

11.21 hrs.

**BENAMI TRANSACTIONS (PRO-
HIBITION) BILL**

[English]

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF WATER RESOURCES (SHRI B. SHANKARANAND) : I rise 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, as passed by Rajya Sabha, be taken into consideration”.

On the 19th May, 1988, the President had promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988. The Ordinance was promulgated to give effect to the recommendations of the Law Commission contained in its 57th Report. It is true that the Government had taken some time for the acceptance and the implementation of the recommendations of the Law Commission. But at the same time, Government had not been keeping quiet. In fact as early as 1978, steps were taken to introduce a Bill to give effect to the recommendations of the Law Commission. But as there was stern opposition to such a measure, the proposal was not brought out. As it was necessary to prohibit the recovery of property transferred benami with immediate effect, the promulgation of the Ordinance became necessary.

The provisions of ordinance invoked mixed reaction from the public and the press. There was a lot of criticism that the ordinance had not gone very far to achieve the object of stopping the proliferation of the black money. It was also observed that it may not have the impact and may prove to be a paper tiger.

After going through the criticism the Government had thought it necessary to refer the matter to the Law Commission for considering the entire question in depth and in its proper perspective. Accordingly, the Law Commission was good enough to send its recommendations so that we may bring

out a Bill after considering the recommendations and that too before the expiry of the period of six weeks when the Ordinance will expire. The Report of the Law Commission has already been placed on the Table of the House.

The Ordinance barred the right of the true owner to file a suit in respect of any property held benami and also provided that no defence based on such a right would be allowed in any suit, claim or action. Exceptions were provided only to properties held by a coparcener in a Hindu undivided family and by a trustee on behalf of a beneficiary.

The Law Commission, while justifying the provisions of the Ordinance, had recommended that it is necessary to make the entering into benami transactions as an offence to give teeth to the provisions of the Ordinance. It also felt that as most of the benami transactions are 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 make 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 benami transactions an offence, it should also provide for the acquisition of the properties from the benamidar.

This provision was thought necessary by the Law Commission in order to put a check on the benamidar retransferring the property to the real owner. This would result in stopping the benamidar circumventing the provisions of the law. Two more recommendations were made by the Law Commission to check the entering into benami transactions by authorising voluntary agencies to file complaints to the tribunals designated for the purpose and to appoint an authority, like the Charfty Commissioner for the supervision of private trusts.

The Bill, in addition to the provisions contained in the Ordinance, provides for prohibiting the benami transactions. It also provides for acquisition of properties held benami. The only exception to the entering of benami transactions is the purchase of a property by the father or the husband for

(Shri B. Shankaranand)

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 the wife.

The specific provisions for authorising the private agencies and creating an authority like the Charity Commissioner for private trusts have not been included in the Bill as Government feels that by the prohibition of the benami transactions and for acquisition of properties held benami, the concerned authorities will come to know of the existence of benami transactions and voluntary organisations would automatically be sending their complaints even without their specifically being authorised. For this reason the recommendation of the Law Commission in this respect has not been incorporated in the present Bill.

Clause 5 of the Bill provides for acquisition of properties held benami. It has been provided therein that the authority for acquisition of property and the procedure to be followed by it will be prescribed by rules. As the House is aware, the provisions of the Bill are relatable to a matter in the Concurrent List. Both the Central and the State Governments are competent to pass the legislation on the subject matter. It is for the State Governments to administer the provisions of law of such a nature. The Government is, not, therefore, in a position to immediately specify an authority for acquisition of the properties in the legislation itself. With this intention, it has provided for the competent authority, and the procedure that acquisition of property will be prescribed by rules. The provisions in the clause are on the lines of similar provisions contained in other Acts already considered by this august House and as such, will not suffer from the vice of excessive delegation.

Further, as no effort 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 an officer of the State Government, to be the competent authority for the purposes of

acquisition who shall, in accordance with the procedure that would be specified in the rules proceed to acquire the properties. The entire proceedings for acquisition will be taken up by the existing officers. No additional staff for this purpose has been incurred by the provisions of the Bill. As such, the recommendation of the President for consideration of the Bill in this House has not been obtained.

The Hon. Members will agree that the Bill is an honest attempt to provide for a comprehensive law on benami, and has touched all aspects of the problem. We feel that the provisions of the Bill will be very effective in achieving the object of preventing benami transactions and the proliferation of black money. Much of the criticism levelled against the provisions of the Ordinance would also be met by the additional provisions incorporated in the Bill. The law has been brought after a detailed examination by an expert authority, namely the Law Commission.

I am sure that the Hon. Members will agree with me that the provisions of the Bill will go a long way in achieving its objects, and will have the unanimous approval of all sections of this august House.

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

MR. DEPUTY SPEAKER : Motion moved :

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

Shri Ram Singh Yadav

SHRI RAM SINGH YADAV (Awar):
Sir, I congratulate the Hon. Minister for Law Justice and Company Affairs, on his having brought the relevant legislation to curb the malpractices in the economic sphere and also to discourage those transactions which were generating black money in the country. Black money is a menace so far as the economy of the country is concerned and this is one of the steps by which we can

contain the generation of black money or the nation can contain the generation of black money.

