

## RE. STATEMENT TO BE MADE BY HOME MINISTER

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI M. JACOB) : Madam Deputy Chairman, as per your suggestion, I had discussions with the Home Minister about the possibility of making the statement earlier. Collecting of information and getting the statement prepared would take some more time. So the earliest opportunity for the Home Minister to come and make the statement is said to be at 4.30 p.m. We are making every effort to speed it up, if possible. But 4.30 p.m. is the indication. Madam, when we are making a statement here, we are also compelled to give both English and Hindi versions of it. Naturally, that also takes some more time. So 4.30 p.m. is the earliest indicated time. If the hon. Members on the other side express their desire to meet the President at 5 O' clock, we can make the statement even after that. It is left to your discretion, Madam.

### THE DEPUTY CHAIRMAN :

If the statement is made at 4.30 p.m., then the hon. Members from the Opposition would not be able to seek clarifications as it will take some time for that. I would rather suggest that it be made at 6 p.m. Let them meet the President and come back. I think it may not be possible at 4.30 p.m. In the meantime, we will have a word with them. If they agree for 4.30 p.m., well and good. Otherwise, we will have it at 6 p.m. Now, the statutory resolution seeking disapproval of the Benami Transactions (Prohibition of the right to Recover Property) Ordinance, 1988 and the Benami Transactions (Prohibition) Bill, 1988 will be taken up together.

## BENAMI TRANSACTIONS (PROHIBITION) BILL 1988

SHRI JASWANT SINGH (Rajasthan) : Madam Deputy Chairman, with profound respect to you and to the House and to the hon. Minister who has prepared for this, my motion of disapproval will be now rendered farcical. I choose, therefore, with respect to you and to the House again, not to move.

THE DEPUTY CHAIRMAN : The resolution is not moved. Mr. Minister.

THE MINISTER OF LAW AND JUSTICE AND THE MINISTER OF WATER RESOURCES (SHRI B. SHANKARANAND) : Madam Deputy Chairman, I beg to move :

“That the Bill to prohibit *benami* transactions and the right to recover property held *benami* and for matters connected therewith or incidental thereto, be taken into consideration.”

As the House is aware, the President promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988, on 19th May 1988. The Bill seeks to implement the recommendations of the Law Commission contained in its 57th report. Although the Government has taken some time to implement the recommendations of the Law Commission, the Government felt that this was the most opportune time for bringing out such a legislation. The Ordinance evoked mixed response from the press, public and the Bar. While some sections congratulated the Government on making a beginning in the law of *benami* transactions, there was some criticism that the Ordinance had not gone very far to achieve the object, that is to say, prevention of proli-

[Shri B. Shankaranand]

feration of black money. There was also criticism that the Ordinance was not complete and had not touched many of the important aspects of *benami* transactions. It was also criticised that the Ordinance did not specifically provide for those cases where properties were transferred in the name of inanimate persons or in the name of tenants or deceased persons. In view of all these criticisms, it was felt that the Bill to replace the Ordinance should be drafted as comprehensively as possible, and if necessary, after obtaining the recommendations of the Law Commission. Accordingly, our Ministry had referred it to the Law Commission and the Law Commission was good enough to send its recommendations so that we might bring the Bill after considering its recommendations, before the expiry of the period of six weeks from the commencement of the session when the Ordinance will expire. The report of the Law Commission has already been placed on the Table of the House.

Before dwelling upon the provisions of the Bill I would like to take the indulgence of the House for bringing this Bill at such short notice. As I mentioned earlier, in view of the peculiar circumstances in which we had to refer the Bill to the Law Commission for advice, there had been some delay in bringing forward the legislation. The Ordinance has to be replaced by a Bill within six weeks, that is to say by 5th September. As the House is aware, the Ordinance prohibited the right of the true owners to file a suit in respect of any property held *benami* and no defence based on any right in respect of any property so held would also be allowed in any suit, claim or action. It provided exceptions only to properties held

by coparceners and by trustees on behalf of the beneficiaries. The Law Commission while justifying the provisions of the Ordinance had recommended that in order to be effective the entering into of *benami* transactions should be made an offence. It also felt that most of the *benami* transactions were entered into for the purpose of defeating tax laws, ceiling laws, etc. Both the parties to the transaction are equally guilty and as such the Ordinance should not allow one of the parties to obtain an undue advantage, that is to say, to retain the property. It has, therefore, suggested that in addition to making the entering into of *benami* transactions an offence, it should also provide for acquisition of the property from the *benamidar*. This would also provide a check against the *benamidar* retransferring the property back to the true owner after the commencement of the Ordinance for no consideration thus resulting in circumventing the provisions of the law. The Law Commission has, however, made two more recommendations, to check the entering into of *benami* transactions by authorising voluntary agencies to file complaints before tribunals designated for the purpose and to appoint an authority like the Charity Commissioner for supervising private trusts. It is proposed to accept all the recommendations of the Law Commission. The Bill, apart from including the provisions of the Ordinance, includes the recommendations of the Law Commission for prohibiting the *benami* transactions and for providing for acquisition of properties held *benami*. The only exception to the entering into of *benami* transactions is the purchase of a property by the father or the husband for the benefit of an unmarried daughter or wife. And a presumption has also been included that in respect of such transactions, it should be presumed that the transactions had been entered into for the benefit of the unmarried daughter or wife. As mentioned by

the Law Commission and in the Statement of Objects and Reasons attached to the Bill, the doctrine of acquisition as prevailing in the English law has been incorporated in the Indian law. The specific provisions for authorising private agencies and creating an authority like the Charity Commissioner for private trusts have not been included in the Bill as we feel that by the prohibition of *benami* transactions and for the acquisition of properties held *benami*, the concerned authorities will come to know of the existence of the *benami* transactions and voluntary agencies would automatically be sending their complaints even without their being specifically authorised. The objects would be amply achieved by these provisions.

