

**LONG STRETCHING IMPRESSIONS OF THE BENAMI
TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016**

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ABSTRACT

Benami transactions are a phenomenon prevalent in the shadows of Indian real estate business. The enigma journey for prohibiting Benami transaction long started in the 19th century in India. This journey has year marked a long stretching ladder of impressions from the judiciary. Although, the Indian legal system has always condoned the Benami transactions, even after 22 years of the inception of the *Benami Transactions Act of 1988*, for criminalizing Benami dealings and recovery of such properties, no impact was per say seen upon the real estate industry and Benami transaction continues to be the main reason for proliferation of black money in the Indian Economy. At this juncture, an attempt is made to analyse comprehensively and review the law of *Benami Transactions Act, 1988* and the various other allied laws, reiterate what the law commission reports aimed by recommending a legislation to criminalize Benami transactions, over this discourse in all these 22 years of its operation and finally adjudge how the new *Benami Transactions (Prohibition) Amendment Act, 2016* aims at fixing the loopholes in the earlier Act.

I. INTRODUCTION

The Law Commission in its *Report No. 57 of 1973 on Benami Transactions*¹ (“The Report”) defined “Benami Transaction” as *purchase or holding of properties in the name of another*. Etymologically “Benami” means “nameless or without name”. The characteristic of these types of transactions are that, there is no link between the name of the person and the benefit accrued. A benamidar is an alias to the person for who the benefit is actually accrued. The benamidar is merely an ostensible owner of the benefit accrued of a property and beneficial ownership does not vest with the benamidar but it vests with the real owner. Benami transactions are not limited to purchase but also to other modes of transfer. According to the report, Benami transactions were not illegal as under the *Transfer of Property Act of 1882* in the past.² By definition of “transfer of property”, it did not require the transfer to be in favour of one person and may not be in the name of another person. A Benami transaction was legal except in certain specified situations in the early past. The 20th Century did prevent Benami transactions completely. However, the 21st century has witnessed

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¹ Law Commission of India, *Fifty Seventh Report on Benami Transactions*, (Law Com No 57 of 1973 Ministry of Law Justice & Company Affairs) ¶¶ 1.5, 1.9, 1.13, 1.15, 5.3.

² Transfer of Property Act, 1882 s 5.

a law prohibiting the Benami Transactions absolutely. The paradigm shift in legal system indicates how far Benami Transactions have furthered illegal objects in the real estate sector of India.

Essentially there is a wide difference between “Benami Transaction” and “a cartel of Benami Transactions”. Keeping across the grammatical differences, the *Benami Transactions (Prohibition) Act, 1988* fails to define what would mean “a cartel of Benami Transactions”. The Act purports to cover Benami Transactions as a whole, however, defines only what constitutes a “Benami Transaction” and omits to set out what constitute “a cartel of Benami Transactions”. Illustratively, in the present day, the Benami Transactions happening are not simple of its kind as stated in the definition of the *Benami Transaction (Prohibition) Act, 1988*, for that matter it is a chain of reactions in the form of arrangements at different levels of the real estate market. Therefore, it becomes difficult to enforce the law on every reaction that takes place in the reaction. That is exactly, where the old law of *Benami Transaction (Prohibition) Act, 1988* has failed and that is exactly where the new law of *Benami Transaction (Prohibition) Amendment Act, 2016* is put to test.

In the 19th century, Benami Transactions were regulated by the *Trust Act, 1882*. Sections 81³ and 82⁴ & 94⁵ of the Act regulated transactions relating to Benami as “certain obligations in the nature of trusts”. After the advent of the *Civil Procedure Code* in 1908, this laid down a procedural element under Section 66⁶ to the then existing jurisprudence on Benami Transactions. However so, the *Benami Transactions (Prohibition) Act, 1988* repealed all this earlier laws with a special legislation on Benami Transactions. Entry Six of the Concurrent list of the Seventh Schedule to the *Constitution of India, 1950* empowers the Union and States to make laws by virtue of Article 246⁷ on transfer of property and registration of deeds and document related matters other than agricultural land. The oldest of the law on Benami Transactions in India was drawn up in 1956 by the State of West Bengal in 1956 under the *West Bengal Land Reforms Act, 1956*⁸ where a provision regarding Benami Transaction was contemplated. Later in the late 1980s, *Benami Transactions (Prohibition) Act, 1988* based on three law commission Reports from the Ministry of Law Justice & Company Affairs in 1973, 1977, and 1988 which recommended to the Parliament the need to

