

THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

CA Vinod Jain

B.Com (H), LLB, FCA, FCS, FCMA, DISA (ICAI)

INMACS Management Services Limited

Vinod Kumar & Associates, CAs

vinodjain@inmacs.com

Adv. Akhilesh

INMACS Law Office

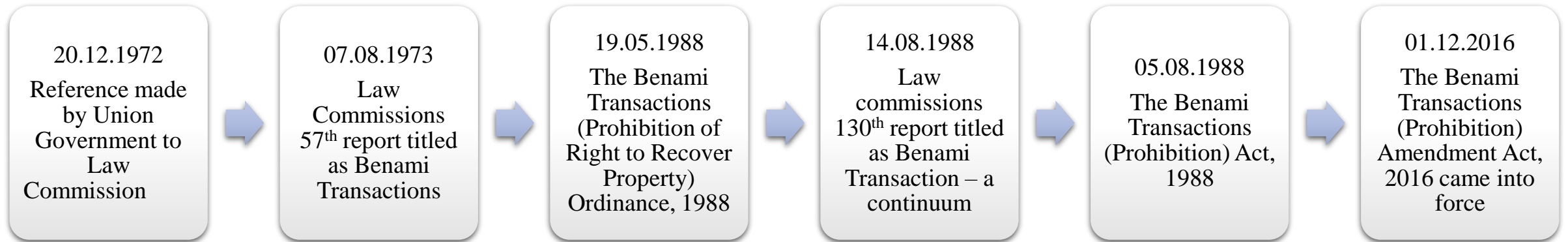
akhilesh@inmacslaw.com

503, Chiranjiv Towers, 43, Nehru Place, New Delhi - 110019
Building No. 32, Global Business Square, Institutional Area, Sector 44, Gurugram 122003

SCOPE OF THE PRESENTATION

- HISTORY OF BENAMI LAW
- WHAT IS A BENAMI TRANSACTION?
- WHAT IS BENAMI PROPERTY?
- AUTHORITIES UNDER BENAMI LAW
- OFFENCES & PROSECUTION UNDER BENAMI LAW
- INTERPLAY OF BENAMI LAW WITH OTHER LEGISLATIONS

BACKGROUND OF BENAMI LAW



CONCEPTUALLY

CONCEPT OF BENAMI: *(As discussed by Hon'ble Supreme Court)*

➤ **Two views arise from Benami Doctrine**

- i. Benamidar does not hold title over the property; or
- ii. Title passes to the Benamidar - he holds the title in 'Trust'

➤ **Two Loose category of Benami Transaction emerge:**

i. Tripartite:

- "B" Sells property to "A" (real Owner),
- Sale Deed Mention "C" as the Owner (Benamidar) - Real Benami.

ii. Bipartite:

- "A" Sells property to "B" without intending to pass the Title to B – This may be termed as Sham/ Furjee / Benami Transaction Loosely.

CONCEPTUALLY

Benami Transaction include:

- Property held by or transferred to a person- consideration provided by another person.
- Transaction in fictitious name
- Owner not aware of ownership or deny knowledge of such ownership.
- Person providing consideration not traceable.

CONCEPTUALLY

Objective (Reason) For Benami proliferation:

- Mitigation of political or Social Risk
- Defraud Creditors
- Evasion of taxes
- Secret provision for family member
- In certain cases, Benami “could be within its legitimate scape”- not to include- fraudulent or illegal purpose.

CONCEPTUALLY

Factor to consider to determine BENAMI Transaction:

- Source of purchase money
- Nature and possession of property after purchase
- Motive to give a Benami color
- Position of parties- their relationship (Claimant – Benamidar)
- Custody of title deeds (after sale)
- Conduct of parties concerned in dealing with property after Sale

CONCEPTUALLY

Exceptions:

- HUF property held by Karta
- Assets held in fiduciary capacity **including** as:
 - Trustee
 - Executor
 - Partners of Firm
 - Director of Company
 - Depository or Custodian
 - Person notified

UNION OF INDIA & ANR. VS M/S GANPATI DEALCOM PVT. LTD.