As the House is aware, this Bill is relatable to a matter in the Concurrent List and both the Central and the State Governments are competent to pass legislation. In fact, Parliament will come in only for the purpose of legislation and it is the State Governments who have to administer the provisions of such law. As such we are not in a position to immediately specify the authority for acquisition of properties in the legislation itself. This will be taken care of by the rules which will be made after consultation with the State Governments.

A point may be raised that this provision may amount to excessive delegation. But the House can see that the procedure for acquisition alone is included in the rules. It will not suffer from the vice of excessive delegation. Further as no step has been taken to assess the quantum of *benami* transactions entered into in the country, we are not in a position to estimate the properties that would be taken up for acquisition. As and when occasion arises, it is proposed to designate either an officer of the Central Government or a State Government to be the competent authority for the

purpose of acquisition in accordance with the procedure that would be specified in the rules. As the entire proceedings for acquisition will be taken up by the existing officers, it is not proposed to create any additional staff for the purpose and no expenditure will be incurred on account of the provisions of the Bill being passed and brought into operation. This has been brought out clearly in the Financial Memorandum attached to the Bill. As no expenditure is involved, the recommendation of the President for the consideration of this Bill in this behalf has not been obtained.

As the Members of the House will agree, this Bill attempts to provide for a comprehensive law on *Benami* and it has touched all aspects. We also feel that this will be very effective in achieving the objective of preventing *denami* transactions. Much of the criticisms levelled against the ordinance will be met by the provisions of the Bill and the intention of the Government cannot be doubted. Further, we have brought forward this Bill after a detailed examination by an expert authority like the Law Commission and I am sure that the Bill will go a long way in achieving the objective and will have the unanimous approval of all sections of the House.

Madam, I commend the Bill for the consideration of the House.

*The question was proposed.*

THE DEPUTY CHAIRMAN:

Now, Mr. Vithalrao Madhavrao Jadhav.

SHRI VITHALRAO MADHAVRAO JADHAV (Maharashtra):  
Madam Deputy Chairman, firstly, I would like to congratulate our Government and the honourable Minister in particular for having brought forward this very important Bill which was required to be brought forward long back. Anyhow, as our

[Shri Vithalrao Madhavrao Jadhav]  
party and our Government are committed to the principles of socialism and democracy in this country. This is a very fine attempt made by the Minister because the *benami* property would now be acquired and any suit or claim or action is prohibited totally. On going through the Bill, I find that there are very good provisions. In respect of prohibition of *benami* transactions clause 3 of the Bill says clearly :

“(1) No person shall enter into any *benami* transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.”

Secondly, Madam, for the prohibition of the right to recover property held *benami*, it has been clearly stated in clause 4 (3) :

“(3) Nothing in this section shall apply,—

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or”

Thirdly, Madam, a very important provision has been made in this Bill and it is that all properties held *benami* shall be subject to acquisition—this is in clause 5 of the Bill—by such authority, in such manner and after following such procedure as may be prescribed.

It has also been clearly stated in sub-clause (2) of clause 5 that for the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1). Provision has also been made for the repeal of provisions of certain Acts. Though the Bill is not very

comprehensive, yet I must say that this is the first and very major effort which has been made by our Government to bring within their purview the *benami* properties in this country. Actually, if we go into the root cause of creation of black money, we will find that the root cause for the creation of black money is the *benami* property, *benami* land, etc. When we look towards the great population under poverty line, which is more than fifty per cent, and the few rich people who can be counted on fingers, we will see that these few people who are having *benai* lands, *benami* flats, *benami* houses and *benami* bungalows, enjoy all the facilities of black money and indulge in all kinds of malpractices prevalent in the society. The biggest racket now is in *benami* land. When we look towards metropolitan cities like Bombay, Delhi, Madras, Calcutta, etc. or even smaller towns, we will find that so many people are involved in the profession of purchasing lands and it is not at all known as to when they are sold, to whom they are sold, in whose name they are sold and at what price. Nothing is known.

Madam, when actually transactions are made in the District Courts and the Registrar's office, you will observe, if you make an enquiry, at what price they are purchased, what is the price that is shown and what is actually paid. As you know, now the cost of land is more than Rs. 4000 per sq. ft. or per sq. metre in Bombay and Delhi. But what is the actual registered price ? Whose money is it ? There is complete indiscipline in this business, in the dealings of *benami* lands or in the dealings of *benami* properties. And the biggest investment of the country is involved in these transactions, urban land transactions. Similar is the case with agricultural lands. To save sales-tax or save income-tax these people show very much less

an amount, they purchase at a very less price; the rest is paid in black money to the owner of the land. So these things are going on in our country. Madam, this is the kind of chaos and unrest in this country, this *benami* property, *benami* land which creates crores of rupees of black money. Black money plays a major role even to disturb the Government, to disturb organisations and social elements in the society. So I must say, Madam, that our Government has made a good beginning by bringing this Bill. Though the Bill is not comprehensive, but the Government is very seriously thinking to have a comprehensive law in regard to such deals which are going on in our country by which parallel black money is created. More than Rs. 72,000 crores black money is in operation. It is the report of some committee. Some committee has reported Rs. 86,000 crores; some committee reported Rs. 48,000 crores. But there is parallel black money. So unless the anti-social elements are checked, we cannot bring socialism in our country. So from that point of view I appreciate the stand taken by the Government that it is going to check these *benami* transactions. Madam, the black money is concentrated in a few hands. We must find out how they got it, how they are enjoying and we must find out how, for luxuries, they are bringing money. It is a matter of investigation. There must be an urban ceiling, how much land one can have and so on. When you go to Bombay or Calcutta or any other metropolitan cities you will find that the richest class of the society is the builder. It is earning not lakhs, but crores of rupees. They purchase land at, say, Rs. 100 or Rs. 125 per sq. ft., and they sell it at exorbitant price and thus collect huge money. It has created a huge amount of black money, which has become the cause of unrest in this country.

