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# **CITIZEN PARTICIPATION AND WHISTLE-BLOWER PROTECTIONS IN ANTI-BENAMI ENFORCEMENT: COMPARATIVE INSIGHTS FROM INDIA, THE US, AND THE UK**

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## **ABSTRACT**

Envision a country where large territories of property are hidden behind a series of fictitious names, hidden owners, and opaque legal arrangements and the citizens who should be exposing them are quiet, oblivious, or unprotected. This is not a hypothetical situation, but is an ongoing challenge of nations grappling with the benami scourge, India being no exception. Although the Prohibition of Benami Property Transactions Act 1988 (amended in 2016) was a legislative overhaul, it has a 'flexible foundation' upon which it has relied almost exclusively on duly established institutional machinery, whilst neglecting the two critical foundations: public legal awareness, and whistleblower protection. This paper argues, notwithstanding the fact that an anti-benami regime now exists in India; a routine comparison shows that although legally strengthened, the regime is culturally asymmetrical. The legal approach of this investigation will be both doctrinal legal analysis, as well as the comparative legal analysis of statutory provisions from: Sections 3, 5 and 54 of the PBPT Act and India Whistle Blowers Protection Act 2014; and international models from the United States of America, the United Kingdom, and Australia the study reveals that India's approach remains enforcement-centric and citizen-averse. The Ministry of Finance, the Standing Committee on Finance (2022-2023), and the Enforcement Directorate's observational data are reviewed to better understand actual outcomes, which reveal a notable absence of informant participation and legal literacy. In interrogating this civic disconnection, the paper contends that urgent legal reforms for procedural protections for whistleblowers, public outreach, and co-constructing a participative context of compliance is necessary. Ultimately, this study advocates not just for reformulating the anti-benami framework as a punitive governance mechanism of financial scrutiny, but as a democratically oriented model of public engagement, constitutional accountability, and economic legitimacy.

**Keywords:** Benami Law; Public Legal Awareness; Whistleblower Protection; Enforcement Mechanisms; Socio-Legal Reform; Financial Transparency.

## 1. Introduction

Benami transactions in India, practices where property is held in the name of one person while the financial benefit is in a different person, are not permitted by law, and while they are quite common, they are used as a covert means of hiding ownership, wealth, and illicit assets. Historically, Benami transactions have been, and continue to be, integrated into customs and family practices<sup>1</sup>. They have evolved into vehicles of economic extraction, tax evasion, black money accumulation, and manipulation of land and real estate markets<sup>2</sup>. Consequently, the Indian state has attempted to propound legislation prohibiting Benami transactions, through the Prohibition of Benami Property Transactions Act, 1988, which was amended via the Prohibition of Benami Property Transactions (Amendment) Act 2016, which made additional positive changes, most notably being<sup>3</sup>: clarification of definitions, enforcement mechanisms, and civil and criminal penalties. Despite these reforms, the institutionalisation of an anti-benami regime has sparked questions regarding the effectiveness of this legislative measure, not simply due to shortfalls in statutory text alone, but in part due to systemic dysfunction in public legal awareness and limited institutionalisation of whistleblower protection<sup>4</sup>.

The tenacity of opaque property ownership practices in India is indicative of a larger moment of regulatory legitimacy crisis and not simply a failure of law enforcement<sup>5</sup>. Laws predicated on public participation and voluntary reporting, as the benami law seems to aspire to, require a citizenry not only familiar with the law, but also a citizenry that has trust and confidence in the ability of the state to provide protection<sup>6</sup>. Yet, both anecdotal and institutional evidence suggest that legal literacy with respect to prohibitions on benami legalities is patchy, and that potential whistleblowers are often deterred from filing complaints about suspected transactions by fear

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<sup>1</sup> Organisation for Economic Co-operation and Development (OECD). (2022). *Tax Transparency and Exchange of Information Report*. <https://oecd.org>.

<sup>2</sup> Choudhury, S. (2023). Retrospective applicability of the PBPT Act and Article 20(1) of the Constitution. *Indian Constitutional Law Review*, 6(2), 45–68.

<sup>3</sup> Prohibition of Benami Property Transactions Act, No. 45 of 1988, India Code (Amended 2016). <https://indiacode.nic.in>.

<sup>4</sup> NITI Aayog. (2022). *Strategy for Anti-Corruption and Asset Recovery*. <https://niti.gov.in>.

<sup>5</sup> Indian Law Institute. (2023). *Casebook on Property and Economic Offences in India*. National Law University Delhi.

<sup>6</sup> Centre for Civil Society. (2023). *Analysis of Regulatory Burden and Transparency Laws in India*. <https://ccs.in>

of being exposed, fear of retaliation, lack of anonymity, or lack of institutional assistance<sup>7</sup>. Without a public interface that is informed and protected, the statutory machinery designed to surface benami transactions collapses into meaninglessness, with enforcement agencies over-relying on self-initiated investigations instead of being fuelled by collective or participatory compliance.

This research aims to examine the extent to which public knowledge, or lack of it, impacts the enforceability of the benami law, and to assess the adequacy of whistleblower protection structurally and doctrinally in the current context. It engages with not just what the law provides or what policies are, but how that is received, understood, and utilised by citizens, informants, or any other affected party. Using a combination of doctrinal and comparative legal analysis, alongside empirical aspects provided by the Enforcement Directorate, Press Information Bureau and Standing Committee on Finance (2022 - 2023<sup>8</sup>), the paper interrogates the spectre of legal invisibility surrounding the legal status of informants and the institutional void on facilitating public legal outreach and examines how other jurisdictions such as the US, UK, Australia have developed a robust framework of whistleblower protection for anticorruption and financial disclosure laws<sup>9</sup>.