CIVIL APPEAL NO. 5783 OF 2022 [@ SPECIAL LEAVE PETITION (C) NO. 2784/2020]

Amendment in 2016 cannot be retrospective

- Law is punitive in nature and can apply only prospectively
- No forfeiture or confiscation can be made in respect of Benami transaction cases before 1st November 2016
- It is not merely procedural law rather these are substantive provisions (*through 2016 Amendment*)
- Proceedings for **all** matters, are quashed and cannot continue, in respect of period before 1st November 2016 including:
 - Confiscation
 - Prosecution
 - Forfeiture
 - Notices
 - Proceeding
- No actions by concerned authorities can be initiated or continue in respect of period before 1st Nov 2016

DETAILED PROVISIONS

WHAT IS A BENAMI TRANSACTION?

SECTION 2(9)

(9) “benami transaction” means,—

A. a transaction or an arrangement—

- a. where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
- b. the property is held for the immediate or future benefit, direct or indirect, of the person who has provided 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 and the consideration for such property has been provided or paid out of the known sources of the Hindu Undivided Family;
 - 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, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;
 - iii. any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
 - iv. any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

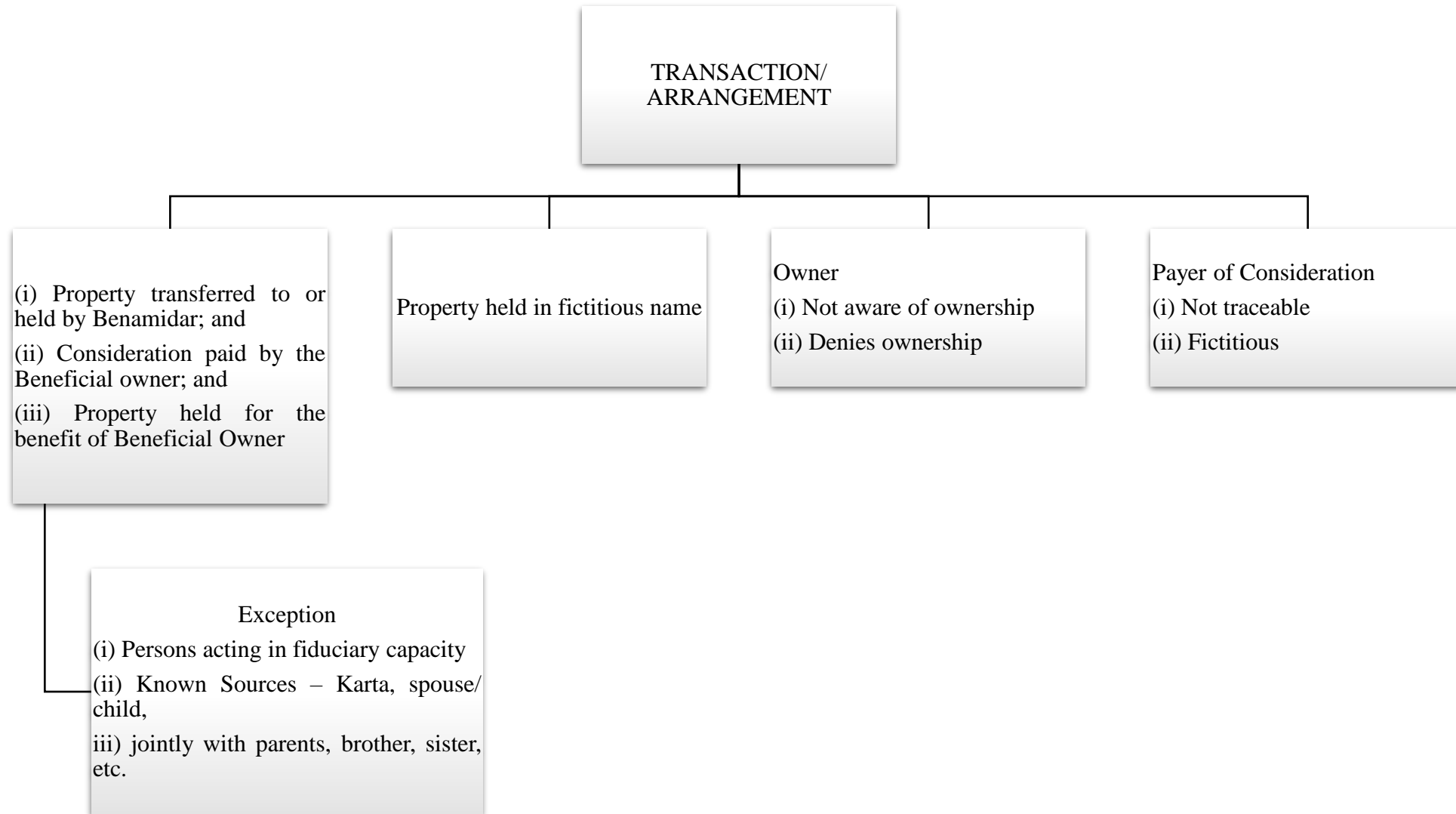
B. a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