So I would like to request the Hon. Law Minister, through you, Madam, that we must have a very comprehensive law. There must be ceiling on how much property one can have. The builders and the dealers in black money are playing havoc in the society. We must do something in this regard. 2 P.M. Madam, when we look at the five-star culture, we find that in a five-star hotel, the cost of one cup of tea is Rs. 25/-. You will see that an agricultural labourer is not paid Rs. 25/- in one day. Here one person is paying Rs. 25/- for a cup of tea. There are service charges and other charges also. I do not know how in a country like India where the wage of a person is not Rs. 25/- per day, can a person pay Rs. 25/- for a cup of tea. We must do something about the disparity. In the name of progress some people are collecting black money. They are playing havoc in the society. We must have comprehensive laws about the prices of food articles which are provided in a five-star hotel and other hotels.

[The Vice-Chairman (Shri Jag-esh Desai) in the Chair].

Mr. Vice-Chairman, Sir, I would like to suggest to the Government that they should have a list of the black-marketeers, of the people who don't pay income-tax regularly and of other economic offenders. Do you have a list of the people who are having property? Some people are having two flats or three flats. Some people are having one big building. From where did they get the money for that? what are you going to do about that? We must do a thorough screening of such people in the society. We must find out what type of economic offences are taking place in the society and who is responsible for those offences. The time has come for that. Our system must provide good things to the society. Sir, we had a seminar on the problem

[Shri Vithalrao Modhavrao Jadhav] of unemployment. Today, we are having more than 10 million people who are unemployed in our country. Today we are having persons who are having an income of 10 million rupees per year. That is the condition of our society. How are we going to change the society? What is your solution to it? What is your answer to it? This is a serious matter.

Mr. Vice-Chairman, Sir, the social unrest in the society is there because of black money and *benami* property. Corruption is the root cause of all this. It is not a question of only traders or builders. You will find that in the districts and small urban centres, post bungalows have been constructed by bureaucrats, engineers and officers. They have got only limited salary. Then wherefrom have they brought the money? That is very important and we must think about it. How to bring discipline in the society and in the entire economic system? That is very important. The hon. Law Minister, Mr. Shankaranand, is here. He is a friend of mine. My friend Shri Bhardwaj is also here. He is also a very close friend of mine. He is very serious about these things. We must sit together and find out the root cause of all this once and for all. From that point of view, I feel the Government has brought a very good Bill. It is a good beginning. I must say that much more needs to be done and, therefore, a comprehensive law should be formulated. A very comprehensive Bill should be placed before the House. It was the real dream of Mahatama Gandhi that the common man must have his land. That land must be his own land and he must earn out of that land. He must have his own house. We must do something about these things. Sir, with these words, I support the Bill.

**SHRI V. NARAYANASAMY** (Pondicherry) : Mr. Vice-Chairman, Sir, I am very happy that the

Congress Party under the leadership of our hon. Prime Minister and our hon. Law Minister, in pursuance of the policies of the Congress Party, have brought this legislation before this House.

Sir, it is a milestone in the history of Congress Party that our policy of curbing *benami* transactions has come by way of an ordinance and now it is being formulated by an enactment before this House.

Sir, I have gone through this Bill. This Bill has been brought to curb the transactions by big and moneyed persons who, by exploiting the poorer sections of the society are getting the properties in their name and enjoying the properties by themselves. Sir, the property is in the name of the poor man. The title deed remains in his name, and the rich persons are getting the benefits out of it because they wanted to evade the taxes. Before the public, they wanted to show that they are not moneyed, they wanted to show to the world that...

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI)** : It is the concealed income of that person, and they are investing it in that.

**SHRI V. NARAYANASAMY** : I am coming to it, Sir. I will first start with the joint family. In the name of Joint family, the properties owned by a single individual are written in several names. And one man enjoys it. He monopolises in that. That relates to land and buildings. Secondly, Sir, a person who amasses wealth and borrows money from various parties, in order to defraud the creditors, in order not to pay them he executes documents in the name of persons with whom he has got trust. He declares himself a pauper. Neither the law nor the Government can do anything about it. Just to defraud the creditors, such *benami* transactions are entered into by individuals. Before the eyes of law, he is a pauper, but in front of the society, he is a multi-millionaire.

Then, Sir, the third aspect is about the persons who have got ill-gotten wealth by way of bribes. This is applicable to Government servants. Sir, the Income-tax Department and the Revenue Intelligence have unearthed money from Government servants who have amassed wealth beyond their known sources of income. What do they do? They execute documents in favour of their relatives. They keep tangible properties in their relatives' houses. So many raids were conducted by this Government when it was found that so many sale deeds have been written in the names of the close relatives of the Government servant because he wanted to conceal his income, and he has got such an amount of wealth which is beyond the known source of income. Therefore, Sir, this is a socialistic measure, and this Bill deals with that particular aspect.

Sir, another important aspect is land reforms about which hon. Member, Shri Jadhav mentioned. Sir, what is happening? Persons who are owning 400 or 500 acres of land in our country, what do they do? They would like to circumvent the Land Reforms Act. The Land Reforms Act provides for a maximum ceiling of six units of land by any individual family. What these people do is that they catch hold of their servants who are working in the fields and they execute sale deeds in their favour.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI) :** In the name of animals also, they do it.

**SHRI V. NARAYANASAMY :** They do it in order to safeguard their own interests. The sale deeds may be in the names of other persons. Actually the user of the land is the landlord himself. But the poor man in whose name is the sale deed cannot even see the title deed. This is the pathetic condition. He does not even know whether the title deed is in his name or not, but the,

landlord himself enjoys all the benefits by cheating the Government and circumventing the law. The hon. Minister should lay his hand on this type of transactions because these people are exploiting the Scheduled Castes and the poorer sections of this country.

Sir, those people have been cheated. I will come to it later and give you some instances...

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI) :** They will be benefited by this Bill now.