Here, the Hon. Minister has provided that no one can enter into transactions by purchasing or acquiring property in the name of another by lending the money or by lending his name for the name of the property. Both the actions of the individual have been termed as penal actions and he is liable for the punishment which has been provided in the Act if either he lends his name for the property or he advances money for the acquisition of the property.

The Hon. Minister has given exceptions in certain cases. One exception is that the coparcener of a Hindu Joint Family is exempted from the operation of the provisions of this Bill.

Secondly, he has allowed that a husband for his wife and the father for his unmarried daughter can enter into *benami* transactions.

Here also he has allowed a third exception and that is for a minor, whose guardian has been appointed by the court in any sort of fiduciary character with relation to the minor or to the other person which has been recognised by the law, that has also been exempted by the provisions of this Act.

Here I would like to mention that the Hon. Minister has provided that the property can be acquired under Chapter XXA of the Income-tax Act without paying any sort of compensation either to the benamidars or to the person in whose name the property has been acquired. Then, I will say that when you have provided that no compensation shall be paid for the acquisition of the property then it is one of the important considerations, which should, as a matter of fact legally be examined by the Hon. Minister. Because, whenever the State Government or the Government of India acquires any property of any individual for the nation, then there is a provision that the compensation should be paid. Now, the rate of compensation or quantum of compensation which is justiceable, can only be determined by the courts. But I think it will be one of the points or one of the grounds or one of the clause which will be challenged in a court of law and it is a valid challenge to the provisions of this Act. You may kindly think over it, whether when

you acquire the property, you are not going to pay any sort of compensation to the person in whose name the property has been purchased; although the quantum of compensation is not so material for the property, what is material is whether it is the *bona fide* transaction of property or the purchaser is a *bona fide* person because his property is being acquired by the State. In those circumstances he is also to be paid some sort of compensation.

Here also, in Section 5 it is provided—

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

Here, after all he has to pay the registration fee and the other incidental charges, in whose name the property has been purchased. Therefore, it is very necessary that there should have been some sort of compensation. That may be one per cent, two per cent, five per cent, so that this may not be challenged in the court of law. Otherwise, courts of law, in this respect, are very zealous and they say that whenever property is being acquired by the Government— by the State Government or by the Union Government— then the provisions for the payment of compensation may be there, although quantum of it may be determined at the instance of the Government or at the discretion of the Government.

Sir, the *benami* transactions should be curtailed. There should be one procedure that whenever there is a transaction, it should be through registered Sale Deed or registered Conveyance Deed. Then, it should be obligatory upon the registering authority to inform the authority, who is to be appointed under the provisions of this Act. Previously in the erstwhile States in the Union of India which have been merged now, there were provisions that whenever there was any transaction and it was registered in the office of the Sub Registrar, then it was obligatory upon the Registrar, to inform the authorities concerned that these transactions have taken place. Even today, in the case of transactions worth more than Rs. 20,000/- or Rs. 25,000/-, they are to be informed to the proper authorities or the District authorities or to the Income Tax authorities, and the Income

[Shri Ram Singh Yadav]

Tax Inspector also goes and looks into the transactions which have been entered into. It should also be provided. If you are not providing for this in the Act, then you may provide in the rules that at least in the transactions which have got the reflection of benami transaction, it must be the duty of the Sub Registrar to inform the Officer who is to be appointed under the provisions of this Bill.

Sir, you have said that in the Trusts also, the trustees enter into benami transactions and action can be taken. You have taken a very wise step that Commissioner is to be appointed, who shall monitor and look after this sort of transactions which are being entered into by the trustees or by other persons who are interested in the Trust. It will also be helpful in implementing the provisions of this Act.

The Hon. Minister has suggested that the benami transactions should be curbed. It should also be duty of the banking institutions and this should also apply to them. Although the words of the Act are that it should apply, yet in the name of fiduciary relationship or in the name of banking transactions, even CBI people are not allowed by the banking authorities to get the names of the persons who are operating these accounts. Some times foreign money comes to the Bank. When CBI people go to the bank and ask them from where the money has come, in whose name the money has been deposited and for whose benefit it has been withdrawn these details are not given by the banking institutions. So, the banking institutions also should come under the provisions of this Act. It is very necessary if you want the provisions of this Bill to be implemented very strictly. I hope the Hon. Minister will think over this matter.

With these suggestions, I commend this Bill and I also congratulate the Minister for Company Affairs for having taken a very wise step in bringing this Bill. This is the legislation which will be welcomed by all sections of the society.

11.39 hrs.

SHRI VIJAY N. PATIL (Erandol) :
Mr. Deputy-Speaker Sir, I rise to support this Bill.

In this country, there are a large number of poor people on the one hand and very

few rich people on the other. The rich people try to exploit the poverty of these poor people by giving them very small amount or by way of some service and then enter into benami transactions in their names, many times of course it is near relatives.

