PMLA & BENAMI

The Current Burning Issues — Statute · the Conflict of Authority · the Way Forward

Prevention of Money-Laundering Act, 2002

Five live controversies — grounds of arrest · bail & reverse burden · collapse of the predicate · value-thereof attachment · Section 50 statements.

Prohibition of Benami Property Transactions Act, 1988

Five live controversies — retrospectivity · unexplained cash · accommodation entries · the unknown source · the fiduciary & family exception.

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HOW THIS SESSION IS ORGANISED

The Roadmap

A

The Two Statutes in Brief

Framework, the offence and the enforcement lifecycle — only what is needed to read the controversies.

B

PMLA — Four Burning Issues

Grounds of arrest · bail & reverse burden · collapse of the predicate · value-thereof · Section 50 statements.

C

Benami — The Framework

The Section 2(9) limbs, the players, the exceptions — and what is, and is not, benami.

D

Benami — Four Burning Issues

Retrospectivity · unexplained cash · accommodation entries (the Tribunal split) · the unknown source · fiduciary & family exception.

E

Where the Three Tracks Meet

Income-tax addition, benami confiscation and PMLA prosecution running in parallel on one transaction.

F

The Professional in the Line of Fire

Reporting-entity duties, red flags, and the privilege dilemma after the 2025 advocate-summons episode.

PMLA, 2002 — Framework at a Glance

THE OFFENCE — SECTION 3

"Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."

1. Projecting or claiming tainted property as untainted / legitimate.
2. Dealing with proceeds — concealment, possession, acquisition or use.
3. Knowingly assisting any process or activity, directly or indirectly — scienter required.

Finance Act 2019 Explanation — each act is independently sufficient (disjunctive), and the offence is a continuing one, persisting so long as the proceeds are enjoyed.

GENESIS

Enacted 2002, operational from 2005; substantially widened by the Finance Acts of 2009, 2012, 2015, 2018, 2019 and 2023.

OBJECT

Prevent laundering, confiscate the proceeds of crime, and prosecute through Adjudicating Authority and Special Courts.

THE AGENCY

The Enforcement Directorate, Ministry of Finance — investigation commences internally through an ECIR, not an FIR.

THE KEYS

S.2(1)(u) proceeds of crime · the Schedule of predicate offences · S.4 punishment: RI 3–7 yrs (10 under NDPS) + fine.

Why the controversies matter · Every safeguard read into these provisions travels straight into arrest, bail, attachment and trial.

PMLA — The Enforcement Lifecycle

1

ECIR

Enforcement Case Information Report — internal. Survey (S.16), search (S.17), summons & statements (S.50).

›

2

Provisional Attachment

Section 5 — property linked to proceeds attached for up to 180 days; complaint to the Adjudicating Authority.

›

3

Adjudicating Authority

Section 8 — notice and hearing; confirmation of attachment within 180 days, failing which it lapses.

›

4

Special Court

Ss. 43–45 — prosecution under S.4; twin bail conditions (S.45); reverse burden (S.24).

›

5

Appeal

Appellate Tribunal against confirmation; High Court / Supreme Court against conviction.

FOUR RESTRAINTS — OFTEN CONFUSED, LEGALLY DISTINCT

Seizure

Physical possession taken by the authority. Temporary; ownership unaffected. (S.17)

Attachment

Bar on transfer; the holder keeps possession but cannot deal. Preventive. (S.5)

Freezing

Operation of accounts / demat restrained; constructive custody. (S.17(1A))

Confiscation

Permanent vesting in the State after adjudication / conviction. (S.8(5)–(7))

Practice point · Identify which restraint is actually in play before choosing the remedy — the appeal route, the limitation clock and the test all differ.

Four Burning Issues — State of Play 2026

Every issue below is either pending before the Supreme Court or the subject of an open conflict between High Courts.

1

PENDING SC REVIEW

Grounds of Arrest & the ECIR

Is the ECIR an FIR? Must the grounds of arrest be furnished in writing — and from when?

2

PENDING SC REVIEW

Bail & the Reverse Burden

Sections 45 and 24 — the twin conditions against the reasserted primacy of Article 21.

3

SETTLED · CONTESTED

Collapse of the Predicate

Does PMLA survive acquittal, discharge or quashing — and what of quashing on technical grounds?

4

CONTESTED

Attachment of 'Value Thereof'

Can wholly clean assets be frozen? Delhi and Punjab & Haryana read the same words in opposite ways.

The common thread — each controversy begins in the text of the statute. The provision is therefore set out first on every slide, before the rival readings of it.

1 Grounds of Arrest & the ECIR

THE PROVISION — SECTION 19(1)

"If the Director… has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest."

THE CONTROVERSY

- ED opens its case via an internal ECIR, not a public FIR — accused faces probe without sight of the foundational document
- Key question 1: **Is there a right to a copy of the ECIR?**
- Key question 2: **Does "inform him of the grounds" require written grounds at the moment of arrest, or is oral intimation enough?**
- ECIR disclosure is one of only two issues admitted for review in the pending Vijay Madanlal matter.
- Money-Bill route of the 2019 amendments remains parked, awaiting a larger Bench decision (Rojer Mathew reference)

ENFORCEMENT VIEW

Reading the Ratio: Enforcement View

Vijay Madanlal Choudhary v. UOI *2022 SCC OnLine SC 929 · 3-Judge Bench*

- ECIR is an internal ED document, not an FIR — supply of a copy is not mandatory in every case.
- Sufficient if ED discloses the grounds of arrest contemporaneously at the time of arrest; no particular format prescribed.
- “So long as the person has been informed about grounds of his arrest, that is sufficient compliance of Article 22(1)”.
- Constitutional validity of Section 19 PMLA upheld — safeguards held adequate and non-arbitrary.

