
BENAMI PROPERTY LAW AND ITS EFFECT ON REAL ESTATE TRANSACTIONS

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ABSTRACT

The Prohibition of Benami Transactions Act, 2016 aims at eliminating concealed property ownership and curbing the circulation of unaccounted wealth. Real Estate has historically been the primary tool for benami transactions. It allows individuals to keep black money, manipulate property ownership and obscure beneficial ownership. The Act introduces a comprehensive mechanism with strict penalties and institutional bodies such as Initiating Officer, Adjudicating Authority, Appellate Tribunal.

The paper analyses the effect of the Act on real estate transactions, market behaviour and the confidence of genuine investors. It examines how the Act has influenced title verification practices, documentation standards, loan approvals and compliance expectations for developers as well as the buyers. I have used a mixed methodology of doctrinal analysis of statutes cases and government reports along with limited empirical component, for which there was a small survey that was conducted. The main aim of the survey was to gauge the awareness and the perceived impact. Thus, this paper highlights the strengths, gaps and unintended consequences of the *Benami* framework. It ultimately argues that although the Act has improved market transparency, India still needs more coherent property law reforms and clearer guidelines for genuine transactions. It is essential for a clean and accessible real estate system.

Keywords: Benami Transactions; Real Estate Law; Property Ownership; 2016 Amendment; Beneficial Ownership

I. Introduction:

Real Estate in India is deeply intertwined with social status, wealth accumulation and long-term financial security. However, this is also one of the most opaque and corruption-prone sectors. For decades, property were purchased in false names, undervalued in sale deeds or held through intermediaries to conceal the true owner. These transactions are commonly known as *Benami* Transactions. These allow individuals to avoid tax liability, launder illicit funds and hide assets from creditors and family members or law enforcement agencies. The scale of practices has become so that benami ownership was considered almost “normal” in many regions.

The initial Benami Property Transactions (Prohibition) Act, 1988, was well intentioned but suffered from weak enforcement provisions and remained largely ineffective for nearly thirty years. The turning point was when the government brought the anti-corruption and anti-black money agenda, culminating in the 2016 Amendment. The amended Act expanded the definition of *benami* property, introduced more rigorous, investigatory powers. It established a multilayered institutional framework to attach, confiscate, and prosecute *benami* holdings. This transformation impacted the real estate sector. The real estate sector had long relied on informal practices, cash dealings and complex ownership structures. With stricter disclosure requirements and the threat of criminal prosecution, buyers and sellers began adopting more cautious and transparent practices. Developers too, faced an increase in scrutiny in terms of funding sources, documentation, and project ownership patterns. Banks and financial institutions tightened their due-diligence norms, especially in high value transactions.

The Act has proved to play a significant role in improving market confidence for genuine buyers. With increasing digitisation of land records, more transparent payment systems and structured disclosure requirements, there is a noticeable shift toward formalisation in real estate transactions. The Benami Act has undeniably altered market behaviour by reducing the feasibility of concealed ownership schemes.

This paper analyses these developments. It explores how the law has reshaped real-estate practices, the strengths and limitations. It also assesses whether the regulatory goals match realities on ground.

II. Research Gap:

Although considerable legal commentary exists on the 2016 amendments, **three major gaps** remain in academic literature:

1. **Insufficient analysis of real estate market behaviour** after the amendments
2. **Almost no empirical studies** measuring awareness among buyers.
3. **Limited research on how the Act affects due-diligence processes**, title verification, and transaction structuring in everyday real estate deals.

III. Research Methodology:

This paper adopts a mixed methodology of doctrinal analysis and empirical analysis. Under empirical analysis, responses from a small group of people above the age of 25 years were collected, those who have experience in dealing with property (buying, selling, etc.). It helps us understand how the Benami Transactions (Prohibition) Act, 1988, as amended by the 2016 legislation, operates in practice and how ordinary property buyers perceive risks linked to such transactions.

