment of imprisonment of three years under the existing Act *i.e.* the *Benami* Transactions (Prohibition) Act, 1988 should be retained in the proposed law.**

## IX. MISCELLANEOUS

### **Clause 31: Exemption**

9.1 Clause 31 of the Bill empowers the Central Government to exempt any property or class of properties from the operation of the proposed Act which reads as under:—

- “(1) The Central Government may, by notification, exempt any property or class of properties from the operation of this Act.
- (2) Every notification issued under Sub-clause (1) shall be laid before each House of Parliament.”

**9.2 The Committee find that no parameters have been prescribed for providing exemption to any property or class of properties from**

**the operation of the proposed Act. The Committee are of the view that though every notification to be issued under Clause 31 (1) would be laid before each House of Parliament, an exhaustive list of parameters for being eligible for exemption under Clause 31 may be provided by way of Rules. Accordingly, Clause 31 may be suitably amended.**

#### **Clause 41: Legal Heir**

9.3 Clause 41 of the Bill relates to legal heir which reads as follows:—

- “(1) Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal heir and may be continued against the legal heir from the stage at which it stood on the date of the death of the deceased.
- (2) Any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal heir and all the provisions of this Act shall apply accordingly.
- (3) Where any property of a person has been held *benami* under section 15, then it shall be lawful for the legal heir of such person to prefer an appeal to the Appellate Tribunal, in place of such person and the provisions of section 20 shall, so far as may be, apply, or continue to apply, to such appeal.”

**9.4 The Committee note that the word “legal heir” has not been defined in the Bill. It is also not clear whether all legal heirs including minor of the deceased would fall under Clause 41. The Committee would, therefore, recommend the Government to review Clause 41 and amend it suitably so that innocent legal heirs are protected against the proceedings under the proposed Act. The Committee also desire that legal heirs in any case should not be sent to jail for the offences committed by their parents/guardians. In such cases, only confiscation of property will suffice.**

#### **Clause 43: Power to make rules**

9.5 Clause 43 of the Bill empowers the Central Government to make rules which reads as follows:—

- “(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) determination of the price where the price is not ascertainable under clause (j) of section 2;
  - (b) the powers and functions to be exercised by the authority under section 8;
  - (c) any other matter under sub-section (1) of section 9;
  - (d) the manner of provisional attachment of the property under sub-section (3) of section 13;
  - (e) the manner to receive and manage property under sub-section (1) of section 17;
  - (f) the form in which appeal shall be filed the fee for filing the appeal under sub-section (1) of section 20.”

**9.6 In order to ensure that the proposed Act would not go the way of the *Benami* Transactions (Prohibition) Act, 1988, the Committee would recommend that a maximum period of six months from the enactment of the law be prescribed to make rules under Clause 43.**

#### **Clause 45 – Power to remove difficulties**

9.7 Clause 45 empowers the Central Government to remove difficulties which reads:—

- “(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.
- (2) No order shall be made under this section after the expiry of two years from the commencement of this Act.
- (3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.”

**9.8 Regarding Clause 45(2) of the Bill, the Committee feel that there should be no time restriction for issue of orders to remove difficulties, which may arise while giving effect to the provisions of**

**the Bill particularly in public interest, especially as Clause 45(3) provides for such orders being laid as soon as may be after it is made, before each House of Parliament. The Committee, therefore, recommend that Clause 45(2) should be deleted in the Bill.**

NEW DELHI;  
15 June, 2012  

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25 Jyaistha, 1934 (*Saka*)

YASHWANT SINHA,  
*Chairman,*  
*Standing Committee on Finance.*

APPENDIX I

MINUTES OF THE EIGHTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Monday, the 9th January, 2012 from  
1130 hrs. to 1430 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Shivkumar Udasi
3. Shri Bhakta Charan Das
4. Shri Chandrakant Khaire
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai
7. Dr. Kavuru Sambasiva Rao
8. Shri Rayapati S. Rao
9. Shri Magunta Sreenivasulu Reddy
10. Shri Yashvir Singh
11. Shri Manicka Tagore
12. Shri R. Thamaraiselvan
13. Shri M. Thambidurai

*Rajya Sabha*

14. Shri S.S. Ahluwalia
15. Shri Raashid Alvi
16. Shri Moinul Hassan
17. Dr. Mahendra Prasad
18. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Smt. Meenakshi Sharma — *Deputy Secretary*
3. Shri Kulmohan Singh Arora — *Under Secretary*

**Part I**

**(1130 hrs. to 1250 hrs.)**

WITNESSES

2. \*\*\*                     \*\*\*                     \*\*\*                     \*\*\*                     \*\*\*

*The witnesses then withdrew.*

*A verbatim record of the proceedings was kept.*

**Part II**

**(1250 hrs. to 1425 hrs.)**

WITNESSES

**Ministry of Finance (Department of Revenue)**

1. Shri R.S. Gujral, Finance Secretary and Revenue Secretary
2. Shri M.C. Joshi, Chairman, Central Board of Direct Taxes (CBDT)
3. Shri K.M. Nair, Member
4. Shri Ashutosh Dikshit, Joint Secretary
5. Shri Sunil Gupta, Joint Secretary

3. The Committee heard the representatives of the Ministry of Finance (Department of Revenue) in connection with examination of the *Benami* Transactions (Prohibition) Bill, 2011. The major issues discussed during the briefing included delay in bringing the Bill to repeal *Benami* Transactions Prohibition Act, 1988, exclusion of property purchased in the name of brother or sister and lineal ascendants and descendants from the ambit of *benami* transactions, grounds for reduction in penalty, safeguards to protect genuine investors, setting up of separate tribunal, lacunae in certain clauses of the Bill, defining terms like property and

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\*\*\* Does not pertain to this report.

transaction etc. and comparable laws in other countries dealing with *Benami* transactions etc. The Chairman directed the representatives of Ministry of Finance (Department of Revenue) to furnish a comprehensive background note on the *Benami* Transactions (Prohibition) Bill, 2011 alongwith replies to the points raised by the Members during the discussion at an early date.