**SHRI V. NARAYANASAMY :** Yes, they will be benefited. I am coming to that part later.

One important aspect I have got in my mind now. While going through the bill, I find that there is another act of *benami* transactions in our country. What is happening in our country now is that the Government is giving benefits to the weaker sections of the society, the Scheduled Castes and the Schedule Tribes people in the form of petrol bunks, LPG distribution centres and some such other things. What is being done in our country is that the benefits which the Government gives for the purpose of uplifting these people in the society, the big moneyed persons take these people, to whom these benefits have been given, in the employment of the companies owned by them as their servants. Practically these big-moneyed persons they run the petrol bunk, or the LPG distribution centre and not these persons to whom the licences were given. These big-moneyed persons give that man a salary of Rs. 500 or so per month. And these poor people whom the Government wants to help, they are taken as servants and employees in the organisations owned by the rich people. And these rich people who get these benefits *benami* from these weaker sections, they enjoy all the benefits keeping the poor man poor

[Shri V. Narayanasamy]

and making the rich still richer. All this, Sir, is happening under the very nose of the Government. Whether this Bill will come to the rescue of these people and save them, I do not think so. It seems to me that this Bill will not benefit those persons because in this particular transaction the deal is of a different kind. What happens is that the title deed remains in his name, but the management is done by a big moneyed person. How the Government is going to help this poorer section of the people, who have been economically exploited, by big-moneyed people in this country, I do not know. Sir, I came to know of a case time back where such a thing had happened. I wrote to the Indian Oil Corporation. Sir, we have been organising in our Party seminars and conferences so as to uplift the Scheduled Castes and the Scheduled Tribes people of this country. Our Government and our Prime Minister are committed to the upliftment of these people. We have been giving these benefits to our poor people. But what is actually happening? What happens is that these big people the moneyed people who have business income, they catch-hold of these people, take promissory notes for Rs. 2 lakhs or so from them without paying them any money and they keep the licences with them. I received a letter from a person that he has been exploited in this manner and even after ten years he was not allowed to run petrol bunk. I wrote to the Oil Corporation, and do you know the reply I got. The reply was, your allegation found to be not correct. The reply came to me. I received the complaint. I wrote to those people and this is what they are writing. Those people have no conscience, I am telling you. The Government is giving the benefits. There are some intermediaries. Who are those persons? They should be taken under the National Security Act. I am telling you that those

people should be dealt with very severely by this Government so that in future there may not be any recurrence of this type of activity in this country. Sir, I find that in this Bill no provision has been made for dealing with such kind of *benami* transactions. Therefore, I want a clarification from the hon. Minister on this point.

Sir, take the case of urban land ceiling laws, which the hon. Member has stated. In order to avoid the ceiling on urban lands, several documents have been written. As the Chairman has already put the question to me, those persons will become the owners. But the question is how will they enjoy the property? Have they got to go to the court to get possession of the property, this Bill does not say anything on that. It is possible that it may be provided in the Rules.

Sir, I have another important suggestion to make in this matter. Who is to lodge the complaint? The person who enjoys the benefit, he gets the benefit out of it. The person in whose name the property is, he is illiterate and he is under coercion. The person in whose name the title deed is, if he goes to court he will be finished. Then who is to lodge the complaint? How the property is to be restored to the rightful owner? What measure have you thought for that purpose? The Bill is silent on that. It simply says under clause 5 that all such properties held *benami* shall be subject to acquisition, and it will become the property of the Government. But which machinery you will have to acquire the property, there is no indication in the Bill. I would like to know from the Minister what procedure is going to be adopted, who is to lodge a complaint and how the Government is going to acquire the property.



Sir, the Ordinance was brought. Immediately after the Ordinance, people were happy. About one or two months' time has elapsed. Has any *benami* transaction been unearthed so far I say so because nothing has appeared in the press. And we could not know about it.

Now, Sir, the date of commencement of the Ordinance has been taken as the guideline for that purpose. Therefore, the Government is committed to unearth these *benami* transactions in the country. The instances I narrated are very clear which show that the weaker sections of the people are being exploited by the moneyed people to evade laws which have been enacted by the Government. Therefore, it is a very important Bill which gives right to a person to hold property owned by somebody else in *benami*. Either it becomes his property, or it goes to the Government.

One important clarification I would like to seek. Clause 3, sub-clause (2) says : "...by any person in the name of his wife or unmarried daughter... unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter." But here also, there should be a limit on the purchase of such property in favour of wife or unmarried daughter. One has to safeguard the interests of the family members ; it should be there ; but there should be a limit on it, because a person who gets property by various means, may do so in the name of his wife or unmarried daughter. But when it says "unless the contrary is proved" which means that contrary is to be proved by the executive authority that the transaction is *benami*. Here, the interests of the wife and the unmarried daughter and also the coparceners in the family have been protected. Coparceners are exempt. I agree that

interests of the coparceners ought to be protected but it has to be up to a limited extent. As I said earlier, in our country, in the name of joint family various transactions are taking place. The person holds property in fact without fear of dispossession because he wants to circumvent the laws which are in force...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : How can it be done? I don't think there can be any limit fixed by the Government.

SHRI V. NARAYANASAMY : There are cases where a person executes a document for Rs. 5 lakh or 10 lakh or 15 lakh. Because this point has arisen, I would like the hon. Minister to clarify. Because this may be done in the name of safeguarding the interests of wife or unmarried daughter.

This is a welcome measure and if the provisions of the Bill are implemented, it will definitely safeguard the interests of the weaker sections and those to whom the benefit should really go, and this will avoid any *benami* transactions in future. My congratulations to the hon. Minister for Law. But I want to know what steps the Government is going to take for speedy implementation of these provisions. Thank you.

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir) : Mr. Vice-Chairman, Sir, I rise to support this Bill. This is a welcome measure. I congratulate the hon. Law Minister for having brought forward this Bill. This Bill prevents people from entering into *benami* transactions and divert the black money towards this.