This study adopts an integrated socio-legal approach, which combines the doctrinal assessment of Indian and international law with the semiotic interpretation of government datasets and other public records. The investigation draws upon constitutional imperatives such as access to justice, the right to information, and the freedom of speech, but more broadly, it also speaks to theories of participatory governance and legal legitimacy. The paper is structured to first present an overview of the legal framework of India's anti-benami law, then goes on to assess the conceptual and statutory absence of informant protections, followed by an analysis of public awareness as a precondition for effective enforcement. It then draws on comparative legal models to suggest reform strategies, before concluding with policy recommendations designed to bridge the gap between law and compliance.

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<sup>7</sup> National Law University Delhi. (2023). *Symposium Proceedings on Economic Offences and Whistleblower Protection in India*.

<sup>8</sup> Basu, A. (2022). Comparative evaluation of whistleblower protection laws: India, UK, and USA. *Comparative Public Law Journal*, 9(1), 151–177.

<sup>9</sup> US Securities and Exchange Commission. (2023). *Annual Report to Congress on the Dodd-Frank Whistleblower Program*. <https://sec.gov>.

## 2. Legal Framework of Benami Law in India

The prohibition against benami transactions is legally articulated in the Prohibition of Benami Property Transactions Act, 1988, which was significantly changed through the enactment of the Benami Transactions (Prohibition) Amendment Act, 2016<sup>10</sup>. The 1988 Act was conceptualized as a short Act, mainly symbolic as it lacked a comprehensive definition of "benami," and instituted little in the way of an enforcement regime. While the original Act addressed benami transactions, the 2016 amendment created a more substantive regime to not only designate that benami transactions were illegal, but also create a process to adjudicate, confiscate, penalize, and sanction benami transactions in a quasi-judicial process. The 2016 legislation is much more substantive than the original Act, as in the new definition, a "benami transaction" is defined in very broad terms in Section 2(9). It provides that a benami transaction refers to a transaction in which property is transferred to or held by one person, but the given consideration is provided by someone else, and the property is held for the direct or indirect benefit of the person who provided the consideration. Included in this definition are written arrangements made in fictitious names, or transactions whereby the owner does not know about the ownership, as well as instances where the consideration provider is untraceable or fictitious. The definition has certain stated exclusions, for instance, property owned by a spouse, child, or in a fiduciary capacity, as long as such property can be traced to that source of funding. It gives precise definitions, rather than the previously approximated definitions, and makes certain that the statute will include not only the particulars of traditional proxy ownership but also more complex financial instruments involved in asset-shielding strategies.

Section 3 of the Act creates a general prohibition against benami transactions. It identifies entering into a benami transaction as a criminal act, punishable by rigorous imprisonment of 1 to 7 years and a fine not exceeding 25% of the fair market value of the benami property. This penal provision is accompanied by Section 5, which provides the central government with the power to confiscate benami property without paying any compensation. It is worth noting that this is a civil forfeiture scheme, meaning that benami property can be attached and confiscated even if an individual is acquitted of criminal charges<sup>11</sup>, given that the procedure complies with quasi-judicial procedures. This provides the state significantly more discretion to extinguish

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<sup>10</sup> Prohibition of Benami Property Transactions Act, No. 45 of 1988, India Code (Amended 2016). <https://indiacode.nic.in>.

<sup>11</sup> Central Board of Direct Taxes (CBDT). (2018). *Benami Transactions Informants Reward Scheme*. <https://incometaxindia.gov.in>.

illegal assets while avoiding the evidentiary burden criminal law would require. A layered enforcement regime is established under the scheme of the Act. It begins with the Initiating Officer taking action by issuing a notice, inquiry, and even provisionally attaching the property believed to be benami under Section 24. After approval by the Approving Authority, the matter is referred to and heard before the Adjudicative Authority, which functions as a quasi-judicial tribunal to determine whether the transaction is benami. If the Adjudicating Authority is to confirm the provisional attachment, then that property is confiscated under Section 27. The appeal from the decision does lie with the Appellate Tribunal established under Section 30. The structure is intended to balance investigative powers and judicial supervision, but doubts emerge regarding their practical operation in light of potential delays in proceedings, victim coordination, and jurisdictional issues or overlap when cases overlap with subsequent cases initiated under income tax, anti-corruption, or anti-money laundering legislation<sup>12</sup>.

Although the statute is primarily focused on penalizing concealment and providing for the forfeiture of illicit property, it is conspicuously silent on providing protections for genuine informants or whistleblowers. Section 54 of the Act establishes a penalty for providing false information, which involves a term of imprisonment and a monetary fine, but does not have a parallel provision to provide assurance to bona fide informants who in good faith report benami transactions. The PBPT Act does not have anything comparable to other Financial or anti-corruption statutes that provide for anonymity to the whistleblower, protections from ridicule or retaliation, or incentivizing disclosures by providing a reward. This is particularly concerning given that this is a law that relies heavily on public intelligence to uncover hidden ownership structures, which are, by nature, difficult to track using an investigator's traditional tools. This void is further highlighted by the broader legal context in India. For example, the Whistle Blowers Protection Act, 2014<sup>13</sup>, which was enacted to protect individuals reporting on corruption and abuse of power in offices that were public offices, does not automatically extend to the informants under economic or financial laws unless there is a clearly identifiable administrative connection. In a similar vein, and while certain protections are woven into the Companies Act, 2013 under Section 177, or the Prevention of Corruption Act, they are largely sectoral in nature and insufficient to address the nuances of property-based financial concealment. In short, the PBPT Act views informants more as suspects than collaborators,

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<sup>12</sup> Indian Express. (2023, August 10). *Whistleblower flagged benami links in mining case*. <https://indianexpress.com>