*A verbatim record of the proceedings was kept.*

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Monday, the 9th April, 2012 from 1430 hrs.  
to 1645 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Shivkumar Udasi
3. Shri Bhakta Charan Das
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Prem Das Rai
7. Shri Rayapati S. Rao
8. Shri Yashvir Singh
9. Shri Manica Tagore
10. Dr. M. Thambidurai

*Rajya Sabha*

11. Shri Piyush Goyal
12. Shri Satish Chandra Misra
13. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

- |                                 |                           |
|---------------------------------|---------------------------|
| 1. Shri A.K. Singh              | – <i>Joint Secretary</i>  |
| 2. Shri Ramkumar Suryanarayanan | – <i>Deputy Secretary</i> |
| 3. Smt. Meenakshi Sharma        | – <i>Deputy Secretary</i> |
| 4. Shri Kulmohan Singh Arora    | – <i>Under Secretary</i>  |



## Part I

(1430 hrs. to 1515 hrs.)

WITNESSES

### Confederation of Indian Industry (CII)

1. Shri Anshuman Magazine, Chairman and MD, CB Richard Ellis, South Asia Pvt. Ltd.
2. Shri Kalyan Chakarabarty, Director, Red Fort Capital
3. Shri Babu Khan, Director and Head – Infrastructure, CII
4. Shri Sunil K. Misra, Director – Public Policy, CII

2. The Committee heard the representatives of the Confederation of Indian Industry (CII) in connection with examination of the 'Benami Transactions (Prohibition) Bill, 2011'. The major issues discussed during the briefing included exclusion of property purchased in the name of brother or sister and lineal ascendants and descendants from the ambit of *benami* transactions, grounds for reduction in penalty, safeguards to protect genuine investors, lacunae in certain clauses of the Bill, defining terms like property and transaction etc. and comparable laws in other countries dealing with *Benami* transactions etc. possible effectiveness of the Bill in prevention of *benami* transactions, United Nation's International convention against corruption, synchronisation of *Benami* Transactions (Prohibition) Bill, 2011 and Prevention of Money Laundering Act, 2002, tracking the source of *benami* transactions, measures for further strengthening the Bill etc. The Chairman directed the representatives of Confederation of Indian Industry (CII) to furnish replies to the points raised by the Members during the discussion within a week's time.

*The witnesses then withdrew.*

## Part II

(1515 hrs. to 1645 hrs.)

WITNESSES

3. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

*A verbatim record of proceedings was kept.*

*The witnesses then withdrew.*

*The Committee then adjourned at 1645 hours.*

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\*\*\* Does not pertain to this report.

MINUTES OF THE TWENTIETH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 18th May, 2012 from 1000 hrs.  
to 1030 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Shivkumar Udasi
3. Shri Nishikant Dubey
4. Shri Prem Das Rai
5. Shri G.M. Siddeswara

*Rajya Sabha*

6. Shri Naresh Agrawal
7. Smt. Renuka Chowdhury
8. Shri Ravi Shankar Prasad
9. Shri Piyush Goyal
10. Shri P. Rajeeve
11. Shri Satish Chandra Misra
12. Dr. Mahendra Prasad
13. Shri Yogendra P. Trivedi
14. Shri Naresh Agrawal

SECRETARIAT

- |                                 |   |                         |
|---------------------------------|---|-------------------------|
| 1. Shri A.K. Singh              | — | <i>Joint Secretary</i>  |
| 2. Shri R.K. Jain               | — | <i>Director</i>         |
| 3. Shri Ramkumar Suryanarayanan | — | <i>Deputy Secretary</i> |
| 4. Smt. Meenakshi Sharma        | — | <i>Deputy Secretary</i> |

2. The Committee took up the following draft Reports for consideration and adoption:—

- (i) The Companies Bill, 2011; and
- (ii) The *Benami* Transactions (Prohibition) Bill, 2011.

3. As some Members desired more time to consider and formulate their views on the above draft reports, the Committee decided to postpone the adoption of the draft reports to 7 June, 2012.

*The Committee then adjourned.*

MINUTES OF THE TWENTY-FIRST SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Thursday, the 7th June, 2012 from 1130 hrs.  
to 1700 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Nishikant Dubey
3. Shri Bhartruhari Mahtab
4. Shri Prem Das Rai
5. Shri Sarvey Sathyanarayana
6. Shri Yashvir Singh
7. Shri R. Thamaraiselvan

*Rajya Sabha*

8. Shri P. Rajeeve
9. Dr. K.V.P. Ramachandra Rao
10. Shri Vijay Jawaharlal Darda
11. Shri Ravi Shankar Prasad
12. Smt. Renuka Chowdhury
13. Shri Piyush Goyal

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*

## Part I

(1130 hrs. to 1330 hrs.)

2. The Committee took up the following draft Reports for consideration and adoption:—

- (i) The *Benami* Transactions (Prohibition) Bill, 2011; and
- (ii) The Companies Bill, 2011.

3. The Committee adopted the above draft reports with some minor modifications as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present the same to Hon'ble Speaker/Parliament.

## Part II

(1500 hrs. to 1700 hrs.)

4. \*\*\*                                  \*\*\*                                  \*\*\*                                  \*\*\*                                  \*\*\*

*A verbatim record of proceedings was kept.*

*The witnesses then withdrew.*

*The Committee then adjourned.*

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\*\*\* Does not pertain to this report.

## APPENDIX II

TO BE INTRODUCED IN LOK SABHA

**Bill No. 56 of 2011**

### THE *BENAMI* TRANSACTIONS (PROHIBITION) BILL, 2011

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#### ARRANGEMENT OF CLAUSES

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#### CLAUSES

#### CHAPTER I

##### PRELIMINARY

1. Short title, extent and commencement.
2. Definitions.

#### CHAPTER II

##### PROHIBITION OF *BENAMI* TRANSACTION

3. Prohibition of *benami* transaction.
4. Property held *benami* liable to confiscation.
5. Prohibition of right to recover property held *benami*.
6. Prohibition to re-transfer property in *benamidar*.

CLAUSES

CHAPTER III

AUTHORITIES

7. Authorities.
8. Jurisdiction of authorities.
9. Powers of authorities regarding summons, production of documents and to give evidence, etc.
10. Power to call for information.
11. Power of authority to impound documents.
12. Power to cause inquiry or investigation.

CHAPTER IV

ATTACHMENT, ADJUDICATION AND CONFISCATION

13. Notice and attachment of property involved in prohibited *benami* transaction.
14. Manner of service of notice.
15. Adjudication of *benami* property.
16. Confiscation and vesting of *benami* property.
17. Management of properties confiscated under this Act.
18. Possession of the property.