But there is another aspect here. I know that it happened in Kashmir also years back. This is in regard to avoiding coming under the pur-

[Shri Ghulam Rasool Matto]  
view of land ceiling legislation. A lot of *benami* transactions were entered into. The Jammu and Kashmir Government under the stewardship of Sheikh Sahib passed a law in relation to entering into *benami* transactions simply for the purpose of avoiding the land ceiling law. *Benami* properties at a particular point of time have to be retransferred because there is an understanding that the property will be retransferred. When the retransfer takes place, a clause is there to see whether the land originally transferred was under the land ceiling law or not. I would request the hon. Minister to take note of this land and Government should ensure that this thing should not happen.

The second point I would like to make is in regard to the exemption made in the case of wife and unmarried daughter. But I would like to make this observation on the basis of experience. I know of many cases. I know of a case that happened in Delhi. This happens in other places also. When a lustful man takes a second wife, the first condition that the second wife imposes upon him is that a property should be bought in her name and then alone she will enter into a matrimonial contract. The rule-making power is with the Central Government. They should see that this exemption applies only in the case of one wife and not in the case of any wife exceeding one. I know this has been done and this is being done. The first condition that a second wife imposes is that the man who wants to marry her should buy her a house. This happened in Kashmir also. I know of a case. I know a gentleman who was a friend of mine. The first condition his second wife put was that he should buy her a house. He has to buy a property worth six lakhs of rupees. Then only she entered into a matrimonial contract

with him. This should be avoided and this can be ensured by the rules.

Both the Ministers are here. I take this opportunity to say a word about the Constitution and its application. I would appeal to the Central Government through them. We know that there are three Lists ; the Central List, the State List and the Concurrent List. So far as the Central and the State Lists are concerned, the Centre and the States respectively are empowered to make laws in relation to the subjects mentioned in the two Lists. But in regard to the subjects in the Concurrent List. I can say from my experience in the last six years as a Member of Parliament that prior consultation is not made with the States when passing legislations by the Centre. I say this because the hon. Minister also said, while moving this Bill, that though the subject is in the Concurrent List they have taken this step. I would request him that in future when legislations have to be introduced dealing with subjects in the Concurrent List, prior consultation should be held with the State Government. Of course, the right lies with the Central Government to make laws. But it is better in the interest of Centre State relations that prior consultation is held with the State Governments.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI) :** In the case of such Bills also ?

**SHRI GHULAM RASOOL MATTO :** I am only talking about the subjects in the Concurrent list. In the case of the subjects under the central List, the Centre has absolute power. The States have absolute power in the case of subjects under the State List. In relation to Concurrent List subjects, the Centre as well as States can make laws. Of course, the view of the Central Government will prevail. But in

regard to the subjects in the Concurrent List, the States should have a sense of participation. I would request him to look into this and also accept my small piece of advice that in future on all Bills coming under the Concurrent List consultations with the State Governments will be held.

With these observations I congratulate both the Law Ministers who are here and the Government of India for bringing forth this beautiful piece of legislation.

**SHRI SANTOSH BAGRODIA** (Rajasthan) : Mr. Vice-Chairman, Sir, I rise to support this Benami Transactions (Prohibition) Bill, 1988. At the outset I must say that this is a Bill which is as per the policies of our Government, of our party, about the socialistic approach because the most important factor of this Bill, as Mr. Matto has said, is that this will avoid contravention of land ceiling transaction. *Benami* transaction is for evading tax but it is more to evade the land ceiling Acts. Whether it is in the urban areas or in the rural areas, this Bill will go a long way in making it very difficult to really hold large chunks of land in the hands of a few. The intentions are definitely very good. It will definitely stop evasion or legal avoidance of different taxes, namely income-tax, wealth tax and the estate duty. When some land is purchased or any property of this kind is purchased in the name of somebody else, obviously income-tax is paid at a lower rate or the other man does not pay any income-tax. Black money is used and the land is passed on in somebody else's name. In India, fortunately, we still are the people where honesty prevails. I buy land in the name of my colleague Shri Deshmukhji, knowing fully well that he is not going to cheat me later. This is how this particular Bill is going to help us because no people hereafter will dare to buy land in the name of others. Similarly, payment of wealth tax is also

avoided. If the man who really holds the land dies, his family does not have to pay estate duty.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI)** : Now estate duty is not there, it has been abolished.

**SHRI SANTOSH BAGRODIA** : It is there in some other form. But the Government must be very careful because earlier these transactions had been legal and some genuine people might be harassed because these *benami* deals have been done under the law and today, suddenly they become illegal. I do not know whether it will be possible to give some kind of time-limit to them so that they could get those deals regularised by paying taxes, etc.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI)** : Mr. Panja will be benefited more. His revenue will increase.

**SHRI SANTOSH BAGRODIA** : Yes, the revenue is going to increase in a big way indirectly. For new deals, however, this Bill is a must. I must thank the Prime Minister and the Ministers for having brought forward this Bill though delayed. It is going to help at least in future times, in future years.

It might create some difficulties for Hindus. This point may be looked into by the Government a little more carefully. I would like to propose a minor amendment in sub-clause (2) of clause 3 where it says : Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter. Here I would like to add, '...or minor son'. I really do not know whether this will create any legal complications but I feel minor son may also be included because parents might like to purchase property in the name of his minor sons. I fully endorse the views of my colleague, Mr. Narayansamy, that one of the reason for these *benami* transac-

[Shri Santosh Bagrodia]

tions is also defrauding the creditors. I may have got plenty of land all over, but it is in the name of others. When the debtors come to me or the creditors come to me. I just say : I have no money. Under the law I have no money. So this Bill will help because it will be very difficult to defraud the creditors in this respect.

Now transactions are done not only in the name of animals but probably even in the name of unborn children. The moment some lady conceives, they put the name and give it. Even in the name of poor God land is purchased. In Hindu religion we have 33 crore gods. We can buy land in the name of all the 33 crore gods.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI) :** How is the Minister going to deal with these cases ? Will the Government take over ?