The doctrinal analysis relies primarily on the statutes that includes the Benami Transactions (Prohibition) Act 1988 and Benami Transactions (Prohibition) Rules 2016¹ and relevant judgements. These help us understand how the law defines “benami transaction”, the scope of “benamidar” and “beneficial owner”, and also the consequences of holding a benami property. In *Union of India v Ganpati Dealcom Pvt Ltd*, the Supreme Court Discussed the retrospective operation of the 2016 amendment². Similarly classical judgements like *Thakur Bhim Singh v Thakur Kan Singh*³ help interpret what makes a benami transaction under Indian jurisprudence.

Secondary sources include books, commentaries, government reports and scholarly articles. They are used to analyse legal interpretation, policy objectives, and enforcement challenges. This doctrinal review establishes the foundation for assessing whether the law effectively

¹Prohibition of Benami Property Transactions Act 1988; Benami Transactions (Prohibition) Amendment Act 2016; Benami Transactions (Prohibition) Rules 2016.

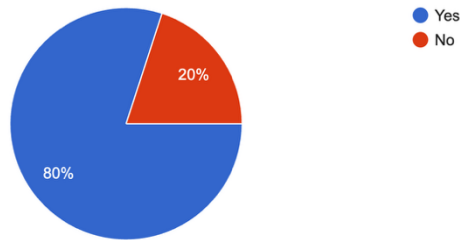
² *Union of India and Another v Ganpati Dealcom Pvt Ltd* (2023) 3 SCC 315 (SC).

³ *Thakur Bhim Singh (Dead) by LRs v Thakur Kan Singh* (1980) 3 SCC 72.

prevents corruption, black money and misuse of property titles.

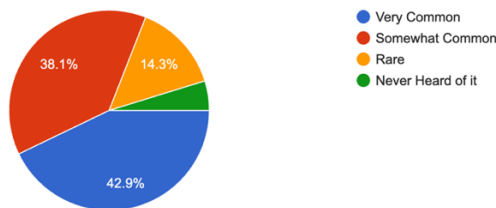
To understand public awareness and behavioural trends in the real estate market, an online questionnaire was conducted using Google Forms. The survey targeted mainly individuals above 25 years and those with experience in buying or selling property to ensure more reliable insights of market behaviour. The empirical method helps connect the legal framework with the actual public understanding. It is essential because benami transactions often occur due to lack of awareness and informal market practices. Although small in size, the sample provides qualitative insights into consumer attitudes.

Have you heard the term "benami property" before today?
20 responses



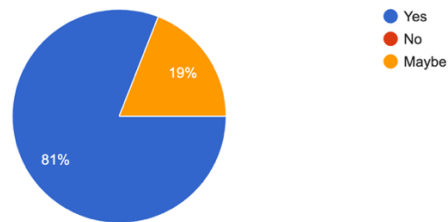
A.

Do you think buying property in someone else's name is common in India?
21 responses



B.

Do you think benami transactions contribute to corruption or black money?
21 responses



C.

The three charts shown above help us analyse the market behaviour, consumer awareness, and risk perception.

A] Awareness of the term “Benami Property”.

This chart shows that 80% of respondents had heard of benami transactions. But majority of these got aware about the term primarily from news also, one thing to be noted is that majority of the people who chose “yes” were for the age group of 45-60 years and barely any was from 25-35 years age group.

B] Do you think buying Property in Someone else’s name is common?

Around 40% said its somewhat common, and 30% said its very common. This aligns with the commentary that benami transactions thrive due to cultural practices of using family names, informality in documentation, and intentions to evade tax or hide assets⁴.

C] Do Benami Transactons Contribute to Corruption or Black Money?

85% respondents answered “Yes”. This reflects high public recognition of the financial governance risks associated with benami holdings, supporting the policy rationale of the 2016 Amendment which sought to curb black money and improve transparency⁵.

The findings from the survey were integrated to assess:

- I. Awareness Gaps
- II. Patterns of trust in property brokers.

⁴ R. Khanna, ‘ Benami Transactions and Indian Property Law’ (2018) NUJS L Rev.

⁵ Statement of Objects and Reasons, Benami Transaction (Prohibition) Amendment Bill 2015 (Lok Sabha).

- III. Perceptions of legal enforcement.
- IV. Likelihood of accidental involvement in benami transactions.
- V. Need for accessible government guidance.