<sup>13</sup> Whistle Blowers Protection Act, No. 17 of 2014, India Code. <https://indiacode.nic.in>.

focusing on perceived misuse of the process rather than enabling civic engagement to reveal benami property holdings. For these reasons, while the legal framework proposed under the 2016 amendment represents a major improvement in terms of scope, procedure, and penalty, it suffers from a normative and operational imbalance<sup>14</sup>. On one hand, the regime grants significant powers to the enforcement authorities for both investigation and seizure of assets<sup>15</sup>. On the other hand, it makes no effort to develop institutional trust with the public, ignoring that in order to be effective, a law needs an informed and secure citizen willing to assist enforcement through legal disclosures. This disparity highlights the dire necessity of incorporating whistleblower protection, both in terms of law and procedure, into any anti-benami legal structure, a theme that we will explore through empirical evidence and comparative analysis in the following sections.

The enforcement history of the Act against Benami Property Transactions, 1988, especially post-comprehensive amendment in 2016, indicates a paradox between legislative ambition and practical implementation<sup>16</sup>. The Act, as prohibitive and punitive as it may have been, has converted statutory power to enforcement with certain difficulties. Official records from the Ministry of Finance and the Enforcement Directorate reveal that from the time the Act's new execution provisions between November 2016 to early 2024, the department identified just less than 4,800 benami transaction cases with aggregate asset value exceeding ₹12,000 crore<sup>17</sup>. Of the identified cases, the Benami Prohibition Units (BPUs) of the Income Tax Department created attachment and confiscation proceedings in respect of more than 3,850 cases note properties valued at approximately ₹8,000 crore. These aggregates blur significant differences across the regions, and to date, they also reflect the limitations of a uniform enforcement strategy in a legally plural and administratively diverse country like India. A closer examination of regional data makes it clear that enforcement outcomes in terms of asset value and number of cases differ by both region and State. For instance, the Northern Region, which contains several politically and economically important States such as Delhi, Uttar Pradesh, Haryana, and Punjab, had the highest asset value of over ₹3,100 crore, with a relatively low number of cases filed (around 900). In contrast, the Central Region, with Madhya Pradesh and Chhattisgarh, had over 1,500 cases filed but a relatively low total asset value of ₹200 crore.

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<sup>14</sup> Moneycontrol. (2023, July 8). *Government mulls amending PBPT Act to plug legal loopholes*. <https://moneycontrol.com>.

<sup>15</sup> Lok Sabha Debates. (2023). *Discussion on the effectiveness of the Benami Law in Parliament*, Session XXIV.

<sup>16</sup> PIB India. (2023). *Government initiatives on benami crackdown*. Press Information Bureau. <https://pib.gov.in>

<sup>17</sup> Central Board of Direct Taxes (CBDT). (2018). *Benami Transactions Informants Reward Scheme*. <https://incometaxindia.gov.in>.

The difference in asset value and number of reported cases indicates that enforcement discretion is shaped not only by the prevalence of benami transactions but also by the degree of administrative discretion, political will, and local institutional capacity<sup>18</sup>.

**Table 1: Regional Distribution of Benami Cases and Asset Values (2016–2024)**

Region	Number of Cases	Estimated Asset Value (₹ Crore)
Northern	900	3,100
Central	1,500	200
Western	850	2,300
Southern	450	1,050
Eastern & NE	100	250
<b>Total</b>	<b>~4,800</b>	<b>~₹12,000</b>

Source - PIB India. (2023). Government initiatives on the benami crackdown. Press Information Bureau. <https://pib.gov.in/>

The above Table1- indicates a deeper threat to the constitutional and institutional framework. While the act and the procedures in the amended statute outline a very specific enforcement architecture, assigning to Initiating Officers the role of investigators, quasi-judicial Benami Adjudicating Authorities the role of adjudicators, and specifying Tribunals as the appellate body, these procedures rely on the responsiveness of the citizenry. While tax evasion through income tax or money laundering may be discovered from indications arising out of digital or financial transactions, benami arrangements are largely reliant on a proxy ownership structure, which complicates detection without a willingness on the part of a third party to report the benami transaction. Thus, informants are an essential element of any effective operation aimed at disrupting benami transactions. However, the Act is notably silent as to this. If an informant supplies false information, Section 54 provides for punishment, including imprisonment and fines, but provides no parallel statutory safe harbor for legitimate whistleblowers acting in good faith. This shortcoming is accentuated when placed into a global perspective. India introduced the Whistleblowers Protection Act in 2014, designed to provide protection to whistleblowers

<sup>18</sup> Economic Times. (2023, May 17). Over ₹14,000 crore worth of benami properties attached in 5 years. <https://economictimes.indiatimes.com>

against corruption or impropriety in duties performed in connection with public office<sup>19</sup>. Nonetheless, this statute is both under-implemented and institutionally detached from the benami enforcement regime<sup>20</sup>. It provides no procedural linkage to the BPUs and no authority linkage under the PBPT Act. Likewise, the Companies Act and Prevention of Corruption Act offered sectoral protections, but neglected those disclosing property concealment on benami channels. In contrast, the legal systems in the US and UK offer robust schemes for protecting and incentivizing informants. For example, the US Internal Revenue Service (IRS) has money regimes (reward schemes), legal anonymity regimes (tax whistleblower statutes), and judicial protections for whistleblowers who report tax evaders or property concealers<sup>21</sup>. The UK Serious Fraud Office employs a similar bargaining logic as well, with public interest disclosure assurances to encourage citizens to cooperate without fear of reprisals<sup>22</sup>.