**SHRI B. SHANKARANAND :** I will reply to that.

**SHRI SANTOSH BAGRODIA :** Lastly the point that Mr. Narayana-samy made is a very valid point. The LPG or very small petrol pump dealers are finding it very difficult because they become employees and the moneyed people make use of those licence-holders. I do not think by making any kind of law the Government can help it. We have to take some positive steps. The Finance Minister was just now here, but I do not find him right now. But through you, Sir, I will request him that the only way to help these poor people is to make the system of giving loans by the banks easier so that finance is available to them like any other small dealer or farmer. This is the only way we can help these scheduled caste, scheduled tribe and poor people. By taking over the business even they will suffer. So if we really want to

help them, we must give them loans at cheaper rates of interest. That is the only way we can save them from the moneyed people.

With these few words, I thank you for giving me this opportunity to speak on this Bill.

**श्री राम चन्द्र विकल (उत्तर प्रदेश) :** उपसभाध्यक्ष महोदय, मैं इस बेनामी संश्लेष-हार (प्रतिषेध) विधेयक का समर्थन करता हूँ। विधि मंत्री जी ने यह बहुत अच्छा विधेयक लाया है, इसका सारा सदन समर्थन करेगा। लेकिन इसमें मैं यह सुझाव देना चाहता हूँ कि जिस तरह कृषि की जमीन पर सीमा लगा दी है, उसी तरह शहरी संपत्ति पर भी सीमा लगाने का एक विधेयक क्यों नहीं आप लाना चाहते, यह मांग बहुत पुरानी है। किसानों की जो जमीन है, उस पर तो सीमा लगा दी, शहरी संपत्ति पर भी सीमा लगाई जानी चाहिए। अभी आप देखें दिल्ली के आस पास ट्रस्टों के नाम से जो जमीन अर्जित कर ली गई है, वहाँ बहुत बड़े-बड़े फार्म बने हुए हैं। तो यह जो विधेयक है, यह उसके मुकाबले में शायद उपयोगी तो है...

**चौधरी राम सेवक (उत्तर प्रदेश) :** सब बेनामी हैं।

**श्री राम चन्द्र विकल :** लेकिन ट्रस्ट के नाम से नाम बदल दिया और ट्रस्ट के नाम से लंबी चौड़ी जमीन रखते हैं इसको भी देखा जाना चाहिए। साथ ही मैं चाहूंगा कि कृषि भूमि पर जो सीमा लगा है, उसी तरह शहरी संपत्ति के साथ-साथ उद्योगों पर बेतनों पर भी सीमा लगा सकते हैं और तभी हम कह सकते हैं कि हम समाजवादी हैं, हम समाजवाद की तरफ जा रहे हैं वरना केवल कृषि पर सीमा लगाकर हम इस तरफ सोच ही नहीं सकते।

इन्हीं शब्दों के साथ मैं इस विधेयक का समर्थन तो करता हूँ लेकिन यह भी मांग करता हूँ कि अगर हमें सही समाजवाद की तरफ जाना है तो शहरी संपत्ति पर, बेतनों

पर और उद्योगों पर भी सीमा लगानी चाहिए आप किसान की जो भी आमदनी लगा लें, जो उनको प्राप्त होती है, एक साल की, दो साल की, दस साल की लगा लें, मगर जो आप किसान पर कानून लाएं, वही कानून उपरोक्त चीजों पर भी लाएं। मैं चाहूंगा कि भविष्य के लिए एक व्यापक विधेयक आना चाहिए, जिसमें इन सारी चीजों की पूर्ति हो और आपका समाजवाद की तरफ कदम बढ़ सके। मैं फिर से एक बार इसका समर्थन करता हूँ। धन्यवाद।

**SHRI B. SHANKARANAND :**  
Sir, at the outset I must thank the honourable Members who participated in the debate who have unanimously supported the Bill. Many suggestions have been made, and observations too, with regard to the provisions of the Bill. Before dealing with the suggestions, I must say that the present Bill is just another step taken by the Government of Shri Rajiv Gandhi in furtherance of the principles which we have adopted for ushering in an egalitarian society and trying to narrow down the gap between the rich and the poor.

Mr. Vice-Chairman, I need not tell the House as to who indulge in these *benami* transactions, why they indulge in *benami* transactions and how they indulge in *benami* transactions. I need not tell the honourable House that it is the man who earns and enriches himself to such an extent with all the black deeds and black deals which are reprehensible in the society and it is he who tries to invest such money at the cost of the nation—and the entire society loses, the entire country loses. He defeats the various laws that control property dealings in this country. He defeats the tax laws, he defeats the land ceiling laws—and how he does it is by surreptitiously transferring his ill-gotten money to purchase properties in somebody's name, living

or dead, animate or inanimate and as observed by you, in the name of gods also. The question was rightly put by the honourable Vice-Chairman: What about the properties transferred in the name of gods? Sir, gods live in the heart and they do not need property for their living. So, anything that is transferred in their name is also a *benami* transaction.

**SHRI GHULAM RASOOL MATTO :** Sir, Mr. Panja was just telling us outside that in West Bengal there are cases of *benami* transactions in the name of bullock-carts!

**SHRI B. SHANKARANAND :**  
That is why I said, animate or inanimate objects also.

Sir, we have heard that properties are transferred in the name of cats, dogs, cows and, as he said, maybe carts—and God knows in how many names they are transferred. It is these people who are putting the economy of the country in jeopardy. People who want to evade the tax laws are the people here and very large money is involved in this. Perhaps I will not be able to say it but I think the Finance Minister will be able to say about the findings of the various committees about the amount of black money in circulation in this country. But it is these people who do it.

Sir, a question was raised whether some time will be given to people to adjust their *benami* transactions. How can we give any time to adjust *benami*, illegal, transfers?

**SHRI GHULAM RASOOL MATTO :** Then everything will become *benami*.

**SHRI B. SHANKARANAND :**  
After all, the Law Commission, in its 57th Report, recommended some 13 years ago to bring in this

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Bill, and the consultation was done perhaps, in 1973. The Law Commission did advise us to bring in this Bill. Since then every one who has earned black money and invested this money in *benami* transactions, knew that the Government was after this. In this regard I may also say certain things. Some Members asked whether we would consult the state Governments.