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

D. a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

WHAT IS A BENAMI TRANSACTION?

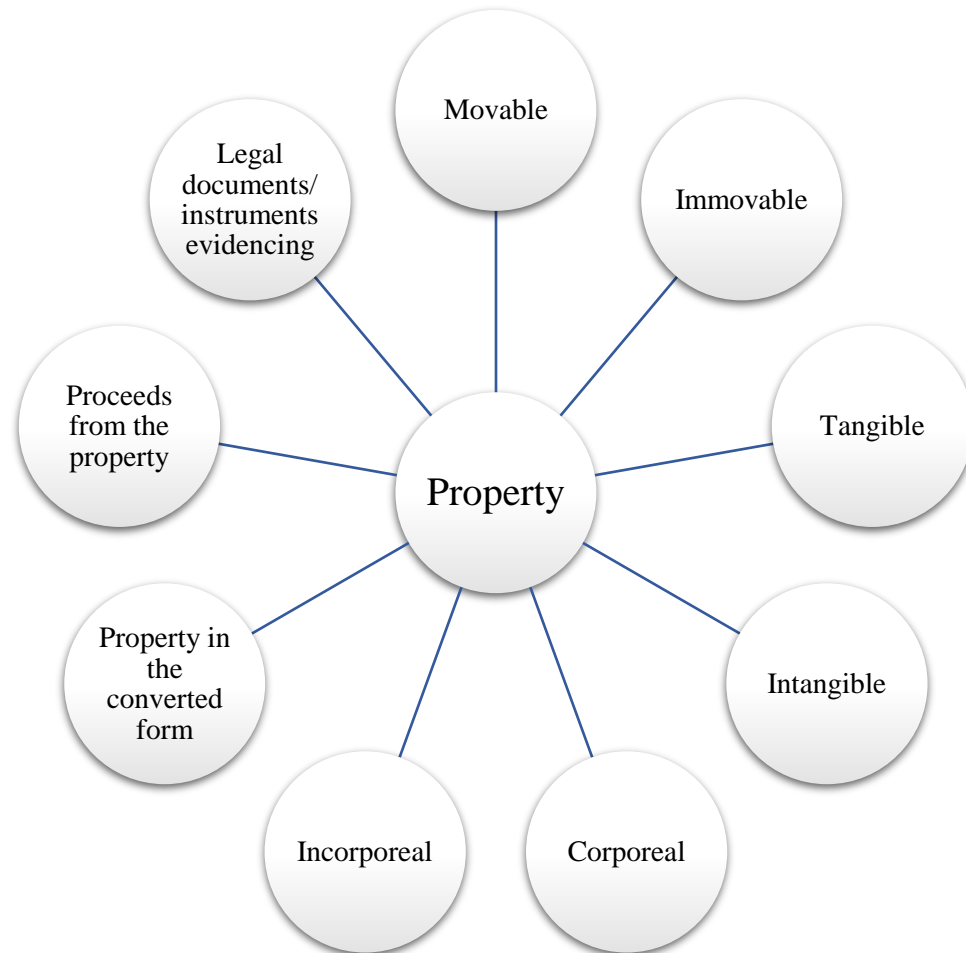
SECTION 2(9)



WHAT IS A BENAMI TRANSACTION?