CHAPTER V

APPELLATE TRIBUNAL

19. Establishment of Appellate Tribunal.
20. Appeals to Appellate Tribunal.

CLAUSES

21. Powers of Appellate Tribunal.
22. Rectification of mistakes.
23. Right to representation.
24. Appeal to High Court.

CHAPTER VI

SPECIAL COURTS

25. Special Courts.
26. Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

CHAPTER VII

OFFENCES AND PENALTIES

27. Penalty for *benami* transaction.
28. Penalty for false information.
29. Previous sanction.

CHAPTER VIII

MISCELLANEOUS

30. Certain transfers to be null and void.
31. Exemption.
32. Power of Central Government to issue directions, etc.
33. Findings under other laws not conclusive for proceedings under this Act.
34. Application of other laws not barred.



## CLAUSES

35. Bar of Jurisdiction.
36. Offences to be non-cognizable.
37. Offences by companies.
38. Notice, etc., not to be invalid on certain grounds.
39. Protection of action taken in good faith.
40. Transfer of pending cases.
41. Legal heir.
42. Overriding effect of Act.
43. Power to make rules.
44. Rules to be laid before Parliament.
45. Power to remove difficulties.
46. Repeal and saving.
47. Amendment of enactment.

## THE SCHEDULE

TO BE INTRODUCED IN LOK SABHA

**Bill No. 56 of 2011**

THE *BENAMI* TRANSACTIONS (PROHIBITION)  
BILL, 2011

A

BILL

*to consolidate and amend the law relating to benami transactions, prohibit holding property in benami and restrict right to recover or transfer property held benami, and provide mechanism and procedure for confiscation of property held benami and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,  
extent and  
commence-  
ment.

**1.** (1) This Act may be called the *Benami Transactions (Prohibition) Act, 2011*.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,— Definitions.

15 of 2003. (a) “Adjudicating Authority” means the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002;

43 of 1961. (b) “Administrator” means an Income-Tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961;

15 of 2003. (c) “Appellate Tribunal” means the Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002;

43 of 1961. (d) “Approving Authority” means a Joint Commissioner of Income-Tax as defined in clause (28C) of section 2 of the Income-tax Act, 1961;

(e) “authority” means an authority referred to in section 7;

(f) “*benami* property” means any property which is the subject-matter of a *benami* transaction;

(g) “*benami* transaction” means,—

(A) a transaction or arrangement—

(a) where a property is transferred to, or is held by, a person for a consideration provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person providing 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; or

(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, agent, director of a company or legal adviser, 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;

22 of 1996.

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

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

(h) “*benamidar*” means a person or a fictitious person, as the case may be, in whose name the *benami* property is transferred or held and includes a name lender;

(i) “beneficial owner” means a person, whether his identity is known or not, for whose benefit the *benami* property is held by a *benamidar*;

(j) “fair market value” in relation to a property, means—

(i) the price that the property would ordinarily fetch on sale in the open market on the relevant date; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act.

43 of 1961.

(k) "Initiating Officer" means an Assistant Commissioner of Income-tax as defined in clause (9A) of section 2 of the Income-tax Act, 1961;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "High Court" means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain;

(n) "person" includes—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm (including a limited liability partnership under the Limited Liability Partnership Act, 2008);

6 of 2009.

(v) an association of persons or a body of individuals, whether incorporated or not;

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses.

*Explanation.*—For the purposes of this clause, an association of persons or a body of individuals or an artificial juridical person

shall be deemed to be a person, whether or not such person or body or artificial juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

(o) “prescribed” means prescribed by rules made under this Act;

(p) “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property and where the property is capable of conversion into some other form, then the property in such converted form;

(q) “Schedule” means the Schedule appended to this Act;

(r) “Special Court” means a Court of Session designated as Special Court under sub-section (1) of section 25;

(s) “transfer” includes sale, purchase or any other form of transfer of right, title, possession or lien.

## CHAPTER II

### PROHIBITION OF *BENAMI* TRANSACTION

Prohibition of *benami* transaction.

**3.** (1) No person shall, on and after the commencement of this Act, enter into any *benami* transaction.

(2) Nothing contained in sub-section (1) shall apply to a *benami* transaction entered into by any person, being an individual, in the name of his—

(a) spouse;

(b) brother or sister; or

(c) any lineal ascendant or descendant.

4. Any property, which is subject-matter of *benami* transaction, not being a *benami* transaction referred to in sub-section (2) of section 3, shall be liable to be confiscated by the Central Government.

Property held *benami* liable to confiscation.

5. (1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by, or, on behalf of, a person claiming to be the real owner of such property.

Prohibition of right to recover property held *benami*.

(2) No defence based on any right in respect of any property held *benami*, whether against the person in whose name the property is held, or, against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

6. No person, being *benamidar* shall re-transfer the *benami* property held by him to the beneficial owner or any other person acting on his behalf.

Prohibition to re-transfer property in *benamidar*.

### CHAPTER III

#### AUTHORITIES

7. The following shall be the authorities for the purposes of this Act, namely:—

Authorities.

(a) the Initiating Officer;

(b) the Approving Authority; and

(c) the Administrator.

8. (1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

Jurisdiction of authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

(a) territorial area;

(b) classes of persons;

(c) classes of cases; and

(d) any other criterion specified by the Central Government in this behalf.

Powers of authorities regarding summons, production of documents and to give evidence, etc.

**9.** (1) The authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:— 5 of 1908.

(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath;

(c) compelling the production of books of account and other documents;

(d) issuing commissions;

(e) receiving evidence on affidavits; and

(f) any other matter which may be prescribed.

(2) For the purposes of this Act, any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with such requisition or direction.

Power to call for information.

**10.** The Initiating Officer or the Adjudicating Authority shall have power to require any officer or authority of the Central Government or State Government or a local authority or any person



or authority who is responsible for registering and maintaining books of account and other documents containing a record of any transaction relating to any property or any other person to furnish such information in relation to such persons, points or matters as in his opinion will be useful for or relevant to the purposes of this Act.

**11.** (1) Where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of such books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain such books of account or other documents for a period not exceeding three months from the date of attachment made by the Adjudicating Authority under sub-section (3) of section 15.

Power of authority to impound documents.

(2) The person, from whom the books of account and other documents were impounded, shall be entitled to obtain copies of the books of account or other documents impounded under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the books of account and other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or Adjudicating Authority permits retention of such books of account and other documents beyond the said period.

**12.** The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or any other relevant matters and it shall be competent upon him to exercise the powers conferred under sub-section (1) of section 9.

Power to cause inquiry or investigation.

## CHAPTER IV

### ATTACHMENT, ADJUDICATION AND CONFISCATION

Notice and attachment of property involved in *prohibited benami* transaction.

