



# **BENAMI TRANSACTIONS (Prohibition) AMENDMENT ACT, 2016**

Amended by Amendment Act, 2016

W.E.F 01/11/2016

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# Act

**Total Chapters  
– I to VIII**

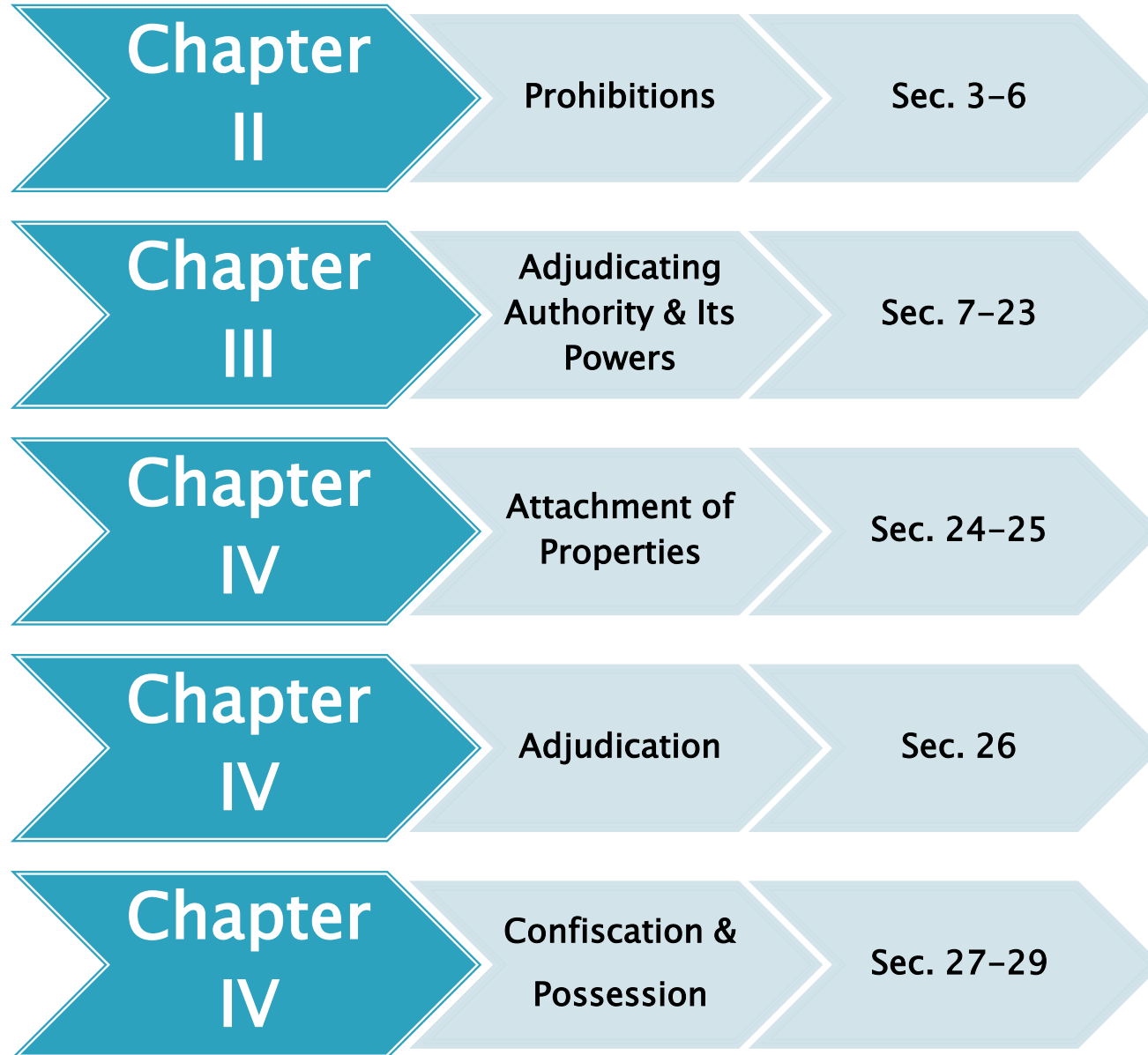
**Total Sections  
– 1 to 72**

# Rules

**Notified rules -  
The Prohibition of  
Benami Property  
Transactions  
Rules, 2016**

**Total Rules – 1  
to 10**

**Forms – 1 to 3**



**Chapter V**  
Appellate Tribunal  
Sec. 30–48

**Chapter V**  
Appeal to High Court  
Sec. 49

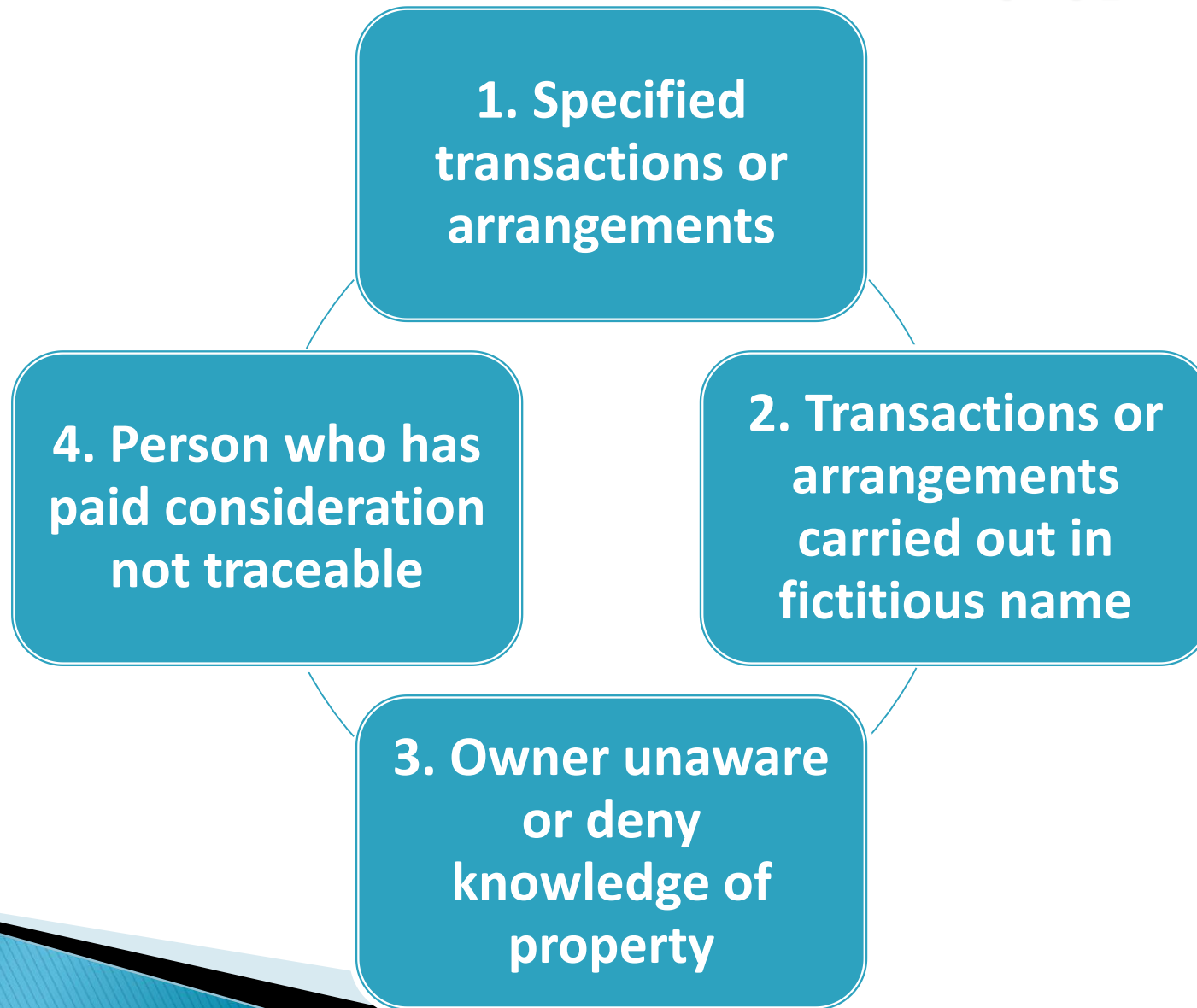
**Chapter VI**  
Special Court  
Sec. 50–51

**Chapter VI**  
Appeal & Revision  
Sec. 52

**Chapter VII**  
Penalties, Offences & Prosecutions  
Sec. 53–55

**Chapter VIII**  
Miscellaneous Provisions  
Sec. 56–72

# Benami Transactions [Sec. 2(9)]



# Benami Transactions [Sec. 2(9)]

## Specified transaction or arrangement

- **Property held, consideration paid by other person**
- **Held for benefit of payer**
- **Certain exceptions**

# Transaction not covered under the Act [Sec. 2(9)]

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**Property  
held by  
family  
member**

>> **Karta or Member of HUF**

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>> **Spouse or Children (Single Owner)**

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>> **Brother or Sister or Lineal  
ascendant or descendant (Joint  
Owner)**

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# Transaction not covered under the Act [Sec. 2(9)]

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**Property  
held by  
person in  
fiduciary  
capacity**

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**Trustee or Executor or Partner or  
Director**

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**Depository or participant as an  
agent of Depository**

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# Explanation to Sec. 2(9)

Transaction involving allowing possession of any property to be taken or retained, as part performance of contract as per S. 53A of the Transfer of Property Act 1882, is out of the purview of this Act, provided that:

Consideration has been provided by the person to whom possession allowed but ownership not transferred,

Stamp  
duty paid

Contract  
registered

## **Exemption [Sec. 58]**

- **The Central Govt. may notify property relating to charitable or religious trust.**