For e.g. 90% respondents said they would avoid a deal if documentation looked suspicious. This shows consumer sensitivity to transparency. Similarly 100% respondents said that they wanted the government to publish simple, accessible guidance. This shows a strong demand for legal literacy.

The sample size is small and geographically limited. Legal awareness among respondents may affect accuracy. However, this data is still useful for identifying trends in public perception. By combining legal analysis and empirical public perception, this study provides a more realistic understanding of how the Benami Act operates in practice.

IV. Legal Analysis:

The Benami Transactions (Prohibition) Act, 1988 defines 'benami' transactions as any transaction in which property transferred to one person of consideration paid by another partner⁶. The Act prohibits all benami transactions and gives the right to recover property held on benami without any compensation to the government. It aimed to prevent individuals from avoiding taxes by acquiring assets in name of others. The Act came into force on 5 September 1988 and was later amended in 2016.

Benami transactions continue to exist in the country primarily as an instrument of tax evasion, concealing black money and enabling corruption⁷. People who have undisclosed sources of income, purchase assets like real estate and get the asset entered in someone else's name (Benamidar) to avoid disclosing either, when avoid paying tax not only on their 'economic' income but also wealth. This can create an opaque façade from which the real owners, the beneficial owners, while avoiding restrictions on property ownership (with some simply held to increase visibility), mask their ill-gained income or make assets inaccessible to a rightful creditor⁸. Re-enacted recently by the Benami Transactions Act, 2016 with provisions for

⁶ The Prohibition of Benami Property Transactions Act, 1988, Act No 45 of 1988 s 2(a).

⁷ The Prohibition of Benami Property Transactions Act, 1988, Act No 45 of 1988.

⁸ Income Tax Department, Keep away from Benami Transaction (Directorate of Income Tax, 2024) 2,7-8.

stringent punishment as confiscation of benamidar's property and imprisonment⁹, but easy escape routes are available on account of huge extent of parallel economy in the country which generates black money allowing incentives to potential holders for using illegal mode of holding assets.

Before the anti- Benami Act, 1988, there was no specific law to control this challenging practice and thus created chaos in the legal as well as economic arena. Courts had difficulty in dealing with difficult proof of ownership, and the true owner was required to withstand powerful presumption that the name on the title deed belonged to the owner. Economically, the practice has been a significant channel of unaccounted money into real estate. This leads to an artificial escalation in housing prices and development of an enormous parallel economy¹⁰. In addition, it also leads to widespread tax evasion and enabled vested interests to deceive laws. This created income inequality along with fraud against the rightful creditors¹¹. Adding this to anomaly, the original Prohibition of Benami Property Transactions Act, 1988 wasn't very effective as it was also a type of inchoate legislation which did not empower authorities for proper enforcement mechanisms. This is because the government did not create the required authorities or publish the appropriate rules. This lack of organizational architecture made an already huge gap between the law on paper and the working of it in reality much greater¹².

The 2016 amendment finally addressed this by expanding the Section 2 definitions. It now clearly identifies the Benamidar and Beneficial Owner, strengthening the Section 3 prohibition. This makes property liable to mandatory confiscation under Section 5. It created the necessary enforcement mechanism including the Initiating Officer, Adjudicating Authority the Appellate Tribunal, complete with the detailed procedures for attachment (Section 24)¹³. The Act enforces severe penalties, that match the objective of discouraging illicit transactions. According to Section 53, the punishment is rigorous imprisonment for one to seven years, along with a heavy fine of up to 25% of the property's Fair Market Value (FMV)¹⁴. The civil consequence is the mandatory confiscation of the property by the government without compensation (Section 5) .

⁹ Union of India v Ganpati Dealcom Pvt Ltd [2024] INSC 799 (recalling and restoring the appeal for fresh adjudication on retrospective application of the Act)

¹⁰ Income Tax Department, Keep away from Benami Transaction (Directorate of Income Tax, 2024) 2,7-8.

¹¹ The Prohibition of Benami Property Transactions Act, 1988, Act No 45 of 1988.

¹² Union of India v Ganpati Dealcom Pvt Ltd [2024] INSC 799 (recalling and restoring the appeal for fresh adjudication on retrospective application of the Act)

¹³ The Benami Transactions (Prohibition) Amendment Act, 2016, Act No 43 of 2016, ss 2,3,5,24.