Ram Kishor Arora v. ED *Delhi HC, 22.09.2023 · W.P.(CRL) 2408/2023*

- Following Vijay Madanlal: mandate of S.19 met once grounds are “informed” — written copy need not be furnished at arrest.
- Petitioner had read and signed “I have been informed…” — held sufficient compliance.
- Remand application (within 24 hrs, reproducing grounds verbatim) satisfies “as soon as may be”.
- V. Senthil Balaji's word “served” does not mandate a written copy; no conflict with Vijay Madanlal — petition dismissed.

LIBERTY VIEW

Reading the Ratio: Liberty View

Pankaj Bansal v. Union of India *[2023] 155 taxmann.com 39 (SC), 03.10.2023 · Bopanna & Sanjay Kumar, JJ.*

- Merely reading out (or letting the arrestee read) the grounds is not adequate compliance with Art. 22(1) / S.19(1).
- Henceforth, a written copy of the grounds of arrest must be furnished to the arrestee as a matter of course, without exception.
- Rationale: avoids a word-against-word dispute, and lets the arrestee instruct counsel and meet S.45's twin conditions for bail.
- Delhi HC's Moin Akhtar Qureshi and Bombay HC's Chhagan Bhujbal (oral reading suffices) held to not lay down correct law.

Prabir Purkayastha v. State (NCT of Delhi) *2024 INSC 414, 15.05.2024 · Gavai & Mehta, JJ.*

- Extends Pankaj Bansal's ratio from PMLA to UAPA — S.43B(1) held pari materia with S.19(1) PMLA.
- “Reasons for arrest” (formal, in the arrest memo) held distinct from “grounds of arrest” (personal, case-specific).
- Pre-dawn remand via unengaged “remand advocate”; WhatsApp copy sent only after the order was signed.
- Charge sheet filed held not to cure illegality — arrest and remand order quashed, appellant released on bail.

PENDING SC REVIEW

2 Bail (S.45) & the Reverse Burden (S.24)

Provisions S.45 · S.24 · Arts. 14, 20(3), 21

THE PROVISIONS — SS. 45(1) & 24

S.45(1): "…no person accused of an offence under this Act shall be released on bail… unless… the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

S.24: the Court "shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering."

THE CONTROVERSY

- The golden thread of criminal law — prosecution proves guilt beyond reasonable doubt — stands inverted twice under PMLA: at bail (twin conditions) and at trial (the presumption)
- Vijay Madanlal Choudhary upheld both provisions, drawing on the NDPS analogy
- The pending Supreme Court review squarely asks whether reversing the presumption of innocence is constitutionally valid.
- A powerful 2024 line of decisions holds that S.45 cannot become an instrument of punishment without trial.

Ratio laid in Manish Sisodia and V. Senthil Balaji

Key legal ratios on PMLA bail under Article 21.

1

Article 21 Overrides Section 45(1)(ii)

The right to a speedy trial is sacrosanct — statutory rigours **"melt down"** when trial completion is unlikely and incarceration is prolonged.

2

PMLA Trial Cannot Outrun Predicate Offence

"Proceeds of crime" is a *sine qua non* under Section 3. PMLA trial cannot conclude before the predicate offence trial.

3

Bail is the Rule, Jail the Exception

Stringent provisions must not become tools for **punishment without trial**.

4

Four-Factor Test for Constitutional Courts

Consider: maximum sentence, incarceration period, delay attribution, and threat to society.

SETTLED · CONTESTED

3 When the Predicate Offence Collapses

Provisions S.3 · S.2(1)(u) · the Schedule

THE PROVISION — SECTION 2(1)(u), FIRST LIMB

“'Proceeds of crime' means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence…”

THE CONTROVERSY

- PMLA is parasitic on the scheduled (predicate) offence — no scheduled offence, no “proceeds of crime,” no laundering.
- Vijay Madanlal Union of India: a person “finally absolved” in the predicate offence cannot be proceeded against under PMLA.
- **Live disputes on how far “final absolution” extends:**
  - Quashing of the predicate offence on technical or procedural grounds (as opposed to a merits-based acquittal)
  - Closure of the predicate case via a closure/final report
  - Partial collapse of the predicate — i.e., quashing/acquittal qua some accused only
  - The PMLA accused who was never named / an accused in the predicate offence at all

CONTESTED

4

Attachment of the ‘Value Thereof’

The second limb of “proceeds of crime” — S.2(1)(u), Prevention of Money Laundering Act, 2002

Provisions S.2(1)(u) · S.3 · S.5 · Art. 300A

THE STATUTORY BATTLEGROUND

LIMB I — UNDISPUTED

Property derived or obtained

“...directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence.” The directly tainted asset — no controversy here.

LIMB II — THE BATTLEGROUND

“The value of any such property”

A tracing provision reaching value in its converted, layered forms — or a free-standing power to seize any asset of matching worth? This is the entire fight.

LIMB III — UNDISPUTED

Property equivalent in value, abroad

Where tainted property is taken or held outside India — inserted by the Finance Act 2015, widened to ‘abroad’ in 2019. Express words; no controversy.

THE FIRST READING — TRACING

Preserves the architecture of a law aimed at tainted property; the second limb defeats layering and transformation — cash into shares, shares into land.

THE SECOND READING — EQUIVALENCE

Converts a property-based confiscation statute into a personal money-recovery power, enforceable pre-trial against the entire estate of a person merely accused.

THE WIDE VIEW

The Expansive View: Follow the Value

Where the actual proceeds are untraceable, the ED attaches property of equivalent value — however clean, however old

1 **B. Rama Raju v. Union of India**

2011 SCC OnLine AP 152 (AP HC)

Upheld the breadth of the definition — the safeguard lies in adjudication, not a narrow reading.

2 **J. Sekar v. Union of India**

2018 SCC OnLine Del 6523 (Del HC)

'Value of any such property' read as value equivalent to the tainted property.