# Instances of Benami transactions

**Property held through unregistered deed or no deed**

**Property bought in the name of relative not falling in exempt category**

**Property held in dummy names or persons not traceable to government**

# Instances of Benami transactions

Property purchased in others name without their consent or knowledge

Amount deposited in bank account of third parties although belonging to the depositor

Amount shown as loan taken in books although belonging to self



# Key Definitions

## Benami Property [Sec. 2(8)]

- **Property subject matter of benami transactions**

## Benamidar [Sec. 2(10)]

- **Person or fictitious person in whose name property held**

## Beneficial Owner [Sec. 2(12)]

- **Identified or unidentified person benefiting from property**

# Authorities and Jurisdiction [Sec. 18]

Initiating  
Officer

Approving  
Authority

Administrator

Adjudicating  
Authority

Asst./Dy.  
Commissioner  
of Income tax

Addl./Jt.  
Commissioner  
of Income tax

Income Tax  
Officer

# Adjudicating Authority and Appellate Tribunal [Sec. 7, 30 & 31 r.w. notification no. 97/2016, dt. 25/10/2016]

>> Adjudicating authority and appellate tribunal appointed under the Prevention of Money Laundering Act 2002 will be the adjudicating authority for this Act.

>> The benches of appellate tribunal shall sit in Delhi or such other places as CG may, in consultation with chairperson, specify.





# Consequences

Previous sanction of approving authority [Sec 55]

Imprisonment upto 3 years or fine or with both [S. 3(2)]

Application of Provisions as per Chapter – VII [S. 3(3)]

Liable for confiscation of property by Central Govt. [S. 5]

Entered into before 01/11/2016

Entered into on or after 01/11/2016



# Consequences other than prosecutions

**Prohibition of right to recover property [Sec. 4]**

**No suit, claim, action lie to recover property from benamidar**

**Prohibition on re-transfer of property [Sec. 6]**

**Re-transfer null & void except u/s 190 of Finance Act, 2016 i.e. IDS**

# **Application of chapter – VII (S. 3(3))**

**Penalty for Benami  
transaction [Sec. 53]**

**liable for imprisonment  
for 1 – 7 years and fine  
upto 25% of fair value**

**Penalty for false  
information [Sec. 54]**

**liable for imprisonment  
for 6 months - 5 years  
and 10% of fair value**

# Other provisions under chapter VII

## Repealment of certain provisions of other Acts [Sec. 56]

S. 81 of Indian Trust Act, 1882  
relating to transfer not intended  
to dispose beneficial interest

S. 82 of Indian Trust Act, 1882  
relating to transfer to one for  
consideration paid by another

S. 94 of Indian Trust Act, 1882  
relating to constructive trust not  
expressly provided for.

# Other provisions under chapter VII

## Repealment of certain provisions of other Acts [Sec. 56]

S. 66 of Code of Civil Procedure, 1908 relating to suit to recover property

S. 281A of the Income Tax Act, 1961 except in the state of Jammu & Kashmir, relating to effect of failure to furnish information in respect of benami transactions

# Other provisions under chapter VII

## Application of other laws [Sec. 60]

Save as expressly provided, this Act is addition to and not derogation of any other laws

## Offence non-cognizable under Cr. PC 1973 [Sec. 61]

# Other provisions under chapter VII

**Offences by Companies, Firms or AOP or BOI whether incorporated or not [Sec. 62]**

**Every Person in-charge of the compliance at the relevant time, will be deemed to be guilty and prosecuted accordingly,**

**Person not liable if proves unaware.**

# Transfer of Pending Cases [Sec. 65]

Suit or proceedings pending before any forum or court other than high court, on the date of commencement of this Act stand transferred to adjudicating authority or appellate tribunal as the case may be



**Appeals against orders  
of Adjudicating authority**

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graph TD; A[Appeals against orders of Adjudicating authority] --> B[Appeal to Appellate tribunal]; B --> C[Appeal to High Court];
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**Appeal to  
Appellate  
tribunal**

**Appeal to  
High Court**

# Appeal to Appellate tribunal [Sec. 46]

>> Appeal to be filed within 45 days from the date of order of adjudication authority subject to delay for sufficient cause,

>> Appeal in Form No. 3 annexed to the Act with fees of Rs. 10,000/- and as per Rule 10 of Prohibition of Benami property transaction rules 2016,

>> Tribunal shall pass order as far as possible within 1 year from last day of month in which appeal filed

# Appeal to High Court [Sec. 49]

>> High Court will determine issues relating to question of law; Issue wrongly or not determined by tribunal,

>> Appeal to be filed within 60 days from the date of communication of order of appellate tribunal subject to delay for sufficient cause,

>> Appeal procedure same as for other appeals to high court under Code of Civil Procedure 1908

# Special Courts [Sec. 50]

>> Central Govt. may specify certain special sessions courts as special court

>> The special court will try case simultaneously under this Act and offence under Cr.CP 1973

>> Take cognizance only on complain by the authority, Officer of Central Govt. or State Govt.

>> Endeavour effort for disposing cases within 6 months.

*Thank you!*

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