**13.** (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person, not being a person referred in sub-section (2) of section 3, is a *benamidar* in respect of a property, he may, after recording reasons in writing, issue a notice to such person to show cause within such time as may be specified in the notice why such property should not be treated as *benami* property.

(2) Where a notice under sub-section (1) specifies any property as being held by a *benamidar* referred to in that sub-section, a copy of the notice shall also be served upon such other person who is a beneficial owner.

(3) Where the Initiating Officer is of the opinion that the person in possession of the property held *benami* may alienate such property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally such property in the manner as may be prescribed.

(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

(a) where the provisional attachment has been made under sub-section (3),—

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the date of the order made by the Adjudicating Authority under sub-section (3) of section 15; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property till the date of order made by the Adjudicating Authority under sub-section (3) of section 15; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of sub-section (4), he shall, within fifteen days from such attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

**14.** (1) A notice under sub-section (1) of section 13 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

Manner of service of notice.

5 of 1908.

(2) Any notice referred to in sub-section (1) may be addressed—

(i) in case of an individual, to such individual;

(ii) in the case of a firm, to the managing partner or the manager of the firm;

(iii) in the case of a Hindu undivided family, to *karta* or any member of such family;

(iv) in the case of a company, to the principal officer thereof;

(v) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Adjudication of *benami* property.

**15.** (1) On receipt of a reference under sub-section (5) of section 13, the Adjudicating Authority shall serve notices, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following person, namely:—

(a) the person specified as a *benamidar* therein;

(b) any person referred to as the beneficial owner therein or identified as such;

(c) any interested party, including a banking company;

(d) any person who has made a claim in respect of the property.

(2) Where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(3) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) making or causing to be made such inquiries and calling for such reports or evidence as he deems fit; and

(c) taking into account all relevant materials,

provide an opportunity of being heard to the person specified as a *benamidar* therein, the Initiating Officer, and any other person who claims to be the

owner of such property, and, thereafter, pass an order—

(i) holding the property not to be a *benami* property and revoking the attachment order; or

(ii) holding the property to be a *benami* property and confirming the attachment order.

(4) Where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is *benami* property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part of properties is held *benami*.

(5) Where in the course of proceedings before him, the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is *benami* property, it shall provisionally attach such property and such property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 13.

(6) The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or *suo motu*, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable it to adjudicate upon and settle all the questions involved in the reference.

(7) No order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under section 13 was received.

**16.** (1) Where any property is attached under sub-section (3) of section 15, the Adjudicating Authority shall, after giving an opportunity of

Confiscation and vesting of *benami* property.

being heard to the person concerned, make an order confiscating the property held to be a *benami* property.

(2) Nothing in sub-section (1) shall apply to a property held or acquired by a person from the *benamidar* for adequate consideration, without his having knowledge of the *benami* transaction.

(3) Where an order of confiscation has been made under sub-section (1), all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

(4) 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.

(5) Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

Management of properties confiscated under this Act.

**17.** (1) The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 16 has been made, in such manner and subject to such conditions, as may be prescribed.

(2) The Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of an Administrator.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 16.

Possession of the property.

**18.** (1) Where an order of confiscation in respect of a property under sub-section (1) of section 16 has been made, the Administrator shall proceed to take the possession of such property.

(2) The Administrator shall,—

(a) by notice in writing, order within seven days of the date of the service of notice to any person, who may be in possession of the *benami* property, to surrender or deliver possession thereof to him or any other person duly authorised in writing by him in this behalf;

(b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

## CHAPTER V

### APPELLATE TRIBUNAL

15 of 2003.

**19.** Subject to the provisions of this Act, the Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002 shall be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the powers conferred on it by or under this Act.

Establishment of Appellate Tribunal.

**20.** (1) Any person aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fee, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under section 15 within forty-five days from the date of such order.

Appeals to Appellate Tribunal.

(2) The Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the

parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(4) The Appellate Tribunal, as far as possible, may hear and decide such appeal within a period of two years from the last date of the month in which the appeal is filed.

Powers of  
Appellate  
Tribunal.

**21.** An Appellate Tribunal shall have the power—

(a) to determine a case finally, where the evidence on record is sufficient;

(b) to take additional evidence or to require such evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted;

(c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it;

(d) to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination;

(e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such order as may be necessary to meet the ends of justice.

Rectification  
of mistakes.

**22.** (1) The Appellate Tribunal or the Adjudicating Authority or as the case may be, the initiating Officer, in order to rectify any mistake apparent on the face of the record, may amend any order made by it, within a period of one year from the end of the month in which the order was passed.

(2) No amendment shall be made under subsection (1) if such amendment is likely to affect any person prejudicially, unless he has been given



notice of the intention to do so and has been allowed an opportunity of being heard.

**23.** (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

Right to representation.

*Explanation.*—For the purposes of this subsection, the expression “authorised representative” shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961.

43 of 1961.

(2) The Central Government may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

**24.** (1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within one hundred and twenty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

Appeal to High Court.

(2) The High Court may entertain any appeal after the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-section (1).

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

(5) Nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(6) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(7) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(8) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section. 5 of 1908.

## CHAPTER VI

### SPECIAL COURTS

Special  
Courts.

**25.** (1) The Central Government, in consultation with the Chief Justice of the High Court, shall for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with

2 of 1974. which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by—

(i) the authority; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(4) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

2 of 1974. **26. (1)** Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a public prosecutor:

Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under

this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 <sup>2 of 1974.</sup> and the provisions of that Code shall have effect accordingly.

## CHAPTER VII

### OFFENCES AND PENALTIES

Penalty for *benami* transaction.

**27. (1)** Where any person enters into a *benami* transaction, not being a *benami* transaction referred to in sub-section (2) of section 3, 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 such *benami* transaction, shall be guilty of the offence of *benami* transaction.

(2) Whoever is found guilty of the offence of *benami* transaction referred to in subsection (1) shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

Penalty for false information.

**28.** Any person who wilfully gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or with fine which may extend to ten per cent. of the fair market value of the property.

Previous sanction.

**29.** No prosecution shall be instituted against any person in respect of any offence under section 27 without the previous sanction of the Approving Authority.

## CHAPTER VIII

### MISCELLANEOUS

**30.** Where, after the issue of a notice under section 13, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently confiscated by the Central Government under section 16 then, the transfer of such property shall be deemed to be null and void.

Certain transfers to be null and void.

**31.** (1) The Central Government may, by notification, exempt any property or class of properties from the operation of this Act.