³ Trusts Act, 1882 s 81 “Where it does not appear that transferor intended to dispose of beneficial interest.”

⁴ *Id.* s 82 “Transfer to one for consideration paid by another.”

⁵ *Id.* s 94 “Constructive trusts in cases not expressly provided for.”

⁶ Civil Procedure Code 1908 s 66 “Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.”

⁷ Constitution of India, 1950 Article 246.

⁸ West Bengal Land Reforms Act, 1956 s 14-FF “Benami Transaction or instruments to be void” Chapter II Restriction on alienation of land by Scheduled Tribes, [Note: This made Benami transactions with the name of a Scheduled Tribe void].

legislate on Benami Transactions. Consequentially, the Himachal Pradesh and Sikkim modernized their own State legislations against Benami transactions in 1994⁹, 1997¹⁰, and 2005¹¹.

After more than three decades of the Benami Transactions Prohibition Act, 1988 being in force how have it been effectively implemented was adjudged. The 2016 Finance Act¹² provided a window exit scheme for all those who had undisclosed incomes with them to potentially surge in a better justice to implement the Benami transaction Prohibition Act effectively through an amendment to it.

II. WHERE IS THE DIFFERENCE? & HOW IS IT DIFFERENT?

The *Benami Transactions (Prohibitions) Act, 1988* (“Principal Act”) is an Act which prohibited Benami Transactions absolutely in black letter law in the late 20th century. This piece of law gave explicit powers to recover property held Benami. The *Benami Transaction (Prohibition) Amendment Act, 2016* (“Agency Act”) is refurbished for the purpose of prohibiting Benami property transactions. The difference line is unclear. The former prohibits Benami transactions which is more wide a piece of a law, on the contrary the latter is narrowed down to property transactions. The former Act is colloquially phrased as the “Principal Act” and the latter Act as an “agency of the former” but the contradiction lines up in mind when the new amendment is not connected to the incidental matters seemingly from the letters of the law as the principal Act proposed. It is unclear as to the position of law, whether the new agency Act does absolutely replace the principal Act on Benami transaction or is it the full cup of the principal Act and agency act is a spill over of the principal Act?

According to the principal Act, there are only two basic essentials that define the square of a Benami transaction viz. “Benami transaction”, and “property” under the principal Act. The principal Act simply defines only two essentials for the purpose of its application making it further primitive and naïve absents from basically defining what a “Benami Property transaction” is? This principal Act is more of a prescribing Act. It is more of a primitive legislation in this jurisprudence. The agency Act, on the contrary has been drawn keeping in mind the requisite

⁹ Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1994 s 2 Amendment of s 118.

¹⁰ Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1997 s 3 Amendment of s 118 [Note: Transfer of land exempted or expressly excluded Benami transactions].

¹¹ Sikkim Regulation of Transfer of Land Act, 2005 s 3 “Prohibition of transfer of land to non-agriculturalists”.

¹² Finance Act, 2016, s 190, “Undisclosed income declared not to be treated as Benami Transaction in certain cases”, Chapter IX ‘Income Declaration Scheme’ 2016”.

essentials of a “Benami Property transaction” making it more foundational to this jurisprudence. Although it does not define what can constitute a “Benami Property Transaction” explicitly but could be made out from the implicit formula of, firstly, as to what is a “Benami Property”¹³? Secondly, as to what is a “Benami Transaction”¹⁴? Thirdly, as to who is a “Benamidar”¹⁵? Fourthly, as to who is a “Beneficial Owner”¹⁶? And lastly, as to what is “Fair Market Value”¹⁷?