3 **ED v. Axis Bank**

2019 SCC OnLine Del 7854 (Del HC)

Coined "deemed tainted property": any asset of equivalent value may be attached, with safeguards for bona fide third parties.

4 **Prakash Industries v. ED**

2022 SCC OnLine Del 2087 (Del HC)

'Value of such property' cannot be confined to the offshore (third) limb alone.

5 **Dilbag Singh v. Union of India**

2024 SCC OnLine P&H 15453 (P&H HC)

P&H itself reverses course from Seema Garg; extends to untainted equivalent-value property.

6 **Arun Suri v. ED (2026) & the Ranu Sahu batch**

Del HC · Chhattisgarh HC, 2026

Ancestral and pre-offence property held not automatically immune from attachment.

The Appellate Tribunal — Ayush Kejriwal, Sadananda Nayak, NKG Infrastructure (2026) — consistently upholds equivalence-based attachment. **The school's sheet-anchor: *Vijay Madanlal Choudhary v. UOI, 2022 SCC OnLine SC 929, ¶ 68*** — *"attachment of property must be equivalent in value only if outside India... this argument, in our opinion, is tenuous."*

THE NARROW VIEW

The Restrictive View: No Attachment Without Nexus

Causation runs forward only — a clean, pre-offence asset can never answer the description 'proceeds of crime'

1 **Satyam Computer Services v. ED**

2018 SCC OnLine Hyd 787

Property acquired before the scheduled offence cannot be treated as its proceeds — the effect cannot precede the cause.

2 **Abdullah Ali Balsharaf v. ED**

2019 SCC OnLine Del 6428 (Del HC)

Equivalent-value attachment contemplated only for assets taken or held outside India.

3 **Seema Garg v. Dy. Director, ED**

2020 SCC OnLine P&H 738 · SLP dismissed 2021

Draws the textual line: 'value of such property' ≠ 'property equivalent in value'. No link, no attachment.

4 **Kumar Pappu Singh v. Union of India**

(2021) 3 ALT 571 (AP HC)

Expressio unius: had Parliament meant a roving power over the estate, it would have said so — as it did elsewhere.

5 **Pavana Dibbur v. ED**

(2023) 15 SCC 91 (Supreme Court)

A property bought in 2013, offence in 2017 — chronology is destiny; no nexus, no attachment.

6 **Satish Motilal Bidri & Davy Varghese**

2024 SCC OnLine Ker 3410 & 7343 (Ker HC)

Attachment absent nexus or offshore taint held "ex facie ultra vires, illegal and arbitrary."

Seema Garg, in terms: *"Property acquired prior to commission of scheduled offence... cannot be attached unless property obtained or acquired from [the] scheduled offence is held or taken outside the country."* The ED's SLP against it was dismissed by a three-Judge Bench (30.04.2021).

ED JURISPRUDENCE · PMLA

Pavana Dibbur — Chronology, Causation & "Value Thereof"

This case addresses a foundational question under the Prevention of Money Laundering Act, 2002: can a property acquired *before* the commission of an alleged scheduled offence be treated as "proceeds of crime"? The answer, as the Court held, turns on the the Court held, turns on the indispensable requirement of a causal nexus between criminal activity and the asset in question.

The Fact Matrix

01.07.2013 — First Property

Purchased for **₹13.50 crores** — well before any alleged criminal activity.

January–November 2017 — Scheduled Scheduled Offence

Alleged collection and siphoning of **₹107 crores** — the predicate offence under the PMLA.

29.06.2019 — Second Property

Purchased from the principal accused for **₹2.47 crores**.

ED Attachment

Both properties attached as alleged **proceeds of crime**.

The Ratio

Derivation Requirement

Property qualifies as "proceeds of crime" *only* if it is **derived or obtained as a result of criminal activity activity** relating to a scheduled offence. This is a substantive condition, not a formality.

"Value Thereof" — A Limited Expansion Expansion

The phrase **"value of any such property"** does not dispense with the foundational requirement of a nexus with criminal activity. It cannot create liability where no causal link exists.

First Property — Excluded

Acquired **before** the alleged scheduled offence, the first property could not, in logic or law, be connected to proceeds of a crime that had not yet occurred.

Second Property — Remitted to Trial

Whether tainted money was used for the second property was held to be a matter of **evidence and trial, trial**, not suitable for summary determination at the the attachment stage.

Precedential Significance

Clean Pre-Offence Assets Are Protected

A **clean, pre-offence asset** cannot itself be regarded as the product of subsequent crime. Temporal sequence is not a mere detail — it is a the ED's claim.

Causation Cannot Be Replaced by Arithmetic

Mere correspondence in value between an asset and the alleged proceeds **cannot substitute for the absence of causation and nexus**. The PMLA demands a factual link, not a mathematical one.

Restrictive Reading of "Value Thereof"

Pavana Dibbur strongly supports the **restrictive reading** of "value thereof" under Section 2(1)(u) of the PMLA, though it did not exhaustively entire equivalent-value controversy.

Key Takeaway: The Enforcement Directorate cannot rely on the "value thereof" formulation to attach assets that predate the scheduled offence. The causal nexus requirement remains an independent and non-negotiable

ARTICLE 141

What the Supreme Court Has — and Has Not — Decided

Both schools claim Vijay Madanlal Choudhary. With respect, neither can claim it wholly.

1

Para 68 is not a ratio on this question

Vijay Madanlal decided the constitutional validity of the Act — not whether a clean, pre-offence asset can be attached on pure equivalence. The submission rejected as "tenuous" concerned only the offshore-limb argument. A judgment is authority for what it decides, not for what may logically follow (Quinn v. Leathem).

2

Vijay Madanlal sows its own nexus requirement

The same Bench held that only property derived or obtained as a result of criminal activity is "proceeds of crime"; that authorities cannot act on assumption; and that final acquittal or discharge in the predicate offence ends any PMLA action on that property.