Exemption.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

**32.** (1) The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government.

Power of Central Government to issue directions, etc.

(2) No orders, instructions or directions under sub-section (1) shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner; or

(b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Findings under other laws not conclusive for proceedings under this Act.

**33.** No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

Application of other laws not barred.

**34.** The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.

Bar of Jurisdiction.

**35.** Save as otherwise provided under this Act, no order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any Authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Offences to be non-cognizable.

**36.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable and bailable. 2 of 1974.

Offences by companies.

**37.** (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

(2) Nothing contained in sub-section (1), shall render any such person liable to punishment if he proves that the contravention took place without his knowledge.

(3) Notwithstanding anything contained in sub-section (1), where a contravention of any of

the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purpose of this section,—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

**38.** No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Notice, etc., not to be invalid on certain grounds.

**39.** No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government or the Appellate Tribunal or the Adjudicating Authority established under this Act, for anything done or intended to be done in good faith under this Act.

Protection of action taken in good faith.

**40.** (1) Every suit or proceeding in respect of a *benami* transaction pending in any Court (other than the High Court) or Tribunal or before any

Transfer of pending cases.

authority on the date of the commencement of this Act shall stand transferred to the Appellate Tribunal or the Adjudicating Authority, as the case may be, referred to in this Act having jurisdiction in the matter.

(2) Where any suit, or other proceeding stands transferred from any court (other than High Court) or Tribunal or other authority to the Appellate Tribunal under sub-section (1),—

(a) the court, Tribunal or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Appellate Tribunal;

(b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so as may be, in the same manner as in the case of a reference made under sub-section (5) of section 15, from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Appellate Tribunal may deem fit.

Legal heir.

**41.** (1) Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal heir and may be continued against the legal heir from the stage at which it stood on the date of the death of the deceased.

(2) Any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal heir and all the provisions of this Act shall apply accordingly.

(3) Where any property of a person has been held *benami* under section 15, then it shall be lawful for the legal heir of such person to prefer an appeal to the Appellate Tribunal, in place of such person and the provisions of section 20 shall, so far as may be, apply, or continue to apply, to such appeal.



**42.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Overriding effect of Act.

**43.** (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) determination of the price where the price is not ascertainable under clause (j) of section 2;

(b) the powers and functions to be exercised by the authority under section 8;

(c) any other matter under sub-section (1) of section 9;

(d) the manner of provisional attachment of the property under sub-section (3) of section 13;

(e) the manner to receive and manage property under sub-section (1) of section 17;

(f) the form in which appeal shall be filed the fee for filing the appeal under sub-section (1) of section 20.

**44.** Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the

Rules to be laid before Parliament.

rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to  
remove  
difficulties.

**45.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

(2) No order shall be made under this section after the expiry of two years from the commencement of this Act.

(3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and  
saving.

**46.** (1) The *Benami* Transactions (Prohibition) Act, 1988 is hereby repealed.

45 of 1988.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation, exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act.

(3) Notwithstanding the repeal of section 281A of the Income-tax Act, 1961, the operation of the said section shall continue in the State of Jammu and Kashmir.

43 of 1961.

47. The enactment specified in the Schedule is hereby amended to the extent and in the manner as given below:—

Amendment  
of enact-  
ment.

## THE SCHEDULE

(See section 47)

### AMENDMENTS TO THE PREVENTION OF MONEY- LAUNDERING ACT, 2002 (15 OF 2003)

1. In section 6,—

(i) in sub-section (1), after the words “conferred by or under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted;

(ii) in sub-section (15), after the words “other provisions of this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force,” shall be inserted.

2. In section 11, in sub-section (1), after the words “purposes of this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted.

3. In section 25, after the words “authorities under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted.

4. In section 35,—

(i) in sub-section (1), after the words “other provisions of this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any

other law for the time being in force” shall be inserted;

(ii) in sub-section (2), after the words “discharging its functions under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted;

(iii) in sub-section (3), after the words “under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted.

## STATEMENT OF OBJECTS AND REASONS

The *Benami* Transactions (Prohibition) Act, 1988 was enacted to prohibit *benami* transactions and the right to recover property held *benami*. However, the said Act, *inter alia*, provides that—(a) all the properties held *benami* shall be subject to acquisition by such authority in such manner and after following such procedure as may be prescribed; (b) no amount shall be payable for the acquisition of any property held *benami*; (c) the purchase of property by any person in the name of his wife or unmarried daughter for their benefit would not be *benami* transaction; (d) the securities held by a depository as registered owner under the provisions of the Depositories Act, 1996 or participant as an agent of a depository would not be *benami* transactions.

2. During the process of formulating the rules for implementing certain provisions of the Act, it was found that the provisions of the aforesaid Act are inadequate to deal with *benami* transactions as the Act, *inter alia*,—(i) does not contain any specific provision for vesting of confiscated property with the Central Government; (ii) does not have any provision for an appellate mechanism against an action taken by the authorities under the Act, while barring the jurisdiction of a Civil Court; (iii) does not confer the powers of the Civil Court upon the authorities for its implementation.

3. In view of the circumstances stated above, a comprehensive legislation, in place of the *Benami* Transaction (Prohibition) Act, 1988 has become necessary in order to prohibit holding property in *benami* and restrict right to recover or transfer property held *benami* and also to provide a mechanism and procedure for confiscation of property held *benami*.

4. It is, therefore, felt necessary to repeal the *Benami* Transactions (Prohibition) Act, 1988 and enact a new comprehensive legislation to deal with *benami* transactions. The *Benami* Transactions (Prohibition) Bill, 2011, *inter alia*, provides for the following, namely:—

- (i) it prohibits *benami* transactions by any person, except in the case of *benami* transactions entered into in the name of spouse, brother or sister or any lineal ascendant or descendant;

- (ii) it provides that *Benami* property arising out of prohibited *Benami* transaction is liable to confiscation by the Central Government and such property shall vest absolutely in the Central Government without paying any compensation;
- (iii) it prohibits right of the *benamidar* to recover property held *benami*;
- (iv) it provides that the Initiating Officer, the Approving Authority and the Administrator shall be the authorities for the purposes of the Bill;
- (v) it provides that the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money-Laundering Act, 2002 shall respectively be the Adjudicating Authority and the Appellate Tribunal for the purposes of the Bill and any person aggrieved by an order of Adjudicating Authority may prefer an appeal to the Appellate Tribunal;
- (vi) it provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court on any question of law;
- (vii) it enables the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Bill;
- (viii) it provides penalty for entering into prohibited *benami* transactions and for furnishing any false documents in any proceeding under the Bill;
- (ix) it provides for transfer of any suit or proceeding in respect of a benami transaction pending in any Court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal as provided in the Bill;
- (x) it also proposes to make consequential amendments in the Prevention of Money-Laundering Act, 2002.