Illustratively, the agency Act has deliberated the above concepts better exhaustively than the Principal Act. The Benami property is that property which is subject matter of a Benami Transaction this includes proceeds from the property as well on the contrary according to the principal Act a Benami Property is a property which is transferred to one person for a consideration paid or provided by another person. The latter is narrower and the former is wide. Benami transaction is understood in this agency Act as an arrangement on the contrary in the principal Act Benami transaction is a transaction itself in which property is transferred. The former is more piercing and the later forms a vague definition of a Benami transaction. The agency Act, defines Benami transactions exhaustively and illustratively, further this definitions exempts certain people from the clutches of the agency Act viz. a Karta or a member of a Hindu undivided family, a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity including a trustee, executor, partner, director of a company, a depository or an agent of a depository and any other person as notified by the Central Government, and lastly, any person in the name of his brother or sister or lineal ascendant or descendant being a joint owner in any document and the consideration being paid out of a known source of an individual. The definition of Benami transaction is an exclusionary definition for that matter being different from the principal Act. The agency Act clarifies further that the transaction is distinct by its nature from S. 53 of the *Transfer of Property Act, 1882*. The Principal Act as well as the agency Act fails to define and clarify as to who is a “fictitious person” although it defines the term “person” it fails to clarify how can a joint stock company can be deemed to be a fictitious person when there are a group of persons colluding under its veil.

Whether prohibition of Benami Transaction is better or whether it is better to have an arm’s length approach to Benami Transaction would be better is question which has failed. The failure to encourage a transaction by a third party in the name of a person is the failure of law itself.

¹³ Benami Transaction (Prohibition) Amendment Act, 2016 s 2(8).

¹⁴ *id.* s 2(9).

¹⁵ *id.* s 2(10).

¹⁶ *id.* s 2(12).

¹⁷ Benami Transaction *Supra* note 13 at s 2(16).

Fair market value determination depends upon the capacity of a buyer and this capacity should be promoted to boost the economy and drive a fair market value. Fair Market Value is a new element which is introduced in the agency Act in comparison with the principal Act. However, it denotes the value of a property which it would fetch on sale in the open market on the date of the transaction, fails to balance an arm's length approach in the transaction. In the place of out rightly prohibiting a Benami transaction it is better to control the transactions happening in the economy by an arm's length approach.

The real estate transactions are known for being having a complicated structure. Therefore, the mechanism of tracing the starting point of a chain requires the acumen of law to be applied in traceability. The aspect of traceability is least accounted for in this agency Act. The fathom of traceability of a Benami is not made out or formulated in the definition clause of the agency Act. Benami transaction is a tripartite relationship which is prohibited by law. This very piece of law is interdisciplinary to a trust, a partnership, a company, a Hindu undivided family, a limited liability partnership and is an allied subject matter of preventing money laundering, income tax and succession. This very element makes this piece of law vulnerable to dependence. The more necessity a law seeks to be read together proves it to be incomplete. A piece of law being incomplete and dependent fails the basic dictum of equity that a piece of law ought to be full and complete.

The agency Act is an interdisciplinary piece of legislation which calls for all the requisite definitions from all the allied Acts to this jurisprudence. Thus for that matter is a cloud legislation. The definition clause of this agency is a result of an effective shopping of various legislations under the sun. The shopping list of the agency Act has failed to integrate the *Transfer of Property Act, 1882* where the precise characterizations of what is a “transfer of property”¹⁸ is and the various rights and liabilities attached to the parties to a transfer is accounted for. Therefore, there is very less deliberation gone into this piece by the law makers and wide amount discretion is left with the law keeps to limit and delimit according to the necessity of the situation. Therefore, the responsibility levied upon the judiciary to apply the law in justice equity and good conscience is heavy.