3

Pavana Dibbur directly decides — and binds

A later Bench, with Vijay Madanlal cited before it, squarely held a pre-offence acquisition (2013 property, 2017 offence) incapable of being "proceeds of crime." Under Article 141, that holding binds every High Court, Adjudicating Authority and the Appellate Tribunal.

PER INCURIAM — THE TRIBUNAL LINE

Five months after Pavana Dibbur, the Tribunal in Ayush Kejriwal upheld attachment of a 1988 property relying only on Vijay Madanlal, Axis Bank and Prakash Industries — without a whisper of Pavana Dibbur, though it was directly in point. A ruling silent on a binding, directly-applicable Supreme Court precedent is per incuriam to that extent (Young v. Bristol Aeroplane Co.; A.R. Antulay v. State of Maharashtra); it is liable to be recalled, distinguished, or set aside.

FIRST PRINCIPLES

Buttressing the Analysis: Seven Lines of Reasoning

Tested against principles beyond the four corners of the PMLA — all seven converge on the same answer

A

Parliament knows how to say ‘any other property’

FEOA 2018 s.12(2)(b), NDPS Ch. V-A and SAFEMA use express words for a roving power — their absence here is expressio unius.

B

The 2015 amendment is Parliament’s own exposition

If equivalence already existed under the second limb, inserting the third limb in 2015 was wholly unnecessary.

C

Strict construction of penal & expropriatory statutes

Tolaram Relumal, Dilip Kumar & Co. and K.T. Plantation: two reasonable readings favour the one that preserves property.

D

International architecture separates property from value

UNCAC Art. 31 & FATF Rec. 4 keep the two distinct; UK POCA and US §853(p) confiscate value only post-conviction, by judgment.

E

The tracing doctrine gives Limb II its content

Foskett v. McKeown: value is followed into its substituted, intermingled forms — it is never invented in an unconnected asset.

F

The logical impossibility of pre-offence ‘proceeds’

Derivation is causal; an effect cannot precede its cause — a 2004 asset cannot be ‘derived’ from a 2021 offence.

G

Presumption and burden provisions confirm the scheme

Ss. 23, 24 and 8(8) presuppose a universe of tainted or taint-connected property whose clean origin can be proved.

The Independent View: The Holding

Value can be followed; it cannot be invented

1 Proceeds of crime are creatures of the crime

A real, demonstrable causal nexus between the criminal activity and the property attached is the foundational requirement of Section 2(1)(u).

2 The second limb is a tracing provision, not an equivalence provision

It reaches tainted value in its converted, transformed and intermingled forms, however layered — it does not authorise attachment of wholly unconnected assets merely because they match in worth.

3 Equivalence-based attachment of clean Indian assets is confined to the third limb

This is the only situation in which Parliament, in express words, sanctioned recourse to untainted equivalent-value property — and the 2015 insertion is itself proof no such power existed before.

4 Pre-offence, clean property can never per se be 'proceeds of crime'

No longer open to debate after Pavana Dibbur, which binds all courts and tribunals under Article 141 — subject only to an offshore-taint or an actual, evidenced flow of tainted value into the asset.

5 Para 68 of Vijay Madanlal does not conclude the issue

It rejected only the submission that equivalence is confined to the offshore situation, in a challenge where no concrete pre-offence attachment was in issue.

6 The contrary current is real and must be candidly acknowledged

Axis Bank, Prakash Industries, Dilbag Singh, the 2026 Chhattisgarh line and the Appellate Tribunal continue to uphold equivalence-based attachment — the conflict awaits the Supreme Court's final word.

THE DEFENCE

Practical Counsel: Lines of Defence

Until the Supreme Court resolves the conflict, the battle is fought — and won — on the side of nexus over equivalence

1 Chronology is the first defence

Establish, on documents, the date of acquisition of each attached asset against the period of the alleged criminal activity — not merely the date of the FIR. Pavana Dibbur and Satish Motilal Bidri turned entirely on this.

2 Source is the second defence

Bank statements, registered deeds, income-tax records and balance sheets proving clean consideration both negate the first limb and rebut the Section 24 presumption. The assessee's own income-tax history becomes the strongest shield.

3 Put the ED to proof of the third limb

Where equivalence is invoked, insist on material showing that the tainted property was taken or is held outside India; absent such material, attachment of clean domestic assets is, ex facie, without jurisdiction.

4 Preserve the challenge at every stage

Raise the jurisdictional objection in the reply to the Section 8 notice, in the Section 26 appeal, and by writ where the order is wholly without jurisdiction — so the matter travels to the Supreme Court in a fit case with a complete record.

Benami Act, 1988 — Framework at a Glance

WHAT IS BENAMI — SECTION 2(9)

Four limbs of a benami transaction

A Property transferred to, or held by, one person; the consideration provided or paid by another — and the property held for the provider's immediate or future benefit.

B A transaction carried out or made in a fictitious name.

C The owner is not aware of, or denies knowledge of, the ownership.

D The person providing the consideration is not traceable or is fictitious.

Consequences — confiscation of the property (S.5, S.27); prosecution: RI 1–7 years + fine up to 25% of FMV (S.53). Benamidar, beneficial owner and abettor are all liable.

THE PLAYERS

Benamidar

In whose name the property stands — criminally liable; the property confiscable.

Beneficial Owner

Who truly owns and provides the consideration — equally liable.

Initiating Officer

The income-tax officer who provisionally attaches under S.24.

Abettor

Who induces or assists the transaction — also penalised (S.53).

Adjudication chain · Initiating Officer › Adjudicating Authority (S.26) › Appellate Tribunal (S.46) › High Court (S.49) — with the Special Court for prosecution.

What is — and is not — Benami

IS BENAMI

- Cash income concealed from tax → property purchased in an employee's or relative's name.
- Promoter routes funds through a shell company → flat registered in a director's name.
- Hawala money → land bought where the provider of consideration is untraceable — limb (D).
- Property standing in the name of a fictitious or non-existent person — limb (B).
- Asset in a spouse's name funded entirely from unaccounted cash — the exception fails.
- Nominee shareholder with no independent beneficial interest and no fiduciary record.