The consequence of this omission is empirically visible. All the parliamentary replies from 2021 to 2023, which cite numerous asset attachments, reflect a very small number of benami offenses initiated by voluntary disclosures or whistleblower tips. In each of the Enforcement Directorate's annual reports, there also appears to be an established norm of initiating almost all investigations suo motu or from concurrent income tax raids. This is more than just a procedural gap; it is indicative of a systemic failure to institutionalize public participation in law enforcement. Some citizens who could be willing to report such transactions lack both institutional trust and legal guarantees to come forward, especially in rural contexts or politically sensitive situations where informants may face retaliation socially, economically, or otherwise.

As judicial interpretation of the PBPT Act continues to unfold, particularly following the Supreme Court's both temporary invalidation and revalidation of important provisions within the law between 2022 and 2024, the lack of protective provisions for informants is developing as a significant constitutional concern<sup>23</sup>. The State's power to forfeit property under Section 5 must be weighed against its obligations to protect fundamental rights, including freedom of

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<sup>19</sup> National Law University Delhi. (2023). *Symposium Proceedings on Economic Offences and Whistleblower Protection in India*.

<sup>20</sup> PIB India. (2023). *Government initiatives on benami crackdown*. Press Information Bureau. <https://pib.gov.in>

<sup>21</sup> US Securities and Exchange Commission. (2023). *Annual Report to Congress on the Dodd-Frank Whistleblower Program*. <https://sec.gov>.

<sup>22</sup> UK Parliament. (2022). *Public Interest Disclosure Act 1998 – Twenty-Five Years Later*. House of Commons Library.

<sup>23</sup> Sinha, P. (2022). Prosecution trends under PBPT Act post-2016. *Law and Policy Journal of India*, 5(1), 21–43.



speech (Article 19(1)(a)), equality (Article 14), and protection against arbitrariness. Unless the law is amended to codify indictee rights (i.e., informant rights) under the PBPT Act or is at least procedurally linked to the Whistleblowers Protection Act, then the present regime may likely violate the principles of proportionality and the rule of law<sup>24</sup>. As such, the empirical findings indicate that the benami enforcement machinery is operationally used and growing; its reliance on investigative authority alone is unsustainable. In the absence of public trust, institutional transparency, and statutory protection for citizen participation, the deterrent objectives of the statute will be unequally realised<sup>25</sup>. The next section will examine how jurisdictions have resolved this tension and what lessons India can draw in developing a participatory and constitutionally robust whistleblowing mechanism in an anti-benami scheme<sup>26</sup>.

### 3. Public Awareness and Legal Literacy: The Missing Compliance Link

The effectiveness of any legal regime designed to govern covert financial dealings, such as benami transactions, relies not only on the strength of its institutional framework but also on the extent and degree to which the public understands and internalizes the law. The Prohibition of Benami Property Transactions Act, 1988, particularly since its reformed version in 2016, requires citizen participation, in some cases as potential informants, in others as beneficiaries of anti-corruption outcomes, or parties complying with its terms<sup>27</sup>. Unfortunately, the linkage between public legal awareness and compliance remains deeply underexplored in the regulatory framework in India. In many accounts of benami transactions, lack of compliance is attributable not just to wilful invasion, but to genuine ignorance of what constitutes a benami transaction, who might be liable, and what penalties may ensue<sup>28</sup>. The problem is compounded by the legal complexity of the Act itself, particularly its edifice of definitions, procedural stages, and the existence of multiple enforcement agencies that would bewilder the average citizen<sup>29</sup>.

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<sup>24</sup> Indian Law Institute. (2023). *Casebook on Property and Economic Offences in India*. National Law University Delhi.

<sup>25</sup> Centre for Civil Society. (2023). *Analysis of Regulatory Burden and Transparency Laws in India*. <https://ccs.in>.

<sup>26</sup> The Wire. (2022, November 13). *Whistleblower reveals hidden wealth through benami companies*. <https://thewire.in>.

<sup>27</sup> Lok Sabha Debates. (2023). *Discussion on the effectiveness of the Benami Law in Parliament*, Session XXIV.

<sup>28</sup> Indian Law Institute. (2023). *Casebook on Property and Economic Offences in India*. National Law University Delhi.

<sup>29</sup> Basu, A. (2022). Comparative evaluation of whistleblower protection laws: India, UK, and USA. *Comparative Public Law Journal*, 9(1), 151–177.

The role of the government in fostering legal literacy, as the objective of the legislation is not just incidental but rather is part and parcel of achieving the success of the legislation. There are several institutional pathways that disseminate legal education: the Press Information Bureau (PIB) provides public notifications, media releases, and educational bulletins, while statutory holders like the National Legal Services Authority (NALSA) is statutorily mandated to promote legal aid and promote legal literacy, particularly for economically and socially challenged groups. In contrast to flagship welfare or digital finance programs that were subject to coordinated promotional outreach, anti-benami enforcement has primarily been an internal administrative, bureaucratic activity with limited public engagement. Periodically, the Ministry of Finance and the Enforcement Directorate would release updates on the developments of specific benami and asset seizures, but these announcements are often technical, sporadic, and inaccessible to the general public. Available data underscores this gap. For example, Standing Committee reports prepared for 2022-2023 do not refer to any public outreach programs connected to the PBPT Act. Nor do the ED's annual reports provide metrics on citizen reporting or whistleblower participation. This invisibility, both institutional and informational, will contribute to eroding any deterrent effect the law has. Insights from other jurisdictions also show how legal literacy can inform a compliance culture. In the United Kingdom, Her Majesty's Revenue and Customs (HMRC) manages public campaigns to help convince the public that their obligations include exposure to tax evasion, undisclosed assets, and beneficial ownership obligations<sup>30</sup>. To make the information accessible, HMRC uses public hotline campaigns, community spaces, and multilingual legal literature. A parallel example is Australia's AUSTRAC (Australian Transaction Reports and Analysis Centre), which examines potential financial crimes, but also works on strategic public communication<sup>31</sup>, particularly targeting real estate brokers, lawyers, and finance advisors that tend to facilitate 'benami' - like structures<sup>32</sup>.