¹⁴ The Prohibition of Benami Property Transactions Act, 1988, s 53.

This is a powerful deterrent that directly impacts black money investment in real estate¹⁵. Cases like Mohanlal v Mirza Abdul Gaffur and Thakur Bhim Singh v Thakur Kan Singh have established the classic definition and tests, focusing on the source of funds and the intention to identify a Benami Transaction¹⁶. Post 2016, the major challenge was the retrospective applicability of the penal and confiscation provisions. This was brought to the forefront in Union of India v Ganpati Dealcom Pvt Ltd case where the Supreme Court’s initial declaration against retrospectively was subsequently recalled and restored for fresh adjudication¹⁷. There are still ambiguities that exist for its difficult to distinguish a genuine family arrangement from a Benami deal, leading to the fear of arbitrary attachment.

ASPECT	1988 ACT	2016 AMENDMENT
1. Definition	Narrow	Very Broad
2. Authorities	None	Full Machinery
3. Punishment	Weak	Strong Imprisonment with confiscation
4. Confiscation	Unclear	Mandatory

V. Empirical Analysis:

A survey was done for people above the age of 25 years. All of these have some degree of experience in real estate wither as buyers, sellers, tenants or advisors. This set of people make the data meaningful because such people have interacted with property markets, brokers, or documentation procedures. A key finding was that many people had heard the term “benami transaction” or “benami property” but very few possess a clear and legally accurate understanding of what qualifies as a benami transaction. This means that awareness exists but at a surface level and the comprehension is limited. This is significant because ethe Benami Act has extremely wide definitions for terms like “beneficial owner”, “benamidar” and “consideration provider”. When ordinary buyers lack clarity about these concepts, they face a risk of unknowingly entering in to transaction that could be later viewed as benami under the

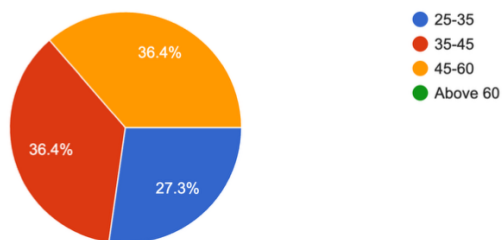
¹⁵ The Prohibition of Benami Property Transactions Act, 1988, s 5.

¹⁶ Mohanlal v Mirza Abdul Gaffur (1996) 1 SCC 639; Thakur Bhim Singh (Dead) by LRs v Thakur Kan Singh (1980) 3 SCC 72.

¹⁷ Union of India v Ganpati Dealcom Pvt Ltd [2024] INSC 799.

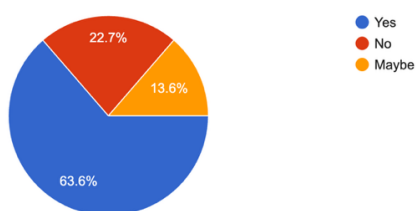
law.

Age
22 responses



Another important view is that benami dealings are common in India. Respondents believe that despite strict laws, benami ownership is still common through proxies, relatives and informal financing. This perception reflects a gap between the intention of the law that aims to discourage concealment and the lived reality of buyers who continue to witness shady practices. This also indicates low trust in real estate intermediaries. Many respondents admitted that they depend heavily on brokers during the property process without verifying the documents themselves. This shows why there’s accidental involvement in benami arrangement. If buyers rely only on verbal assurances and intermediaries , they may become a part of a transaction where the registered owner and the real owner differ.

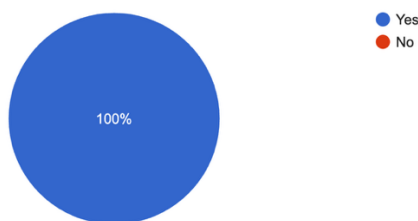
Do you believe ordinary buyers could accidentally become part of a benami transaction without knowing?
22 responses



Also it is important to note that there is a strong belief that one could unknowingly become part of benami transaction. This fear among the buyers themselves show that the legal framework is complicated and difficult to navigate. This creates an “awareness gap”, the law is strict but the understanding is weak. All the respondents also said that the Government should issue simplified public guidance on the Benami Act. People want clear , accessible explanations, checklists etc. to help them avoid risky transactions. This aligns with a broader theme that ordinary buyers are not trying to violate the law but they are uncertain about how to comply with it. Overall the findings show a mismatch between statutory requirements and

public awareness. While the Benami Act is one of India's strictest property laws, people still rely on informal market behaviour that exposes them to risk. The results confirm that there's a need for better legal communication, consumer education and practical tools that help buyers conduct safe property transactions.