III. REVIEWING THE IMPRESSIONS

The impression of the principal Act was very primitive. The agency Act has incorporated some and liquidated some of the provisions in it. Till 2016, the law stood in the fashion that

¹⁸ Transfer of Property Act, 1882, s 5.

nobody shall enter into a Benami transaction and only property bought and sold in the name of wife and unmarried daughter was exempted. Post 2016, the position of law has taken a different current. Anything and everything would be a Benami transaction under the law except those listed in S. 4(9) of the agency act. The new position is any transaction and arrangement where a property is held by a person in consideration and paid by another person for the immediate or future benefit and direct or indirect benefit of the person paying the money. The question is what principle would be applied to figure out firstly, whether there is a transaction or arrangement? Secondly, whether there is an immediate or future benefit or a direct or indirect benefit being accrued? The definition being an exclusionary definition whether a transaction where a transaction or arrangement does not exist and whether an immediate or future benefit or a direct or indirect benefit is not traceable disprove to be a Benami transaction? Would it not be significant to keep in mind the existence principle to determine whether there was a transaction or arrangement and the traceability principle to determine whether there was an immediate or future benefit or a direct or indirect benefit?

Illustratively, Brian is one among the promoter of Brian & Company. Brian negotiates and agrees with Dominic to buy Dominic's land and buildings for a consideration of 5 lakhs. Brian buys the land & building in the name of Brian & Company. This fact is undisclosed to Dominic. Later Brian is inducted as a director of Brian & Company holding a majority stake in the company. This transaction necessarily does not meet the criterion of a transaction or arrangement as required by the definition of a Benami Transaction nor accrue any immediate or future or indirect or direct benefit for Brian. Therefore, is it right to understand that these four are the necessary ingredients that constitute a Benami Transaction? This shows the incompleteness of the definition and further makes it necessary to hold principles of existence and traceability into the definition of Benami Transaction under S. 4 (9) of the agency Act.

S. 4 of the principal Act out rightly gives a complete bar on filing a suit for recovery of property held Benami. This has been completely reiterated in the agency Act. Any property held Benami would be confiscated by the central Government. A transfer by the benamidar to the beneficial owner would be null and void according to this law. The question in this still remains as to whether when exactly does this transaction becomes null and void. Is it when the Benami is characterized as a benamidar? Or is it when the concerned central government authority is able to prove beyond reasonable doubt that a there was a Benami Transaction going on? The Impression still in unclear. For the purpose of this provision, the agency Act does not necessarily define what would constitute a “re-transfer”. “Re-transfer” essentially means a dual transfer. If so such

meaning may be attributed, then essentially what is exact limitation period to constitute a re-transfer is unclear from this piece of law.

Along the lines of this comprehensive analysis, the Central Government may notify an adjudicating authority, composition of the authority, qualification for the appointment of chairperson and members, constitution of the bench of the adjudicating authority. The adjudicating authority shall have a chairperson and two members, further the jurisdiction may be exercised by the benches. The adjudicating authority shall not be bound by the procedures laid down by the Civil Procedure Code and would conduct itself under the principles of natural justice and authority would have its own procedures. It is ambiguous to find that the adjudicating authority would have the powers vested to a civil court under the Code of Civil Procedure although would be restricted to conduct the procedures under the Civil Procedure.

The agency Act has many new things which has been absent in the principal Act. The agency Act is a piece of law with 6 chapters and 72 sections in toto. The new law on Benami transactions have got better teeth and is sharp enough to narrow down any Benami transactions happening. The black letter law has put up a piece of operating law. The new law delegates the central government to appoint adjudicating authority under this agency Act. The agency Act further gives powers to the central Government to attach, adjudicate and confiscate if necessary to require evidence for narrowing down a Benami transaction. The agency Act further provides for an appellate authority to appeal against the order of an adjudicating authority. The hierarchy of courts has been maintained in the new law unlike the principal Act as everything was delegated to the Central Government to frame rules upon and act upon. Special Courts and Offences and persecutions have been set out clearly in the Act to demystify the cloud of uncertainties that prevailed under veil of the principal Act until a Benami transaction was proved beyond reasonable doubt. Section 9 which commemorates The Benami Transactions (Prohibition of the Right of Recover Property) Ordinance, 1988 (Ord.2 of 1988)¹⁹ which led a pathway for the Principal Act has been appended to the agency Act.