In contrast, India's approach remains institutionally siloed and enforcement-focused, assuming that legal deterrence will inherently produce compliance. The evidence provided by prior empirical sections already indicates that a large portion of the public does not have a functional understanding of benami law. Many of the respondents confuse it with general corruption statutes, or worse, they simply believe that family-held properties automatically fall within the

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<sup>30</sup> Organisation for Economic Co-operation and Development (OECD). (2022). *Tax Transparency and Exchange of Information Report*. <https://oecd.org>.

<sup>31</sup> Government of Australia. (2022). *Public Interest Disclosure Act Review*. Attorney General's Office.

<sup>32</sup> World Bank. (2023). *Stolen Asset Recovery (StAR) Initiative: Global Progress Report*. <https://worldbank.org>

exceptions<sup>33</sup>. And again, these knowledge deficiencies are not naïve; they impede the detection and reporting of violations, and erode public trust in enforcement. In rural contexts, where informal and tenuous ownership structures predominate and documentation is often incomplete, the failure to adequately communicate the scope and purpose of the law may yield not deterrence but fear, confusion, or wrongful penalisation. Without a normative transformation of how the law is conceived and adopted socially, the legislative effort remains conceptually sound but socially inert.

#### **4. Whistleblower Protection under Indian Law: Status, Gaps, and Risks**

The silence of institutions and procedures around public engagement in relation to the PBPT Act becomes even more troubling in the context of whistleblower protection or other safeguards, or the lack thereof. The anti-benami regime is built on the assumption that information about disguised ownership, fictitious or illusory transactions, and untraceable funding must either originate from within the social network or from a third party who is better informed about the layers of ownership in these transactions. Yet, the law provides no direct procedural avenue, reward structure, or legal immunity for informants who assist enforcement agencies in detecting benami arrangements<sup>34</sup>. In fact, the Act is asymmetric: Section 54 punishes false informants; however, there is no equivalent and parallel protection for whistleblowers. The lack of clarity in the legislation not only discourages trust from members of the public, but also discourages participation in public duties, especially when informants exposing these transactions risk personal, social, or professional harm. Even though there is a formal whistleblower statute in India in the form of the Whistleblowers Protection Act, 2014, its application has been limited and entangled with political and procedural issues. It is intended mainly to protect people revealing corruption in public offices and doesn't have any enabling provisions that can apply to whistleblowers disclosing property-based financial crimes prescribed by the PBPT Act<sup>35</sup>. Likewise, the Companies Act 2013, section 177, provides for whistleblower protocols for certain classes of companies but has limited relevance to corporate fraud and governance failures. Therefore, while the Lokpal and Lokayuktas Act 2013 created anti-corruption ombudsmen having regard to an employer, there is no direct procedural

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<sup>33</sup> The Hindu. (2023, June 22). *Benami land linked to former officials unearthed in Bihar*. <https://thehindu.com>.

<sup>34</sup> National Law University Delhi. (2023). *Symposium Proceedings on Economic Offences and Whistleblower Protection in India*.

<sup>35</sup> Sinha, P. (2022). Prosecution trends under PBPT Act post-2016. *Law and Policy Journal of India*, 5(1), 21–43.

protection to whistleblowers reporting on benami property dealings<sup>36</sup>. The result is a fragmented legal ecosystem in which whistleblower protections are disparate, indirect, and functionally decoupled from certain financial crime statutes like the PBPT Act.

Judicial pronouncements have sometimes affirmed the hazards associated with whistleblowing, but have not yet developed enforceable doctrines or interim protections in the context of benami law. Notably, the Supreme Court has extended constitutional protections under Article 21 to include the safety and dignity of informants under certain circumstances of public interest disclosures; such recognition remains ad hoc and does not constitute a substitute for legislative action. The courts are yet to declare whether whistleblowing of the kind associated with benami transactions is protected speech under Article 19(1)(a) or whether retaliatory conduct is capable of being constitutionally challenged under the rubric of Articles 14 or 21. In the absence of clear jurisprudence, lower enforcement agencies have no procedural confidence or organizational policy to protect whistleblowers. Anecdotal media reports and investigations by civil society have documented several cases when whistleblowers, particularly against powerful persons or organizations, faced harassment, transfers<sup>37</sup>, or charges of criminal defamation<sup>38</sup>. While these accounts may not have specifically involved benami disclosures, they do illustrate the adverse context within which whistleblowing takes place in India. Without legal guarantees regarding anonymity, protections against reprisals, legal immunity for good faith disclosures, and secure ways to submit evidence, the risk calculus for prospective informants tilts decisively toward silence<sup>39</sup>.

Comparative jurisdictions provide instructive models. The United States' False Claims Act has a qui tam provision permitting whistleblowers to initiate lawsuits on the government's behalf and receive a portion of damages recovered. The UK's Public Interest Disclosure Act provides statutory protection for all workers across sectors and has been judicially interpreted to extend to financial misconduct<sup>40</sup>. Australia has also enveloped whistleblower rights within corporate, financial, and criminal law, allowing for remedies, such as reinstatement, damages, and injunctive relief<sup>41</sup>. These models appropriately recognize that informants are not ancillary

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<sup>36</sup> The Hindu. (2023, June 22). *Benami land linked to former officials unearthed in Bihar*. <https://thehindu.com>.

