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**STANDING COMMITTEE ON FINANCE
(2011-12)**

FIFTEENTH LOK SABHA

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

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

FIFTY-EIGHTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

June, 2012/ Jyaistha, 1934 (Saka)

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Presented to Hon'ble Speaker on 26 June, 2012



LOK SABHA SECRETARIAT
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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2011-12

Shri Yashwant Sinha - Chairman

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

* 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

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.

8. 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.

9. 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
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 lawyersacting 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 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 causes 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

(i) 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 subsection (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
25 Jyaistha, 1934 (Saka)**

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

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. **XX** **XX** **XX** **XX**
 XX **XX** **XX** **XX**

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 & 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 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 – Joint Secretary
2. Shri Ramkumar Suryanarayanan – Deputy Secretary
3. Smt. Meenakshi Sharma – Deputy Secretary
4. Shri Kulmohan Singh Arora – Under Secretary

Part I

(1430 hrs. to 1515 hrs.)

WITNESSES

Confederation of Indian Industry (CII)

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

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 – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary
4. Smt. Meenakshi Sharma – Deputy Secretary

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. X X X X X X X X X X X X X X X
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A verbatim record of proceedings was kept.

The witnesses then withdrew.

The Committee then adjourned.