5. The Notes on clauses explain in detail various provisions in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 3rd August, 2011.*

PRANAB MUKHERJEE

## NOTES ON CLAUSES

*Clause 1.*—This Clause, *inter alia*, seeks to extend the provisions of the Bill to the whole of India except the State of Jammu and Kashmir.

*Clause 2.*—This clause defines various expressions used in the Bill.

*Clause 3.*—This clause contains provisions relating to prohibition of *benami* transactions. Sub-clause (1) of this clause provides that no person shall, on and after the commencement of this Act, enter into any *benami* transaction. Sub-clause (2) of the said clause provides that nothing contained in sub-clause (1) shall apply to a *benami* transaction entered into by any person, being an individual, in the name of his spouse, brother or sister or any lineal ascendant or descendant.

*Clause 4.*—This clause provides that any property, which is subject matter of *benami* transaction, not being a *benami* transaction referred to in sub-clause (2) of clause 3, shall be liable to be confiscated by the Central Government.

*Clause 5.*— This clause contains provisions relating to prohibition of right to recover property held *benami*. Sub-clause (1) of this clause provides that no suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by, or, on behalf of, a person claiming to be the real owner of such property. Sub-clause (2) of said clause provides that no defence based on any right in respect of any property held *benami*, whether against the person in whose name the property is held, or, against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

*Clause 6.*—This clause provides that no person, being *benamidar* shall re-transfer the *benami* property held by him to the beneficial owner or any other person acting on his behalf.

*Clause 7.*—This clause provides the initiating officer, the Approving Authority and the Administrator as the Authorities for the purposes of this legislation.

*Clause 8.*—This clause relates to the jurisdiction of authorities. Sub-clause (1) of this clause provides that the authorities shall exercise



all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities. Sub-clause (2) of said clause provides that in issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of —(a) territorial area; (b) classes of persons; (c) classes of cases; and (d) any other criterion specified by the Central Government in this behalf.

*Clause 9.*—This clause deals with the powers of authorities regarding summons, production of documents and to give evidence, etc. Sub-clause (1) of this clause provides that the authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) compelling the production of books of account and other documents; (d) issuing commissions; (e) receiving evidence on affidavits; and (f) any other matter which may be prescribed. Sub-clause (2) of this clause provides that any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-clause (1), and it shall be the duty of every such officer to comply with such requisition or direction.

*Clause 10.*—This clause relates to power to call for information. It seeks to provide that the Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer or authority of the Central Government or State Government or a local authority or any person or authority who is responsible for registering and maintaining books of account and other documents containing a record of any transaction relating to any property or any other person to furnish such information in relation to such persons, points or matters as in his opinion will be useful for or relevant to the purposes of this Act.

*Clause 11.*—This clause relates to the power of authority to impound documents. Sub-clause (1) of this clause provides that where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of such books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain such books of account or other documents for a period not exceeding three months from the date of attachment made by the Adjudicating Authority under Sub-clause (3) of clause 15.

Sub-clause (2) of said clause provides that the person, from whom the books of account and other documents were impounded, shall be entitled to obtain copies of the books of account or other documents impounded under sub-clause (1). Sub-clause (3) of this clause provides that on the expiry of the period specified under sub-clause (1), the books of account and other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits retention of such books of account and other documents beyond the said period.

*Clause 12.*—This clause contains provisions relating to power of Authority to require certain officers to exercise certain powers. It provides that the Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or any other relevant matters and it shall be competent upon him to exercise the powers conferred under sub-clause (1) of clause 9.

*Clause 13.*—This clause relates to notice and attachment of property involved in prohibited *benami* transaction. Sub-clause (1) of this clause provides that where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person, not being a person referred to in sub-section (2) of section 3, is a *benamidar* in respect of a property, he may, after recording reasons in writing, issue a notice to such person to show cause within such time as may be specified in the notice why such property should not be treated as *benami* property. Sub-clause (2) of said clause provides that where a notice under sub-section (1) specifies any property as being held by a *benamidar* referred to in that sub-section, a copy of the notice shall also be served upon such other person who is a beneficial owner. Sub-clause (3) of said clause provides that where the Initiating officer is of the opinion that the person in possession of the property held *benami* may alienate such property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally such property in the manner as may be prescribed. Sub-clause (4) of this clause provides that the Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1)—(a) where the provisional attachment has been made under sub-section (3)—(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the date of the order made by the Adjudicating Authority under sub-clause (3) of clause 15; or (ii) revoke the provisional attachment of the property with the prior

approval of the Approving Authority; (b) where provisional attachment has not been made under sub-clause (3)—(i) pass an order provisionally attaching the property till the date of order made by the Adjudicating Authority under sub-clause (3) of clause 15; or (ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority. Sub-clause (5) of said clause provides that where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of sub-clause (4), he shall, within fifteen days from such attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

*Clause 14.*—This clause relates to manner of service of notice. Sub-clause (1) of this clause provides that a notice under sub-section (1) of clause 13 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908. Sub-clause (2) of this clause provides that any notice referred to in sub-clause (1) may be addressed—

- (i) in case of an individual, to such individual;
- (ii) in the case of a firm, to the managing partner or the manager of the firm;
- (iii) in the case of a Hindu undivided family, to *karta* or any member of such family;
- (iv) in the case of a company, to the principal officer thereof;
- (v) in the case of any other association or body of individuals, to the principal officer or any member thereof;
- (vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

*Clause 15.*—This clause deals with the adjudication of *benami* property. Sub-clause (1) of this clause provides that on receipt of a reference under sub-section (5) of section 13, the Adjudicating Authority shall serve notices, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on—(a) the person specified as a *benamidar* therein; (b) any person referred to as the beneficial owner therein or identified as such; (c) any interested party, including a banking company; (d) any person who has made a claim in respect of the property. Sub-clause (2) of said clause provides that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. Sub-clause (3) provides

that the Adjudicating Authority shall, after (a) considering the reply, if any, to the notice issued under sub-clause (1); (b) making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and (c) taking into account all relevant materials, provide an opportunity of being heard to the person specified as a *benamidar* therein, the Initiating Officer, and any other person who claims to be the owner of such property, and, thereafter, pass an order—(i) holding the property not to be a *benami* property and revoking the attachment order; or (ii) holding the property to be a *benami* property and confirming the attachment order. Sub-clause (4) of said Clause states that where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is *benami* property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part or properties is held *benami*. Sub-clause (5) of this clause provides that where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is *benami* property, it shall provisionally attach such property and such property shall be deemed to be a property referred to it on the date of receipt of the reference under Sub-clause (5) of clause 13. Sub-clause (6) of this clause provides that the Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or *suo motu*, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable him to adjudicate upon and settle all the questions involved in the reference. Sub-clause (7) of this clause provides that no order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under clause 13 was received.