But in other cases it can be some other man employed by the rich person. I have seen in a bungalow in South Delhi that 8 cars are standing, but two are in the name of the house owner and the other six are in the names of drivers. There also nobody challenges them as to how those drivers have purchases cars when they are serving them. If you just go around Delhi in thousands of bungalows you will find boards of property dealers. At least majority of these property dealers indulge in benami transactions we do not ask them to take licence for dealing in property nor do we insist upon legal transactions of the property with proper registration and as such the benami transactions continue. Of course, by this enactment there will be certain limit or restrictions on benami transactions. But I do not think, it will be completely stopped as in the case of flats. In big cities like Delhi, Bombay, Calcutta if a flat is purchased at a lower value than the prevailing market rate in that area, the income tax authorities can ask the purchaser to transfer the flat to Government and the authorities will pay him only 15 per cent added value. So it acts as deterrent against under-valuation of the flat. In this case also, prescribing punishment and other provisions will prove as deterrent in prohibiting transactions.

Mr. Ram Singh Yadav has mentioned that there should be some consideration because at the time of acquiring benami property, registration fee, stamp duty and other Government duties are paid by the real owner through the benami person to the Government and it can be challenged in a court of law. I would suggest that if a person has acquired property in the name of other person just to avoid more taxation or ceiling limit, in that case, the tax penalty should be double.

In the surrounding areas of big cities the farmers are paid a very little amount for their lands. The sale agreement is entered into and for four or five years the plots are

sold and construction takes place. Persons having black money purchase these lands and earn enormous amount in black money.

In Poona there are three builders who have purchased almost all the land in 22 villages surrounding it. Will you be able to enquire in whose names these lands have been purchased in these villages and whether proper taxes have been paid on that? This is a new type of criminal activity i.e. avoiding taxes of the Government, paying very little to the farmers who are needy and using black money to earn more black money on that.

I support this Bill but again suggest that merely non-payment in case of acquisition is not going to help. Severe tax penalty as suggested by me earlier may be imposed and the property may be allowed to be transferred to the true owner, or some compensation should be given if it is acquired by the Government. Of course, some concessions have been given as per the Hindu laws which are necessary in the case of these benami transactions. I hope that after the enactment of this Bill as per the recommendations of the Law Commission, this type of black-money activities, which have been on the increase recently, will be curbed.

[Translation]

SHRI SHANKAR LAL (Pali): Mr. Deputy Speaker, Sir, the Bill which has been brought forward in this House is in fact quite in keeping with the socialistic policies enshrined in our Constitution. As many Hon Members have submitted that there are no provisions for paying compensation here and that is why perhaps the Courts may interfere here, but in this connection, I would like to draw the attention of the Hon. Deputy Speaker and of the Hon. Members towards sections (b) and (c) of Article 39 of the Constitution.

[English]

It is mentioned here :

"(b) That the ownership and control of the material resources of the community

are so distributed as best to subserve the common good.

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

[Translation]

Mr. Deputy Speaker, Sir, The situation in our country is that on one hand, some people have amassed wealth worth crores of rupees through benami transactions and on the other there are people who own nothing at all. This Bill is meant for reducing these disparities. I would even say that Land ceiling laws have been brought in our country but unless property ceiling laws are also brought we will not be able to fulfil the socialistic aims of our constitution. How will be able to usher in socialism when on one hand some people have amassed crores through benami transactions and on the other people are living in huts with little food and clothing. The proposed legislations for checking these benami transactions is thus a step in good direction. It cannot be challenged in the courts. Mr. Deputy Speaker, Sir, my second submission is that an exception has been made here that in case such transactions are made in the name of husband/wife or father and unmarried daughter, these will not deemed to be a benami transaction. This provision can be misused. Many people may not have daughters of their own and adopt any girl for this purpose. In this way, it can be misused. Therefore, if this provision is to be kept in the Bill, then certain limits should also be imposed on that. If no limits are kept, any number of benami transactions can be made in the name of wife and daughter. So what has been the effect? There is every scope for its misuse. I am not in its favour. I want that certain restriction should be imposed on it.

As Hon. Member has stated that the term property includes movable and immovable properties both. I want to know as to how are you going to know about the transactions of movable property? In such a case, Government should have the power to check the account books or ledgers of the licensed money lenders, banks and other

[Shri Shankar Lal]

financing agencies. This provision should be made in this Bill. The Hon. Minister should provide that the persons responsible for making investigations in such transactions should have the power to check the account books of the concerned people. Without this power, you will not be able to implement the law.

As regards the other clauses, some of them will come into effect with immediate effect and some will come into force with retrospective effect, from 19th May, 1988. It is essential to examine it from the legal point of view. It is written in para 3 of clause 1 and I quote :

[English]

"The provisions of Section 315 and 8 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 19th of May, 1988".

[Translation]

When this Bill has not even been passed, you want to enforce it with retrospective effect that is, from 19th May, 1988. What is the basis for this provision? You have not clarified as to on what basis this has been done. If you provide for it immediate enforcement or for extending the date, it is all right but to enforce it from back-date from 19th May is not proper. I would of course want that under this clause the Central Government will have the power to make rules but what will happen to the scrutiny aspect? This should be made clear.