SECTION 2(8)

(8) “benami property” means any property which is the subject-matter of a benami transaction and also includes the proceeds from such property;



Section 2(26)

“property” means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;

AUTHORITIES UNDER BENAMI LAW

SECTION 18

Initiating Officer S. 2(19)

- Conducting inquiries, impound documents
- Provisional attachment of property

Approving Authority S. 2(4)

- Grants approval to IO

Adjudicating Authority S. 2(1)

- Pass order confirming or revoking the provisional attachment
- Pass order for confiscation of property

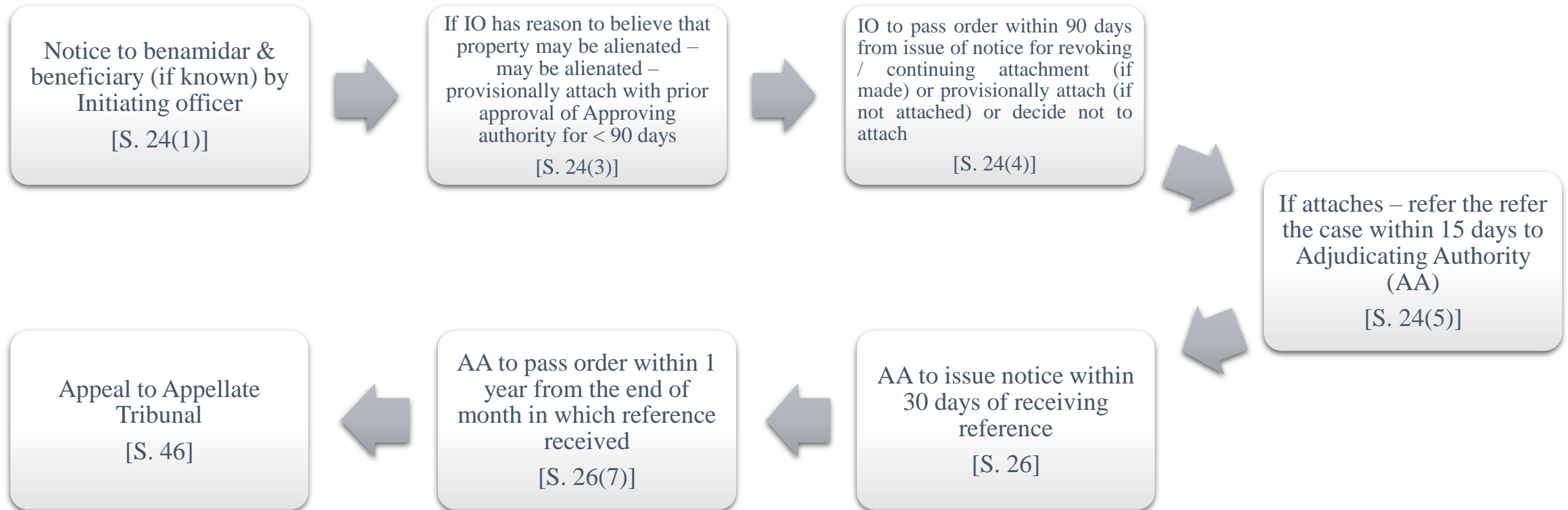
Appellate Tribunal S. 2(3)

- Review the order passed by Adjudicating Authority

Administrator S. 2(2)

