

BENAMI LAW CAN'T BE APPLIED RETROSPECTIVELY: SC

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Supreme Court on Tuesday declared as “unconstitutional and manifestly arbitrary” the amendments introduced to the Benami law in 2016, which apply retrospectively and can send a person to prison for three years even as it empowers the Centre to confiscate “any property” subject to a benami transaction.

In a decision much awaited by businesses, a three-judge Bench, led by Chief Justice of India N.V. Ramana, declared as unconstitutional Sections 3(2) and 5 introduced through the Benami Transactions (Prohibition) Amendment Act, 2016. The 2016 law amended the original Benami Act of 1988, expanding it to 72 Sections from a mere nine.

Section 3(2) mandates three years of imprisonment for those who had entered into benami transactions between September 5, 1988 and October 25, 2016. That is, a person can be sent behind bars for a benami transaction entered into 28 years before the Section even came into existence.

Justice Ramana, who wrote the 96-page judgment, held that the provision violated Article 20(1) of the Constitution.

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”. Section 5 of the 2016 Amendment Act said that “any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government”. The court held that this provision cannot be applied retrospectively.

The CJI dismissed the government’s version that forfeiture, acquisition and confiscation of property under the 2016 Act was not in the nature of prosecution and cannot be restricted under Article 20. The court observed that the 2016 Act condemned not only transactions that were traditionally denominated as benami but also a “new class of fictitious and sham transactions”. The court said the intention of Parliament was to condemn property acquired from ill-gotten wealth. “These proceedings cannot be equated as enforcing civil obligations,” the CJI noted.

[Our code of editorial values](#)

END

Downloaded from [crackIAS.com](#)

© **Zuccess App** by crackIAS.com