Would you like the government to provide simpler, publicly accessible guidance on safe property buying?
22 responses



VI. Policy Implications:

The doctrinal evidence and the findings from the empirical research are that, while the Benami Transactions (Prohibition) Amendment Act 2016 has brought in a far more robust regulatory architecture, its impact on real estate transactions is uneven. The law is designed to bring hidden ownership and unreported money under check, with stringent punishment, specialized bodies and a framework for enforcement¹⁸. However, the success of such measures is contingent on public awareness and transparency in land records, as well as on their implementation being uniform across states. The results of the survey reveal that although people have an understanding that real estate serves as one of the primary conduits for benami transactions, almost all respondents are unclear about what qualifies as a benami transaction under s 2(9) of the Act¹⁹. Lack of this awareness, this knowledge gap has implications for policy. Numerous commenters indicated that they were unsure about everyday family dealings, such as in acquisition of property in the name of a spouse or children, which are carved out from the statutory exceptions²⁰. Ambiguity will also cause innocent buyers to be scared of accidentally breaking the law, making compliance more expensive. “The government thus needs to be providing simplified public guidance, such as FAQs, checklists and model scenarios that explain eligible and ineligible transactions.” This would be similar to requirements in other areas of regulation, like the RBI's circulars on suspicious transactions which could serve

¹⁸ Benami Transactions (Prohibition) Amendment Act 2016, Statement of objects and Reasons.

¹⁹ Prohibition of Benami Property Transactions Act 1988, s 2(9).

²⁰ Ibid, s 2(9)(A) (exceptions for spouse, children and fiduciary capacity).

as a model here as well²¹. Without this clarity, the law runs the risk of punishing stupidity rather than discouraging intentionally-obscured ownership.

One clear theme to come out of the data is a call for better record-keeping around who owns land and property. "Ask for a clear listing of who is the owner, that will help us notice if it's already been lawfully owned or if it's benami," responded repeatedly mentioned. This is also consistent with the Expert Committee on Land Titling's suggestions (NITI Aayog, 2021) that have argued in favour of standardised, searchable and digitally linked land records²². An effective integration of the Benami Act with extant programmes like the Digital India Land Records Modernization Programme (DILRMP) will greatly diminish opportunities for a benami transaction since beneficial ownership will no longer be easy to mask.

Second, a significant policy implication is that of institutional capacity. While the Amendment of 2016 led to constitution of Initiating Officer, Adjudicating Authority and Appellate Tribunal, there are disparities in functioning across states leading to delays or inconsistent adjudication²³. The Supreme Court in *Ganpati Dealcom Pvt Ltd v Union of India* held that procedural fairness and proper application of mind during attachment proceedings under the 2016 framework were required²⁴. For better enforcement, government has to invest in specialized training, standardization of operations and improved coordination between the enforcement agencies on one hand and the financial institutions on the other.

There also is a danger of over-criminalization. Three years imprisonment along with hefty fines have been mandated under the Act for attempting to enter a benami deal²⁵. While such penalties make sense for fraudulent suppression, they are likely to generate excessive caution among the sincere buyer who has an honest reporting mistake. A sliding scale of punishment, which will differentiate between deliberate concealment and careless neglect, would help justify enforcement action. There are analogous graded framework under the Prevention of Money Laundering Act that could act as a referent²⁶. Lastly, the results indicate a clear need of cooperation between banks and enforcement authorities. The banks, who are among the first ones to detect unusual transactions have not been provided with a clear guidance on reporting

²¹ Reserve Bank of India, Master Direction on KYC (2023).

²² NITI Aayog, Report on Land Titling and Modernisation (2021).