The VICE-CHAIRMAN (SHRI JAGESH DESAI) : But what will we do about these transactions ? How are these covered ?

SHRI V. NARAYANASAMY : What is the machinery ?

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : He will come to that.

SHRI B. SHANKARANAND : I am coming to that. May I take the house to the provisions of this Bill ? Clause 3 of the Bill very categorically states this about prohibition of *benami* transactions. It says :

“(1) No person shall enter into any *benami* transaction.

“(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

“(3) Whoever enters into any *benami* transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

“(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under

this section shall be non-cognizable and bailable.”

Of course, the penal provision is only prospective, it is never retrospective. That much I can say Sir. But the transactions, *benami* transactions are covered by the provisions of this Bill. (*Interruptions*).

About the question of giving time for *benamidars* to adjust their accounts, the question does not arise under the provisions of this Bill.

Some Members have raised the question whether we can give some guide lines for urban ceiling and land ceiling. Sir, ceiling laws are already existing. Where is the question of giving fresh guidelines on this matter. ?

CHOWDHARY RAM SEWAK : But the law is not implemented, Sir.

SHRI B. SHANKARANAND : It is true.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Practically they are not implemented at all. About the urban land ceiling Act I am taking.

SHRI V. NARAYANASAMY : Even the land ceiling laws are circumvented by people through *benami* transactions.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : That will be covered now.

SHRI B. SHANKARANAND : That is why this Bill.

SHRI V. NARAYANASAMY : Is there a machinery ? How do you enforce it ?

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : He will come to it. Listen to him. Be patient.

**SHRI B. SHANKARANAND :**  
I will come to the point about enforcement of the Act a little later.

Our Government and our party have been trying since the banks were nationalised. Late Mrs. Gandhi took the bold step, even at the cost of dividing the party, of nationalising the banks—for whose purpose? —because the bank money was cornered by only a few rich people. It was not available to poor people, farmers, workers. That process which we started in 1969 has continued, and today this is another step in that direction. The country, the poor people of this country will, I am sure, as the hon. Members have welcomed it, will definitely welcome the provisions of this Bill.

Doubts have been raised by hon. Members about the implementation of the Act. Sir, rules are to be framed. If you look at clause 5, it is with reference to property held *benami* being liable to acquisition. I quote clause 5 :

“(1) All properties held *benami* shall be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed.

“(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI) :** So, it is taken away.

**SHRI B. SHANKARANAND :**  
The property will be taken away without any payment.

**चौधरी राम सेवक :** दिल्ली में कितनी प्रापर्टीज आपने ली है ?

**श्री बी० शंकरानन्द :** उसके लिए स्टेट्स से कंप्लेंट करना पड़ेगा, प्रोसीजर लेडाउन करना पड़ेगा ।

**उपसभाध्यक्ष (श्री जगेश देसाई) :**  
उनका यह कहना है कि आप इसको अर्दी कीजिए ।

**SHRI B. SHANKARANAND :**  
The implementation of the provisions of the Bill will have to be done very carefully because the purpose of the Bill is that not a single *benami* transaction is left out. The question is, who will bring this to the notice of the Government? I have already clarified in my speech when I introduced the Bill that those organisations themselves are competent to inform the Government and the Government will definitely take action. Not only both the parties would not be spared, but both will be held guilty and the property will be procured by the Government.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI) :** I will help you.

**SHRI B. SHANKARANAND :**  
Now, we welcome the cooperation of the hon. Members. They are in no way prevented from disclosing any *benami* transaction to the Government. The Members may in their capacity as representatives of their constituencies or State should propagate the provisions of the Bill to concerned States can also take action. This way it will get momentum.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI) :** I think after your answer everybody is satisfied. You have made it amply clear now.

**SHRI B. SHANKARANAND :**  
Now I come to the question about *benami* transfers in regard to the Scheduled Castes and Scheduled Tribes allowing their agencies to be handled by somebody else though the agency stands in their name. It is true that in majority of the cases

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not only of the Scheduled Castes but also in the cases of the non-Scheduled Castes and Scheduled Tribes poor people who are holding the agencies, they are subject to such exploitation. Business interest is also property. If it is transferred in a *benami*, perhaps it also attracts the provisions of the Bill.

Surely, we have been taking care of the interests of the Scheduled Castes and Scheduled Tribes by not only giving them social justice, but also by providing them economic security. We will do everything to protect their interests. We will take care while implementing the provisions of the Bill that their economic interests are well guarded.

Because, the hon. Members have not raised any other points, for the purpose of clarifications I would read Clause 7. It is about repeal of certain provisions. Clause 7 says :

"Section 81, 82, 94 of the Indian Trusts Act, 1980, Section 66 of the Code of Civil Procedure and Section 281(A) of the Income-tax Act, 1961 hereby repealed."

Now, what are these sections ? I quote :

"Section 81 : Where the owner of property transfers or bequeathes it and it cannot be referred consistently with attendant circumstances, that he intended to dispose of the beneficial interest therein. The transferee or the legacy must hold such property for the benefit of the owner or his legal representative." This is contrary to the intention of the Bill. That is why it has been repealed.

So also 82 of the said Act, I quote : Where property is trans-

ferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration." This is exactly the opposite of what the Bill intends to do.

Section 94 of the Trusts Act says, I quote : "In any case not coming within the scope of any preceding section where there is no trust but the person is in possession of the trust has not to hold beneficial interest therein, he must hold the property for the benefit of the persons having such interests or the residue thereof, as the case may be, to the extent necessary to satisfy their just demands." So these are the provisions of the the Indian Trusts Act which go directly against the provisions of the Bill which I am introducing. That is why these provisions have been sought to be repealed.