*Clause 16.*—This clause relates to confiscation and vesting of *benami* property. Sub-clause (1) of this clause provides that where any property is attached under sub-section (3) of section 15, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a *benami* property. Sub-clause (2) of this clause provides that nothing in sub-clause (1) shall apply to a property held or acquired by a person from the *benamidar* for adequate consideration, without his having knowledge of the *benami* transaction. Sub-clause (3) of this clause provides that where an order of confiscation has been made under sub-section (1), all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation. Sub-clause (4) of this clause provides that 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. Sub-clause (5) of this

clause provides that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

*Clause 17.*— This clause deals with the management of properties confiscated under this Act. Sub-clause (1) of this clause provides that the Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-clause (1) of clause 16 has been made, in such manner and subject to such conditions, as may be prescribed. Sub-clause (2) of the said clause provides that the Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of an Administrator. Sub-clause (3) of this clause provides that the Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under clause 16.

*Clause 18.*—This clause relates to the possession of the property. Sub-clause (1) of this clause provides that where an order of confiscation in respect of a property under sub-clause (1) of clause 16 has been made, the Administrator shall proceed to take the possession of such property. Sub-clause (2) of the said clause provides that the Administrator shall,—

- (a) by notice in writing, order within seven days of the date of the service of notice any person, who may be in possession of the *benami* property, to surrender or deliver possession thereof to him or any other person duly authorised in writing by him in this behalf;
- (b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty such officer to comply with such requisition.

*Clause 19.*— This clause relates to the establishment of Appellate Tribunal. It provides that subject to the provisions of this Act, the Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002 shall be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the powers conferred on it by or under this Act.

*Clause 20.*—This clause contains provisions relating to the Appeals to Appellate Tribunal. Sub-clause (1) of this clause provides that any

person aggrieved by an order of Adjudicating Authority may prefer an appeal in such form and along with such fee, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under clause 15 within forty-five days from the date of such order. Sub-clause (2) of the said clause provides that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Sub-clause (3) of this clause provides that on receipt of an appeal under sub-clause (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. Sub-clause (4) of this clause provides that the Appellate Tribunal, as far as possible, may hear and decide such appeal within a period of two years from the last date of the month in which the appeal is filed.

*Clause 21.*—This clause relates to the powers of Appellate Tribunal. It provides that an Appellate Tribunal shall have the power; (a) to determine a case finally, where the evidence on record is sufficient; (b) to take additional evidence or to require such evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted; (c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it; (d) to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination; (e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such order as may be necessary to meet the ends of justice.

*Clause 22.*—This clause deals with the rectification of mistakes. Sub-Clause (1) of this clause provides that the Appellate Tribunal or the Adjudicating Authority, or as the case may be, the Adjudicating Officer, in order to rectify any mistake apparent on the face of the record, amend any order made by it, within a period of one year from the end of the month in which the order was passed. Sub-clause (2) of the said clause provides that no amendment shall be made under sub-clause (1) if such amendment is likely to affect any person prejudicially, unless he has been given notice of the intention to do so and has been allowed an opportunity of being heard.

*Clause 23.*—This clause relates to right to representation. Sub-clause (1) of this clause provides that a person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal. Sub-clause (2) of the said clause

provides that the Central Government may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

*Clause 24.*—This clause contains provisions relating to the appeals to High Court. Sub-clause (1) of this clause provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within one hundred and twenty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order. Sub-clause (2) of this clause provides that the High Court may entertain any appeal after the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-clause (1). Sub-clause (3) of this clause provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. Sub-clause (4) of the said clause provides that the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. Sub-clause (5) of this clause provides that nothing in this sub-clause shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. Sub-clause (6) of this clause provides that the High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. Sub-clause (7) of the said clause provides that the High Court may determine any issue which; (a) has not been determined by the Appellate Tribunal; or (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in Sub-clause (1). Sub-clause (8) of this clause provides that save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

*Clause 25.*—This clause deals with the Special Courts. Sub-clause (1) of this clause provides that the Central Government, in consultation with the Chief Justice of the High Court, shall for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. Sub-clause (2) of the said clause provides that while trying an offence under this Act, a Special Court shall also try an offence other

than an offence referred to in sub-clause (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. Sub-clause (3) of this clause provides that the Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by (i) the authority; or (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government. Sub-clause (4) of this clause provides that every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

*Clause 26.*—This clause relates to application of Code of Criminal Procedure, 1973 to proceedings before Special Court. Sub clause(1) of this clause provides that save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a public prosecutor. However, the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor. Sub-clause (2) of the said clause provides that a person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State. Sub-clause (3) of the said clause provides that every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

*Clause 27.*—This clause deals with the penalty for *benami* transaction. Sub-clause (1) of this clause provides that where any person enters into a *benami* transaction, not being a person referred to in Sub clause(2) of clause 3, 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 such *benami* transaction, shall be guilty of the offence of *benami* transaction. Sub-clause (2) of the said clause provides that whoever is found guilty of the offence of *benami* transaction referred to in Sub-clause (1) shall be punishable with imprisonment for a term which shall not be less than six months' but which may extend to two years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.



*Clause 28.*—This clause deals with the penalty for false information. It provides that any person who wilfully gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or with fine which may extend to ten per cent. of the fair market value of the property.

*Clause 29.*—This clause provides that no prosecution shall be instituted against any person in respect of any offence under clause 27 without the previous sanction of the Approving Authority.

*Clause 30.*—This clause relates to certain transfers to be null and void. It provides that where, after the issue of a notice under clause 13, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently confiscated by the Central Government under section 16 then, the transfer of such property shall be deemed to be null and void.

*Clause 31.*—This clause relates to exemption. Sub-clause (1) of this clause provides that the Central Government may, by notification, exempt any property or class of properties from the operation of this Act. Sub-clause (2) of the said clause provides that every notification issued under Sub-clause (1) shall be laid before each House of Parliament.

