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**STANDING COMMITTEE ON FINANCE
(2015-16)**

SIXTEENTH LOK SABHA

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

THE BENAMI TRANSACTIONS PROHIBITION (AMENDMENT) BILL, 2015

TWENTY-EIGHTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2016 / Chaitra, 1938 (Saka)

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Presented to Lok Sabha on 28 April, 2016

Laid in Rajya Sabha on 28 April, 2016



LOK SABHA SECRETARIAT
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April, 2016 / Chaitra, 1938 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2015-16

Dr. M. Veerappa Moily - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Sudip Bandyopadhyay
5. Shri Nishikant Dubey
6. Shri P.C. Gaddigoudar
7. Dr. Gopalakrishnan C.
8. Shri Shyama Charan Gupta
9. Shri Chandrakant B. Khaire
10. Shri Rattan Lal Kataria
11. Shri Bhartruhari Mahtab
12. Shri Prem Das Rai
13. Shri Rayapati Sambasiva Rao
14. Prof. Saugata Roy
15. Shri Jyotiraditya M. Scindia
16. Shri Gajendra Singh Sekhawat
17. Shri Gopal Shetty
18. Shri Anil Shirole
19. Shri Shivkumar Udasi
20. Dr. Kiritbhai Solanki
21. Dr. Kirit Somaiya

RAJYA SABHA

22. Shri Naresh Agrawal
23. Vacant*
24. Shri A. Navaneethakrishnan
25. Shri Satish Chandra Misra
26. Dr. Mahendra Prasad
27. Vacant**
28. Shri C.M. Ramesh
29. Shri Ajay Sancheti
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri P.C. Tripathy | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

* Vacancy caused due to retirement of Shri K.N. Balagopal, MP from Rajya Sabha w.e.f. 2.4.2016

** Vacancy caused due to retirement of Shri Naresh Gujral, MP from Rajya Sabha w.e.f. 9.4.2016

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance, having been authorised by the Committee, present this Twenty-eighth Report on "the Benami Transactions (Prohibition) Amendment Bill, 2015".

2. The Benami Transactions (Prohibition) Amendment Bill, 2015 introduced in Lok Sabha on 13 May, 2015, was referred to the Committee on 15 May, 2015 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 general public, experts, Institute of Chartered Accountants of India (ICAI) and State / UT Governments.

5. The Committee at their Sittings held on 04 June and 18 June, 2015 took evidence of the representatives of the Ministry of Finance (Department of Revenue).

6. At the Sitting held on 27 August, 2015, the Committee heard the views of the representatives of the Institute of Chartered Accountants of India (ICAI).

7. The Committee at their sitting held on 16 October, 2015 heard the views of the representatives of M/s. B.K. Khare and Company.

8. At their Sittings held on 19 & 20 November 2015, the Committee heard the views of the representatives of State / UT Governments of Haryana, Rajasthan, Madhya Pradesh, Chhattisgarh, Odisha, West Bengal, Gujarat, NCT of Delhi, Punjab, Jharkhand and Meghalaya.

9. The Committee at their sitting held on 05 February, 2016 took the concluding evidence of the representatives of the Ministry of Finance (Department of Revenue).

10. The Committee at their sitting held on 29 March, 2016 considered and adopted the draft Report and authorized the Chairperson to finalise the same and present it to the Parliament.

11. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Revenue), the Institute of Chartered Accountants of India (ICAI), M/s. B.K. Khare and Company, State / UT Governments for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

12. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI
18 April, 2016
29 Chaitra, 1938 (Saka)

DR. M. VEERAPPA MOILY,
Chairperson,
Standing Committee on Finance

REPORT

PART I

A. Background

1. Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988

On May 19, 1988, the President of India promulgated the "Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988". The Ordinance was promulgated to prohibit the right to recover property held benami and for matters connected therewith or incidental thereto. The Ordinance did not define the expression "benami". Sub-section (1) of section 2 of the Ordinance barred a suit, a claim, or an action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person by or on behalf of a person claiming to be the real owner of such property. Sub-section (2) of section 2 barred defences of a like nature. Sub-section (3) carved out two exceptions to the rule. The exceptions were (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; and (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 for whom he stands in such capacity. Section 3 declared that the said Ordinance shall not affect the provisions of section 53 of the Transfer of Property Act, or any law relating to transfers for an illegal purpose. Section 4 repealed section 82 of the Indian Trusts Act, 1882, section 66 of the Civil Procedure Code, 1908, and section 281A of the Income-tax Act, 1961.

2. The Benami Transactions (Prohibition) Act, 1988

2.1 The Ordinance was criticized by press and public as a half hearted measure. Accordingly, it was felt that the Bill to replace the Ordinance may be brought out as a comprehensive law on Benami Transactions touching all aspects and accordingly, Law Commission was requested to examine the subject in all its ramifications.

The Law Commission vide its 130th Report on August 14, 1988 recommended passing of appropriate legislation. 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. 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 except sections 3, 5 and 8 which came into force on 05.09.1988. The Ministry of Finance was tasked with implementation of this Act.

2.2 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.

3. Infirmities in the Act

During the process of formulating the rules for implementing certain provisions of the BTPA, it was found that owing to infirmities in the legislation, it would not be possible to formulate the rules without comprehensive legislation by repealing the existing Act. The major infirmities were –

- (i) Powers of a civil court have to be conferred on the authorities under the Act.
- (ii) Specific provisions have to be introduced for vesting of confiscated property with the Central Government.
- (iii) An appropriate appellate structure has to be defined, while barring jurisdiction of a civil court against an action taken by the authorities under the Act.
- (iv) 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.

4. A new Bill the *Benami* Transactions (Prohibition) Bill, 2011 which

was to replace the **Benami Transactions (Prohibition) Act 1988** was introduced in the Lok Sabha in July 2011. The Bill was referred to the **Standing Committee on Finance by Lok Sabha for its examination**. The report was submitted by the Standing Committee in June, 2012. The Committee had made various recommendations and suggested changes to the proposed Bill which was introduced in the Lok Sabha. The Benami Transactions (Prohibition) Bill, 2011 however lapsed in view of dissolution of the Fifteenth Lok Sabha.

5. The present Bill **Benami Transactions (Prohibition) Amendment Bill** is a Bill to amend the 1988 Act and remove the infirmities present therein. The reasons for introducing an Amendment Bill to the 1988 Act instead of preparing a new bill are as under:-

In this context it is submitted that a new bill incorporating the above features was prepared and forwarded to the Ministry of Law. In the Repeals and Savings clause a specific sub-clause had been included, so as to ensure that any benami transaction which had been undertaken by any person between the year 1988 and the date the proposed Bill coming into force, was also covered under the new legislation. This implied that Benami transactions on which no action was taken under the 1988 Act, would be recognized as a Benami transaction under the new Act, and consequential action would follow. The Ministry of Law was of the opinion that aforesaid provision was unconstitutional in view of Article 20 of the Constitution, and therefore, could not be included in the repeals and savings. Therefore no action would be possible on any such transaction which occurred between 1988 and the date of repeal of the 1988 Act. As a consequence, the Benami transactions during the period of twenty six years, would be in fact granted immunity since no action could be initiated in the absence of a specific provision in the Repeals and Savings clause. It was therefore suggested by the Ministry of Law, that it would be advisable to comprehensively amend the existing Benami Transactions (Prohibition) Act, 1988, so that the offences committed during the last twenty six years are also covered. This would enable action against Benami transactions undertaken after the commencement of the 1988 Act. Therefore the present Bill is an Amendment Bill and not a Bill proposing a new Act.

6. Salient Features of the Proposed *Benami* Transactions (Prohibition) Amendment Bill

Taking into account the provisions of the 2011 Bill and the comments of the Standing Committee, comprehensive changes were required in the existing Benami Transactions (Prohibition) Act, 1988. The main changes proposed in the present Amendment Bill are as follows:-

A. Definition of Benami transaction and benami property:

(a) A Benami transaction is proposed to be defined as-

- a. a transaction or an arrangement where a property is transferred to or held by a person and the consideration for such property 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 providing the consideration;
- b. a transaction or an arrangement in respect of a property carried out or made in a fictitious name;
- c. a transaction or an arrangement where the owner of the property is not aware of or denies knowledge of such ownership;
- d. a transaction or an arrangement where the person providing the consideration is not traceable or fictitious.

(b) Benami property is proposed to be defined as any property which is the subject matter of a benami transaction.

(c) The following are proposed to be excluded from the definition of Benami transaction:-

- a. Properties acquired out of the known sources of income of the Hindu undivided family which are held by a coparcener in a Hindu undivided family;
- b. Properties held by a person in fiduciary capacity;
- c. Properties acquired out of the known sources of income by an individual in the name of spouse or in

the name of any child of such individual;

- d. Properties acquired in the joint names of an individual and his brother or sister or lineal ascendant or descendant and acquired from the known sources of income of the individual.

B. Consequences of entering into a prohibited benami transaction are proposed to be as under:

(a) Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, in such cases the beneficial owner, benamidar and any other person who abets or induces any person to enter into such benami transaction, shall be punishable with rigorous imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to a fine which may extend to twenty five percent of the fair market value of the property .

(b) A benami property shall also be liable for confiscation by the Adjudicating Authority.

C. Procedure: The following procedure is proposed for determination and related penal consequences in the case of a prohibited benami transaction:-

- (a) Proceedings for enquiring into an alleged benami transaction are to be initiated by the Initiating Officer;
- (b) The Initiating Officer will refer the case to the Adjudicating Authority set up under the proposed Bill;
- (c) The Adjudicating Authority, after providing an opportunity of being heard to the alleged benamidar, the beneficial owner, any interested party including a banking company and any other person who makes a claim in respect of

the property, will pass an order within one year, holding the property to be a Benami property or otherwise;

- (d) An appeal against the order of Adjudicating Authority will lie with the Appellate Tribunal set up under the proposed Bill;
- (e) An appeal against the orders of the Appellate Tribunal shall lie with the jurisdictional High Court;
- (f) After the order of adjudicating authority becomes final, it shall confiscate the properties held Benami;
- (g) Confiscated properties are to be managed and disposed of by officers of the rank of Income-tax Officer who will be designated by the Central Government as Administrators.

D. The following other provisions are also proposed:

- (a) The powers of civil court will be available to authorities under the Act.
- (b) Miscellaneous provisions for service of notice, protection of action taken in good faith, etc.
- (c) The Central Government to be empowered to make rules for the implementation of the legislation.