NOT BENAMI — STATUTORY EXCEPTIONS

- Property in the name of spouse or child, funded from the individual's known sources — proviso (iii).
- Property held by a Karta or member for the HUF's benefit, from known HUF sources — proviso (i).
- Genuine fiduciary holding — trustee, executor, partner, director, depository or agent — proviso (ii).
- Joint holding with brother, sister or lineal ascendant / descendant, from known sources — proviso (iv).
- Possession under a S.53A part-performance contract, where stamped and consideration is paid.
- Property held under a statute, or Waqf / public and religious trust property.

THE HINGE Every family exception turns on a known, disclosed source of funds. Unaccounted cash defeats it — which is precisely where the income-tax and benami tracks intersect.

Four Burning Issues — State of Play 2026

The recall of Ganpati Dealcom has reopened questions many had treated as closed — and the Tribunal itself now speaks in two voices.

1

REOPENED

Retrospectivity of the 2016 Amendment

Can the confiscation machinery reach pre-2016 deals? Prospective — or caught by ‘continued holding’?

2

DEVELOPING

Unexplained Cash as Benami Property

Is seized cash ‘property’? Can there be a benami without a beneficial owner?

3

TRIBUNAL SPLIT

Accommodation Entries as Benami

Share capital and loans through shell entities — the Tribunal has gone both ways.

4

CONTESTED

S.2(9)(D) — the Unknown Source

What must the Initiating Officer actually prove — and who bears the burden?

Issues 2 and 3 are today's centre of gravity: the same accommodation-entry facts are producing attachments upheld in one appeal and vacated in the next.

The Controversy, Explained

LIVE CONTROVERSY

Provisions: S.3 · S.5 · S.24 · Art. 20(1)

Why courts, and now the Supreme Court itself, cannot agree on whether the 2016 Amendment reaches transactions entered into before 1 November 2016.

THE PROVISION

Article 20(1), Constitution of India
No person shall be convicted of an offence except for violating a law in force at the time of the act, nor be subjected to a penalty greater than what the law then in force prescribed.

1988 Act
Prohibited benami transactions, but Parliament never framed rules — so there was no working machinery to attach or confiscate anything.

2016 Amendment Act
Supplied that machinery — attachment, adjudication, confiscation, and enhanced criminal liability. Commenced 1 November 2016.

THE QUESTION

Can enforcement machinery created in 2016 be used against a benami transaction entered into before 1 November 2016 — or does Article 20(1) bar it as a retrospective penalty?

1988	1.11.2016	23.08.2022	18.10.2024	8.05.2026
Benami Act enacted	**2016 Amendment in force**	**Ganpati Dealcom (SC)**	**SC recalls the judgment**	**Manjula v. D.A. Srinivas**
Prohibition only — no confiscation machinery	Attachment, adjudication, confiscation added	Amendment held prospective-only	Recalled for want of a lis — not on merits	SC splits: machinery vs. punishment

THE CORE DOCTRINAL TENSION

Machinery / Procedural view

The prohibition already existed in 1988. The 2016 Act only gives it teeth — procedure can always look back, so pre-2016 transactions can still be proceeded against.

Penal / Substantive view

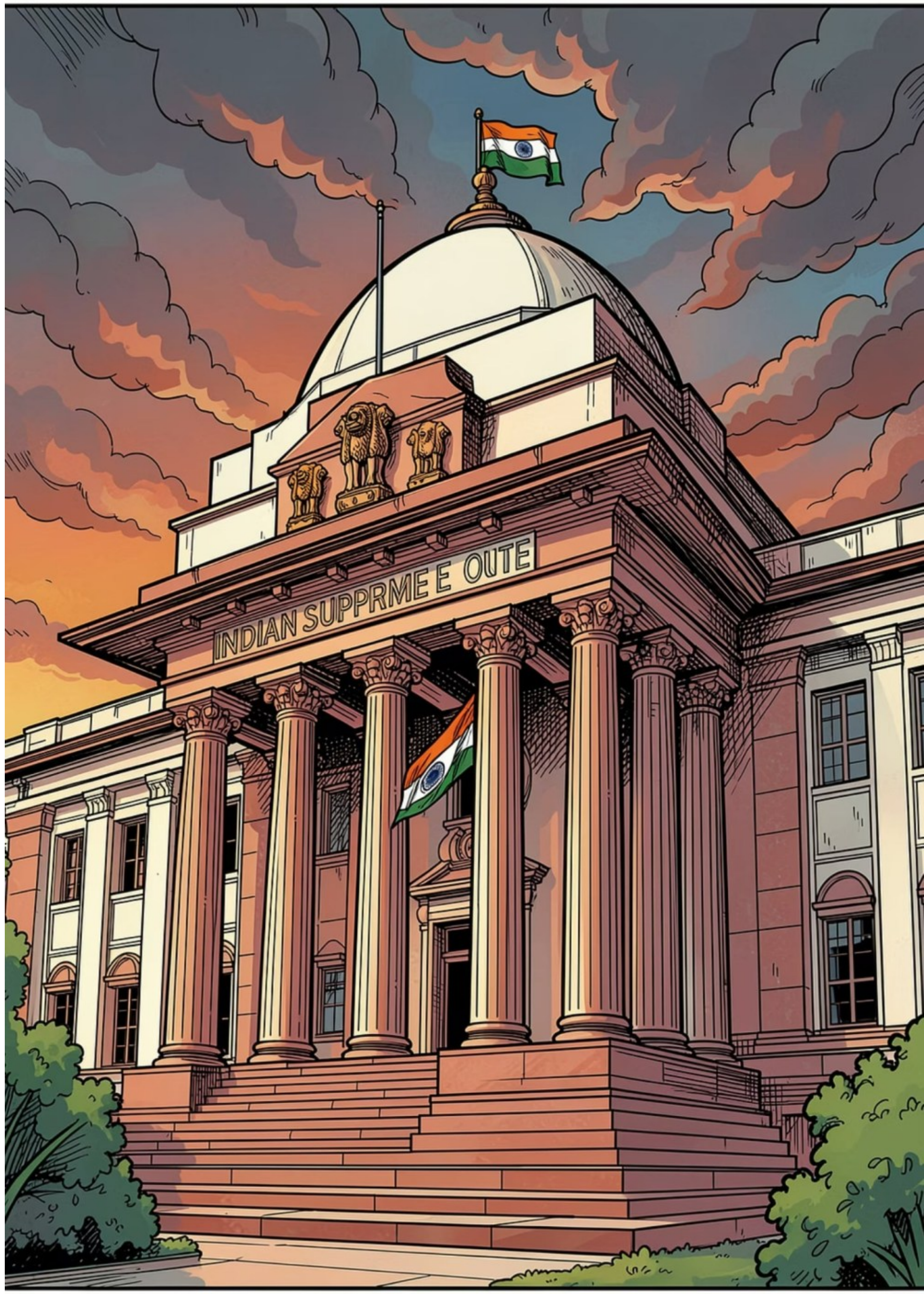
Confiscation and enhanced criminal liability are new, substantive burdens — not mere procedure. Article 20(1) bars applying them to conduct that predates the law.