Chapter III of the agency Act is a very politically motivated chapter. The action of the authorities is subject to the satisfaction of Central Government, Therefore the authority setup to adjudicate is not completely independent and cannot function independently free from the limps of the executive. There are possibilities of bias. The Central Government can appoint more than

¹⁹ Benami Transactions (Prohibition of the Right of Recover Property) Ordinance, 1988 (Ord.2 of 1988) [Note: This ordinance was made into a law].

one adjudicating authority to exercise the jurisdiction, powers and authority under this Act. This denotes that the power vested in absolute power, which could be easily be subjected to redtapism and political motivations. Therefore, independence of such an adjudicating authority is primordial to safeguard the interests of justice equity and good conscience. The adjudicating authority is a three-member body. This body is constituted under the executionary discretion and jurisdiction of the Central Government. There is arbitrary and unreasonable discretion vested with the Central Government in this regard. There is no balance of power and harmony foreseen under this chapter and this calls for a constitutional challenge any time soon when this chapter of laws is operated upon. Therefore, this piece of legislation is always under a vulnerable cloud from a constitutional challenge as there is no distribution of powers as required by the constitution of India between the executive and judiciary in the case of adjudication of a particular matter as the power completely vested with the Central Government.

Chapter IV of this agency Act volcanoes' power to the Central Government to attach, adjudicate and confiscate. Although the agency act does not contain an explicit provision that says nothing in this act could be amended or questioned by law it more likely behaves in that regard. The nature of the adjudicating authority is not clear. Whether this adjudicating authority would have a *suo moto* power to take cognizance of certain cases or a whistle blower would be required to fire up the whole system? The Benami Transaction devolves in that thin line difference between Civil and Criminal liability. When a Benami transaction is found to exist by virtue of the procedures under chapter IV of this agency Act, the question still remains as to how justice can be rendered. Benami transaction is a subject matter which attracts both civil and criminal attributes. Thus the question of how justice can be served is unclear. The Constitution of India under Article 20(3) mandates that no person shall be compelled to be a witness against himself. In the present case, a situation arises where a benamidar would be positioned in a situation before the courts of law to be a witness against himself. The investigation conducted by the adjudicating authority can adduce only evidences from either the approving authority or from the confiscated documents by virtue of this chapter IV. Thus it is highly likely that once a criminal liability is attributed to a Benami or a beneficial owner then justice would not be served.

Chapter V of the agency Act establishes a tribunal to hear appeals against the orders of the adjudicating authority. The tribunal shall constitute one Chairperson and two members. The chair person shall by either a retired high court judge or a sitting High Court judge who has completed by five years of service. Further the two members shall be appointed of which one shall be an

administrative member and the other shall be a judicial member. The Appellate tribunal and Adjudicating authority shall have the nature of a civil court. Any order passed by the Appellate Tribunal by virtue of the procedures and powers vested in the Appellate Tribunal shall deem to be an order passed by a Civil Court of competent jurisdiction. The order shall be executable as a decree of the Civil Court. The transition from the principal Act to the Agency Act is quiet clear now that, the earlier Benami transaction was considered to have a criminal liability attached to it, in the present day this view has changed. The agency Act has given primarily the Benami transaction prohibition Act a new outlook attributing civil liability to it. The glitch lies in the point that the Central Government appoints in consultation with the Chief Justice of India. The definition of consultation is not defined in the legislation which essentially makes this piece of legislation vulnerable to the independency of judiciary debate under the Constitution of India, questioning whether that the word consultation would include concurrence as well?

