

SC declares retrospective use of benami law unconstitutional

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Recently, the Supreme Court had struck down Sections 3(2) of the Benami Transactions (Prohibition) Act of 1988.



[Ref- The Hindu]

Major Highlights

- Sections 3(2) provides for the punishment of a **maximum jail term of three years or a fine or both for those indulging in 'benami' transactions.**
- The provision was declared unconstitutional for being "**manifestly arbitrary.**"
- The verdict came in response to the Centre's appeal against a Calcutta High Court decision holding that the amendment made to **the 1988 Act in 2016** would be applicable with prospective effect.
- It has been observed that the Benami Transactions (Prohibition) Amendment Act, 2016 **condemned not only transactions** which were traditionally denominated as "benami" but rather a "**new class of fictitious and sham transactions**".
 - **Sections 3(2) and 5** were introduced through the Benami Transactions (Prohibition) Amendment Act of 2016.
- **Section 3** of the statute deals with the issue of "Prohibition of benami transactions" and its impugned sub-section (2) states- "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."
- **Article 20(1)** mandates that no person should be convicted of an offence which was not in force "at the time of the commission of the act charged as an offence".

Benami transaction

- It refers to the **property-related transaction carried out under a fictitious name**, or one where the owner of the property denies having knowledge of the ownership, or if the identity of the real or beneficial owner is unknown.

- It is not to be **confused with a situation where an individual buys property in the name of his spouse** or a family member, or jointly owns property with a sibling or another relative.

Benami Transactions (Prohibition) Act, 1988 and amendments in 2016

- The law came into effect in **1988 with just 8 sections**.
- The Act has granted **extensive powers of discovery, inspection, compelling attendance, and compelling production of documents to officials**.
- It also empowered authorities **to seek the assistance** of police officers, customs officers, income tax officers, etc., for furnishing information.
- The **2016 law amended the original Benami Act of 1988** with multiple additions and had **72 sections**.
- The 1988 Act was made to **prohibit 'benami' transactions** and the right to recover property that is held to be 'benami'.
- **Section 5 of the 2016 Amendment Act** said that “any property which is subject matter of a benami transaction shall be liable to be confiscated by the Central Government.”

Punishments under the Benami Act include

- Confiscation of benami property
- Under a benami transaction which has been done to **avoid provision of law, avoid payment of dues to creditors**, or any person who **enters or abets another person** to enter into such a transaction is punishable with:
 - Imprisonment between **1 to 7 years**
 - **Fine up to 25 %** of the fair market value of the property
- **Section 54 of the 2016 Act**, when a person asked for information gives wrong information, they shall be punishable with:
 - **6 months to 5 years of imprisonment**
 - **Fine up to 10 % of the fair market value** of the property
- **Section 3 (2) mandates** punishment of three years' imprisonment for those who have entered into benami transactions between September 5, 1988 and October 25, 2016.