Standing Committee Report Summary

The Benami Transactions (Prohibition) Bill, 2011

- The Standing Committee on Finance, chaired by Mr Yashwant Sinha, submitted its 58th Report on 'The Benami Transactions (Prohibition) Bill, 2011' on June 15, 2012.
- The Bill was introduced in the Lok Sabha on August 18, 2011. It aims to prohibit *benami* transactions (property transactions in the name of another person) and replaces the existing Benami Transaction (Prohibition) Act, 1988 (1988 Act). The existing legislation was passed by parliament but never came into force as no rules were prescribed.

Observations and recommendations of the Committee:

The Committee supports the enactment of the Bill subject to several observations and modifications:

- The Committee recommended that the Bill's provisions extend to the state of Jammu and Kashmir because of the economic gravity of *benami* transactions.
- According to the Committee, the Bill fails to define several terms like "transaction", "arrangement", "trustee", "executor" and "agent". The Committee recommended that the definition clauses be reviewed to include proper definitions for every relevant term.
- The Committee believes that there are too many exemptions provided for in the Bill. It recommended only including the exemptions provided in the 1988 Act (i.e. only property in the name of a spouse or unmarried daughter is exempt).
- The Committee wanted the Bill to specify the manner of confiscation of agricultural *benami* property after examining the constitutional position since agricultural land is a state subject.
- The Bill's provisions addresses the re-transfer of *benami* property but the Committee was unsure if these infringe the provisions of the Transfer of Property Act, 1882.
- The Bill provides the authorities with powers to obtain information about *benami* transactions, one of which is the power to summon "any person". The Committee recommended that this be amended to include "any officials of a banking company or a financial institution or a company".
- According to the Committee, tracking the source of money in a *benami* transaction is a challenge. The Committee suggested introducing an in-built mechanism in the Bill where any suspicious transactions are mandatorily referred to the Initiating Officer.
- The Committee recommended introducing a time limit for the Adjudicating Authority to serve notice to any person concerned.
- The Bill defines the Adjudicating Authority as the same authority in the Prevention of Money-Laundering Act, 2002 (PML Act). The Committee expressed doubts about whether the powers conferred to the Adjudicating Authority in the PML Act are applicable to this Bill.
- The Appellate Tribunal established by the Bill is also the existing Appellate Tribunal set up by the PML Act. The Committee believes that this Appellate Tribunal would not be able to expedite the cases falling under both the PML Act and the Bill. It recommended the creation of an exclusive Appellate Tribunal for the Bill.
- The Committee felt that the appeal process in the Bill should be amended. Currently the Bill does not provide the Initiating Officer or Approving Authority the opportunity to file an appeal against the order of the Adjudicating Authority. The Committee also recommended shortening the time-limit for disposal of appeals by the Appellate Tribunal to one year from two years.
- The Bill allows aggrieved parties to appeal to the High Court within 120 days from the order of the Appellate Tribunal. The Committee recommended this time limit be shortened to 60 days.
- With regards to penalties for *benami* transactions, the Bill proposes a maximum punishment of two years imprisonment. The Committee felt that the original maximum punishment of three years in the 1988 Act should be retained in the Bill.
- In the event of proceedings against the deceased, the Bill allows proceedings to continue against the "legal heir". The Committee recommended that this clause be amended to ensure innocent heirs are protected against proceedings.
- Given that the 1988 Act never came into force because of rules not being prescribed, the Committee recommended adding a maximum period of six months from the enactment of the Bill to create rules.
- The Committee felt that there should be no time restriction for orders to remove difficulties with the Bill and this clause should be amended accordingly.

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