7. Changes from the earlier Benami Transactions (Prohibition) Bill 2011

7.1 The following main changes proposed in the amendment Bill which are different from the earlier Benami Transactions (Prohibition) Bill 2011 i.e. (inclusions and exclusions from the earlier Bill) are as under :-

a)	A number of definitions of the terms such as “trustee”, “executor”, “partner” etc are proposed to be included in the amended definitions section.
b)	The Definition of a Benami transaction has also been changed and a fourth category where the person paying the consideration is fictitious has been added.

c)	<p>The exclusions from the Benami Transactions are proposed to be substantially reduced and are as under</p> <ol style="list-style-type: none"> a. Properties acquired out of the known sources of income of the Hindu undivided family which are held by a coparcener in a Hindu undivided family; b. Properties held by a person in fiduciary capacity; c. Properties acquired out of the known sources of income by an individual in the name of spouse or in the name of any any child of such individual d. Properties acquired in the joint names of an individual and his brother or sister or lineal ascendant or descendant and acquired from the known sources of income of the individual. <p>The exclusions have been substantially reduced. The condition of the property acquired from known sources of income has been placed in three of the above four exclusions.</p>
d)	<p>There is no concept of a permitted Benami transaction. Whatever exclusions are provided the same have been placed in the definition clause only. The earlier Bill had provided for Benami transactions which were not prohibited.</p>
e)	<p>The definition of the term 'property' is proposed to be brought in line with the recommendations of the UNCAC.</p>
f)	<p>The powers of summon, production of documents etc.(including the summoning of any official of a banking company etc), under the proposed Bill are proposed to be brought in line with the Prevention of Money Laundering Act, 2002. The requirements relating to assistance from other government servants is also proposed to be modified to align it with PMLA.</p>
g)	<p>An enabling power has been incorporated in the Bill to provide for Rules to be made for periodic collection of information with reference to transactions for proper detection of Benami transactions.</p>
h)	<p>A provision for setting up a separate Appellate Tribunal and a separate Adjudicating Authority is proposed in the amendment Bill.</p>
i)	<p>A number of provisions are proposed to be modified to rationalize the procedure of provisional attachment and subsequent orders by the Adjudicating Authorities leading to confiscation.</p>
j)	<p>The initiating authority can also file an appeal to the Appellate Tribunal in a case where such authority is not satisfied with the order of the adjudicating authority.</p>
k)	<p>The amendment Bill provides that the Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of the Act. In the 2011 Bill this was a general power of notification now it is specific.</p>

l)	It is proposed to provide a punishment with rigorous imprisonment of up to seven years for an offence of benami transaction. Further, it is proposed to provide rigorous imprisonment upto 5 years for giving false information to any authority under the Act or for furnishing false documents under any proceedings under the Act.
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8. Distinctive Clause-wise explanation for the proposals / amendments

Clause 1: This clause relates to short title, extent and commencement of the Bill. The clause provides that 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.

Clause 2: This clause seeks to insert new heading before section 1 of the *Benami Transactions (Prohibition) Act, 1988* (hereinafter referred to as the principal Act).

Clause 3: This clause seeks amend section 1 of the principal Act so as to provide that this Act may be called the Prohibition of Benami Property Transactions Act, 1988.

Clause 4: This clause seeks to substitute new section for section 2 which deals with definitions. The said section 2 provides for the definitions of the terms used in this Bill and which have not been separately provided in the respective Chapters, including “benami property”, benami transaction”, “benamidar”, “beneficial owner”, “fair market value”, “person”, “property”, “transfer”, various authorities under the statute and so on.

Clause 5: This clause seeks to insert a new heading before section 3 of the principal Act relating to prohibition of benami transactions (chapter 2).

Clause 6: This clause seeks to amend section 3 of the principal Act relating to prohibition of benami transactions. This clause seeks to omit the exclusions provided in sub-section (2) of the principal Act .The clause also seeks to provide that whoever enters into any Benami transaction on or after the date of commencement of the *Benami Prohibition Amendment Act, 2015*, shall be punishable in accordance with the provisions contained in **Chapter VII**.

Clause 7: This clause seeks to omit sub-section (3) of section 4 of the principal Act relating to prohibition of the right to recover property held benami. The exclusions provided therein have been omitted.

Clause 8: This clause seeks to substitute new sections for sections 5 and 6 of the principal Act. **Section 5** as proposed to be inserted seeks to provide that any property, which is a subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

Section 6 as proposed to be inserted deals with prohibition on re-transfer of property by benamidar. Sub-section (1) seeks to provide that no person, being a benamidar shall re-transfer the Benami property held by him to the beneficial owner or any other person acting on his behalf. Sub- section (2) seeks to

provide that where property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.

Clause 9: This clause seeks to insert new Chapters III to VII in the principal Act.

Chapter III deals with the provisions relating to the authorities under this Act.

Section 7 relates to relates to Adjudicating Authority. This section seeks to provide that the Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, power and authority conferred by or under this Act.

Section 8 deals with composition of the Authority. This section seeks to provide that an Adjudicating Authority shall consist of a Chairperson and two other Members.

Section 9 relates to qualifications for appointment of Chairperson and Members. Sub-section (1) of this section provides that a person shall not be qualified for appointment as the Chairperson or a Member of the Adjudicating Authority unless he (a) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service; or (b) has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service.

Sub-section (2) of this section provides that the Chairperson and other Members of the Adjudicating Authority shall be appointed by the Central Government in such manner as may be prescribed.

Sub-section (3) of this section provides that the Central Government shall appoint the senior most Member to be the Chairperson of the Adjudicating Authority.

Section 10 relates to constitution of Benches of Adjudicating Authority. Sub-section (1) of this section provides that subject to the provisions of this Act, (a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof; (b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with two Members, as the Chairperson may deem fit; (c) the Benches of the Adjudicating Authority shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify; (d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

Sub-section (2) of this section provides that notwithstanding anything contained in sub-section (1) of the said section, the Chairperson may transfer a Member from one Bench to another Bench.

Section 11 relates to power of Adjudicating Authority to regulate its own procedure. This section provides that the Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but

shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Authority shall have powers to regulate its own procedure.

Section 12 relates to term of office of Chairperson and Members of Adjudicating Authority. This section provides that the Chairperson and Members of the Adjudicating Authority shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty- two years, whichever is earlier and shall not be eligible for re-appointment.

Section 13 deals with terms and conditions of services of Chairperson and Members of Adjudicating Authority. Sub-section (1) of this section provides that the salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the Adjudicating Authority shall be such as may be prescribed .

Sub-section (2) of this section provides that any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

Section 14 relates to removal of Chairperson and Members of Adjudicating Authority. Sub-section (1) of this section provides that the Central Government may, by order, remove from office the Chairperson or other Members of the Adjudicating Authority, if the Chairperson or such other Member, as the case may be,-(a)has been adjudged as insolvent; or (b)has been convicted of an offence, involving moral turpitude; or (c)has become physically or mentally incapable of acting as a Member; or(d)has acquired such financial or other interest as is likely to affect prejudicially his functions; or (e)has so abused his position as to render his continuance in office prejudicial to the public interest.

Sub-section (2) of this section provides that no such Chairperson or Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Section 15 relates to circumstances for Member to act as Chairperson. Sub-section (1) of this section provides that in the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Sub-section (2) of this section that when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Section 16 relates to vacancies etc. not to invalidate proceedings of Adjudicating Authority. Sub-section (1) of this section provides that no act or proceeding of the Adjudicating Authority shall be invalid merely by reason of

(a) any vacancy in, or any defect in the constitution of the Authority; or (b) any defect in the appointment of a person acting as a Member of the Authority; or (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Section 17 relates to officers and employees of Adjudicating Authority. Sub-section (1) of this section provides that the Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.

Sub-section (2) of this section provides that the officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

Section 18 relates to authorities and jurisdiction. Sub-section (1) of this section provides for the authorities for the purposes of this Act, namely, the, Initiating Officer, the Approving Authority, the Administrator and the Adjudicating Authority.

Sub-section (2) of this section provides that the authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or in accordance with such rules as may be prescribed.

Section 19 deals with powers of authorities. Sub-section (1) of this section provides that 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 matters relating to discovery and inspection; enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity and examining him on oath; compelling the production of books of account and other documents; issuing commissions; receiving evidence on affidavits; and any other matter which may be prescribed.

Sub-section (2) of this section provides that all the persons so summoned shall be bound to attend in person or through authorised agents, as any authority under this Act may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

Sub-section (3) of this section provides that every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

Sub-section (4) of this section provides that 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 above, and it shall be the duty of every such officer to comply with such requisition or direction.

Sub-section (5) of this section provides that for the purposes of this section "reporting entity" means any intermediary or any authority or of the Central or the state Government or any other person as may be notified in this behalf."Intermediary" shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Prevention of Money laundering Act

2002.

Section 20 seeks to provide that certain officers like income-tax authorities, officers of the Customs and Central Excise Departments, officers appointed under sub-section(1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 etc. would be required to assist the authorities in the enforcement of this Act.

Section 21 relates to power to call for information. Sub-section (1) of this section provides that the Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer of the Central Government or State Government or a local body or any person or officer 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 any information in relation to any person, point or matter as in his opinion shall be useful for or relevant to the purposes of this Act.

Sub-section (2) of this section provides that the Central Government may prescribe the form and manner in which information is required to be maintained and submitted to any authority under this Act.

Section 22 deals with power of authority to impound documents. Sub-section (1) of this section provides that 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 order of attachment made by the Adjudicating Authority under sub-section (3) of section 26. However, the period for retention of the books of account or other documents may be extended beyond a period exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section(3) of clause 26 where the authority records in writing the reasons for extending the same.

Sub-section (2) of this section provides that where the authority impounding and retaining the books of account or other documents, under sub-clause (1), is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.

Sub-section (3) of this section provides that the period of retention of the books of account or other documents under sub -clause (1) shall in no case exceed a period of thirty days from the date of conclusion of all the proceedings under this Act.

Sub-section (4) of this section provides that the person, from whom the books of account and other documents were impounded, shall be entitled to obtain copies of the impounded books of account or other impounded

documents.

Sub-section (5) of this section provides that on the expiry of the period specified above [sub-section (1)], the books of account and other documents shall be returned to the person from whom such books of accounts or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits the release of such books of account and other documents to any other person.

Section 23 relates to power of authority to conduct inquiry. The said section seeks to provide that the Initiating Officer after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act.

Chapter IV deals with the provisions relating to attachment, adjudication and confiscation.

Section 24 relates to notice and attachment of property involved in *benami* transaction. Sub-section (1) of this section provides that where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person 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 the property should not be treated as *benami* property. Sub-section (2) of this section provides that a copy of the notice may also be served upon such other person who is a beneficial owner.

Sub-section (3) of this section provides that 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, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).

Sub-section (4) of this section provides that the Initiating Officer, after making such inquiries 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 passing of the order by the Adjudicating Authority under sub-section (3) of section 26; 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 with the prior approval of the Approving Authority, till the passing of the order made by the Adjudicating Authority under sub-clause (3) of section 26; or (ii) decide not to attach the

property as specified in the notice, with the prior approval of the Approving Authority.

Sub-section (5) of this section provides that where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

Section 25 deals with the manner of service of notice. Sub-section (1) of this section provides that a notice under sub-clause (1) of section 24 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908. Sub-section (2) of this section provides that any notice referred to above may be addressed---

- (i) in case of an individual, to such individual ;
- (ii) in the case of a firm, to the managing partner or the manager of the firm;
- (iii) in the case of a Hindu undivided family, to karta or any member of such family;
- (iv) in the case of a company, to the principal officer thereof;
- (v) in the case of any other association or body of individuals, to the principal officer or any member thereof;
- (vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Section 26 relates to adjudication of *benami* property. Sub-section (1) of this section provides that on receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons:-

- (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.

However, the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received. Further, the notice shall provide a period of time of not less than thirty days to the person to whom such notice is issued to furnish the information sought.

Sub-section (2) of this section provides that where such property is held jointly by more than one person, the Adjudicating Authority shall make endeavours to serve notice to all persons holding such property. However, where the notice is served on one of the aforesaid persons the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property.

Sub-section (3) of this section provides that the Adjudicating Authority shall, after considering the reply, if any, to the notice issued under sub-section(1);

making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and taking into account all relevant materials, provide an opportunity of being heard to the person specified as a *benamidar* therein, the Initiating Officer, and any other person who claims to be the owner of such property. Thereafter, the Adjudicating Authority shall pass an order holding the property not to be a *benami* property and revoking the attachment order; or holding the property to be a *benami* property and confirming the attachment order in all other cases.

Sub-section (4) of this section provides that where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is *benami* property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part or properties is held *benami*.