BENAMI LAW · GANPATI DEALCOM RECALL

The Recall: What Changed — and What Did Not

In 2022, *Ganpati Dealcom* held the 2016 Benami Amendment prospective, quashing prospective, quashing pre-2016 confiscation and prosecution proceedings. In 2024, proceedings. In 2024, the Supreme Court recalled that ruling — constitutional constitutional validity was decided without a proper *lis*. The matter was restored for restored for fresh adjudication, with liberty granted to seek review in matters matters disposed of on *Ganpati*.

The Real Controversy: The recall unsettles the substantive ratio —but but does it unsettle finality?



BENAMI LAW · REVIEW JURISDICTION

K.L. Rathi Steels — The Finality Rule

A judgment correct under the law then prevailing cannot be reviewed merely because the law later changes.

THE HOLDING

A judgment correct under the law then prevailing cannot be reviewed merely because the law later changes.

THE STATUTORY ANCHOR

Explanation to Order XLVII Rule 1 CPC: later reversal / modification of law in another case is not a ground for review.

THE PRINCIPLES

- Review is not an appeal in disguise.
- "Any other sufficient reason" must be read with the specified review grounds.
- Error must be self-evident — not one requiring long reasoning.
- Subsequent change in law cannot reopen a final order.
- Finality cannot depend on future legal developments.

Kokilaben & Virendra: General Liberty Cut Down

Kokilaben Chhaganbhai Patel — 2025 SCC OnLine SC 2622

The Court declined review, holding that a later Bench's grant of "general liberty" to seek review does not itself create a substantive review ground. A review must still satisfy Order XLVII Rule 1 CPC.

Virendra Amrutbhai Patel — 2025 (11) TMI 978 · SC

The same principle was reaffirmed in a connected benami matter: a later change or reversal in law is not, by itself, a ground for review.

What the two cases together establish

Kokilaben shows that "general liberty" in a recall order cannot expand review jurisdiction.

Virendra confirms that a later reversal in law does not, by itself, justify review.

Recall liberty is only a procedural gateway; it does not decide the merits.

Each applicant must still show an independent ground under Order XLVII Rule 1 CPC.

Doctrinal Effect

General liberty in the recall order does not dispense with Order XLVII Rule 1. Every petitioner must independently establish a statutory ground.

Practical Limit

The liberty *permits* an application — it does not *compel* the review to be allowed.

BENAMI LAW · THE HIGH COURT CONFLICT

Satyajit Saha v. Munnidevi Sitani: A Division in Authority

Gauhati HC — *Satyajit Saha*

2026 (2) TMI 303

Recall-liberty does not itself create review jurisdiction. The Court held that a party must still satisfy the statutory limits of **Section 114** and **Order XLVII Rule 1 CPC**, read with **Section 40(2)(f) of the PBPT Act**.

The tribunal cannot turn a procedural liberty into substantive power to reopen a concluded decision. An independent review ground is still required.

Rajasthan HC — *Munnidevi Sitani*

2026 (6) TMI 197

The restoration was upheld on the basis of reserved liberty. The Court treated the application as maintainable and relied on **Order XLVII Rule 7 CPC** to hold that no immediate appeal lay.

The focus was on the tribunal's express liberty in the earlier order. On that view, the restoration could proceed unless and until a higher court disturbed it.

Gauhati View

Recall-liberty is only procedural permission; it does not create review jurisdiction.

Rajasthan View

Reserved liberty was enough to sustain restoration at that stage.

The conflict: Gauhati treated recall-liberty as only procedural permission, while Rajasthan treated it as enough to sustain restoration at that stage. The issue is whether liberty can supply review jurisdiction despite the limits of **Section 114**, **Order XLVII Rule 1**, and **Section 40(2)(f)** PBPT Act.

Is Unexplained Cash "Benami Property"?

Why cash seized with no explained source is now being attached as benami — and why that is contestable

THE PROVISIONS

Section 2(26)
"Property" means assets of any kind — movable or immovable, tangible or intangible, corporeal or incorporeal.

Section 2(9)(D)
A transaction/arrangement in respect of a property where the person providing consideration is not traceable, or is fictitious.

THE CONTROVERSY — THREE OPEN QUESTIONS

1 Is cash "property", or merely the consideration?

S.2(26) covers assets generally; limb (D) is about a transaction in respect of a property funded by an untraceable person — currency itself may just be the untraced consideration, not the taxed "property."