The Civil Court is barred from its jurisdiction to pass an injunction in any matters relating Benami transactions as all the matters devolving around a Benami transaction is in black letter law a subject matter jurisdiction of the Adjudicating Authority or the Appellate tribunal constituted under this very agency Act. The Appellate Tribunal follows its own procedures and any procedures prescribed by the Central Government. The Civil Procedure Code is not fully operational before the Appellate Tribunal. This essentially bars the defendant from having any remedies available to him under law. This would violate the defendant's natural justice and the right to have an alternative remedy.

The simple analogical question which this problem boils down to is whether Appellate Tribunal setup under this very agency Act would supplant the jurisdiction of a Civil Court from entertaining any matters which involves a Benami Transaction as an add-on to any other transfer in question before a Civil Court? The answer to all these questions is yet to be deliberated before the rule of law and till then this piece of legislation is quite vulnerable to operate as it is crystal that this piece of law is not full and complete in the eyes of equity.

Chapter VI of the agency Act provides for the creation of special courts. Benami Transactions are of both civil and criminal nature. Therefore, attribution of one nature alone to a Benami transaction would render it quite more incomplete. Thus the agency Act, suits within itself to create special courts for trial, which would necessarily have the powers to punish for the offences mentioned under the agency Act. These special courts are a close substitute to try those

other offences not mentioned under this agency Act but are tagged & reasonably doubted to have a Benami transaction within it. This is another head to the Benami transaction prohibition law. The special court shall transmute to become a sessions court when a complaint from the authority or the Central Government is made to it in writing. As far as this agency Act is concerned the idea of creation of special courts is very novice and not suitably placed. Thus, this makes this agency Act a double headed snake trying to move in two directions in the desert as application of law is confusing with two heads. Now the burden is cumbersome upon the appellate authority to tag those appeals of similar nature and hear it accordingly which adds-on to the delays in the procedures established by law.

Chapter VI of the agency act punishes any person who enters into a Benami Transaction in order to default payment of dues shall be held in question and any beneficial owner or benamidar abets or induces any person to enter into a Benami transaction shall be guilty of offence of Benami transaction. The punishment would be seven years of rigorous imprisonment and 25 percent of the fair market value as fine for entering into Benami transaction.

Chapter VII is miscellaneous chapter which is very significant in the present case. The agency Act purports to vibrate that any property under the effect of Section 24 of the *Transfer of Property Act, 1882* if transferred or any property under the effect of Section 27 of the *Transfer of Property Act, 1882* shall be null and void. The Central Government may exempt religious and charitable organization from the ambit of this Act. Every notification by the Central Government shall be laid before the Central Government which can blend in a lot of delay in the administration of the law. The Central Government shall have powers to issue direction from time to time whenever it finds it necessary. There is a one liner mention that application of other law is not barred. This however is a vague note. The nature of the offence is non-cognizable and bailable.

Further, the Central Government is blanketed with a blanket provision to safe its nose from any actions taken by the Central Government under the guise of Good Faith and the actions of the Central Government through the adjudicating authority or the appellate tribunal is barred from legal actions being taken against it. The agency act is unaware about what could constitute good faith and what all acts of the Central Government can be challenged and what all cannot be. There is no specific protection rendered in this regard in the agency Act. The cases may be transferred from one bench to other. The case may continue upon the death of the person accused against the legal representatives. This act does have an overriding effect and the Central

Government shall have the power to frame the appropriate rules. The rule so made shall be laid before the Parliament for approval. So far no further actions have been moved in this cause making the agency Act unclear. The impression that is derived from the bare reading of the provisions of the new agency Act is quite thought provoking and it is understood that due care and caution was not taken care while framing this piece of law.