As it is given in the report of the Law Commission that the voluntary organisations may lodge complaints with regard to benami transactions. But everyone should have a power to lodge such complaints. If someone knows about a benami transaction being undertaken we should have the right to bring it to the notice of the authorities. It should be made clear in the provision that

[English]

Otherwise anybody can complain for benami transactions.

[Translation]

It has not been made clear as to who are allowed to file complaints. In the objects and reasons of the Bill also, mentions have been made about voluntary organisation and the courts. This does not solve the purpose. If you want to actually enforce it, curb the concentration of wealth in the hands of a few rich persons, you should make such amendments in this Bill. The bill has to be framed in this way so that it cannot be misused. In order to keep with the policies and aims which you want to follow, you have to make some such provisions which will prevent acquisition of benami property.

We know cases in which the persons on whose name properties have been purchased, do not know even the existence of such property. The high-ups often acquire houses in the names of their relatives and servants but these people are not even aware of it. If some one goes and informs these people about it they simply say that they are not aware of any such transaction. If some provisions are made to award stringent punishment to such people, it will be welcome.

Finally, I want to submit that after considering the entire matter, the aforementioned provisions should be definitely included. The law which you have brought forward is in accordance with your socialistic policies. We welcome it. With these words, I want to request the Hon. Minister that my suggestions may kindly be considered.

(English)

SHRI SRIBALLAV PANIGRAHI (Deogarh) : Mr. Deputy Speaker, Sir, I rise to support the Benami Transactions (Prohibition) Bill, 1988. It is really, a revolutionary Bill and it can be called a right step along the path of socialism. Gradually we are moving towards that step by step and it is a right step towards that. After nationalisation of banks, so many other such measures were required to be taken and Government should give a serious thought to this aspect that many such steps are to be taken and they should be taken one after another. This Bill prohibits benami

transactions and gives the Government the right to acquire benami property without paying any compensation. This is very important, Sir, and I wholeheartedly welcome this provision that no compensation whatsoever will be paid to the benami property holders. This, if properly implemented will reduce the gap between the rich and the poor.

Sir, at the same time, I would say that no further time under any circumstances should be given to the benamidars to regularise their transactions. Of course, there is a provision in the Bill that to enter into benami transaction after the commencement of the new law will be an offence except there is a proviso about father and husband transferring some such land to their unmarried daughters and wife respectively. I have also some reservation about that provision that this may open a floodgate. There is some justification no doubt but precaution has to be taken and it should be carefully seen that it does not open a floodgate and there should be some restrictions also in this regard.

Sir, we know that in our country there is a parallel economy going on and that is, as you know, dominated by blackmarketeers and smugglers, and also this benami property forms a part—I don't equate them, 12.00 hrs.'

but this is also in a small way part of the parallel economy that is illegally going on. That has to be stopped effectively. There is a feeling now that Government's attention is concentrated on or confined to land property sector only. Why should there not be overall ceiling on the property/whatever it is, landed property, industrial property or urban property. Is it natural justice that we should go in for ceiling in respect of landed property only excluding other properties in general? We should not dismiss this proposal saying that it is just impracticable, this cannot be done. There may be some difficulty in implementation. But why should we take to task only farmers. The big landlords should be taken to task. We can straight-away enforce land ceiling but other people should not be allowed to acquire properties out of proportion, on the industrial arena, in the industrial sphere. Therefore, I would urge

upon the Hon. Law Minister to give serious thought to it so as to go in for ceiling on property in general, regardless of landed property, urban property, business etc. At the same time, while coming to this Bill, again I would say that a very good decision has been taken. There is no dispute about it. This aspect has also been examined by the Law Commission and they came out for such legislation in their report. And the Government also responded to it favourably and promulgated ordinance on 19th May which is now sought to be replaced by this Bill.

The Government is responsive to public opinion and the ordinance as promulgated on 19th May evoked mixed response. But there were some criticisms also about certain provisions that these are not comprehensive measures and a comprehensive law should be brought forward. The Government further examined the matter and again referred the matter to the Law Commission and they have accommodated the Law Commission's recommendations in this Bill. I congratulate the Government and congratulate the Minister in particular. It is a comprehensive Bill which is a right step along the path of socialism. But this is not enough. So many things have to be supplemented. At the same time, I would say something about the implementation. As we learn from our experience, implementation is very poor, very tardy and very unsatisfactory. Who will implement this measure? The State machinery will have to be geared up. That seriousness is there at the Centre and it has been expressed at the highest level that the benefits should percolate down, in the right perspective. Therefore, necessary rules have to be framed. How long will the Government of India take to frame rules? Otherwise, it is our bitter experience that we pass law but in the absence of relevant rules, the law remains to be implemented for quite a long period. Let that not be repeated in this case and, therefore, the Government should be quick enough to go in for framing of rules etc., may-be in consultation with the States.

A doubt has arisen in the minds of the public about the business interests, as to whether the business interests also come

[Shri Shriballav Panigrahi]

under the definition of property in the case of benami transaction.