Sub-section (5) of this section provides that where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is *benami* property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 24.

Sub-section (6) of this section provides that the Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or *suo moto*, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable it to adjudicate upon and settle all the questions involved in the reference.

Sub-section (7) of this section provides that no order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under section 24 was received.

Section 27 deals with confiscation and vesting of *benami* property. Sub-section (1) of this section provides that where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a *benami* property, 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. However, where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46. Further, confiscation of the property shall be made in accordance with such procedure as may be prescribed.

Sub-section (2) of this section provides that the above shall not apply to a property held or acquired by a person from the *benamidar* for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the *benami* transaction.

Sub-section (3) of this section provides that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

Sub-section (4) of this section provides that any right of any third person

created in such property with a view to defeat the purposes of this Act shall be null and void.

Sub-section (5) of this section provides that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

Section 28 relates to management of properties confiscated under this Act. Sub-section (1) of this section provides that 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 27 has been made, in such manner and subject to such conditions, as may be prescribed.

Sub-section (2) of this section provides that 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 Administrators.

Sub-section (3) of this section provides that 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 sub-section (3) of section 27 in such manner and subject to such conditions as may be prescribed.

Section 29 relates to possession of the property. Sub-section (1) of this section provides that where an order of confiscation in respect of a property under sub-section (1) of section 27 has been made, the Administrator shall proceed to take the possession of such property.

Sub-section (2) of this section provides that the Administrator shall, - (a) by notice in writing, order within seven days of the date of the service of notice any person, who may be in possession of the *benami* property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf; (b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty such officer to comply with the requisition.

Chapter V deals with the provisions relating to the Appellate Tribunal.

Section 30 deals with establishment of Appellate Tribunal. The said section seeks to provide that the Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Section 31 relates to composition etc. of the Appellate Tribunal. Sub-section (1) of this section provides that the Appellate Tribunal shall consist of a Chairperson and at least two other Members of which one shall be a Judicial Member and other shall be an Administrative Member..

Sub-section (2) of this section provides that subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

Sub-section (3) of this section provides that notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

Section 32 lays down the qualifications for appointment as Chairperson and Member of the Appellate Tribunal. Sub-section (1) of this section provides that a person shall not be qualified for appointment as Chairperson unless he is, or has been a Judge of a High Court.

Sub-section (2) of this section provides that a person shall not be qualified for appointment as a Member unless he—

(a) in case of a Judicial Member, has been a Member of the Indian Legal Service and has held the post of Additional Secretary or equivalent post in that Service;

(b) in case of an Administrative Member, has been a Member of the Indian Revenue Service and has held the post of Chief Commissioner of Income-tax or equivalent post in that Service; or

Sub-section (3) of this section provides that no sitting Judge of a High Court shall be appointed under this section except after consultation with the Chief Justice of the High Court.

Sub-section (4) of this section provides that the Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a Member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.

Section 33 lays down the conditions of service of Chairperson and Members of the Appellate Tribunal. Sub-section (1) of this section provides that the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed and shall not be varied to his disadvantage during their tenure.

Sub-section (2) of this section provides that any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

Section 34 deals with term of office of Chairperson and Members. This section provides that the Chairperson and Members of the Appellate Tribunal shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.

Section 35 provides for removal from office of the Chairperson and Member of

the Appellate Tribunal in certain circumstances. Sub-section (1) of this section provides that the Central Government may, in consultation with the Chief Justice of High Court, remove from office of the Chairperson or any Member, who—

- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or
- (c) has become physically or mentally incapable; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

Sub-section (2) of this section provides that the Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by Chief Justice of the High Court in which the Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Sub-section (3) of this section provides that the Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Chief Justice of the High Court under sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by Chief Justice of the High Court on the reference.

Sub-section (4) of this section provides that the Central Government may regulate the procedure for inquiry referred to in sub-section (2) in the manner as may be prescribed.

Sub-section(5) of this section provides that the Administrative Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the Central Government. However, the Administrative Member shall not be removed unless he has been given an opportunity of being heard in the matter.

Section 36 relates to vacancies etc. not to invalidate proceedings of Appellate Tribunal. This section provides that no act or proceeding of the Appellate Tribunal shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of the Tribunal; or
- (b) any defect in the appointment of a person acting as a Member of the Tribunal; or
- (c) any irregularity in the procedure of the Tribunal not affecting the merits of the case.

Section 37 deals with resignation and removal of the Chairperson or a Member of the Appellate Tribunal. This section provides that the Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office. However, the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of the notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office,

whichever is earlier.

Section 38 provides for circumstances in which Member may act as the Chairperson of the Appellate Tribunal. This section provides that in the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Sub-section (2) of this section provides that when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Section 39 provides for staff of the Appellate Tribunal. Sub-section (1) of this section provides that the Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.

Sub-section (2) of this section provides that the officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

Sub-section (3) of this section provides that the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Section 40 lays down the procedure and powers of Appellate Tribunal. Sub-section (1) of this section provides that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

Sub-section (2) of this section provides that the Appellate Tribunal shall, for the purposes of discharging its functions under 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) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter, which may be, prescribed by the Central Government.

Sub-section (3) of this section provides that an order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

Sub-section (4) of this section provides that notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Sub-section (5) of this section provides that all proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Section 41 relates to distribution of business amongst Benches of Appellate Tribunal. This section provides that where any Benches are constituted, the Chairperson may, from time to time, by notification, make provision as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Section 42 relates to power of Chairperson of Appellate Tribunal to transfer cases. This section provides that on the application of any of the parties and after notice to the parties, and after hearing them, or on his own motion without any notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

Section 43 relates to decision to be by majority. This section provides that if the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and the point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 44 provides that the Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Approving Authority, Initiating Officer, Administrator and the officers subordinate to all of them shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Section 45 deals with bar of jurisdiction of civil courts. This section provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 46 relates to appeals to Appellate Tribunal. Sub-section (1) of this section provides that any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under sub-section (3) of section 26 within a period of forty-five days from the date of the order.

Sub-section(2) of this section provides that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented, by sufficient cause, from filing the appeal in time.

Sub-section(3) of this section provides that on receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

Sub-section(4) of this section provides that An Appellate Tribunal while deciding the appeal shall have the power—

- (a) to determine a case finally, where the evidence on record is sufficient;
- (b) to take additional evidence or to require any evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted;
- (c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it;
- (d) to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination;
- (e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such other order or orders as may be necessary to meet the ends of justice.

Sub-section (5) of this section provides that the Appellate Tribunal, as far as possible, may hear and decide such appeal within a period of one year from the last date of the month in which the appeal is filed.

Section 47 relates to rectification of mistakes. Sub-section (1) of this section provides that the Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, within a period of one year from the end of the month in which the order was passed.

Sub-section (2) of this section provides that no amendment shall be made under sub-section (1) if such amendment is likely to affect any person prejudicially, unless he has been given notice of intention to do so and has been given an opportunity of being heard.

Section 48 relates to right to representation. Sub-section (1) of this section provides that a person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised

representative of his choice to present his case before the Appellate Tribunal.

Sub-section (2) of this section seeks to provide that the Central Government may authorise one or more authorised representatives or any of its officers to act as presenting officers on its behalf, and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Sub-section (2) defines “authorised representative” to mean a person authorised by the assessee in writing to appear on his behalf, being

i) a person related to the assessee in any manner, or a person regularly employed by the appellant; or

(ii) any officer of a scheduled bank with which the appellant maintains a current account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practise in any civil court in India; or

(iv) any person who has passed any accountancy examination recognized in this behalf by the Board; or

(v) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

Section 49 relates to appeal to High Court. Sub-section (1) of this section provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty 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.

Sub-section (2) of this section provides that the High Court may entertain any appeal after the said period of sixty 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).

Sub-section (3) of this section provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

Sub-section (4) of this section provides that the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Sub-section (5) of this section provides that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

Sub-section (6) of this section provides that the High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

Sub-section (7) of this section provides that the High Court may determine any issue which — (a) has not been determined by the Appellate Tribunal; or (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

Sub-section (8) of this section provides that save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Chapter VI deals with the provisions relating to Special Courts.

Section 50 relates to Special Courts. Sub-section (1) of this section provides that the Central Government, in consultation with the Chief Justice of the High Court, shall for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Sub-section (2) of this section provides that while trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

Sub-section (3) of this section provides that the Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by - (i) the authority; or (ii) any officer of the Central Government or State Government authorised in writing by that Government by a general or special order made in this behalf.

Sub-section (4) of this section provides that every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made by the Special Court to conclude the trial within six months from the date of filing of the complaint.

Section 51 relates to application of Code of Criminal Procedure, 1973 to proceedings before Special Court. Sub-section (1) of this section provides that save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and the persons conducting the prosecution before the Special Court, shall be deemed to be Public Prosecutors. However, the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

Sub-section (2) of this section provides that a person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless the Public Prosecutor has been in practice as an advocate for not less than seven years, and the Special Public Prosecutor has been in practice as an advocate for not less than ten years in any Court.

Sub-section (3) of this section provides that every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Section 52 relates to appeal and revision. This section provides that the High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Chapter VII deals with the provisions relating to offences and prosecution.

Section 53 relates to penalty for *benami* transaction. Sub-section (1) of this

section provides that where any person enters into a *benami* transaction 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.

Sub-section (2) of this section provides that whoever is found guilty of the offence of *benami* transaction referred to above shall be punishable with rigorous imprisonment for a term which shall not be less than one year , but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

Section 54 relates to penalty for false information. This section provides that any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten per cent. of the fair market value of the property .

Section 55 relates to previous sanction. This section provides that no prosecution shall be instituted against any person in respect of any offence under sections 3,53 or section 54 without the previous sanction of the Board.

Clause 10 seeks to substitute new Chapter VIII for sections 7 and 8 in the principal Act.

Chapter VIII deals with miscellaneous provisions.

Section 56 deals with Repeal of provisions of certain Acts. Sub-section (1) of this section provides that sections 81, 82 and 94 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure, 1908 and section 281A of the Income-tax Act, 1961, are hereby repealed.

Sub-section (1) of this section provides that for the removal of doubts, it is hereby declared that nothing in sub-section (1) shall affect the continued operation of section 281A of the Income-tax Act, 1961 in the State of Jammu and Kashmir.

Section 57 provides for certain transfers to be null and void. This section provides that notwithstanding anything contained in the Transfer of Property Act, 1882 or any other law for the time being in force, where, after the issue of a notice under section 24, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under section 27, then, the transfer of such property shall be deemed to be null and void.

Section 58 relates to exemption. Sub-section (1) of this section provides that the Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act.

Sub-section (2) of this section provides that every notification issued under sub-section (1) shall be laid before each House of Parliament.

Section 59 seeks to empower the Central Government to issue directions etc. Sub-section (1) of this section provides The Central Government may, from time to time, issue such orders, instructions or directions to the authorities or require any person to furnish information as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow the orders, instructions and directions of the Central Government.

Sub-section (2) of this section provides that in issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

(a) territorial area;(b) classes of persons;(c) classes of cases; and(d) any other criterion that may be specified by the Central Government in this behalf.

Sub-section (3) of this section provides that no orders, instructions or directions under sub-section (1) shall be issued so as to—(a) require any authority to decide a particular case in a particular manner; or (b) interfere with the discretion of the Adjudicating Authority in the discharge of its functions.

Section 60 relates to application of other laws .This section provides that the provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.

Section 61 seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable.

Section 62 relates to consequences in case of offences by companies. Sub-section (1) of this section provides that where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Sub-section (2) of this section provides that nothing contained in sub-section (1) of this section shall render any person liable to punishment, if he proves that the contravention took place without his knowledge.