<sup>37</sup> Supreme Court of India. (2022). *Ganpati Dealcom Pvt. Ltd. v. Union of India*, (2022) SCC OnLine SC 1064.

<sup>38</sup> World Bank. (2023). *Stolen Asset Recovery (StAR) Initiative: Global Progress Report*. <https://worldbank.org>

<sup>39</sup> Reserve Bank of India. (2023). *Banking Sector Exposure and Risk of Benami Transactions*. <https://rbi.org.in>

<sup>40</sup> UK Parliament. (2022). *Public Interest Disclosure Act 1998 – Twenty-Five Years Later*. House of Commons Library.

<sup>41</sup> Centre for Civil Society. (2023). *Analysis of Regulatory Burden and Transparency Laws in India*. <https://ccs.in>

players in the enforcement ecosystem, but rather core participants. In India, the idea of incorporating whistleblower protection provisions into the PBPT Act or, at the very least, establishing a formal linkage to the Whistleblowers Protection Act, must be treated as a legislative imperative, not a policy option<sup>42</sup>. Given the covert nature of benami transactions, along with the impediments surrounding the issues of proving beneficial ownership, the law must, in a structural way, encourage disclosures while insulating informants from adverse effects. Legislative inaction here risks undermining what the PBPT Act ultimately envisions, creating a regime in which illegality continues to exist without the visibility of enforcement only because those with knowledge may be unwilling or unable to disclose or come forward.

## 5. Public Engagement and Informant Mechanisms in Benami Law Enforcement

The effectiveness of any law targeting financial secrecy and asset concealment, like India's anti-benami regime<sup>43</sup>, truly is dependent not only on enforcement actions initiated by the state but also on public engagement. Acknowledging this, the Government of India created a Benami Transactions Informants Reward Scheme, 2018, to encourage people to report benami property<sup>44</sup>. Informants, whether Indian or foreign, can be rewarded up to ₹1 crore for actionable information that results in the successful attachment and confiscation of benami assets<sup>45</sup>. Though this kind of scheme appears to be a progressive activity for the government to provide, actual public involvement seems limited, and the efficacy of the reward scheme remains largely unquantified in government disclosures<sup>46</sup>. An empirical snapshot of government-reported enforcement results shows the amount of work performed by the Income Tax Department and other authorities. Between 2016 and 2021, there were more than 2,400 benami properties provisionally attached under the amended Act, with the value of the reported property exceeding ₹9,500 crores, according to data from the Ministry of Finance. In January 2021, the government introduced an online platform that allowed citizens to report benami ownerships and illegal foreign properties. The intrigue surrounding the reporting program is that the government has not published any data to quantify the number of cases that originated from informants compared to agency action, as well as the amount dispersed to the informant as a

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<sup>42</sup> Moneycontrol. (2023, July 8). *Government mulls amending PBPT Act to plug legal loopholes*. <https://moneycontrol.com>.

<sup>43</sup> NITI Aayog. (2022). *Strategy for Anti-Corruption and Asset Recovery*. <https://niti.gov.in>

<sup>44</sup> The Hindu. (2023, June 22). *Benami land linked to former officials unearthed in Bihar*. <https://thehindu.com>.

<sup>45</sup> Lok Sabha Debates. (2023). *Discussion on the effectiveness of the Benami Law in Parliament*, Session XXIV.

<sup>46</sup> Central Vigilance Commission. (2023). *Annual Report on Public Sector Corruption and Asset Tracing*. <https://cvc.gov.in>

reward<sup>47</sup>.

**Table 2: Key Enforcement Data on Benami Transactions in India (2016–2023)**

Metric	Value / Status
Total Benami Properties Attached (2016–2021)	2,400+
Total Value of Attached Properties	₹9,500+ crore
Maximum Informant Reward under the 2018 Scheme	₹1 crore
Launch of Online Informant Portal	January 2021
Data on Number of Reward Claims Processed or Paid	Not officially disclosed
Proportion of Informant-led Cases vs. Department-initiated Actions	Unavailable / Not Disaggregated

Source-Ministry of Finance. (2023). *Annual Report 2022–2023. Department of Revenue, Government of India.* <https://dea.gov.in>

The issue of a lack of disaggregated data on informant-led enforcement is a serious concern. The lack of this information implies, at a minimum, that there is either no systemic ability to record the outcomes or, worse, the scheme itself has not been utilized to its full potential<sup>48</sup>. Legal scholars have pointed out this systemic omission as a structural flaw, wherein the government has established a reward system and identified no statutory whistleblower protections, as well as established no national awareness of the Scheme that would encourage its use. India's legal and institutional context is still very bureaucratic, and informants may struggle to be confident in the reporting process, especially if they lack a formal education in law or social capital. In addition to a lack of statutory anonymity and limited enforcement of the Whistleblowers Protection Act, 2014, the core of the problem is rooted in public reticence to be seen as "snitching", especially when it is anticipated to be in politically sensitive or high-value property disputes.

A comparative review of international frameworks demonstrates India's relative lack of regulation in the area of whistleblower participation<sup>49</sup>. The IRS Whistleblower Program in the

<sup>47</sup> Economic Times. (2023, May 17). *Over ₹14,000 crore worth of benami properties attached in 5 years.* <https://economictimes.indiatimes.com>.

<sup>48</sup> Sinha, P. (2022). Prosecution trends under PBPT Act post-2016. *Law and Policy Journal of India*, 5(1), 21–43.

<sup>49</sup> World Bank. (2023). *Stolen Asset Recovery (StAR) Initiative: Global Progress Report.* <https://worldbank.org>.