May I draw the attention of the Hon. Minister through you to the fact that I have a doubt in my mind about business interests since business interests also come well within the definition of property and whether in the event of benami transfers of business interests, that would attract the provisions of this law. At the same time, I would say that I support the Bill.

The initial recommendation of the law Commission is that the voluntary organisations will have the authority or they will be encouraged to bring benami transactions to the notice of the Government. Why is it deleted from the Bill? Not only voluntary organisations but all those who are having some knowledge of benami transactions should be encouraged to bring in to the notice of the competent authority.

As regards Nyaya Panchayats also, we should encourage the idea that the disputes should be disposed of at Nyaya Panchayat level since we are now trying to revitalise our Panchayati raj as an integral part thereof.

[*Translation*]

KUMARI MAMATA BANERJEE (Jadavpur): Mr. Deputy Speaker, Sir, I heartily support the Bill under discussion. The proposed legislation to curb benami property and blackmoney is a welcome one. It is a fact that the rich are growing richer and the poor poorer. This is happening because we pass bills in the House and laws are made but they are not properly implemented. As laws are not implemented effectively, they lose their importance in the course of time. It is a fact that our Hon. Minister, Sri B. Shankaranand is making efforts to check acquisition of benami properties but I want to request him through you that such statutes should be framed so that even the political parties are not spared. There are many people in the political parties who own huge benami properties. Such persons may be from our party as well as from the Opposition too. There are many such persons in the various political parties about whom I know but I

don't want to disclose the name of any particular individual in the House because it may be said that the individual member has been disreputed. But I know a number of Hon. Members who own benami properties so much so that they are not even aware as to how much property do they own. Therefore, if we do not take the initiative ourselves, how can it be done from outside? I want to submit that there is something fishy. As we pass laws and we are the protectors of law so it should start from us. Only then can we implement it on others. I want to inform you that there are many political parties which did not have their party offices there but subsequently big party offices were set up. You call me any day and I will give you information in this regard. Each one of the men have 8 to 10 benami flats. You should acquire these flats and establish school in them or utilise them for such other development work. If the Hon. Minister gets this work done, it will be something substantial and every one will praise him.

It is true that some people acquire property in somebody else's name. This is done to shield themselves from the eyes of the law. It is also true that the law protects the rich who keep filling their coffers and get richer while the poor get poorer. Such is the law of the country. A person uses another's name and no records are kept. Income-tax records are also manipulated. Income tax officers are bribed. The Government should pay attention towards this, the records should clearly show who has the title to which property. Effective implementation of the law is possible only if the Government takes strong action in this regard. The Bill provides for giving priority to voluntary organisations. But there are many voluntary organisations in the country which have been formed only to turn blackmoney into white. Such organisations have no record and are not even registered. Voluntary organisations are formed by the affluent people of society. These voluntary organisations get a lot of favourable publicity by doing things like organising eye camps and giving funds for flood relief. But they actually do nothing. The Government should pay attention to this aspect also. This is not a work of any single person, but one of co-operation between all.

The Government has taken the right step by bringing the Property Ceiling Act. I request the Government to make the land reforms effective. Land reforms have been enforced in West Bengal but not in Bihar. The 'benami' property in Bihar should be distributed among the poor. I shall not say much on this Bill because I do not have enough knowledge about it. I want to speak on what is happening in society. The Government should appoint a fact finding committee. Through this committee the Government can find out who are the people holding, benami property. Private individuals, politicians, film stars and prominent social workers should be included in such a committee. The law should be equally applicable to all. Strong measures should be taken in this regard. This Bill will create a good impact. I want to quote from the recommendations of the Law Commission :—

[English]

"Entering into a *benami* transaction after the commencement of the new law should be declared as an offence. However an exception should be made for transactions entered into by the husband or the father for the transfer of properties in the name of the wife or unmarried daughter for their benefit..." I am quoting the view of the Law Commission. I would request the Hon. Minister to accept this recommendation.

[Translation]

If a person enters into a transaction for acquisition of property for his wife or unmarried daughter, an exception should be allowed. But it should be seen whether such transactions are genuine or not. I support the recommendations of the Law Commission. I do not have much to say. I support the Hon. Minister's points. I want this Bill to be properly implemented.

With these words I conclude my speech.

SHRI K. D. SULTANPURI (Simla) :
Hon. Mr. Deputy Speaker Sir, I congratulate the Hon. Minister for introducing the Amendment Bill, 1988 and express my support for it.