²³ Ministry of Finance, Annual Report of the Adjudicating Authority under the Benami Act (2020-21).

²⁴ *Union of India v Ganpati Dealcom Pvt Ltd* (2022) 3 SCC 315 (SC).

²⁵ Prohibition of Benami Property Transactions Act 1988, s 53.

²⁶ Prevention of Money Laundering Act 2002, ss 3-8

suspect benami business. The development of structured reporting requirements, like the Suspicious Transaction Reports under anti-money laundering regimes could strengthen early detection²⁷.

Conclusion, in general, the policy need to move from a punishment-oriented to transparency-led citizen friendly regime. Making the Benami Act more effective through raising public awareness, digitising land records, enhancing institutional capacity and introducing graduated penalties. It is these reforms that are needed for an honest, efficient and accessible real estate market in India.

VIII Comparative Perspective:

A comparative perspective helps us check if India's Benami law aligns with the global standards of beneficial ownership transparency. Jurisdictions of several countries have adopted different mechanisms to curb the misuse of real estate for concealing illicit wealth.

The United Kingdom offers one of the most relevant models through the Register of Overseas Entities (ROE) that was introduced under the Economic Crime (Transparency and Enforcement) Act, 2022²⁸. Under ROE, it is mandatory for foreign company owning UK properties to disclose their beneficial owners to Companies House. Non Compliance can result in criminal sanctions. There can also be restrictions on dealing with the property. Benami law also targets hidden ownership but the UK framework focuses on real time disclosure and public accessibility. This is unlike India's confidential adjudicatory model. Public registers increase market confidence and discourage the use of shell companies to hold property²⁹. India's register, however, remains non-public, which limits transparency for buyers conducting due diligence.

In the United States, under the Corporate Transparency Act 2021 (CTA) companies are required to disclose beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN)³⁰. Even though the CTA does not specifically target property transactions, the US Treasury has repeatedly issued Geographic Targeting Orders (GTOs). It mandates title insurance companies in high-risk regions to identify beneficial owners behind high value cash

²⁷ Financial Intelligence Unit (FIU-IND), Guidelines on Suspicious Transaction Reporting (2020).

²⁸ Economic Crime (Transparency and Enforcement) Act 2022 (UK).

²⁹ Alex Cobham and Peter Janský, Global Beneficial Ownership Transparency Report (Tax Justice Network 2022).

³⁰ Corporate Transparency Act 2021 (US).

property purchases³¹. This shows a more targeted and data driven approach rather than a uniform prohibition. Indian Law, in contrast, criminalises the transaction itself that than reporting obligations for intermediaries like registrars, banks or developers.

Singapore adopts a regulated compliance model under the Companies Act and anti-money laundering norms issued by the Monetary Authority of Singapore (MAS). It requires disclosure of beneficial ownership and imposes strict due-diligence obligations on property professionals³². Instead of criminalising benami style arrangements, Singapore focuses on monitoring corporate ownership, it mandates record-keeping and imposing heavy penalties for false declarations. This model encourages transparency while avoiding the risk of criminalising genuine family arrangements, an issue that Indian courts have repeatedly warned against³³.

A comparison between all, shows us that India's approach is punitive. On the other hand, UK, US and Singapore rely on mandatory disclosure and institutional reporting duties. India lacks a public beneficial ownership register, a property-transaction reporting system and strong due diligence obligations on the intermediaries. International experience shows that transparency tools yield better compliance than broad criminalisation. It also reduces transaction fears among honest buyers. The Indian framework may thus benefit from adopting a:

- a. Public or semi-public beneficial ownership registers.
- b. Mandatory reporting obligations for registrars and banks, and
- c. Data driven, risk based monitoring similar to GTOs.

IX Challenges in Implementation

Despite a strong framework, the implementation of the Benami Transactions (Prohibition) Amendment Act 2016 faces several structural and practical challenges that limit its real impact on real estate sector. The biggest challenge is simple: real estate transactions in India are complicated, and not everything fits neatly into the definition of a benami deal. For example, people often buy property in the names of parents, spouses, or siblings for convenience or

³¹ US Department of Treasury, 'Geographic Targeting Orders' (FinCEN, 2023).