*Clause 32.*—This clause deals with the power of Central Government to issue directions, etc. Sub-clause (1) of this clause provides that the Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government. Sub-clause (2) of the said clause provides that no orders, instructions or directions under sub-clause (1) shall be issued so as to (a) require any authority to decide a particular case in a particular manner; or (b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

*Clause 33.*—This clause provides that no finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

*Clause 34.*—This clause relates to the application of other laws not barred. It provides that the provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.

*Clause 35.*—This clause relates to bar of jurisdiction. It provides that save as otherwise provided under this Act, no order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any Authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

*Clause 36.*—This clause relates to offences to be non-cognizable. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable and bailable.

*Clause 37.*—This clause deals with the offences by companies. Sub-clause (1) of this clause provides that where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Sub-clause (2) of the said clause provides that nothing contained in Sub-clause (1), shall render any such person liable to punishment if he proves that the contravention took place without his knowledge. Sub-clause (3) of this clause provides that notwithstanding anything contained in Sub-clause (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Clause 38.*—This clause relates to notice, etc., not to be invalid on certain grounds. It provides that no notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

*Clause 39.*—This clause relates to protection of action taken in good faith. It provides that no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government or the Appellate Tribunal or the Adjudicating authority established under this Act, for anything done or intended to be done in good faith under this Act.

*Clause 40.*—This clause contains provisions relating to transfer of pending cases. Sub-clause (1) of this clause provides that every suit or proceeding in respect of a *benami* transaction pending in any Court (other than High Court) or Tribunal or before any authority on the date of the commencement of this Act shall stand transferred to the Appellate Tribunal or the Adjudicating Authority, as the case may be, referred to in this Act having jurisdiction in the matter. Sub-clause (2) of the said clause provides that where any suit, or other proceeding stands transferred from any court (other than High Court) or Tribunal or other authority to the Appellate Tribunal under sub-clause (1)—(a) the court, Tribunal or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Appellate Tribunal; (b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so as may be, in the same manner as in the case of a reference made under sub-clause (5) of clause 15, from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Appellate Tribunal may deem fit.

*Clause 41.*—This clause relates to legal heir. Sub-clause (1) of this clause provides that where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal heir and may be continued against the legal heir from the stage at which it stood on the date of the death of the deceased. Sub-clause (2) of the said clause provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal heir and all the provisions of this Act shall apply accordingly. Sub-clause (3) of the said clause provides that where any property of a person has been held *benami* under clause 15, then it shall be lawful for the legal heir of such person to prefer an appeal to the Appellate Tribunal, in place of such person and the provisions of clause 20 shall, so far as may be, apply, or continue to apply, to such appeal.

*Clause 42.*—This clause provides that the provisions of this Bill shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

*Clause 43.*—This clause relates to power of the Central Government to make rules. Sub-clause (1) of this clause empowers the Central

Government by notification in the Official Gazette to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates various matters in respect of which the Central Government may make rules. These include (a) determination of the price where the price is not ascertainable under sub-clause (j) of clause 2; (b) the powers and functions to be exercised by the authority under section 8; (c) any other matter under item (f) of sub-clause (1) of clause 9; (d) the manner of provisional attachment of the property under sub-clause (3) of clause 13; (e) the manner to receive and manage property under sub-clause (1) of clause 17; (f) the form in which appeal shall be filed and the fee for filing the appeal under sub-clause (1) of clause 20.

*Clause 44.*—This clause deals with the rules to be laid before Parliament. It provides that every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

*Clause 45.*—This clause relates to power to remove difficulties. Sub-clause (1) of this clause provides that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty. Sub-clause (2) of the said clause provides that no order shall be made under this section after the expiry of two years from the commencement of this Act. Sub-clause (3) of this clause provides that every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

*Clause 46.*—This clause contains provisions relating to repeal and saving. Sub-clause (1) of this clause provides that the *Benami Transactions (Prohibition) Act, 1988* is hereby repealed. Sub-clause (2) of this clause provides that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation, exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as

it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act. Sub-clause (3) of the said clause provides that notwithstanding the repeal of section 281A of the Income-tax Act, 1961, the operation of the said section shall continue in the State of Jammu and Kashmir.

*Clause 47.*—This clause provides that the enactment specified in the Schedule is amended to the extent and manner as given in the Schedule. The Schedule to this Bill contains amendments to the Prevention of Money Laundering Act, 2002.

## FINANCIAL MEMORANDUM

Clause 7 of the Bill seeks to provide that the Initiating Officer, Approving Authority and Administrator shall be the authorities for the purposes of the proposed legislation. The Initiating Officer, the Approving Authority and the Administrator for the purposes of the Bill would respectively be the Assistant Commissioner of Income-tax, the Joint Commissioner of Income-tax and the Income-tax Officer as defined under the Income-tax Act, 1961.

2. The Adjudicating Authority appointed under section 6 of the Prevention of Money Laundering Act, 2002 and the Appellate Tribunal established under section 25 of the said Act shall respectively be the Adjudicating Authority and the Appellate Tribunal for the purposes of the proposed legislation.

3. Clause 25 of the Bill seeks to provide for Special Courts. The Central Government may designate one or more Courts of Session as Special Court or Special Courts.

4. As it is proposed to utilise the services of the serving officers or members under the Income-tax Act, 1961 and the Prevention of the Money-Laundering Act, 2002, respectively, and also to utilise the services of Courts of Sessions as Special Courts, for the purposes of the proposed legislation, no additional expenditure, both recurring and non-recurring, from the Consolidated Fund of India is likely to be involved.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 43 of the Bill empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made. These matters include (a) determination of the price where the price is not ascertainable under sub-clause (j) of clause 2; (b) the powers and functions to be exercised by the authorities under section 8; (c) any other matter under item (f) of sub-clause (1) of clause 9; (d) the manner of provisional attachment of the property under sub-clause (3) of clause 13; (e) the manner to receive and manage property under sub-clause (1) of clause 17; (f) the form in which appeal shall be filed and the fee for filing the appeal under sub-clause (1) of clause 20.

2. The rules made under the proposed legislation shall be required to be laid before the Parliament.

3. The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

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to consolidate and amend the law relating to *benami* transactions,  
prohibit holding property in *benami* and restrict right to recover  
or transfer property held *benami*, and provide mechanism  
and procedure for confiscation of property held  
*benami* and for matters connected  
therewith or incidental  
thereto.

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(*Shri Pranab Mukherjee, Minister of Finance*)



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