So far as this country is concerned, big landlords have indulged in 'benami' transactions of land and exploited the poor throughout the country. May I know from the Hon. Minister the State-wise distribution of persons who have indulged in 'benami' transactions? Himachal Pradesh, Punjab and Haryana have been made out of the erstwhile Punjab State. In these places big landlords have cornered a lot of land in the name of their sons and other relatives. At many places the Government has purchased land from poor farmers at low prices and sold them off at high prices. The farmers got a very meagre compensation leading to a deterioration in his economic condition. A large number of people in this country hold lands, 'benami' even today. It can be seen that many industrialists have become richer while the farmers have become poor and landless. This is because the farmers are illiterate and ignorant. They are given the temptation of jobs and partnership in factories and their land is registered under a 'benami' deal. This kind of thing is done everywhere in the country. Wherever industrialists have obtained a large number of licenses, it has been done at the cost of farmers. It is a very good provision in the Bill that whosoever indulges in 'benami' transactions is liable to undergo three years' imprisonment. The Law Commission has recommended that a person be awarded the most stringent punishment if he is found guilty of indulging in such an anti-national act. The rich manage to get a stay-order from courts and the case drags on for years. But what can the farmer do in this difficult situation? His land is purchased at a very low rate through a 'benami' deal and later sold off at a price many times higher than its cost. Such deals should also be banned.

As far as urban property is concerned, the most exploited are Harijans, Scheduled tribes, poor farmers and women. At many places, parents acquire the property in the name of their daughters but the latter are not given any share of property in their in-laws house. There is corruption in the property given by affluent persons to their daughters at the time of the latter's marriage. Stringent action should also be taken against the relatives who receive 'benami' land.

[Shri K. D. Sultanpuri]

I want to say something about the deeds of Government officials also. Some Government officers purchase plots at many places and when the price of the plots go up, they dispose them off. They acquire land through 'benami' deals in the name of their relatives or any poor person. It should be found out as to how many officials indulge in this practice. This should be inquired into because 'benami' transactions are detrimental to the country. Farmers have very little money but Government officials and big landlords have a lot of money to buy land through 'benami' transactions. Government officials draft the laws in such a manner as to suit their convenience. They go to court and obtain a stay-order and then try to regularise their 'benami' transaction.

I feel that the Hon. Minister has brought a very useful Bill and I support it. I hope the Bill will help us in attaining our basic objective of socialism. With these words I thank you for giving me time to speak.

SHRIMATI USHA CHOUDHARI (Amravati): Mr. Deputy Speaker, Sir, I support this Bill and would like to say a few words, Hon. Kumari Mamata Banerjee and several other Hon. Members said that the Bill aims at checking the gap between the rich and the poor and bringing socio-economic equality. Many laws have been made earlier with the same objective but they have not been effective due to difficulty in implementation. It is very important that different sections of the society also take the responsibility for this along with the Administration. It is very difficult for the officers of Central and State Governments to keep a control on persons who acquire property in the name of their family members by indulging in 'benami' transaction. For this purpose a machinery at the lower level should be created and economic provisions should also be made for it. To investigate these matters the Government will have to seek co-operation from social organisations at the village, 'taluka' and district level so that proper information is available.

A land ceiling law has been enacted hurriedly in respect of rural areas and it was urgently needed but this law has not been

effective as no ceiling has been prescribed in urban areas. People have acquired, a large number of shops, factories, agencies and properties in urban areas and even Government officers and Politicians are involved in such transactions. This needs to be controlled. If one section of society keeps acquiring assets through such means, the gap between the rich and poor can never be reduced.

Everyone favours urban ceiling and this Bill is closely related to that aspect. Therefore, it is very essential to take action in this regard.

No one really wants to give property to women but whenever any property has to be saved it is registered in the name of female members of the family. When such a property is transferred in their name they should have complete title of such a property. While supporting the recommendations of the Law Commission I shall ask for a sound administrative plan for its implementation with these words I thank you for giving me time to speak.

SHRI HARISH RAWAT (Almora): Mr. Deputy Speaker, Sir, the objective of this Bill, which is going to replace the Ordinance, is good. Some or the other law is flouted to conduct 'benami' transactions. The Government hopes to stop such transactions through a law. While welcoming it I feel that this is against the policies of our Party. This Bill is aimed at bridging the gap between the rich and the poor and to supplement the Government's efforts to check black-money. But this Bill also gives rise to certain doubts. The recommendations of the Law Commission have been mentioned here. The Central as well as State Government can pass laws with regard to 'benami' transactions. The State Governments have not been consulted in this matter. This has not been clarified by the Hon. Minister in his speech nor does the Bill throw any light on it. Clause 5 of this Bill is very ambiguous. Under this clause, there is a provision to set up an authority. It has not been specified as to where this authority will function from, how it will be formed and what will be its responsibilities. This authority has been empowered to confiscate any

property acquired through a 'benami' transaction, without paying any compensation. Until the authority is clearly defined it will be difficult to enforce the law. People who have been flouting the law for a long time may take legal advantage of the loopholes in this Bill to push their 'benami' transactions through. The jurisdiction of the authority should be defined. As this subject falls under the Concurrent List laws in this regard should be made after consulting the State Governments. All states should be allowed to form their own respective authorities if they so desire. In our country 90 per cent of the population is poor. More than 50 per cent of the population lives below the poverty line. Only 5 per cent of the people invest their black-money in acquiring assets through 'benami' transactions. Many laws have been made to check this practice but all of them continue to be violated. The Hon. Minister has taken the right step by bringing this Bill. I welcome the provision of treating this as a form of criminal offence. A beginning should be made by conducting a search for 'benami' assets in banks. Most of the bank deposits are found to be 'benami' and most of these banks are under the Central Government. A search like this may yield crores of rupees which can be used for the welfare of the masses. Builders purchase land at a very nominal price in metropolitan cities like Delhi, Bombay and Calcutta and sell the flats at an exorbitant price. There should be a special provision for them. Just now my colleague Kumari Mamtaji also mentioned the name of a Member of Parliament in this connection. There are many people who own assets worth crores of rupees. A beginning should be made from banks and big cities so that our Government achieves its objective. With these words I conclude.