Sub-section (3) of this section provides that notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished

accordingly.

For the purpose of this section,

(a) a “company” means a body corporate, and includes (i) a firm; and (ii) an association of persons or a body of individuals whether incorporated or not; and

(b) “director”, in relation to—

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

Section 63 relates to notice, etc., not to be invalid on certain grounds. This section provides that no notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in the notice, summons, order, document or other proceeding if the notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Section 64 relates to protection of action taken in good faith. This section provides that no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government or the Appellate Tribunal or the Adjudicating Authority established under this Act, for anything done or intended to be done in good faith under this Act.

Section 65 deals with transfer of pending cases. Sub-section (1) of this section provides that every suit or proceeding in respect of a *benami* transaction pending in any Court (other than a High Court) or Tribunal or before any forum on the date of the commencement of this Act shall stand transferred to the Adjudicating Authority or the Appellate Tribunal, as the case may be, having jurisdiction in the matter.

Sub-section (1) of this section provides that where any suit, or other proceeding stands transferred to the Adjudicating Authority or the Appellate Tribunal under sub-section (1),—

(a) the court, Tribunal or other forum shall, as soon as may be, after the transfer, forward the records of the suit, or other proceeding to the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(b) the Adjudicating Authority may, on receipt of the records, proceed to deal with the suit, or other proceeding, so far as may be, in the same manner as in the case of a reference made under sub-section (5) of section 24, from the stage which was reached before the transfer or from any earlier stage or *de novo* as the Adjudicating Authority may deem fit.

Section 66 relates to proceedings etc. against legal representative. Sub-section (1) of this section provides that 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 representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased.

Sub-section(2) of this section provides that any proceeding which could have

been taken against the deceased if he had survived may be taken against the legal representative and all the provisions of this Act, except sub-section (2) of section 3 and the provisions of Chapter VII, shall apply accordingly.

Sub-section (3) of this section provides that where any property of a person has been held *Benami* under sub-section (3) of section 26, then, it shall be lawful for the legal representative of the person to prefer an appeal to the Appellate Tribunal, in place of the person and the provisions of section 46 shall, so far as may be, apply, or continue to apply, to the appeal.

Section 67 relates to overriding effect of this Act. This section provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Section 68 relates to power to make rules. This section empowers the Central Government to make rules relating to the implementation of this Act. This section provides that the Central Government may, by notification, make rules for carrying out the provisions of this Act.

Section 69 relates to laying of rules and notifications before Parliament. This section provides that every rule made and notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or notifications, as the case may be, both Houses agree that the rules or notifications, as the case may be, should not be made or issued, the rule or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification, as the case may be.

Section 70 relates to power to remove difficulties. Sub-section (1) of this section provides that 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.

Sub-section (2) of this section provides that no order shall be made under this clause after the expiry of two years from the commencement of this Act.

Sub-section (3) of this section every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Section 71 relates to transitional provision. This section provides the Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Money-Laundering Act, 2002 and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority

and Appellate Tribunal, respectively, under this Act.

Clause 11 seeks to amend section 9 of the principal Act. This clause seeks to provide that section 9 of the principal Act shall be renumbered as section 72 thereof.

B. Major Issues related to the provisions of the Bill

The major issues discussed during the sittings of the Committee with the representatives of Ministry of Finance (Department of Revenue), State Governments, Institute of Chartered Accountants of India (ICAI) and Experts related to the provisions of the Bill are as under :

Alternative Approach to the Bill

9.1 The expert on the alternative approach to the Benami Transactions (Prohibition) Amendment Bill, 2015 has stated that the Benami Transactions (Prohibition) Act, 1988 did not perform because of absence of administrative mechanism/rules. It is therefore submitted that the proposed bill, to the extent it provides for such administrative mechanism, be permitted to be enacted. What could be provided for there is necessary safeguards. There could be provision for time bound resolution of litigation with appeals to the Supreme Court directly from the Tribunal much in the manner of appeals against orders of the CESTAT. The question which also arises is whether the objectives sought to be achieved i.e. whether curbing the growth of black money in real estate transactions or prevention of transfers to defeat ceiling laws or the claims of creditors - cannot be much better met by the existing definition given to the term under the existing 1988 Act along with the provisions of the Prevention of Money Laundering Act, 2002 and the Income-tax Act, 1961. If the latter two enactments are inadequate, can these be suitably amended so as to achieve the desired results? In other words, how can the aforesaid statutes be strengthened to make them more effective to deal with the menace of black money resulting from spurious property transactions?

9.2 Before enacting the subject Bill into an Act, exploration of alternative approaches are felt required for an important reason: the proposed legislation (Bill) is draconian. If enacted it would generate considerable unrest in rural India, where land records are often in disarray. Ostensible and real owners of property are often different, but matters may currently be quiet because people have quietly accepted the status quo. However, if the actual owners are declared benamidars of someone else in whose name the property stands,

upheavals of all kinds may result. Inevitably, in any such conflict between the rich and the poor or between the strong and the weak, it is always the latter who suffer.

9.3 Similarly, in urban India, particularly the metropolitan cities, the legislation is also bound to generate another kind of conflict between nominal holders of property and the power of attorney holders. Disturbing the status quo without careful thought to these and other implications could prove disastrous and may perhaps be eschewed. But then, if the Bill is dropped, what alternative amendments can be proposed to the legislations named above viz. the Prevention of Money Laundering Act, 2002 (PMLA) and the Income Tax Act, 1965 (IT Act) which we may possibly need to consider.

9.4 The existing legislative framework could be strengthened suitably in order to achieve the objectives sought to be achieved by means of a new legislation. Some suitable amendments would be required with a view to addressing the situation of benami transactions being entered into to escape laws such as ceiling laws and transactions entered into to defeat creditors. The present amendment Bill, if legislated, shall result not only in multiplicity of proceedings but also a clash of Government orders of attachment and confiscation of the same property. However, the need for separate legislation is not at all warranted. On the contrary, it is bound to lead to multiplicity of proceedings as well as clash of orders of attachment and confiscation in respect of the same property. This is because if the property which shall be a subject matter of the PMLA shall be, in all probabilities a benami property and shall also be subject matter of The Benami Transactions (Prohibition) Amendment Bill, 2015 after the Bill comes into being. This is particularly relevant in view of Section 60 of the proposed amendment Bill to The Benami Transactions (Prohibition) Amendment Bill, 2015 which envisages that application of any other Law shall be in addition to provisions of The Benami Transactions (Prohibition) Act. Therefore, as the provisions exist duplicacy is bound to occur and there is a need of preventing the same.

9.5 Enlargement of scope of the PMLA can itself meet the requirement of dealing with benami properties. It may be noted that entire procedural

mechanism in both the scheme of things is parallel and shall require a duplicacy of hierarchical mechanism which is uncalled for.

9.6 Considerable powers under the Income-tax Act ('IT Act') have been conferred on the administration to deal with benami transactions. If the authorities under the tax laws are satisfied that a device has been entered into to defeat the tax laws, it can proceed to recover tax demands ignoring the façade of apparent or real ownership, as the case may be. As observed in Kanga and Palkhivala's Law and Practice of Income-tax (10th edition), where a taxpayer enters into such a transaction i.e. in the name of another without intending to pass on the benefit to such other person, the revenue is entitled to hold that the transaction is not genuine and the property in question as well as the income that arises therefrom belongs to the taxpayer concerned and not his nominee (Mohan Singh v. CIT 88 ITR 53(SC); Dalchand v. CIT 12 ITR 458 (Lahore); Hazarilal v. CIT 47 ITR 516(AP)). This conclusion follows from the basic principle that income is taxable in the hands of the person who earns it; or to whom it really belongs (ITO v. Ch. Atchiah 218 ITR 239(SC) (The A.O. "can, and must, tax the right person and the right person alone").

9.7 Income Tax Act confers sufficient powers on tax authorities to deal with all manner of sham transactions including those which are benami. If at all any amendment is required, it would have to be to sections 69 and 69-B, and this only need clarify that for the removal of all doubts the expression "investments made by the assessee" would also include investments made by him in benami names.

9.8 On being asked to offer their suggestions on the above issue, the Ministry of Finance (Department of Revenue) submitted as under :

"The Benami Transaction (Prohibition) Amendment Bill provides for a mechanism to confiscate property which is held to be Benami property. Benami property is a property which is a subject matter of benami transaction. A transaction where a property is held in the name of one person and the consideration for such property has been provided or paid by some other person and such property is used for immediate or future benefit of the person paying the consideration will qualify as a benami transaction. The underlying principle of making such action of holding property in someone else's name as an offence is not provided in the Income-tax Act or the PMLA. There is no provision in either of these Acts which creates a prohibition for a benami transaction. Since such transaction is not prohibited, no action can be contemplated under the two Acts for such properties. The benami law seeks to address this issue and provides a

mechanism for confiscation of properties which are held benami. With detailed procedures and mechanisms provided in the Amendment Bill, the issue of black money being invested in a benami property would be tackled".

Impact of the Bill on Rural and Urban Properties

9.9 On the issue of impact of the bill on rural and urban properties, the Expert in his written submission stated that the proposed Bill is likely to have serious impact on rural India because of large number of cash transactions and poor state of land records; even genuine land owners may find it difficult to establish their title and even genuine property owners may be declared as benamidars of someone else. Similarly, a large number of properties are purchased on Power of Attorney in Urban Areas particularly in unauthorised colonies and after the enactment of the law these properties would be declared benami properties.

9.10 When asked about the safeguard mechanism the Ministry would suggest in such a scenario so as to protect the genuine land owners particularly considering the state of land records and how will a common citizen understand and cope with this legislation, the Ministry in their post evidence replies stated as under:

"A' Benami transaction has been carefully defined in the proposed Bill so as to avoid undue hardship in genuine cases. A property held by a person for a consideration provided by another person will be held to be benami only if it is **held for the benefit (present or future) of the person providing the consideration** and not if the holder of property is holding it for his own benefit. Moreover, a specific exception has been created when the property is held by a Karta or a member of the HUF and it is held for the benefit of other members of the HUF, so long as the consideration for such property was paid out of the known sources of income of the HUF. A large number of safeguards have been built into the Act to avoid action against bona fide transactions. The Initiating Officer can act only on the basis of information in his possession. He has to record the reasons in writing; he has to issue a show cause notice and give adequate opportunity of being heard; prior approval of the Approving Authority is required both for provisional attachment and for passing of order by the Initiating Officer. All actions are time-bound; an independent Adjudicating Authority has been constituted; appeal to an Appellate Tribunal headed by a retired Judge of the High Court has been provided for; confiscation of property can only take place after confirmation by Appellate Tribunal; previous sanction from the CBDT is required for launch of prosecution; all offences are non-cognizable and no power of arrest has been given to any authority under the Act.

As regards purchase of property through Power of Attorney, the Supreme Court, in its decision in the case of *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana* (Order dated 11-10-2011) has categorically held that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'Sale Agreement /General Power of Attorney/Will transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. In view of this decision the Supreme Court Power of Attorney cannot be treated as a legitimate means of purchase or transfer of property.

As for the implications of such a transaction under the proposed Bill, a power of attorney would fall within the ambit of "a transaction or arrangement" and therefore, if such a transaction or arrangement falls within the definition of "benami transaction" namely, that the property is held by one person, and the consideration for the same has been provided or paid by another person **and the property is held for the benefit of the person providing the consideration**, the same will constitute a benami transaction unless the case falls under one of the specified exceptions under clause 9 (A)."