2 Can limb (D) apply to bare possession, with no transaction at all?

Limb (D) requires "a transaction or arrangement in respect of a property." Mere possession of one's own cash — with no identifiable transferor, transferee, or beneficial owner — arguably discloses no transaction to examine.

3 Does a benami finding need a person other than the holder?

Benami is fundamentally a two-person concept — benamidar and beneficial owner. If the holder is also the source, there may be no second party for the law to bite on.

WHY IT MATTERS Revenue's present trend answers all three questions in its own favour — treating cash simpliciter as benami property under limb (D), even where the holder has already offered the very sum to tax under Ss.69/69A of the Income-tax Act. This creates a real risk of double jeopardy: one sum, taxed once and confiscated once, under two different statutes — unless the assessee affirmatively contests the absence of a transaction and of any beneficial owner distinct from the holder.

The Case Law Divide: Revenue v. Assessee

Same three questions, opposite answers — with the ratio laid down in each authority

THE PRESENT TREND — REVENUE

Yoosaf N.A. v. Initiating Officer

Appellate Tribunal (SAFEMA), New Delhi

- A benami transaction needs only two parties — benamidar and beneficial owner.
- Three parties are not required under S.2(9)(D).
- Rs.50.13 lakh unexplained cash held benami on this basis.
- The Tribunal also held the IT Act and PBPT Act are parallel, independent tracks — an offer/undertaking to pay tax on the sum is no bar to confiscation proceedings.

THE COUNTER-CASE — ASSESSEE

Mangathai Ammal v. Rajeswari

Supreme Court · (2020) 17 SCC 283

- The burden of proving a transaction benami rests solely on the party alleging it.
- The burden must be strictly discharged by cogent, definite evidence.
- The Court reaffirmed the six-factor test from Jaydayal Poddar v. Bibi Hazra (source of funds, possession, motive, relationship, custody of title, conduct) as the guide for any benami finding.

Same Ratio, Same Judge, Different Judicial Method

SAFEMA Tribunal (Bhandari, Chairman) • Benami/PBPT Act — the "consideration-from-beneficial-owner" test

	Nibodh Trading (P.) Ltd. *FPA-PBPT-2497/MUM/2023 — 05.11.2024*	**Gainful Multitrade (P.) Ltd. (+3)** *[2026] 182 taxmann.com 401 — 12.01.2026*
FACTS	• Benami office held via 3 shell companies with dummy directors. • Funds traced. • Forfeited share-application money (Rs.10.7 cr) → invested in Richa Realtors → arbitration payout (~200% swell) → property purchase. • Dept named AjitPawar/SunetraPawar/ParthPawar as BOs via relatives (Neeta & Mohan Patil) holding shares in the layering companies.	• 4 respondent companies received share-application money at high premium (2008–11) from alleged shell entities. • Funds used to acquire CGCL shares + mutual-fund investments. • Dept, relying on s.131 IT Act statements of accommodation-entry operators, alleged named BOs infused cash through the shell chain. • PAO attached CGCL shares and downstream investments.
ISSUE	• Whether relatives' shareholding alone proves BO status absent proof of consideration.	• Whether premium share capital from shell cos is benami under s.2(9)(A)? • whether simultaneous invocation of s.2(9)(A) & s.2(9)(D) is valid? • whether s.131 IT statements alone suffice? • whether PAO can attach property beyond SCN scope?
OBITER DICTA	• Mere family relation (sister/brother-in-law) or historical shareholding transfer cannot found an inference of control or consideration — "the conclusion cannot be drawn on assumption." Narrow, single-limb reasoning.	• Builds a 4-limb test: • (i) s.2(9)(A) & (D) are mutually exclusive — naming a BO forecloses (D); • (ii) s.131 IT statements need independent PBPT inquiry, esp. against audited financials; • (iii) benamidar's own profitability (400%+ on capital) rebuts the 'shell/veil-piercing' charge; • (iv) PAO cannot exceed the s.24(1)/24(3) notice scope (Shital International).
RATIO DECIDENDI	• Burden lies on the Department to prove the named BO actually provided consideration for the property; • benami cannot be presumed from relationship or corporate layering alone — assumption is not evidence.	• Same core principle: benami ownership requires proof consideration originated from, and benefit accrued to, the named BO. • 'Borrowed satisfaction' from IT proceedings, without independent inquiry, cannot discharge the Department's burden; profit retained by the company itself negates s.2(9)(A).
JUDGMENT	• Department's appeal dismissed; AA's refusal to confirm the reference/attachment upheld.	• All 4 Departmental appeals dismissed; AA's revocation of PAO upheld — expressly follows Nibodh Trading (Para 22) as precedent.

THIRD CONTROVERSY

3 Accommodation Entries as Benami

A promoter needs to convert unaccounted cash into clean books. The cash is routed through an entry operator's shell companies and returns as "share capital" or a "loan." The whole dispute is about how the law should treat that return leg.

THE PROVISION — SECTION 2(9)(A)

"...a property is transferred to, or is held by, a person, and the consideration for it has been provided or paid by another person; and the property is held for the immediate or future benefit — direct or indirect — of the person who provided the consideration..."

THE MODUS ALLEGED

Promoter's unaccounted cash → entry operator → layered shell / paper companies → returns as share capital (at premium) or unsecured loan → assets acquired.

ATTACHMENT UPHELD — IN FAVOUR OF REVENUE

M/s Prism Scan Express (P) Ltd.

- Ratio: the word "held" in S.2(9)(A) is independently significant, continued holding of the asset after 01.11.2016 attracts the amended definition, even if the transfer itself pre-dates the amendment.
- Ganpati Dealcom's bar on retrospective use does not shield a benamidar still holding the shares post-amendment.