Now, with regard to section 281-A of the Income tax Act for the benefit of the House, may I quote ? "(i) No suit to enforce any right in respect of any property held in *benami* whether against the person in whose name the property is held or against any another person shall be instituted in any court by or on behalf of any person either in this section referred to as the claimant claiming to be the real owner of such property unless in notice prescribed form and containing the prescribed particulars in respect of the property has been given by the claimant within a period of one year from the date of acquisition of the property to the Chief Commissioner or Commissioner." Can you allow this section to remain on the Statute ? We want to have such drastic action against the *benemidars*.



So this also goes and it has been repealed.

**SHRI GHULAM RASOOL MATTO** ; Mr. Vice-Chairman, Sir, you have correctly pointed out about the implementation part of it. Now I request the Minister to think about it that it is self-operating. For instance, in a *benami* transaction that has taken place, the person who is the actual owner wants to ask him "return to me the property." Now after passing of this Bill that man will say "no".

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI)** ; He cannot do It has gone.

**SHRI B. SHANKARANAND** ; It is gone for the man who transfers it and it is also gone for the transferee according to this Bill. He also loses. The Government can procure the property.

Sir, I need not dwell upon clause 8 which gives the authority to the Government to make the rules under the provisions and under certain circumstances enumerated in the clause.

I can only say, Sir, that I must thank the hon. Members who have supported the Bill and I can assure the House that this will not be the last act by the Government. We will do everything that is under our command which we can do for the welfare of the poor people of this country and to reduce the gap between the rich and the poor. Thank you.

**बौधरी रामसेवक** : उत्तर प्रदेश में ऐसा कानून है और देश के दूसरे भागों में भी ऐसा कानून है कि शेड्यूल्ड कास्ट्स के आदमी की जमीन सिर्फ शेड्यूल्ड कास्ट्स के आदमी ही परपेज कर सकते हैं। लेकिन हो यह रहा है कि शेड्यूल्ड कास्ट्स की जमीन नान शेड्यूल्ड कास्ट्स परचेज

करते हैं। इस तरीके से सारे देश में बेनामी ट्रांजेक्शन्स हो रहे हैं। दूसरी बात यह है कि केरल में अभी तक यह कानून लागू नहीं है कि शेड्यूल्ड कास्ट्स की जमीन केवल शेड्यूल्ड कास्ट्स ही खरीद सकता है। इसलिए मैं यह जानना चाहता हूँ कि क्या सरकार ऐसा कानून बनाने जा रही है कि केरल में भी शेड्यूल्ड कास्ट्स की जमीन का ट्रांसफर सिर्फ शेड्यूल्ड कास्ट्स के आदमी ही के नाम पर हो सकेगा। इसके अलावा पिछले 10 सालों में दिल्ली में जो बेनामी ट्रांसफर्स हुए हैं उनके बारे में क्या गवर्नमेंट कोई सव कराएगा और उनके खिलाफ क्या कोई एक्शन लेगी?

**SHRI V. NARAYANASAMY** : Mr. Vice-Chairman, Sir, I am afraid, the hon. Minister has not replied to my particular question about the Petrol Pump and the LPG gas connection. Sir, the permit is given by the Government. Sir, *benami* transaction has been defined. "Benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person." Now, in respect of the Petrol Pump, the permit is given by the Government. It is not given by a person for consideration. Therefore, Sir, these particular provisions will not be attracted under this Act and a person who is managing his business naturally will be a rich person and the permit is in the name of another person. Then, how will this Act apply to him? It is defeating the provisions of this Act.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI)** : How to cover that? Think over this.

**SHRI B. SHANKARANAND** : Sir, we know how to protect the interest of the Scheduled Castes. No doubt, Scheduled Castes people are being exploited since time immemorial and this is just one example which the hon. Member has quoted. There are many cases where the

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Scheduled Castes people are exploited. Not only the Scheduled Castes people are exploited, but the concessions, the assistance given by the Government to the Scheduled Castes people is also exploited. I can only assure the House that the economic interests of the Scheduled Castes will be taken care of by the Government.

SHRI V. NARAYANASAMY :

It should be considered while framing the rules.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Now the question is :

"That the Bill to prohibit *benami* transactions and the right to recover property held *benami* and for matters connected there with or incidental thereto, be taken into consideration."

*The motion was adopted*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Now, we shall take up clause-by-clause consideration of the Bill.

*Clauses 2 to 9 were added to the Bill.*

*Clauses 1 the Enacting Formula and the Title were added to the Bill.*

SHRI B. SHANKARANAND :  
Sir I move :

"That the Bill be passed."

*The question was put and the motion was adopted.*

# **PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES BILL, 1988**

THE MINISTER OF STATE IN THE DEPARTMENT OF REVENUE IN THE MINISTRY OF FINANCE (SHRI AJIT PANJA) :

Sir, I seek the leave of the House to move :

"That the Bill to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances and for matters connected therewith, as passed by the Lok Sabha, be taken into consideration."

Sir, as the hon. Members are aware, India has been facing the problem of transit traffic in illicit drugs which has been escalating in recent times. The spill-over from such traffic has been causing problems of abuse and 3-00 P.M. addiction as cutnote. There have been indications that this trend has created an illicit demand for drugs and that this may lead to increased diversion of opium from illicit growing areas to opium poppy. Sir, the Government being concerned with the developing drug situation have taken a number of legislative, administrative and preventive measures which have resulted in checking the transit traffic to a considerable extent. However, increased internal drug traffic, diversion of opium from illicit growing areas and attempts of illicit manufacture of drugs within the country threaten to undermine the effects of the counter measures taken. Further, drug traffickeers often succeed in obtaining bail on minor technical grounds enabling them to continue their illicit activities.

Keeping in mind the magnitude of the threat from drug trafficking from the Golden Crescent region comprising Pakistan, Afghanistan and Iran and the Golden Trianglen region comprising Burma, Thailand and Laos and having regard to the internal situation, the Prime Minister gave a 14-point directive on April,