Definition of Benami Transaction

9.11 The expert in a written note submitted to the Committee has stated that the objectives behind the Amending Bill are liable, the provisions themselves are quite draconian and there appear to be hardly any safeguards against their misuse. The definition of what constitutes a benami transaction is itself somewhat one-sided and unfair. In *G. Mahalingappa v. G.M. Savitha* (Civil Appeal 2867 of 2000) the Supreme Court has noted the essential features of a benami transaction. Very briefly these are :

- The real owner should have purchased the property in the name of the ostensible owner;
- The property should have been purchased by the benamidar **for his own benefit** - in the case in hand the fact that the real owner, the father of the benamidar daughter, bought the property for his own benefit supported the inference that the father was the real owner;
- The fact that the father and mortgaged the property to raise a loan also supported this inference;
- That he had let out the property also shows that he was in control of the same.

The definition of Benami transaction under the Bill radically departs from

the above definition approved by the Supreme Court.

9.12 On the above issue, the Ministry of Finance (Department of Revenue) in their post evidence replies, stated as under:

"In the said case, the transaction took place in 1970 and the suit was filed in 1984, before the definition provided in the 1988 Act came into force. The present Bill further proposes to amend the definition provided in the 1988 Act. Therefore, the view taken by the Apex Court in that case is not relevant in the context of the present Bill."

Exception to Benami Transactions

9.13 The Institute of Chartered Accountants of India (ICAI), in their written submission stated that the exception to benami transaction as laid down in section 2(1) of the Bill uses the expression consideration paid on provided for the property by the Karta or member of HUF out of the known sources of income of HUF in sub clause (i) and in case of individual out of the known sources of income of the individual is of wider import and contemplates situations where loan funds may be provided for acquiring the property. Loan funds are not income and therefore expression "out of known sources" can be used instead of "known source of income" to bring in clarity in such cases.

9.14 In this context the Ministry of Finance, furnished their following views:

"The term "known source of income" was used in consultation with Ministry of Law and Justice to provide for investment where the source of funding was clearly identifiable. However if the Committee recommends, the matter shall be examined in consultation with Ministry of Law and Justice.

Although the intention of the provision is that the source of funds should be explained, ambiguity may arise on account of the present language of the provision. The matter will be examined further and, if necessary, an amendment will be moved with the approval of the competent authority."

Detection and Identification of Benami Property

9.15 An enabling power has been incorporated in the Bill to provide for Rules to be made for periodic collection of information with reference to transactions for proper detection of Benami transactions. When asked about the mechanism for detection of benami property and also as to whether mandatory on-line registration of properties is feasible on an all-India scale for easy tracking of benami transactions, the Ministry in their post-evidence reply stated as under :

"The detection and identification of benami property shall be initiated on the basis of the information collected by the authorities. The nature of information required and the source of information and the manner of

collection will be notified in the rules. The information with reference to immovable properties would be collected from entities such as registration authorities, authorities responsible for collecting property tax, private builders, urban development authorities such as DDA, HUDA and other such entities. The information collected can thereafter be compared with the income details of the registered owners. In cases of mismatch further enquiry can be conducted to ascertain whether the property is being beneficially used by a person other than the registered owner. Action can also be pursued in the case of specific complaints. The Income-tax Department also collects information by way of Annual Information Returns and receives information related to suspicious transactions from the Financial Intelligence Unit. The available information with the Department would therefore be effective in dealing with the issue of detection of Benami property. Further the issue related to making online registration of property on an All India basis is not a subject matter of the present Bill under consideration. It would however assist in tracking and consolidating transactions.

9.16 On the issue of online registration of properties, the Government of NCT of Delhi offer their following comments :

"Since, the office of the Sub-Registrar in Delhi are I.T. enabled / computerized the online registration of property on all India scale basis is feasible for tracking of benami transaction. It is suggested that the online registration of the properties should be made mandatory for easy tracking of Benami transactions on All India Scale".

9.17 On the above issue the Government of Haryana submitted as under :

"The State of Haryana is committed to the digitalization of land records and its regular updation. The State in the times to come is also committed to linking the transactions with the Aadhaar Card of the persons entering into the registration of land. Obviously, in the times to come, data sharing between the registering authority and the Central Agencies like Income Tax Department for monitoring transaction of the immovable properties would be feasible".

Authorities and Jurisdiction

9.18 In Section 18 of the proposed Bill, following have been stated to be the authorities for the purpose of this Act, namely:

- a) The Initiating Officer;
- b) The Approving Authority;
- c) The Administrator; and
- d) The Adjudicating Authority.

The appointment of the Administrator has been prescribed in Section 28 of the proposed Bill where it has been stated that 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 Administrators. The appointment of Adjudicating Authority has been prescribed in Section 9 whereby the Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdictions, power and authority conferred by or under this Act. However, no such mechanism has been provided for appointment of the Initiating Officer and the Approving Authority though the same have been defined in Section 2 (1) and 2(2) respectively.

9.19 When asked as to whether the proposed Bill be restructured by inserting a Chapter on Authorities on the line of Income-tax Act whereby Chapter XIII provide for appointment and control, jurisdiction and power of such authorities so as to avoid any legal hassle later on, the Ministry in their post evidence reply stated as under:

"Under the Bill, Initiating Officer means an Assistant Commissioner or a Deputy Commissioner as defined in clause (9A) and (19A) respectively of section 2 of Income Tax Act,1961. Approving Authority means an Additional Commissioner or a Joint Commissioner as defined in clauses under (1c) and (28c) respectively of section 2 of the Income tax Act. Since the authorities, namely, Assistant or Deputy Commissioner of Income tax and Additional and Joint Commissioner of Income-tax already exist under the Income-tax Act, no separate power to appoint them under the new law is required.

Clause 18 of the Bill authorises the Central Govt. to prescribe rules for assignment of jurisdiction to these authorities. Since assignment of jurisdiction is an administrative matter and the same has not been included in the Act. "

Attachment, Adjudication and Confiscation

9.20 In Chapter IV on the issue of Attachment, Adjudicating and Confiscation, in section 24(1) it has been stated that the Initiating Officer shall issue a notice to the person why the property should not be treated as benami property. Further in sub-section 24(2) it has been stated that a copy of the notice shall also be served upon the other person who is a beneficial owner where a notice under sub-section 24(1) specify any property held by a benamidar. Obviously, since there has to be a beneficial owner and as such the requirement of issuing the notice to the benamidar as well as beneficial owner may be made simultaneous and not conditional as stated in section 24(2).

9.21 When asked as to whether it would not be better that instead of having two sections i.e. sub-section 24(1) and sub-section (2) the provision of section 24(1) be redrafted whereby the Initiating Officer is required to issue a notice to

the benamidar as well as beneficial owner, the Ministry of Finance in their post evidence reply stated as under:

"The provisions of S.24 require that the Initiating Officer will initiate proceedings under the Act by issuing a notice to the person who is believed to be the benamidar and a serving copy thereof on the beneficial owner. The Bill has been vetted by the Ministry of Law & Justice. However, any suggestions from the Committee for improvement or strengthening the language of the Bill will be examined carefully and the views of the Ministry of Law & Justice will be taken. "

Confiscation and vesting of Benami property

9.22 Sub-section (5) of section 27 provided that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government. This sub-section apparently has been inserted so as to protect the Government from any claim of damages, etc. in case where proceedings are initiated but later on such proceedings are dropped considering the explanation and evidences.

9.23 On being asked that though objective is justified but instead of making it a sub-clause of section 27, can a separate section be introduced as is the case with the other fiscal legislation for protecting Government and its Officer from any claim for anything done or intended to be done in good faith, the Ministry of Finance in their post evidence reply stated as under:

"The Bill has been vetted by the Legislative Department, Ministry of Law and Justice. However, any suggestions which may be made by the Committee in its report with regard to drafting changes will be duly examined. The Ministry of Law and Justice will also be consulted where necessary."

Provision of timelines for confiscated Benami Property

9.24 On the issue of provision of time limits for the adjudication of confiscated benami property in the proposed Bill, the Ministry of Finance (Department of Revenue) stated as under :

"It has been clearly provided in Clause 9 of the Amendment Bill, in the proposed section 26 that the adjudicating authority would be required to pass an order of a reference received for holding a property to be Benami property or otherwise within one year from the end of the month in which the reference is received . The Appellate Tribunal would be required to pass an order within one year from the end of the month in which an appeal is filed (proposed Section 46). The proposed Act also provides that the confiscation of the property shall be made after the order of the adjudicating authority and in a case an appeal is filed against such order, after the order of the Appellate Tribunal. The procedure for the confiscation shall, however, be prescribed in the rules. Therefore, adequate timelines have been provided to ensure that properties which are adjudicated as benami properties are confiscated promptly".

On the above issue, the State Government of Odisha stated as under :

"The prescription of limitation of one year provided in Clause 26(7) of the Bill appears unreasonable and may enure to the benefit of the Benamidar which will go against the spirit of the legislation".

Confiscation Rights

9.25 Clause 27(3) of the Bill provides that "Where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances...."

9.26 When asked as to why the confiscation rights of a Benami property have been vested in the Central Government in the proposed Bill not with the State Governments, being the land is a State subject, the Ministry of Finance (Department of Revenue) has stated as under :

"The proposed law is being enacted by the Central Government and extends to the whole of India except the State of Jammu & Kashmir. The legislation is under Entry No. 97 of the Union List ("Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists") and inter-alia provides for confiscation of Benami property. The properties confiscated under the Act would vest with the Central Government. Parallel provisions for vesting of confiscated property in the Central Govt. already exist in section 9 of the PMLA and Section 68-I of the NDPS Act which too are central enactments. "

9.27 On the above issue the Government of Odisha submitted as under :

"The provision contained in Clause 27(3) of the Bill where it is prescribed that the right title of the property shall vest absolutely in the Central Government free of all encumbrances, does not appear to be reasonable and it is suggested that the property should vest with the State Government instead of Central Government as the State Government is always the owner of the properties within its jurisdiction. Further, vesting with the Central Government by such confiscation will affect the federal structure enshrined in the Constitution".

Appellate Tribunal

9.28 Chapter V of the proposed Amendment Bill is on the Appellate Tribunal.

As per section 32 Chairperson of the Appellate Tribunal shall not be qualified for appointment unless he is or has been a Judge of a High Court.

9.29 On being asked that simply a Judge of the High Court is not an adequate requirement. Experience as a High Court Judge need to be inserted and accordingly this section may be amended so as to provide qualification as Chairperson, a person who has been a Judge or a High Court for a period of at least five years, the Ministry of Finance in their post evidence reply stated as under:

"The Ministry of Law & Justice has been consulted while preparing the Bill. However, if the Committee so recommends in its report, the requirement of a certain minimum number of years as a Judge of the High Court can be incorporated in the Bill in consultation with the Ministry of Law and Justice."

Right to Representation

9.30 Under section 48, a right to representation has been given for a person preferring an appeal to the Appellate Tribunal. No similar mechanism has been provided for representation before the Adjudicating Authority

9.31 On this issue, the Ministry of Finance in their post evidence reply stated as under:

"The draft Bill was vetted by the Law Ministry. However, if the Committee makes a recommendation to this effect, the issue can be examined in consultation with the Ministry of Law & Justice. "

Compliance Window :

9.32 On the provision of compliance window in the proposed Bill for regularisation of Benami properties purchased through known source of income by a genuine buyer, the Ministry of Finance (Department of Revenue) stated as under :

"There is no provision in the current law or in the proposed amendment Bill to provide for any compliance window. Moreover a Benami transaction

continues to be an offence even under the existing Act of 1988 from the date of coming into effect of the said Act".