- To receive and manage the property
- To dispose of the property

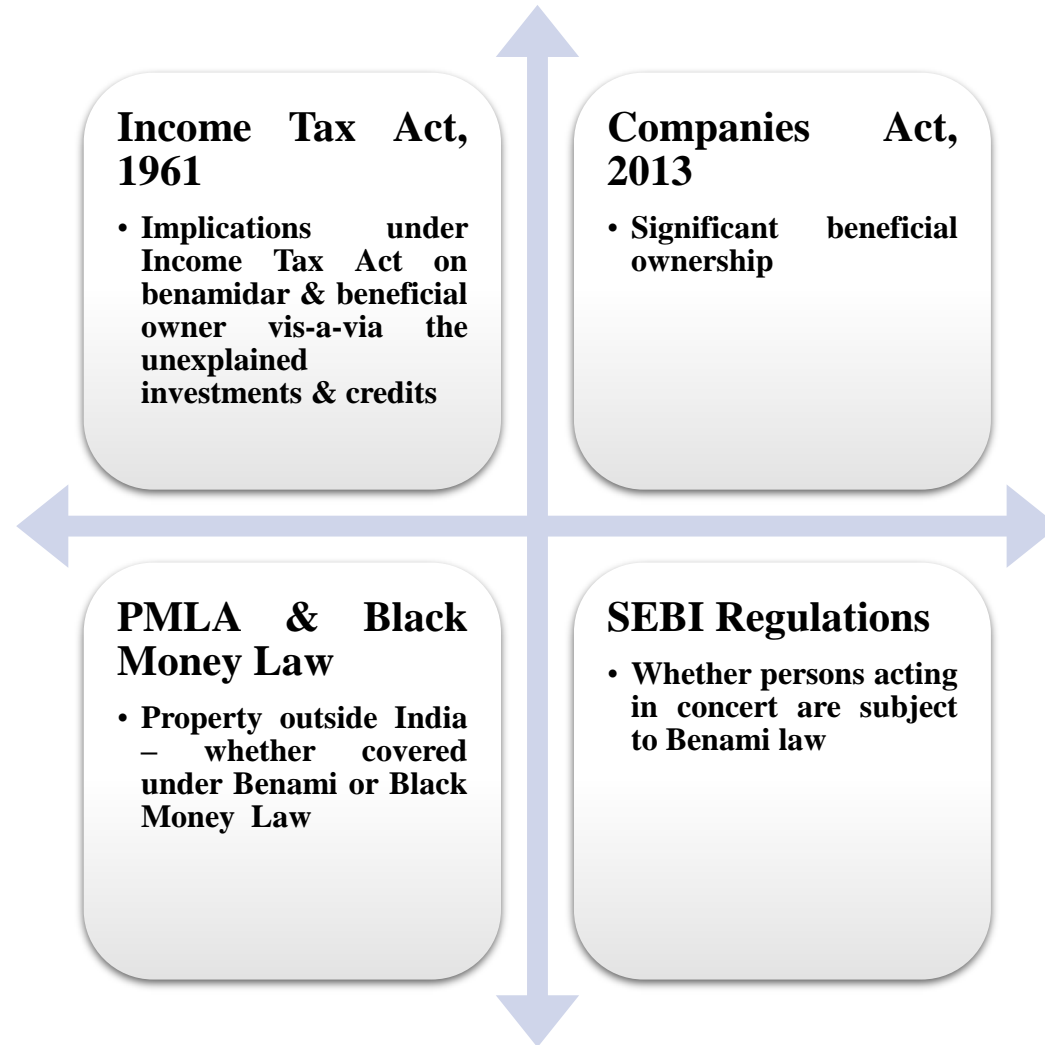
PROCEDURE



OFFENCES & PROSECUTION UNDER BENAMI LAW

Particulars	Accused/ Suspect	Imprisonment	Fine
Penalty for Benami Transaction (Section 53)	<ul style="list-style-type: none">• Benamidar• Beneficial owner• Any other person who abets to enter into benami transaction	1 – 7 years	25% of FMV of Property
Penalty for False Information (Section 54)	Any Person	6 months – 5 years	10% of FMV of Property
Failure (Section 54A)	Any Person	-	Rs. 25000 (penalty)