[English]

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF WATER RESOURCES (SHRI B. SHANKARANAND): Mr. Deputy Speaker Sir, at the outset I must thank all the Hon. Members who have participated in the debate and wholeheartedly supported the Bill. This is another occasion where the Government have made efforts to narrow the gap between the various sections of the society. The Bill is now going to replace the Ordinance.

I have already explained the circumstances under which the Ordinance was promulgated. The House is very kind because no one has raised any objection to the Bill. The difficulties raised are for the implementation of the Bill. The Bill contains about nine clauses. The relevant Clauses of which Clause 2 is one defines 'benami transaction'. It says: "Benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person. I am bringing this purposely to the notice of the House because many Members have propounded their arguments in favour of payment of compensation for the acquisition of property because the Bill contains a provision that property can be acquired without compensation. Clause 5 states that property held benami will be liable to acquisition and it says: 'All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed. 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). One Hon. Member quoted certain statements in favour of payment of compensation and he fears that this Act may not be struck down by Law Courts for want of compensation because of the absence of payment of compensation in the provisions of the Bill. But the authority which the Hon. Member cited is based on the provisions obtained previous amendment to the Constitution, by 44th Amendment, 1978 which came into force in June, 1979. By 44th Amendment of the Constitution Article 31 was repealed or dropped and new Article 300A was inserted. I quote Article 300A which is under Chapter IV regarding Right to Property: 'Persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law.' Here this Article does not contain anything regarding payment of compensation for acquisition of property which of course, did find place in the replaced Article 31. Apart from this, I can quote from the Law Commission in favour of acquiring property without compensation when the Ordinance was referred to the Law Commission before it was brought before the House for enactment. The Law Commission also advised that 'if the real owner cannot recover property and the

[Shri B. Shankaranand]

ostensible owner has no interest in the property, obviously a provision can be made for acquiring the property without payment of any compensation. Above all, common sense says if somebody holds a property in his name for which he has not paid a pie and for which somebody has paid, why should that ostensible owner be paid compensation? He has not invested and paid anything. The payment of compensation does not arise in the case of Benamidars.

With regard to giving information regarding benami transactions, many Hon. Members have given very important suggestions. Some have said that the Banks should cooperate in revealing such transactions; some Hon. Members have said that the Sub-Registrar should inform the Competent Authority. Above all, there would be a Competent Authority for taking this action and the Government did not find it necessary to have any provision in the Bill itself for appointment of such a person. Clause 81 of this Bill which gives powers to make rules says :

- “(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely :
 - (a) the authority competent to acquire properties under section 5;
 - (b) the manner in which, and the procedure to be followed for, the acquisition of properties under section 5;
 - (c) any other matter which is required to be, or may be, prescribed.”

Now, under the provisions of the Bill, Clause 8, there is a rule making power with regard to appointment of the Competent Authority, with regard to taking action etc.

Before concluding, I would like to inform the House with regard to Clause 7 of the Bill, where precaution has been taken to see that the provisions of the other Acts which would go against the provisions of this Bill are repealed. Clause 7 says :

“(8) Sections 81, 82 and 94 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure, 1908 and Section 281A of the Income-tax Act, 1961 are hereby repealed.”

What are these provisions. Section 81 of the Indian Trusts Act, 1882 says :

“Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.”

Then Section 82 of the same Act :

“Where property is transferred 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.”

Section 94 of the Indian Trusts Act says :

“In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.”

Sir, many people were getting the benefits of the provisions of this Act which now stand repealed under the present case. Many people who wanted to evade the Tax Laws, Land Ceiling Act and who acted against

the Land Reforms Act and transferred their properties in the names of cats, dogs and other objects both animate and inanimate, for such people, this Bill has been brought. So, by this way though the property is not in their name still they are the owners of such property. Such people are keeping the economy of the country in jeopardy. So, we have to see that such laws which give advantage to these people are also repealed.

The present Bill and Clause 7 also repeals the Income Tax Act, Section 281A and I quote :

“(1) No suit to enforce any right in respect of any property held *benami*, whether against the person in whose name the property is held or against any other person, shall be instituted in any court by or on behalf of a person (hereafter in this section referred to as the claimant) claiming to be the real owner of such property unless notice in the 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”.

Sir, the Bill also repeals Section 66 of the Civil Procedure Code and I quote :

“(1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims and in any suit by a person claiming title under a purchase so certified, the defendant shall not be allowed to plead that the purchase was made on his behalf or on behalf of someone through whom the defendant claims.