United States offers significant financial inducements coupled with shielded legal immunity<sup>50</sup>. This governmental program facilitates the recovery of billions of dollars each year in undisclosed tax and undisclosed asset recovery<sup>51</sup>. The IRS generates annual reports of taxpayer claims received, accepted, and paid, demonstrating accountability and transparency. The United Kingdom's Public Interest Disclosure Act 1998 also relies on statutory protections and works across employment sectors as part of the resulting protections for disclosures involving financial fraud, prohibited property holding, and tax evasion allegations<sup>52</sup>. In essence, whistleblowers are protected against retaliation through dismissal, legal proceedings, or other retaliatory action, as Public Interest Disclosure Units, such as the Serious Fraud Office (SFO) in the UK, retain all disclosures in strict confidence<sup>53</sup>. The laws of Australia provide general whistleblowing protection under the Corporations Act, and incentivized or specific support from its financial intelligence agency, AUSTRAC, invites anonymous and safe reporting with legal enforcement against retaliation or breach of confidentiality<sup>54</sup>. Conversely, the whistleblower system in India under the PBPT Act is much less onerous on these critical aspects<sup>55</sup>. The law, as it currently stands, penalizes false reporting (under Section 54), but does not simultaneously guarantee safety or immunity for the whistleblower acts made in good faith<sup>56</sup>. Additionally, the government has failed to indicate whether disclosures under the reward scheme would be protected under the general Whistleblowers Protection Act<sup>57</sup>. Thus, the risk of exposure, legal retaliation, or even social exclusion discourages potential informants from cooperating with authorities, even where they want to be informed and incentivised.

## 6. Constitutional, Ethical, and Policy Concerns

The implementation of anti-benami laws in India concerns the delicate balance between the authority of the state and the rights of individuals under the Constitution of India<sup>58</sup>. Some of

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<sup>50</sup> PIB India. (2023). *Government initiatives on benami crackdown*. Press Information Bureau. <https://pib.gov.in>

<sup>51</sup> Basu, A. (2022). Comparative evaluation of whistleblower protection laws: India, UK, and USA.

*Comparative Public Law Journal*, 9(1), 151–177.

<sup>52</sup> Indian Law Institute. (2023). *Casebook on Property and Economic Offences in India*. National Law University Delhi.

<sup>53</sup> UK Parliament. (2022). *Public Interest Disclosure Act 1998 – Twenty-Five Years Later*. House of Commons Library.

<sup>54</sup> Government of Australia. (2022). *Public Interest Disclosure Act Review*. Attorney General's Office.

<sup>55</sup> Sinha, P. (2022). Prosecution trends under PBPT Act post-2016. *Law and Policy Journal of India*, 5(1), 21–43.

<sup>56</sup> Moneycontrol. (2023, July 8). *Government mulls amending PBPT Act to plug legal loopholes*. <https://moneycontrol.com>.

<sup>57</sup> The Wire. (2022, November 13). *Whistleblower reveals hidden wealth through benami companies*. <https://thewire.in>.

<sup>58</sup> The Hindu. (2023, June 22). *Benami land linked to former officials unearthed in Bihar*. <https://thehindu.com>.

the most substantive constitutional tensions involve the paramount right to property in Article 300A and the societal interest in exposing concealed ownership<sup>59</sup>. The PBPT Act, which empowers the state to attach and seize properties that are in the suspected benami category, presumes that some form of constitutional muster of due process is followed prior to seizure of the property<sup>60</sup>. Confiscation without adequate procedural safeguards could be challenged as arbitrary or excessive against the constitutional test of proportionality in administrative action, particularly if the state acts on unsubstantiated information or otherwise limits the affected party's opportunity to rebut. The requirements of transparency and justification of the state's actions as part of the evolving jurisprudence on proportionality by the Supreme Court of India reinforce the need for any forfeiture process to occur in a justified, fair, and transparent way.

Also related is the fact that whistleblower rights appear to be constitutionally positioned, even though not formally enumerated in the Indian Constitution. These rights can be extrapolated and inferred from the rights provided by Article 19(1)(a), freedom of speech and expression, and Article 21, right to access to justice. A legal regime that does not protect individuals reporting in the public interest, especially where reports involve wrongdoing relating to finances or property, deters expression and obstructs justice. The limited opportunities for anonymous disclosures, the risk of retaliation, and the absence of legal remedies for whistleblowers create a climate of institutional mistrust<sup>61</sup>. Courts have at times recognized and granted the right of citizens to disseminate and report information affecting public interest, but have not provided until now significant solid constitutional protections for whistleblowers, in particular in economic or regulatory space, such as enforcement of benami laws<sup>62</sup>.

From an ethical standpoint, the informant-based enforcement model carries both promise and peril. Citizen enforcement may democratize economic crime detection, but may nonetheless encourage misleading complaints, personal vendettas, and strategic exploitation of the reward system<sup>63</sup>. Frivolous complaints lead to frivolous investigations, reputational damage, and could lead to property seizures, especially in the case of family or business relationships in which the definition of beneficial ownership may be ambiguous. The ethical validity of the law, therefore,

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<sup>59</sup> PIB India. (2023). *Government initiatives on benami crackdown*. Press Information Bureau. <https://pib.gov.in>

<sup>60</sup> Lok Sabha Debates. (2023). *Discussion on the effectiveness of the Benami Law in Parliament*, Session XXIV.

<sup>61</sup> The Wire. (2022, November 13). *Whistleblower reveals hidden wealth through benami companies*. <https://thewire.in>

<sup>62</sup> National Law University Delhi. (2023). *Symposium Proceedings on Economic Offences and Whistleblower Protection in India*.

