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“LEGAL MECHANISM FOR THE ECONOMIC HAVOC CAUSED BY BENAMI TRANSACTIONS”

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ABSTRACT

The legal mechanism for dealing with the economic havoc caused by benami transactions includes severe rules and enforcement under the Benami Transactions (Prohibition) Act, 1988, and subsequent amendments, which empower authorities to seize properties involved in such transactions and impose heavy penalties on offenders.

Furthermore, several regulatory and investigative organisations, including the Income Tax Department, have been actively monitoring and investigating potential benami transactions. To uncover such violations, they utilise innovative data analysis and financial auditing technologies and methodologies. The government's commitment to reducing benami transactions emphasises the importance of maintaining economic stability and integrity by discouraging and punishing individuals who engage in these illegal financial practises. Overall, the legal framework, together with strict enforcement, is critical in protecting the country's economy from the harmful impact of benami transactions.

KEYWORDS- ECONOMIC HAVOC, BENAMI TRASACTIONS, ECONOMIC STABILITY, LEGAL FRAMEWORK

INTRODUCTION: MEANING AND FACETS

The term “Benami” basically means “without a name.” A benami transaction is defined as a “transaction in which property is transferred to one person in exchange for consideration paid or provided by another person.

Benami properties are those that are held by an owner through proxies. The property is purchased in the name of or held in the name of a person who has neither paid for it nor actually enjoys it. It may even be held in the name of a non-existent person. Such front person is known

as 'Benamidar'. This name is only an assumed name for the actual owner, the 'Beneficial Owner'. Thus, the Benami property transaction is where the 'Beneficial Owner' buys the property in the name of a Benamidar but seeks to enjoy it himself.

Thus, a 'Beneficial Owner' is a person (whether his identity is known or not) for whose benefit the benami property is held by a Benamidar. Sometimes the Benamidar does not know or cannot disclose the identity of the real owner. He may have only taken money and placed some signatures. Even in these conditions, the property will be benami.

Over the years, it was noticed that people had begun to enter Benami transactions in real estate, shares, fixed deposits, vehicles and even in contracts. The main motives were to avoid payment of statutory dues or taxes, defrauding banks, and creditors by avoiding making payments to them and to disguise the real ownership of a property to prevent detection of the illegal activity that produced it. Therefore, to curb such socio-economic offences Government of India have implemented legal mechanisms which provide a broad scope to protect the economic fibre of our country.

ILLUSTRATION -

Mr. A buys a house in the name of his sister-in-law Mrs. B. Payment has been made by A and he and his family start to live in that house. Even if B is a rich lady, the transaction is Benami. B is the Benamidar and A is the beneficial Owner.

ECONOMIC COSEQUENCES CAUSED BY BENAMI TRANSACTIONS

Transactions such as these were once common in India's economy. They predominantly involved the acquisition of real estate. Additionally, these transactions were considered to add to the country's black money problem. The increase and spread of such money can seriously impact the economy as it can significantly reduce government revenue. This type of wealth is available in the economy in large amounts, which can result in the running of a parallel economy. It is a well-known fact that India already has various corrupt practices. Black money has added to this corruption through benami transactions which are made for concealing the black money. The most common way in which corruption is practised in this country is by way

of bribing bureaucrats, government officials, etc. for getting their work done. Such money goes to unaccounted books and is never shown as income, thereby adding this type of money to the Indian economy. Therefore, black money is consequential to corruption, and the already existing corruption is consequential to such money, thereby forming a never-ending vicious circle unless some serious step is taken by the government. The illegally earned money or the black usually gives rise to numerous illegal activities in society, and corruption is among them. The time period of elections is also the time when the illegal and illicit use of black money can be seen. Various terrorist activities are backed by the holders of black money, which is even harmful to the whole country. Furthermore, when Black money circulates in the market, it leads to high inflation in the market. The inflated prices of Real Estate are an example of this. India's Black Money is stashed in tax havens abroad like Swiss Bank.