IV. WHAT MAY BE THE LONG STRETCHING IMPACTS?

The law is unsettled. Due to an unsettled position of law this law fails its framer. In the light and premise of the impressions reviewed, it is still unclear whether the law of prohibiting Benami transactions is an absolute prohibition or a qualified prohibition. It is a delegated legislation. Although there is significant concentration of administrative discretion, power and influenced persisting in this piece of law. There is essentially a spill over. The Agency Act can repeat the history of his principal Act. The principal Act was a piece of law framed with purpose with acquired disabilities. The agency Act is also vulnerable from all the directions to be reframed again and again in the future for lack of sharpness.

The move to have the adjudicating authority having its own procedures framed would delay the law coming into full swing much longer. It is prudence to recognize the requisite functional procedural codes of the country, viz. the *Code of Civil Procedure, 1908* and the *Code of Criminal Procedure, 1973*, than trying to conduct an adjudicating authority, appellate tribunal and a special court which are claimed to be having the nature of a Civil Court and a Session Court respectively with self-driven rules and dynamics of the Central Government.

A double-headed snake in the desert can sometimes feed its own counterpart's head for the sake of its own survival. Similarly, the Special Courts and its counterpart adjudicating authority can have significant friction in the time to come in aspects of jurisdiction, power, authority, supremacy, and primacy as everything is dependent upon the Central Governments prerogatives to frame rules, guild lines and directions for the conduct of the Benami Transaction Prohibition (Amendment) Act, 2016.

The objective of the new agency Act is to provide for expedites procedures to deal with benami property, authorities to execute such procedures and stringent punishment for offenders. The statement of object and reason to prohibit the benami transactions which is prevalent in the country and penalize the law breakers have not served fully and completely by the virtue of this new legislation coming into effect. Neither has the impact of black money reduced in the country

due to the procedures established by law through this piece of legislation. Therefore, the agency Act would have the same long standing effect less destiny in the longstanding future.

V. CONCLUSION

From the brief surge to a conclusion, the *Benami Transaction Prohibition (Amendment) Act, 2016*, has a long path ahead to be full and complete to be finally become operational fully. Today the operative Benami transaction is not as simple as it sounds. It is quite collusive and forms as an arrangement between multiple numbers of elements. The transactions have become collusive to the extent that it is quite cumbersome for the procedure established by law to narrow down the right element when the law is incomplete. There has been a significant shift from the earlier legislations in this regard in the new Act. However, the new Act is lacking in all respect to adapt to the complicated situations which is yet to face. Judicial activism is always a resort but consumes a lot of time and delay.

The benami law is not an independent law. It is always dependent on many allied legislations viz. the *Real Estate (Regulation & Development) Act, 2016*, Land Reforms laws, *Transfer of Property, Act, 1882* etc. This legislation is drafted with comparative relation with any laws in the country. A procedure established by law should be complete and full and if necessary reasonably inter-disciplinary also according to the mandate of Article 21 of the Indian Constitution, unlikely this piece of legislation fails to pass this test and proves to be inadequate by being narrow, and unclear to the extent of substantivity and proceduralism it bounds.

It is introduced the principle of existence and traceability. These principles are the activism based on this reviewed impression. The benami law has to take into account these two very principles to apply and narrow down a benami transaction in its application in the country. The new benami transaction prohibition law formulas for a blend of three things viz. a transaction or arrangement, an immediate or future benefit and finally an indirect or direct benefit. These three things are fruitless in test of litmus without applying the principles existence and traceability. Therefore, if the law ought to be made effective in the light of the three ingredients formulated in the law these principles have to be added to get the right and accurate result.

In this regard a recommendation is made to have one commission viz. a commission for the administering the prohibition of Benjamin transactions in the country which has this adjudicating authority and special courts integrated into one. There need no two institutions to deal with one aspect of law. Therefore, a conclusion is drawn to the optimism of having a better law which would serve the integrals and conditions of procedures established by law in the interest

of justice equity and good conscience. The *Benami Transaction Prohibition (Amendment) Act, 2016* is to be reviewed for betterment and a good and suitable law integrating all the requirements and keeping the comparatives in place may be drafted to have the country march towards a country without black money due to collusive benami transactions not being able to be located.