INTERPLAY OF BENAMI LAW WITH OTHER LEGISLATIONS



Mangathai Ammal (Died) Through Lrs vs Rajeswari

Supreme Court, Civil Appeal no. 4805 of 2019 dated 09.05.2019

- *“While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct etc.”*
- *“To hold that a particular transaction is benami in nature these six circumstances can be taken as a guide:*
 1. *The source from which the purchase money came;*
 2. *the nature and possession of the property, after the purchase;*
 3. *Motive, if any, for giving the transaction a benami colour;*
 4. *Position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
 5. *Custody of the title deeds after the sale;*
 6. *Conduct of the parties concerned in dealing with the property after the sale.”*
- *“Furthermore, the court held that the Benami Transaction (Prohibition) Act would not be applicable retrospectively”*

Smt. P.Leelavathi vs V.Shankarnarayana Rao

Supreme Court, Civil Appeal No. 1099 of 2008 dated 09.04.2019

- ❑ In the case of *Binapani Paul v. Pratima Ghosh* the court had held that “the source of money had never been the sole consideration, and is only merely one of the relevant considerations but not determinative in character.”
- ❑ In *Valliammal v. Subramaniam*, the court had delineated six circumstances to check whether the transaction is benami or not. These are: **(a) The source from which the purchase money came; (b) the nature and possession of the property, after the purchase; (c) Motive, if any, for giving the transaction a benami color; (d) Position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (e) Custody of the title deeds after the sale; and (f) Conduct of the parties concerned in dealing with the property after the sale.**
- ❑ *"It is true that, at the time of purchase of the suit properties, some financial assistance was given by Late G. Venkata Rao. However, as observed by this Court in the aforesaid decisions, that cannot be the sole determinative factor/circumstance to hold the transaction as benami in nature. The plaintiff has miserably failed to establish and prove the intention of the father to purchase the suit properties for and on behalf of the family, which were purchased in the names of defendant Nos. 1 to 3.....Therefore, the intention of Late G. Venkata Rao to give the financial assistance to purchase the properties in the names of defendant Nos. 1 to 3 cannot be said to be to purchase the properties for himself and/or his family members and, therefore, as rightly observed by the High Court, the transactions of purchase of the suit properties – Item Nos. I(a) to I(c) in the names of the defendant Nos. 1 to 3 cannot be said to be benami in nature. The intention of Late G. Venkata Rao was to provide the financial assistance for the welfare of his sons and not beyond that."*

Niharika Jain W/o Shri Andesh Jain Vs Union of India

Rajasthan High Court, Civil Writ Petition No. 2915/2019 (SB), dated 12.07.2019

❑ The Rajasthan High Court agreeing with the contention of the petitioner held that *sub-section (3) to section (3) of the Amended Benami Act talks about punishments in respect of benami transactions entered into after amendment in Benami Act and is thus, prospective*. While holding the said sub-section (3) as prospective, the Rajasthan High Court observed that :

1. Unless a contrary intention is reflected, a legislation is presumed and intended to be prospective;
2. Where an amendment affects rights or imposes obligations or casts a new duties or attached a new disability is to be treated as prospective ; and
3. Benami Amendment Act, 2016 neither appears to be Clarificatory nor curative.

❑ Accordingly, the Rajasthan High Court threw the entire transactions entered into by the petitioner before amendment out of the purview of Benami Act.

Please feel free to reach out to us at
vinodjain@inmacs.com +9198110 40004 akhilesh@inmacslaw.com +9188821 44442

CA Vinod Jain

B.Com (H), LLB, FCA, FCS, FCMA, DISA (ICAI)
INMACS Management Services Limited
Vinod Kumar & Associates, CAs
vinodjain@inmacs.com

Adv. Akhilesh

INMACS Law Office
akhilesh@inmacslaw.com

503, Chiranjiv Towers, 43, Nehru Place, New Delhi - 110019
Building No. 32, Global Business Square, Institutional Area, Sector 44, Gurugram 122003