³² Monetary Authority of Singapore, Notice on Prevention of Money laundering and Countering Finance of Terrorism, MAS Notice 626.

³³ Ganpati Dealcom Pvt Ltd v. Union of India (2022) 3 SCC 315 (SC).

safety. Indian courts have also said this repeatedly that intention matters, not just whose name appears on the document³⁴. But proving intention is extremely difficult. Sometimes the payment was made years ago, in cash, with no clear financial trail. This creates confusion and a bit of fear among ordinary buyers.

Another challenge is the burden of proof. Enforcement officers may suspect a property is benami, but suspicion alone is not enough. They must show where the money came from, who controlled the property, and why the transaction was structured that way³⁵. That is hard when financial documentation is incomplete or old. Courts have in fact, criticised agencies when attachment orders were issued without adequate evidence³⁶. These setbacks slow down enforcement and make the law look unpredictable.

A deeper structural challenge is our land record system. India still does not have a single, unified database that connects land records, tax filings, Aadhaar, PAN, and financial information³⁷. Everything is scattered. Different states, different registries, different formats. Without reliable data, identifying the “real” owner becomes a guessing game. This prevents early detection and forces investigators to work manually, which takes time and leaves room for mistakes.

There is also a psychological problem: people are scared of the law. The Act has very strict penalties which include confiscation of property and imprisonment³⁸. For genuine buyers, this feels harsh. Your survey responses show this clearly. People didn’t fully understand the Act, yet they worried that a normal family purchase might be labelled as benami. When a law creates more anxiety than clarity, even honest investors step back. This can unintentionally slow down the property market.

Then comes the issue of litigation. A lot of people challenge attachment orders, and many cases reach tribunals and High Courts³⁹. This backlog creates long delays. When a property is stuck in litigation, no one can buy it, sell it, or develop it. For builders, this is a nightmare. For banks, it increases risk. For buyers, it creates uncertainty.

³⁴ Jaydalal Poddar v Bibi Hazra (1974) 1 SCC 3.

³⁵ Ministry of Finance, White Paper on Black Money (Government of India 2012).

³⁶ Union of India v Ganpati Dealcom Pvt Ltd 3 SCC 315.

³⁷ NCAER, Land Records and Property Rights Study (2019).

³⁸ Benami Transactions (Prohibition) Act 1988, ss 3-5 (as amended in 2016).

³⁹ Law Commission of India, Report on Judicial Backlog and Tribunals (2019).

Finally (and this is important) public awareness is still low. Many people have heard of the Benami Act, but very few understand what actually makes something benami. Countries like the UK spend money on public guidance. India doesn't. Without clear communication, people can't comply properly, even if they want to⁴⁰.

In short, the law is strong, but the ground reality is messy. Confusion in the definition, weak documentation, scattered land records, fear among honest buyers, and rising litigation, all of these limit the real impact of the Act. Until these issues are addressed, the law will struggle to achieve what it promises.

X. Conclusion

The Benami Transactions (Prohibition) Amendment Act 2016 was supposed to mark a clean break from India's long history of opaque property dealings. In many ways, it genuinely has. The law tightened the definition and created a clearer enforcement chain. But the more I worked through the cases and the survey responses, the more obvious it became that the Act is still a work in progress, sometimes a promising one and sometimes a frustrating one. And that tension runs through almost every aspect of its implementation.

For e.g. Courts have repeatedly emphasized that the amended statute must be read strictly because it imposes harsh penalties. It can also lead to confiscation of property. In *Ganpati Dealcom Pvt Ltd v Union of India*, the Supreme Court drew a firm line by refusing to apply the 2016 provisions retrospectively, stressing that individuals cannot be punished for conduct that was lawful earlier⁴¹. This single judgement brought a kind of clarity that, honestly should have been built into the legislative text from the start. Yet it also showed something deeper, that even the judiciary is still trying to stabilise the legal framework.

On the ground, things look even messier. Several respondents in the survey admitted they found the law "confusing" or "too technical", which is unsurprising when even practitioners often disagree about what is "benami" versus what is simply a family arrangement. Government committees have echoed these concerns, noting that genuine transactions risk being entangled with suspicious ones because ownership structures in India can be complex and culturally

⁴⁰ Alex Cobham and Petr Janský, *Global Beneficial Ownership Transparency Report* (Tax Justice Network 2022).