Benamidar located abroad and Role of Whistle Blower :

9.33 The Institute of Chartered Accountants of India (ICAI) in their written submission have stated that the proposed formulation is silent on the extra territoriality where the transaction, person standing in fiduciary capacity, benamidar, beneficial owner or property is situated or located abroad. Similarly, it is also silent on role of whistle blowers which would be important to detect the Benami holdings.

9.34 On being asked to offer their comments on the above issue, the Ministry stated as under :

"The definition of "benami transaction" under the Act does not make any exception based on place of residence of the benamidar. So long as the subject matter of the transaction (i.e., benami property) is in India or the benami transaction takes place in India, the provisions of the Act will clearly apply. Such property can be proceeded against and confiscated. It may not be possible to take action against a person if he is able to avoid his physical presence in India. But this is a separate issue which applies equally to all other offences.

As for whistleblower's role, DOR will look forward to the valuable suggestions from the Committee on this issue. "

Self confliction in Clauses

Clause 60 of the Bill reads as under :

"The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force".

Clause 67 of the Bill reads as under :

"The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force".

It is clearly evident from the above that the provisions under Clause 60 and Clause 67 are self-conflicting.

Protection to Banks and Financial Institutions

9.35 Regarding protection to Banks and Financial Institutions pertaining to the confiscation of benami property, the Institute of Chartered Accountants of India *vide* their written submission stated as under :

- (i) As per provision of Section 27(1) the Adjudicating Authority shall make an order confiscating the property held to be a *benami* property.
- (ii) Further in sub-section 27(2) it has been provided that such confiscation shall not apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section 24(1)

- without his having knowledge of the benami transaction.
- (iii) It has been further stated in sub-section 27(3) that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

On going through the above three clauses, it transpires that sub-section (2) protects the buyer in good faith and for adequate consideration and at the same time sub-section (3) does not protect the banks or financial institutions who have financed the transaction for adequate consideration and in good faith. In order to bring parity it is suggested that in sub-section (3) also, the right of the person acquired in good faith and for adequate consideration such as banks and financial institutions be protected.

9.36 On the above issue, the Ministry furnished their following views:

"Banks are required to exercise due diligence before financing a transaction to ensure that the borrower is the lawful owner of the property. The banks also take necessary collateral as a safeguard vis-a-vis the loan sanctioned. The RBI has also prescribed elaborate Know Your Customer (KYC) norms which banks are required to follow. Under clause 26 of the Bill, the Adjudicating Authority is required to issue notice to any interested party, including a banking company. Insofar as the provisions of section 27(2) are concerned, the same are in line with the accepted legal principle of protection of bona fide purchaser without notice and for good consideration. All commercial entities engaged in the business of lending of money for profit are expected to exercise due care and caution before extending loans and build adequate safeguards into the terms of lending. "

PART- II
OBSERVATIONS / RECOMMENDATIONS

The Committee note that the Benami Transactions (Prohibition) Amendment Bill, 2015 seeks to substantively amend the Benami Transactions (Prohibition) Act, 1988,(which was not notified) while continuing to provide a ban on benami transactions and confiscation of benami properties. The provisions of the Benami Transactions (Prohibition) Act, 1988 could not be implemented due to certain flaws and infirmities. The amending Bill, therefore, attempts *interalia* to remove the infirmities present in the Act of 1988 as well as to create conditions for smooth implementation of the Act. Specifically, the Bill seeks to (i) amend the definition of a benami transaction; (ii) provide for Adjudicating Authorities and a Tribunal; and, (iii) specify appropriate penalties where the ban on benami transactions is violated. However, the Committee after examining the written submissions and hearing the views of the Ministry, Institutions, Experts and State governments on the Bill find that there are key issues, concern areas and certain operational difficulties, identified in the succeeding paragraphs of the Report, which require to be squarely addressed before the Bill is enacted :

1. In the exception to benami transaction as laid down in Section 2(1) of the Principal Act [Section 4(9) (i), (iii) and (iv) of the proposed Bill], the expression "out of known sources of income" should be replaced by "out of known sources" so as to bring clarity in cases where loan funds, which are not income, are used as consideration for purchase of a property and not be kept out of purview of the Bill. Further, the words 'and legal' may also be inserted after 'known' so as to safeguard genuine and bonafide transactions.

2. The definition of benami transactions does not cater to certain bonafide arrangements entered into in relation to transfer of immovable property. Therefore, it has to be ensured that any bonafide transaction should not be deemed as 'benami', when it involves transfer of immovable property entered into under: (i) a registered Agreement to Sale (ii) a registered irrevocable General Power of Attorney (GPA), and, (iii) a

registered Development Agreement on payment of stamp duty in accordance with law applicable thereto.

3. Further, with regard to transfers made on Power of Attorney, possession of property through Power of Attorney and Sale Agreement etc., it may be ensured that all legitimate and genuine power of attorney holders and owners under legally valid agreements *even though it is not registered*, are allowed enough time period to legitimise their ownership rights through appropriate amnesty scheme.

4. The definition of "benami transactions" does not cater to situations where the consideration is bonafide, paid or provided by a lender under a financial arrangement. Provisions should be made in the Bill to deal with such situations as well.

5. There is no limitation prescribed for initiation of proceedings under Section 24 of the Bill. A certainty of time limitation, for initiating the proceeding and completing the inquiry / investigation, as provided in the Income Tax Act, may accordingly be provided in the Bill.

6. It has been pleaded by some States that in a federal set up like India where land is a State subject, it would be deemed appropriate that the rights of confiscated benami properties vest with State Governments instead of the Central Government as proposed in the Bill. In view of this position, the Committee would like the Government to re-examine this aspect in the light of the Constitutional provisions.

7. Time limit for disposing of the appeal by an Appellate Tribunal, say within 2 years from the date of filing of the appeal, should be fixed in the Bill. Any increase in this period should be an exception, made only at the instance of the High Court on an application made by the Tribunal.

8. It should be ensured that the provisions of the Bill are not in conflict with the provisions of the existing Tribal Land Acts administered by States in Tribal Areas and Scheduled Areas specified under the Constitution. Ground realities in these specified areas should thus be considered and duly factored in.

9. The amendment Bill is likely to have very serious impact in rural areas, where because of large number of cash transactions and poor

state of land records, even genuine land owners may find it difficult to establish their titles and bonafides. There may also be several cases of old title records being non-traceable. As a precaution, therefore, a thorough and serious inquiry by the Initiating Officer becomes essential before the matter goes to the Adjudicating Authority. The time taken for such inquiry should, therefore, be extended from the proposed period of thirty days to three months. This would give the affected person adequate time to prove that she / he is the genuine owner of the property in question.

10. The provisions of the proposed Bill are silent on the extra territoriality, where the transacting persons standing in fiduciary capacity, benamidar, beneficial owner or the property are situated or located abroad. Similarly, the provisions are also silent on the role of whistle blowers and their protection, which would be important to detect benami holdings. Adequate provisions in this regard should be incorporated in the Bill.

11. In the proposed Bill, the appointment of Adjudicating Authority has been prescribed in Section 9; however, no such mechanism has been provided for appointment of the Initiating Officer and the Approving Authority. The proposed Bill may, therefore, be restructured by inserting a Chapter on Authorities on the lines of Income Tax Act, wherein Chapter-XIII provides for appointment and control, jurisdiction and power of such Authorities so as to have greater clarity and avoid legal hassles.

12. The two Sub-Sections i.e. sub-section 24(1) and sub-section 24 (2) should be redrafted whereby the Initiating Officer is required to issue a notice to the benamidar as well as beneficial owner simultaneously. Similarly, the sub-section (5) of Section 27 should also be redrafted as a separate Section as is the case with other financial legislations for protecting the Government and its officers from any claim for anything done or intended to be done "in good faith".

13. In Section 32 for Qualification for appointment of Chairperson of the Appellate Tribunal, "experience as a High Court Judge for a period of at least five years" may be inserted with a view to having the services of

experienced judges.

14. A provision is needed to be inserted in the proposed Bill for right to representation for a person preferring an appeal before the Adjudicating Authority as provided under Section 48 of the Bill for preferring an appeal to the Appellate Tribunal.

15. The crux of the whole problem of benami transactions lies in transactions being recorded in the name of persons who are not the beneficial owners. To pre-empt and eliminate this, the Committee desire that certain consequential amendments in the Transfer of Property Act, 1882 and Registration Act, 1908 should be made, particularly making mandatory online registration of all immovable properties, linkage of Aadhar No. and Pan No. of all the parties to the transaction and sharing of data by the Registration Authorities with the Central Agencies like Income Tax Department. Stress should be laid on digitalisation of land records and its regular updation. Efforts should be made to deal with the problem systemically to the extent possible without needless discretionary intrusions. Pre-emptive Structural or Systemic measures to curb generation of black money would be more sustainable and effective from public governance perspective.

There should be complete coordination and intelligence sharing between different agencies such as Income Tax, Excise, Customs, Police, Banks, Stock Exchanges, Regulators, such as SEBI / RBI and investigative agencies such as CBI, ED & SFIO. This aspect should be adequately reflected in the Bill.

16. The Committee are of the view that this Bill should not become another coercive instrument in the hands of the Revenue Department to forcibly collect/mobilise taxes, as the existing Income Tax Act has adequate provisions and teeth to deal with issues such as tax evasion and unaccounted income/wealth. The Committee believe that multiplicity of authorities should not be created and the existing set up may be utilised for this purpose. The need of the hour is to exercise these existing powers judiciously and in a credible manner. It is very important

for the Tax Administration to carry conviction and credibility with the tax-paying public to increase tax buoyancy. The Committee would, therefore, like the Revenue Department to re-orient their policies and approach accordingly. As regards the need for having deterrent provisions in statutes like the proposed Bill, their possible abuse or mis-use weighs more in balance. The desire for legal deterrence should therefore be moderated. In this context, the Committee desire that the Government should seriously consider whether appropriate amendments in the existing Income Tax Act would serve the purpose better instead of having another related law in the statute book.

17. Even if a compelling need is felt for a separate law, considering the fact that so many substantive amendments have been proposed in the existing Benami Transactions (Prohibition) Act of 1988, it would be in the fitness of things to have a fresh Bill on the subject instead of an overhauling amendment Bill like the proposed Bill. For this reason, the Government in 2011 brought the Benami Transactions (Prohibition) Bill as it was not possible to remove all the infirmities in the original Act of 1988 by merely making some amendments. It was then felt that a fresh legislation would be required to comprehensively deal with all the issues of Benami Transactions.

18. The Finance Minister in his Budget Speech 2015 has stated that the purpose of the Bill is to curb the generation of domestic black money. However, the Committee find that the Statement of Objects and Reasons of the Bill is silent over this significant aspect. The intent of the Government should therefore be clearly mentioned in the Statement of Objects and Reasons of the Bill. It is also necessary that prevention of corruption and tracking of tainted money are also added as supplementary objects of the Bill.