<sup>63</sup> CBI. (2022). *Whistleblower Complaints and Action Taken*. Central Bureau of Investigation Report.



revolves around having robust filters, procedural safeguards, and protections for both the informant and the person charged with an offense. Without such a balance, the law could effectively encourage unwanted surveillance and harassment under the guise of compliance. The policy dilemma of how to reconcile deterrents with protection is no less daunting. A punitive regime that provides no incentive to comply because it lacks public trust cannot reasonably expect voluntary compliance; conversely, while a lenient framework risks being ineffectual. The current architecture of the PBPT Act is heavily leaned on enforcement theory but rather limited in terms of civic engagement<sup>64</sup>. Our position was that it undermined compliance and enforcement, and also undermined a democratic model for financial regulation in a constitutional democracy. The policy dilemma calls for a more deliberate, multi-stakeholder and systemic regulatory approach that aligns enforcement and compliance with civil engagement, accommodates rights while enforcing duties to protect the public, and safeguards individual liberties even as it targets systemic wrongdoing<sup>65</sup>.

## 7. Recommendations

Given the doctrinal, empirical, and comparative assessments presented in this paper, a holistic reform of India's anti-benami legal regime should be pursued, a reform that facilitates public engagement through legally protected whistleblowing and enhances legal literacy throughout the country and across sectors. The first and most urgent reform is a clause that provides whistleblower protection in the PBPT Act. This clause should expressly guarantee informant confidentiality, as well as immunity from civil or criminal liability for disclosures made in good faith, from retaliatory actions such as dismissal, reprisal, or reputational harm. This clause would solidify the law into constitutional principles about the right to free expression and due process and establish India within other international best practices regarding anti-corruption law enforcement. To implement this protection, the government could create an Independent Informant Review Board, operating under the Ministry of Finance. The Board would receive complaints, determine the appropriateness and eligibility of potential rewards and follow anonymity protocols, and offer recourse in cases of informant retaliation. The Board would have legal expertise, retired judges and legal academics, representatives from civil society, and technical officers from the Enforcement Directorate and Income Tax Department to provide

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<sup>64</sup> Moneycontrol. (2023, July 8). *Government mulls amending PBPT Act to plug legal loopholes*. <https://moneycontrol.com>.

<sup>65</sup> Indian Express. (2023, August 10). *Whistleblower flagged benami links in mining case*. <https://indianexpress.com>

credibility and technical competence. The decisions of the Board would be subject to a limited form of judicial review, balancing institutional discretion with procedural legitimacy.

This reform should be accompanied by an effective reward framework that defines eligibility for reward conditions, reward disbursements, and safeguards against misuse. The existing Benami Transactions Informants Reward Scheme, 2018, does not offer this procedural clarity and transparency, which reduces its deterrent and incentivizing value. Publicly available data on the number of claims received, processed, and paid should be released regularly to ensure that institutional credibility is maintained and the system is used more widely. At the same time, a national legal literacy campaign must be carried out so that the public is able to learn what constitutes a benami transaction, who can be liable, and what protections are offered to the conferrer. The Press Information Bureau and the National Legal Services Authority should spearhead the campaign in conjunction with the ED and the Income Tax Department. Legal education campaigns should not just target urban abnormalities but also rural Districts, with materials translated into regional languages. The campaign should target both conventional and digital platforms. Finally, a coordinated inter-agency approach is not only necessary but the only way to avoid fragmented implementation. The Ministry of Finance needs to initiate regular coordination meetings amongst the Enforcement Directorate, the Income Tax Department, the Central Economic Intelligence Bureau, and NALSA. Civil society organizations and legal aid clinics should be included in this dialogue to offer responses, help identify ground-level challenges, and serve as intermediaries for vulnerable informants who do not necessarily have direct access to institutional structures. Through these reforms, it will be possible to shift the PBPT Act from a statutorily prescribed enforcement tool into a planning the PBPT Act in terms of a public-legal framework that engages citizens as partners and agents of justice, not merely as regulated subjects. The future of India's anti-benami project will depend on establishing a civic community governed by law as an alternative to a punitive oversight, which sustains constitutional values while tackling evasions of accountability through illegitimate obscurity.

## **8. Conclusion**

India's legislative approach to benami transactions evolved from a skeletal structure under the 1988 Act to a comprehensive, procedural regime post-amendment in 2016. Yet, this evolution remains incomplete both in terms of conception and implementation. A regime to target hidden wealth and illicit ownership structures must rely not only on formal investigative powers but

also on the engagement, trust, and participation of the public it seeks to protect and regulate. This paper demonstrates that without a protective and incentivised informant regime, coupled with low levels of legal awareness, the Prohibition of Benami Property Transactions Act has a limited capability to achieve its intended aims. From the comparative international experience, for instance, the United States, the United Kingdom, and Australia, the success of similar regimes has depended upon ensuring whistleblower protections that were embedded into the legislative framework and normalised citizen cooperation, as a foundation of financial regulation. In India, informants, unlike in most countries, remain vulnerable, unsupported, and frequently invisible in the complex enforcement system of the state. This disparity in enforcement has led to over-reliance on agency-led investigations and, arguably, a systematic underutilization of potentially valuable civic intelligence. In order to break these structural limitations, India needs to recalibrate its anti-benami strategy away from punitive regulation and towards a participatory model of governance. This entails enacting statutory protections for whistleblowers, a robust public legal literacy campaign, and the creation of institutional mechanisms to facilitate safe, transparent, and legally protected disclosures. Legal reform cannot be only punitive; it isn't enough to have legal elements based on punitive purposes alone, if they are not expanding a legal culture that enables individuals to participate meaningfully in regulatory enforcement without fear or uncertainty. Only then can anti-benami law evolve from being a deterrent to a democratic platform for economic integrity and constitutional accountability.

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