⁴¹ *Ganpati Dealcom Pvt Ltd v Union of India* (2022) 3 SCC 315.

layered⁴². So yes, transparency has improved but so has the fear of making a mistake. Buyers now double check documents more than before which is good, but some also step back from deals because they are anxious about scrutiny, which is not so good.

And then there's enforcement. India created an Initiating Officer, an Adjudicating Authority, and an Appellate Tribunal to handle benami cases, but these bodies face the same chronic problems that affect many regulatory institutions: heavy caseloads, inconsistent interpretations, and limited coordination with the state revenue departments⁴³. The result is slow progress. Some properties are attached for years before being resolved, leaving families and developers stuck in legal limbo. It's not that the Act is flawed in its intention; it's that real estate in India is intertwined with taxation, inheritance, banking and local land record systems, all of which move unevenly. Still, despite these gaps, the Act has pushed the real estate market toward cleaner practices. Developers increasingly rely on formal documentation, banks demand clearer ownership proofs, and investors say they feel "slightly safer" than a decade ago. It's a small shift, but a real one. And perhaps that is the best way to understand the law's impact: it hasn't transformed the system overnight, but it has changed the direction of movement.

Ultimately, for the Act to achieve its full potential, India needs not just stronger enforcement but simpler property laws, better land records and more guidance for genuine owners who simply want to comply. Until then, the Benami framework will continue operating in this in-between space helpful, necessary, but still finding its balance.

⁴² Ministry of Finance, Report of the Standing Committee on Finance: Benami Transactions (Lok Sabha Secretariat 2018).

⁴³ Central Board of Direct Taxes, Benami Proceedings Statistics Report (CBDT 2023).

References

Legislation

- Prohibition of Benami Property Transactions Act 1988.
- Benami Transactions (Prohibition) Amendment Act 2016.
- Benami Transactions (Prohibition) Rules 2016.
- Prevention of Money Laundering Act 2002, ss 3-8.
- Economic Crime (Transparency and Enforcement) Act 2022 (UK).
- Corporate Transparency Act 2021 (US).

Cases

- Jaydalal Poddar v Bibi Hazra (1974) 1 SCC 3.
- Thakur Bhim Singh (Dead) by LRs v Thakur Kan Singh (1980) 3 SCC 72.
- Mohanlal v Mirza Abdul Gaffur (1996) 1 SCC 639.
- Union of India and Another v Ganpati Dealcom Pvt Ltd (2023) 3 SCC 315 (SC).
- Union of India v Ganpati Dealcom Pvt Ltd [2024] INSC 799.

Books and Journal Articles

- Khanna R, 'Benami Transactions and Indian Property Law' (2018) NUJS Law Review.
- Cobham A and Janský P, Global Beneficial Ownership Transparency Report (Tax Justice Network 2022).

Government Reports and Official Publications (India)

- Ministry of Finance, White Paper on Black Money (Government of India 2012).

- Ministry of Finance, Report of the Standing Committee on Finance: Benami Transactions (Lok Sabha Secretariat 2018).
- Ministry of Finance, Annual Report of the Adjudicating Authority under the Benami Act (2020–21).
- Central Board of Direct Taxes, Benami Proceedings Statistics Report (CBDT 2023).
- Income Tax Department, Keep Away from Benami Transaction (Directorate of Income Tax 2024) 2, 7–8.
- NITI Aayog, Report on Land Titling and Modernisation (2021).
- NCAER, Land Records and Property Rights Study (2019).
- Law Commission of India, Report on Judicial Backlog and Tribunals (2019).

Regulatory Guidelines and International Materials

- Reserve Bank of India, Master Direction on Know Your Customer (KYC) (2023).
- Financial Intelligence Unit -India (FIU-IND), Guidelines on Suspicious Transaction Reporting (2020).
- US Department of Treasury, 'Geographic Targeting Orders' (FinCEN 2023).
- Monetary Authority of Singapore, Notice on Prevention of Money Laundering and Countering the Financing of Terrorism, MAS Notice 626.