(2) Nothing in this section shall bar a suit to obtain declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.”

This Section also helped *benami* transactions and the present Bill repeals this also.

Now, Clause 6 of the Bill says and I quote :

“Nothing in this Act shall affect the provisions of Section 53 of the Transfer of Property Act, 1982 or any law relating to transfers for an illegal purpose.”

With regard to this I would like to inform the House the provision of the Section 53 of the Transfer of Property Act, 1882 :

“(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for considerations.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or

[Shri B. Shankaranand]

delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of all the creditors.

- (2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by person only that a subsequent transfer for consideration was made."

So, fraudulent transfers are taken care of under Section 53 of the Transfer of Property Act.

Sir, no other member has raised any objection with regard to the provisions of this Bill. I do not think I should take the time of the House any more. I must thank the Hon. Members for their unanimous support for the Bill and I wish the House extends its full support in passing the Bill unanimously.

MR. DEPUTY SPEAKER : The question is :

"That the Bill to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY SPEAKER : The House will now take up clause by clause consideration.

The question is :

"That Clauses 2 to 9 stand part of the Bill."

The motion was adopted.

Clauses 2 to 9 were added to the Bill.

MR. DEPUTY SPEAKER : The question is :

"That Clause 1, the Enacting Formula and the Long Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

SHRI B. SHANKARANAND : I beg to move :

"That the Bill be passed."

MR. DEPUTY SPEAKER : Motion moved :

"That the Bill be passed."

Mr. Patnaik, you may speak for two minutes either in favour of or against the Bill.

SHRI JAGANNATH PATTNAIK (Kalahandi) : Sir, I congratulate the Hon. Minister for bringing forward this Bill. This Bill is another revolutionary step towards achieving the goal of socialism and eradicating inequality.

Sir, many Hon. Members have given many suggestions. I want to urge upon the Minister that the provisions contained in this Bill should be implemented very strictly and strong action should be taken against those who violate the provisions. I would also like to suggest that Gram Nyayalayas should be strengthened and legal support should be provided so that action can be taken against those who indulge in benami transactions and other related offences. Otherwise, even if there is awareness among the people about the provisions of the Bill, they cannot take any action in this regard.

As per the provisions of this Bill, any person entering into benami transaction

after the commencement of the new law will be punishable. This is a very salutary provision. There is yet another provision to the effect that 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 that unless the contrary is proved, the said property had been purchased for the benefit of the wife or the unmarried daughter. There should not be any scope for misusing the above mentioned exemption and it should be seen that it is utilised only for the purpose mentioned. There should not be any lacuna in this regard. Also, the concern expressed by many other Hon. Members in this regard should also be well taken care of.

With this Bill, we are marching towards socialism and progress. I would also submit here that we should also take many more progressive steps such as ceiling on expenditure, ceiling on income, land reforms and so on. When the Government implements all these things, we can certainly achieve our goal of socialism. With these words, I support the Bill.

SHRI B SHANKARANAND : With reference to the observations made by the Hon. Member, I have already explained all the points. I only wish that the members of this House cooperate with the Government in disclosing and informing the names of persons who indulge in benami transactions so that we can take action against them.

MR. DEPUTY SPEAKER : The question is :

“That the Bill be passed.”

The motion was adopted.

12.48 hrs

[English]

JAMIA MILLIA ISLAMIA BILL

As passed by Rajya Sabha

MR. DEPUTY SPEAKER : We will now take up the Bill to establish and incor-

porate a teaching University in the Union Territory of Delhi and to provide for matters connected therewith or incidental thereto, as passed by Rajya Sabha, for consideration.

SHRI G.M. BANATWALLA (Ponnani) : I have a short submission. This is a very important Bill and we will have to go for our Friday prayers. You may take it up either after the prayers or you may make some adjustment. Otherwise it will be a problem because you are taking it up right at the time when the prayers are going to start.. (Interruptions). You may take it up after the prayers. We are not obstructing it.

MR. DEPUTY SPEAKER : Well, you may initiate it now itself and afterwards you can go, finish your prayers and come back. Meanwhile, other members will be participating.

SHRI G.M. BANATWALLA : But we would like to see how the whole matter is proceeding. Also, other Muslim members are there and they also want to participate.

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF WATER RESOURCES (SHRI B. SHANKARANAND) : Jamia Millia is not for Muslim members only.

SHRI G.M. BANATWALLA : I am talking about something else please. There is a precedent in the House. When Z.R. Ansari, the Hon. Minister once raised the same issue, the House was adjourned.

[Translation]

THE MINISTER OF HUMAN RESOURCE DEVELOPMENT (SHRI P. SHIV SHANKER) : Upto what time you will be here ? Will you come back by 2 o' clock after going at 1.30.

SHRI G.M. BANATWALLA : Yes, Sir, we will go at 1.15 and come back by 2 o' clock.

[English]

MR. DEPUTY SPEAKER : I can make one suggestion. Upto 1.15 we will continue,