NEW DELHI;
18 April, 2016
29 Chaitra, 1938 (Saka)

DR. M. VEERAPPA MOILY,
Chairperson,
Standing Committee on Finance

Minutes of the Twenty-seventh sitting of the Committee on Finance

The Committee sat on Thursday, the 4th June, 2015 at 1100 hrs. to 1300 hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri P.C. Gaddigoudar
4. Shri Shyama Charan Gupta
5. Shri Prataprao Jadhav
6. Shri Rattan Lal Kataria
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Prof. Saugata Roy
10. Shri Jyotiraditya M. Scindia
11. Shri Gajendra Singh Sekhawat
12. Shri Gopal Shetty
13. Shri Anil Shirole
14. Dr. Kiritbhai Solanki

RAJYA SABHA

15. Shri Naresh Gujral
16. Shri Satish Chandra Misra
17. Dr. Mahendra Prasad
18. Shri K.N. Balagopal
19. Dr. Manmohan Singh

SECRETARIAT

1. Smt. Abha Singh Yaduvanshi - Joint Secretary
2. Shri P.C. Tripathi - Director
3. Shri Ramkumar Suryanarayanan - Additional Director
4. Shri Kulmohan Singh Arora - Deputy Secretary

WITNESSES

Ministry of Finance (Department of Revenue)

1. Shri Shaktikanta Das, Secretary
2. Ms. Anita Kapur, Chairperson (CBDT)
3. Smt. Rani Singh Nair, Member (L&C) CBDT
4. Smt. P.S. Saksena, JS (TPL-I)
5. Shri Anandrajan, JS (TPL-II)

2. At the outset, the Chairperson welcomed the Members and the

representatives of the Ministry of Finance (Department of Revenue) to the sitting. After the customary introduction of the witnesses, the Committee heard the representatives of the Ministry of Finance (Department of Revenue) in connection with examination of the Benami Transactions (Prohibition) Amendment Bill, 2015. The major issues discussed during the briefing included reasons for introduction of the Benami Transactions (Prohibition) Amendment Bill, 2015, removal of the infirmities present in the Benami Transactions (Prohibition) Act, 1988, incorporation of recommendations made by the Committee on Finance in their Fifty-eighth Report on 'the Benami Transactions (Prohibition) Bill 2011 in the present Amendment Bill, exclusion or exemption from the definition of Benami transaction particularly exemption to property relating to Charitable or Religious Trust from the operation of Benami Act, synergy of the present Bill with related statutes like Transfer of Property Act, 1882, alignment of definitions of property with the recommendations of the UNCAC in the present Bill, mechanism for detection of benami property, coordination and cooperation with State Property Registering Authority, intelligence sharing among various authorities such as Income Tax , Excise and Customs, Police, Banks, Stock Exchanges, SEBI, RBI, CBI, ED and SFIO regarding Benami transactions study of comparable laws in other countries dealing with Benami transactions and also study of comparable laws in operation in States like Bihar and Jammu and Kashmir so as to incorporate best practices in the present Bill etc. The Chairperson then directed the representatives of the Department of Revenue to furnish replies to the points raised by the Members during the discussion within ten day's time.

A verbatim record of the proceedings was kept.

(The witnesses then withdrew.)

The Committee thereafter, discussed the new Study Tour programme in view of the postponement of their earlier Study Tour programme to Darjeeling and Sikkim from 10 to 13 June, 2015. They decided to undertake a Study Tour to Srinagar and Jammu during the second week of July, 2015.

The Committee then Adjourned.

Minutes of the Twenty-ninth sitting of the Committee on Finance

The Committee sat on Thursday, the 18th June, 2015 at 1100 hrs. to 1250 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri P.C. Gaddigoudar
4. Shri Shyama Charan Gupta
5. Shri Prataprao Jadhav
6. Shri Rattan Lal Kataria
7. Shri Bhartruhari Mahtab
8. Shri Gajendra Singh Sekhawat
9. Shri Gopal Shetty
10. Shri Anil Shirole
11. Shri Shivkumar Udasi
12. Dr. Kiritbhai Solanki
13. Dr. Kirit Somaiya

RAJYA SABHA

14. Shri Naresh Agrawal
15. Shri Naresh Gujral
16. Dr. Mahendra Prasad
17. Shri K.N. Balagopal
18. Shri C.M. Ramesh
19. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 3. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

WITNESSES

Ministry of Finance (Department of Revenue)

1. Shri Shaktikanta Das, Secretary
2. Ms. Anita Kapur, Chairperson (CBDT)
3. Smt. Rani Singh Nair, Member (L&C) CBDT
4. Smt. Pragya S. Saksena, JS (TPL-I)
5. Shri Anandrajan, JS (TPL-II)

Ministry of Law and Justice

Dr. N.R. Battu, Joint Secretary &LC

2. At the outset, the Chairperson welcomed the Members and the representatives of the Ministries of Finance (Department of Revenue) and Law and Justice to the sitting. The Committee then took the oral evidence of the representatives of Ministry of Finance (Department of Revenue) on the Benami Transactions (Prohibition) Amendment Bill, 2015. The major issues discussed during the oral evidence included exemption/exclusion of religious or charitable trusts from the purview of the Act, justification for such removal/exclusions, composition of a Adjudicating Authority under the proposed amendment Bill, absolute right of Centre on confiscated properties under the Act, timeliness on the disposal of benami property, penal consequence of imprisonment under the Act, need to build adequate deterrence against corruption, need for adequate safeguards in the proposed amendment Bill to prevent the misuse of power and harassment of a genuine investor by the investigating/initiating officer etc. The Chairperson then directed the representatives of the Department of Revenue to furnish replies to the points raised by the members during the discussion within ten day's time.

(The witnesses then withdrew)

A verbatim record of the proceedings has been kept.

Considering the importance and wider ramifications of the Bill, the Committee decided to invite and hear views/suggestions from various stakeholders/individuals/experts/institutions/organisation interested in the Bill.

The Committee then adjourned.

Minutes of the Thirty-third sitting of the Committee on Finance

The Committee sat on Thursday, the 27th August, 2015 from 1100 hrs. to 1245 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Shyama Charan Gupta
7. Shri Prataprao Jadhav
8. Shri Rattan Lal Kataria
9. Shri Bhartruhari Mahtab
10. Prof. Saugata Roy
11. Shri Gajendra Singh Sekhawat
12. Shri Gopal Shetty
13. Shri Anil Shirole
14. Shri Shivkumar Udasi
15. Dr. Kirit Somaiya

RAJYA SABHA

16. Shri Naresh Agrawal
17. Shri Naresh Gujral
18. Dr. Mahendra Prasad
19. Shri K.N. Balagopal
20. Shri C. M. Ramesh
21. Dr. Manmohan Singh

SECRETARIAT

1. Shri P.C. Tripathy - Director
2. Shri Ramkumar Suryanarayanan - Additional Director
3. Shri Kulmohan Singh Arora - Deputy Secretary

WITNESSES

The Institute of Chartered Accountants of India

1. C.A. Manoj Fadnis, President
2. C.A. Devaraja M. Reddy, Vice President
3. C.A. Ved Jain, Past-President
4. C.A. Naveen Gupta, Chairman, Committee on Economic and Commercial Law.
5. C.A. Dhinal Shah, Vice-Chairman, Committee on Economic and Commercial Law.
6. Shri V. Sagar, Secretary

2. At the outset, the Chairperson welcomed the Members to the Sitting of the Committee. After the customary welcome of the representatives of Institute of Chartered Accountants of India (ICAI), the representatives of ICAI briefed the Committee on the "Benami Transactions (Prohibition) Amendment Bill, 2015". The major issues discussed during the sitting included scope of definition of "Benami Transactions" under section 9(A)(b), extension of exemption to any relative of the individual from Benami Transaction under Section 9(A) (III) (IV) of the definition, consequential changes in the definition of Hindu Undivided Family (HUF), definition of Fair Market Value vis-a-vis Jantri Price concept in deciding fair market value of a property, Right to Representation to Authorised Representative, Compliance window in Benami Transaction etc. The Chairperson then directed the representatives of ICAI to furnish replies to the points raised by the Members during the discussion within fifteen day's time.

(The witnesses then withdrew)

A verbatim record of the proceedings has been kept.

4. Thereafter, the Committee took up the following draft Reports for consideration and adoption :

- (i) Draft Report on Action Taken by the Government on the recommendations contained in the Fourth Report of the Committee on Finance on Demands for Grants (2014-15) of the Ministry of Planning.
- (ii) Draft Report on the Subject - 'Planning Process - A Review'.
- (iii) Draft Report on the Subject - 'Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc.

5. After deliberations, some of the Members suggested certain modifications in the above reports. Some Members requested the Chairperson to give them more time to study the said draft reports and give their suggestion thereon. The Committee then decided to consider the above draft reports at a later date as term of this Committee would end on 31 August 2015.

Thereafter, the Committee placed on record their appreciation of the significant contribution of Hon'ble Chairperson to the deliberations of the Committee and large number of reports presented by the Committee to Parliament under his able guidance during the tenure of Committee for the year 2014-15.

The Committee then adjourned.

Minutes of the Fourth sitting of the Committee on Finance

The Committee sat on Friday, the 16 October, 2015 from 1100 hrs. to 1300 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Shyama Charan Gupta
7. Shri Chandrakant B. Khaire
8. Shri Rattan Lal Kataria
9. Shri Prem Das Rai
10. Prof. Saugata Roy
11. Shri Gopal Shetty
12. Dr. Kiritbhai Solanki
13. Dr. Kirit Somaiya
14. Shri Shivkumar Udasi

RAJYA SABHA

15. Shri Naresh Gujral
16. Shri Satish Chandra Misra
17. Dr. Mahendra Prasad
18. Shri C.M. Ramesh
19. Shri Ajay Sancheti
20. Shri Digvijay Singh
21. Dr. Manmohan Singh

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Smt. Abha Singh | - | Joint Secretary |
| 2. Shri P.C. Tripathy | - | Director |
| 3. Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. Shri Kulmohan Singh Arora | - | Deputy Secretary |

PART I

(1100 hrs to 1200 hrs)

WITNESSES

M/s. B.K Khare And Co.

1. Shri H.P. Mahajani, Partner;

2. Shri Hardayal Singh, Senior Consultant;
3. Shri Karthik Natarajan, Director

2. At the outset, the Chairman welcomed the Members to the Sitting of the Committee. After the customary welcome, the representatives of M/s B.K. Khare and Company briefed the Committee on the various provisions of the Benami Transactions (Prohibition) Amendment Bill 2015.

3. The major issue discussed during the sitting included need/justification for amending the Benami Transactions (Prohibition) Act, 1988, impact of proposed amendment bill on rural areas of the country due to poor land records, concept of locus pententia to have prospective application of provisions of proposed Bill, compulsory registration of all immovable property transactions in the country, time bound resolution of litigations in respect of confiscated benami properties, in adequate checks and balances on the power of Initiating Officer under proposed bill, lack of safeguards to protect genuine property owner under the proposed bill, duplication of hierarchical machinery for attachment and confiscation in respect of same property, strengthening of existing legislations namely the Prevention of Money Laundering Act 2002 and Income Tax Act 1956 to check the menace of benami transactions in the country etc. The Chairperson then directed the representatives of M/s B.K. Khare & Co. to furnish replies to the points raised by the Members during the discussion within a weeks time.

(The witness then withdrew)

Tea Break

PART II

(1220 hrs to 1300 hrs)

WITNESSES

Ministry of Finance (Department of Revenue)

1. Dr. Hasmukh Adhia, Secretary, Department of Revenue
- 2.. Smt. Anita Kapur, Chairperson, CBDT
3. Smt. Rani Singh Nair, Member (L&C), CBDT
4. Smt. Pragya S Saksena, JS (TPL-I)
5. Shri Anandrajan, JS (TPL-II)

4. The Committee after tea break resumed their sitting. The Chairperson welcomed the representatives of the Ministry of Finance (Department of Revenue) to the sitting. Since the proposed Bill could have wide ramifications on the Centre and State relations the Committee decided to first hear the views of Chief Secretaries of the States / UTs in batches and also to hear the views of experts and thereafter take the evidence of the Ministry on the Bill. The Committee, therefore, decided to defer the evidence of the Ministry of Finance (Department of Revenue) to a later date.

