

# THE *BENAMI* TRANSACTIONS (PROHIBITION) ACT, 1988

ACT NO. 45 OF 1988

[5th September, 1988.]

An Act to prohibit *benami* transactions and the right to recover property held *benami* and for matters connected therewith or incidental thereto.

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

**1. Short title, extent and commencement.**—(1) This Act may be called the *Benami* Transactions (Prohibition) Act, 1988.

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

(3) The provisions of sections 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 19th day of May, 1988.

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

(a) “*benami* transaction” means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

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

(c) “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

**3. Prohibition of *benami* transactions.**—(1) No person shall enter into any *benami* transaction.

<sup>1</sup>[(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a—

(i) depository as a registered owner under sub-section (1) of section 10 of the Depositories Act, 1996 (22 of 1996);

(ii) participant as an agent of a depository.

*Explanation.*—The expressions “depository” and “participant” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996).]

(3) Whoever enters into any *benami* transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

**4. Prohibition of the right to recover property held *benami*.**—(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.

(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.

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1. Subs. by Act 22 of 1996, s. 30 and the Sch., for sub-section (2) (w.e.f. 20-9-1995).

(3) Nothing in this section shall 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.

**5. Property held *benami* liable to acquisition.**—(1) All properties held *benami* shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.

(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).

**6. Act not to apply in certain cases.**—Nothing in this Act shall affect the provisions of section 53 of the Transfer of Property Act, 1882 (4 of 1882), or any law relating to transfer for an illegal purpose.

**7. Repeal of provisions of certain Acts.**—(1) Sections 81, 82 and 94 of the Indian Trusts Act, 1882 (2 of 1882), section 66 of the Code of Civil Procedure, 1908 (5 of 1908) and section 281A of the Income-tax Act, 1961 (43 of 1961), are hereby repealed.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall affect the continued operation of section 281A of the Income-tax Act, 1961 (43 of 1961) in the State of Jammu and Kashmir.

**8. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes 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) the authority competent to acquire properties under section 5;

(b) the manner in which, and the procedure to be followed for, the acquisition of properties under section 5;

(c) any other matter which is required to be, or may be, prescribed.

(3) 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.

**9. Repeal and saving.**—(1) The *Benami* Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 (Ord. 2 of 1988) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.