ATTACHMENT SET ASIDE — AGAINST REVENUE

M/s Manpreet Estates LLP

- Ratio: once a registered sale deed and a genuine loan agreement (from DHFL) are shown, the burden shifts to the I.O. under S.91/92 of the Evidence Act to prove otherwise.
- Common promoters or group affiliation, without proof that consideration actually flowed from the alleged beneficial owner, is not enough to establish a benami transaction.

FOURTH CONTROVERSY

The Unknown Source — What Is Actually in Dispute

THE PROVISION — SECTION 2(9)(D)

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

THE FAULT LINE — ONE QUESTION

Does an **unexplained or weak source of funds**, by itself, make the holder a benamidar under limb (D) — or must the Officer first **positively identify** a real person who actually provided the consideration and show that person is untraceable?

HOW THE REVENUE READS IT

- Possession without a credible money trail is itself the mischief limb (D) targets.
- The onus shifts to the holder once his financial capacity looks inadequate for the asset held.
- Silence or a vague explanation is read as the "provider" being untraceable or fictitious.

HOW THE ASSESSEE MUST ANSWER IT

- Limb (D) needs an identified transaction and a specific provider shown to be untraceable — not a general doubt about capacity.
- A weak or unexplained source is, at most, material for an income-tax addition — it does not, without more, prove benami intention.
- The burden to prove benami stays throughout on the person alleging it; it never shifts merely on suspicion.

WHY IT MATTERS Equating low creditworthiness with benami intention converts every unexplained credit into a confiscation, and blurs limb (D) with a plain income-tax addition on the same amount.

The Conflict of Authority — Ratio-Wise Comparison

AUTHORITIES SUPPORTING THE REVENUE

Krishna Sudama Marketing (P) Ltd v. UOI — *Calcutta HC, 22.03.2024*

Ratio: A Section 24 show-cause notice already carries a built-in right to reply, and natural-justice safeguards are codified for the adjudication stage under Section 26(6). A writ court will not interfere at the notice/attachment stage merely on a factual dispute over source of funds — only where jurisdiction is wholly absent.

AUTHORITIES HOLDING THE CLASSICAL LINE

Binapani Paul v. Pratima Ghosh — *(2007) 6 SCC 100*

Ratio: Source of the purchase money is only one of several relevant circumstances, not the sole test. A six-fold guide — source, possession, motive, relationship, custody of title deeds, subsequent conduct — must be weighed cumulatively before a finding of benami is reached.

Thakur Bhim Singh v. Thakur Kan Singh — *(1980) 3 SCC 72*

Ratio: Whether a transaction is benami is a question of fact to be gathered from intention, surrounding circumstances and conduct of the parties — not presumed from an unexplained source alone. The burden on the person alleging benami is a heavy one.

THE WAY FORWARD Hold the Officer to the classical, fact-based test — an identified provider shown to be untraceable, not a bare doubt about capacity; keep the benami enquiry distinct from a tax addition on the same credit.

Three Tracks on One Transaction

Scenario	Income Tax	Benami	PMLA
Cash investment in B's name	Added in A's hands as unexplained investment (S.69).	Property in B's name is benami; liable to confiscation.	Benami being a scheduled offence, PMLA can follow.
IT surrender of the same funds	Surrendered income taxed.	Surrender does not, by itself, stop attachment — the Kerala HC view; Ss.60/67 override.	The predicate may still be alleged independently.
CIT(A) deletes the addition	Addition deleted in A's favour.	The IO may still proceed — a different enquiry and burden of proof.	Outcome turns on the predicate's fate, not the tax appeal.

Triple-jeopardy risk

One set of facts can attract an income-tax addition, benami confiscation and PMLA prosecution — each track independent of the others, each with its own burden.

Benami feeds PMLA

Benami (S.3 read with S.53) is a scheduled offence; once attached, the benami property can be alleged as proceeds of crime, opening the PMLA gate.

The twin-pillar defence

Prove a genuine, disclosed source; contest ‘reason to believe’ at the attachment stage; and use the tax and civil records as mutually reinforcing pillars.

Reporting Duties & the Privilege Dilemma

Who is a reporting entity

Banks, financial institutions and intermediaries — and, for specified transactions carried out for clients, chartered accountants, company secretaries and cost accountants — carry obligations under S.2(1)(sa)/(wa) read with S.12.

KYC & STR obligations

Identify the customer and the true beneficial owner; file Suspicious Transaction Reports with FIU-IND; maintain records for at least five years; calibrate diligence to risk.

Red flags to watch

Insistence on cash or avoidance of banking channels; webs of entities with no commercial rationale; loans without economic substance; registrations out of line with declared income; circular fund flows.

Privilege vs disclosure

Privilege protects advice, not the structuring of a transaction. The 2025 advocate-summons episode ended with the Supreme Court's suo motu intervention — opinions and advice are protected; execution work is not. One who abets a benami remains punishable (S.53).

The uncomfortable truth · The professional who structures the entry is no longer a bystander — he is a reporting entity on one side and a potential abettor on the other.

IN CLOSING

Six Things to Carry Away

1 The predicate is the foundation

PMLA stands or falls with the scheduled offence — but note the Madras HC caveat: quashing on technical grounds may not amount to final absolution.

2 Liberty has reasserted itself

Written grounds of arrest, restraint on custodial S.50 statements, and Article 21 bail on delay have softened the rigour of S.45 — the review will test how far.

3 The burden is not the beginning

Sections 24 and 45 bite only after the ED lays the foundational facts — make them prove the nexus first.

4 Benami is substance over form

Who paid, who benefits, and from what source — the ‘known source’ question decides most family and nominee cases.

5 Accommodation entries: a split Tribunal

Prism Scan and Seasons Warehousing sustain attachment; Manpreet Estates and the Chaurasia rulings vacate it — the beneficial-owner question decides, and the High Courts must resolve it.

6 Three tracks, one transaction

Tax, benami and PMLA can run together — a surrender to tax buys no immunity, and the professional who structures the entry is an abettor.

AW

Thank you

Questions, and the conversation, are warmly welcome.

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