LEGAL MECHANISMS AND ITS IMPLICATIONS

Benami transactions were first prohibited in India and was a non-cognizable offence under **The Benami Transactions (Prohibition) Act, 1988**. The legislative intent behind the prohibition on benami transactions was to deter people from engaging in such transactions for dishonourable purposes, such as money laundering, tax evasion, and diverting assets in order to create the appearance of insolvency and defeat the legitimate claims of creditors. In simple words, the 1988 Act made any benami transaction a punishable offence, as well as any suit, claim, or action to enforce any right in respect of any property held benami against the person in whose name the property was held. In other words, the legal right to claim beneficial ownership in any benami property has been terminated in its entirety.

Despite the Benami transactions being banned now, the act only had a minor impact on them. To fight against this problem, updated versions were passed in 2011 and 2016 to enforce the bans more broadly. After examining numerous acts and the Benami system, in 1973, India's Law Commission proposed an act for fighting the bad debt.

The Benami Transactions (Prohibition) Amendment Act, 2016, was previously passed by the government. It stipulates a maximum sentence of seven years in prison and a fine of up to 25% of the fair market value of the Benami property. It also allows the government to seize deposits made by people who convert unaccounted cash into white money through other accounts. However, the corrupt have not been discouraged from amassing Benami estates and

burden of proving a Benami Transaction, always rests on the person alleging the transaction. However, the Act has stated that the following property will not be considered as Benami Transaction:

- Property held by a Karta or a member of Hindu Undivided Family where the consideration of such property is provided or paid from a known source.
- Property held by a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity.
- Property held by any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual.
- Property held by any person in the name of his brother or sister or lineal ascendant or descendant and the consideration for such property has been provided or paid out of the known sources of the individual.

SOCIO- ECONOMIC BENEFIT OF THE ACT; MY OPINION

Since the 1980s, benami transactions have been a major drain on the Indian economy, necessitating extensive laws to curtail their effects, which impair a growing economy and help combat bad loans. In response to growing public outrage over rising lender fraud and India's fight against black money, this Amendment Act was passed. A closer look finds that the Amendment Act of 2016 seems to have promise for resolving the Act's legal issues criminal activities and strengthen creditors nationwide.

The correct implementation of the executive would have a significant deterrent impact on society. Instilling terror in people's minds is the threat of collecting Benami assets, for instance, but offering an exemption to those who disclose their Benami holdings appears to be an effective incentive. Because of this, if the newly updated rule is not hindered by nonimplementation, it might send shivers down the spines of people who have engaged in illegal operations and increase lenders all over the nation.

SUGGESTIONS AND WAY FORWARD

The Benami Transactions (Prohibition) Amendment Act, 2016 is now in effect, and the government wishes to move to intensify its fight against black money. However, glitches need

to be fixed. According to the legislation, anytime a benami property is seized, the Centre would become the legal owner of all rights and titles. This expropriator power must be used with extreme care, and safeguards must ensure that. The legislation only exempts Benamidar from its application if the property is financed by known sources of income, such as a trustee or a member of a Hindu Undivided Family.

Adjudicating authorities and an appellate tribunal will deal with benami transactions. An efficient functioning of the judicial system is a must to lower disputes and cut needless delays in confiscation of benami properties. Black money finds refuge in real estate, which is made easier by undetermined titles. This needs to alter. Additionally, the government must guarantee property owners' ownership. The Torrens system, in which state agencies directly register land ownership, is the way forward for India. Clear government-guaranteed titles will stop shady real estate transactions. Institutional change is also necessary to eliminate the financing of political parties outside of the law and lessen the artificial scarcity of urban land. When every money is recovered, benami real estate transactions would come to an end.

CONCLUSION

The Benami Transactions (Prohibition) Act 2016 amendments will eventually stabilise the market, foster transparency, reliability, and confidence, and support lenders. The amendment's objectives were to outlaw Benami transactions, punish those who engaged in them, and make the fight against bad debt more widespread because they had evolved into a way for the corrupt to evade taxes, concentrate land, and launder money. They had also helped members of the middle and lower classes realise their dream of owning a home. One of the most common areas to invest black money in India is real estate. This legislation is a step in the right direction, along with other regulatory adjustments like the implementation of the Goods and Services Tax (GST), the Real Estate (Regulation and Development) Act (RERA), and Land Digitization. The economy may experience short-term losses in a variety of industries, most notably real estate, but it will boost long-term participation in the real sector from local investors, financial institutions, and institutional investors from abroad. However, it is challenging to identify Benami properties, and litigation is limited, due to the nature of the relationship between parties, such as blood relatives or family members.