(The witnesses then withdrew)

A verbatim record of the proceedings has been kept.

Thereafter, the Committee took up the following drafts reports for consideration and adoption:

- i. Draft Report on Action taken by the Government on the recommendations contained in the 13th Report on Demands for Grants (2015-16) of the Ministry of Corporate Affairs
- ii. Draft Report on Action taken by the Government on the recommendations contained in the 14th Report on Demands for Grants (2015-16) of the Ministry of Statistics and Programme Implementation.

5. After some deliberations, the Committee adopted the above draft Reports without any modification and authorised the Chairperson to finalise them and present these Reports to Parliament.

The Committee then adjourned.

Minutes of the Fifth sitting of the Committee on Finance

The Committee sat on Thursday, the 19 November, 2015 from 1100 hrs. to 1300 hrs. in Committee Room 'D', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Chandrakant B. Khaire
7. Shri Rattan Lal Kataria
8. Shri Prem Das Rai
9. Shri Rayapati Sambasiva Rao
10. Shri Gopal Shetty
11. Dr. Kirit Somaiya

RAJYA SABHA

12. Shri Naresh Agrawal
13. Shri Naresh Gujral
14. Shri Digvijay Singh
15. Dr. Manmohan Singh

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Smt. Abha Singh | - | Joint Secretary |
| 2. Shri P.C. Tripathy | - | Director |
| 3. Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. Shri Kulmohan Singh Arora | - | Deputy Secretary |

WITNESSES

State Government of Haryana

1. Shri D.S. Dhesi,
Chief Secretary
2. Shri Sanjeev Kaushal,
Additional Chief Secretary, Finance & Planning

State Government of Rajasthan

1. Shri Sanjeev Kumar, D.G, State Directorate of Revenue Intelligence
2. Shri K.B. Gupta, Inspector General, Registration and Stamps

State Government of Madhya Pradesh

Shri Virender Singh
Principal Secretary, Law

State Government of Chhattisgarh

Shri A.K. Samantray,
Principal Secretary, Law

2. At the outset, the Chairman welcomed the Members and the representatives of State Governments of Haryana, Rajasthan, Madhya Pradesh and Chhattisgarh to the sitting of Committee.

3. Thereafter, the witnesses put forth their views / suggestions on the Benami Transactions (Prohibition) Amendment Bill 2015. The Members then raised a number of queries relating to the various provisions of the Bill.

4. The major issues discussed during the sitting included impact of the amendment Bill on properties located in rural areas of the country, properties purchased on Power of Attorney, linkage of Aadhar number with online registration of property, digitalisation of land records, overlapping of the provisions of the proposed Bill with existing State Laws / Statutes, no provisions of whistleblower and benamidaar located abroad in the proposed Bill, lack of awareness amongst people about the Benami Transactions (Prohibition) Act, 1988, vesting of power of confiscation of benami property with the State Government instead of the Central Government as proposed in the Bill etc. The Chairperson then directed the representatives of State Governments to furnish replies to the points raised by the Members during the discussion within 20 days.

(The witnesses then withdrew)

A verbatim record of the proceeding has been kept.

5. The Committee then took up the following draft Reports for consideration and adoption.

- I. Draft Report on Action taken by the Government on the recommendations contained in the 10th report on Demands for Grants (2015-16) of the Ministry of Finance (Departments of Economic Affairs, Expenditure, Financial Services, Disinvestment).

- II. Draft Report on Action taken by the Government on the recommendations contained in the 11th report on Demands for Grants (2015-16) of Ministry of Finance (Department of Revenue).
- III. Draft Report on Action taken by the Government on the recommendations contained in the 12th report on Demands for Grants (2015-16) of Ministry of Planning.

. After some deliberations, the Committee adopted the above draft Reports with minor modification and authorised the Chairperson to finalize them and present these Reports to Parliament.

6. Thereafter, the Committee decided to undertake a study tour to Darjeeling, North- East Region including Sikkim during the month of January / February, 2016.

The Committee then adjourned.

Minutes of the Sixth sitting of the Committee on Finance

The Committee sat on Friday, the 20 November, 2015 from 1100 hrs. to 1315 hrs.
in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri Venkatesh Babu T.G.
3. Shri Nishikant Dubey
4. Shri P.C. Gaddigoudar
5. Shri Rattan Lal Kataria
6. Shri Prem Das Rai
7. Shri Rayapati Sambasiva Rao
8. Shri Jyotiraditya M. Scindia
9. Shri Gopal Shetty
10. Shri Anil Shirole
11. Dr. Kiritbhai Solanki

RAJYA SABHA

12. Shri K.N. Balagopal
13. Shri Digvijay Singh
14. Dr. Manmohan Singh

SECRETARIAT

1. Smt. Abha Singh - Joint Secretary
2. Shri P.C. Tripathy - Director
3. Shri Ramkumar Suryanarayanan - Additional Director
4. Shri Kulmohan Singh Arora - Deputy Secretary

WITNESSES

State Government of Odisha

1. Shri R. Balakrishnan, IAS
Additional Chief Secretary, Finance
Govt. of Odisha
2. Shri B.P. Routray, Principal Secretary, Law
Govt. of Odisha

State Government of West Bengal

Shri Biswajit Gangopadhyay, Secretary, Finance

State Government of Gujarat

1. Shri G.R. Aloria,
Chief Secretary
2. Shri K. Srinivas,
Principal Secretary

Government of NCT of Delhi

Shri K.K. Sharma, Chief Secretary

State Government of Punjab

Shri Jaspal Singh, Secretary, Expenditure

State Government of Jharkhand

Shri B.B. Mangalmurti, Principal Secretary, Law

State Government of Meghalaya

1. Shri L. Lyngdoh, IAS
Commissioner & Secretary, Home
2. Shri L.M. Sangma,
Special Secretary, Law

2. At the outset, the Chairman welcomed the Members and the witnesses to the sitting of Committee.

3. Thereafter, the witnesses put forth their views / suggestions on the Benami Transactions (Prohibition) Amendment Bill 2015. The Members then raised a number of queries relating to the various provisions of the Bill.

4. The major issues discussed during the sitting included conflict of the provisions of the Bill with the provisions of the State Acts, Synergy of the proposed Bill with statutes administered by States like Transfer of Property Act, Tenancy Act and Transfer of Land Act, transaction of Property between tribals and non-tribals, conflict of judgment between Special Courts and Confiscating Authorities / Adjudicatory Authority, cumbersome culminating procedure of confiscation of property, vesting of confiscated property with the State Governments instead of Central Government as proposed in the Bill, contradiction between clauses 60 and 67 in the proposed Bill, no provisions in the proposed Bill regarding benami property in JJ and unauthorised colonies etc. The Chairperson then directed the witnesses to furnish replies to the points raised by the Members during the discussion within 20 days.

(The witnesses then withdrew)

A verbatim record of the proceeding has been kept.

5. Considering the wider ramifications of the provisions of the Bill, the Committee decided to hear and obtain the views of more stakeholders on the provisions of the Bill. The Committee, thereafter, decided to seek extension of time from Hon'ble Speaker for presentation of the Report on the Benami Transactions (Prohibition) Amendment Bill, 2015 during the Second part of the Budget Session.

The Committee then adjourned.

Minutes of the Tenth sitting of the Committee on Finance

The Committee sat on Friday, the 05 February, 2016 from 1500 hrs. to 1630 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri Venkatesh Babu T.G.
3. Shri Nishikant Dubey
4. Shri Rattan Lal Kataria
5. Shri Rayapati Sambasiva Rao
6. Prof. Saugata Roy
7. Shri Gajendra Singh Sekhawat
8. Shri Gopal Shetty
9. Dr. Kiritbhai Solanki
10. Dr. Kirit Somaiya

RAJYA SABHA

11. Shri Naresh Gujral
12. Shri Ajay Sancheti
13. Shri Digvijay Singh
14. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri P.C. Tripathy | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

WITNESSES

Ministry of Finance (Department of Revenue)

1. Dr. Hasmukh Adhia, Secretary, Department of Revenue
2. Shri Atulesh Jindal, Chairperson, CBDT
3. Smt. Rani Singh Nair, Member (L&C), CBDT
4. Smt. Pragya S Saksena, JS (TPL-I)
5. Shri V. Anandrajan, JS (TPL-II)

2. At the outset, the Chairperson welcomed the Members and the representatives of the Ministry of Finance (Department of Revenue) to the sitting. The Committee then took the oral evidence of the representatives of

Ministry of Finance (Department of Revenue) on the Benami Transactions (Prohibition) Amendment Bill, 2015. The major issues discussed during the evidence included the reasons for bringing a new Bill instead of amending the existing Benami Act of 1988, data sharing between the State Registering Authorities and Central Agencies with regard to transactions of immovable properties, consequential amendments in Transfer of Property Act administered by State Governments, impact of the provisions of the proposed Bill on rural land records, properties purchased on General Power of Attorney (GPA) in urban areas, properties located in tribal areas governed by Tribal Lands Act, confiscation rights of benami properties, role of whistle blower in the proposed Bill, exemptions / exclusion provided to the Charitable / Religious trusts in the proposed Bill, lack of clarity and contradictions in the provisions of the proposed Bill, synchronisation of the proposed definition of benami transactions with the definition propounded by the Supreme Court of India, safeguard mechanism provided in the provisions of the proposed Bill to protect genuine property owners, provision of window in the proposed Bill to regularise the properties of genuine property owners, etc. The Chairperson then directed the representatives of the Department of Revenue to furnish replies to the points raised by the Members during the discussion within ten days time.

(The witnesses then withdrew)

A verbatim record of the proceedings has been kept

3. Thereafter, the Committee took up for consideration the draft Report on the Subject "Non-Performing Assets (NPAs) of Financial Institutions". The Committee expressed their appreciation of the draft Report and adopted the same with minor modifications as suggested by Members. The Committee authorised the Chairperson to present the Report to Hon'ble Speaker / Parliament.

The Committee then adjourned.

Minutes of the Twelfth sitting of the Standing Committee on Finance

The Committee sat on Tuesday, the 29 March, 2016 from 1100 hrs. to 1715 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Nishikant Dubey
5. Shri Shyama Charan Gupta
6. Shri Chandrakant B. Khaire
7. Shri Rattan Lal Kataria
8. Shri Bhartruhari Mahtab
9. Prof. Saugata Roy
10. Shri Jyotiraditya M. Scindia
11. Shri Gopal Shetty
12. Shri Anil Shirole
13. Dr. Kiritbhai Solanki
14. Dr. Kirit Somaiya

RAJYA SABHA

15. Shri Naresh Agrawal
16. Shri Naresh Gujral
17. Shri A. Navaneethakrishnan
18. Dr. Mahendra Prasad
19. Shri C.M. Ramesh
20. Shri Ajay Sancheti
21. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri P.C. Tripathy | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

PART - I

(1100 hrs. to 1415 hrs.)

WITNESSES

1. XX XX XX XX XX

(The witnesses then withdrew).

The Committee then adjourned for lunch

break.

PART-II
(1445 hrs. to 1515 hrs.)

The Committee took up for consideration and adoption the draft Report on "the Benami Transactions (Prohibition) Amendment Bill, 2015. The Committee adopted the above draft Report with some minor modifications as suggested by Members. The Committee authorised the Chairperson to finalise the Report in the light of the modifications suggested and present the same to Parliament.

PART-III
(1515 hrs. to 1715 hrs.)

1. XX XX XX XX
 XX.

(The witnesses then withdrew).

A verbatim record of the proceedings has been kept.

The Committee then adjourned.