

Apex court unconstitutionality hammer on benami law provisions:

1. Today, the Supreme Court has declared that Section 3(2) of the Benami Transactions (Prohibition) Act 1988 as unconstitutional on the ground of being manifestly arbitrary. Accordingly, Section 3(2) of the Benami Transactions (Prohibition) Amendment Act 2016 is also unconstitutional as it is violative of Article 20(1) of the Constitution.
2. Section 3(2) prescribes that 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.
3. The Court further held that Benami Transactions (Prohibition) Amendment Act 2016 cannot be applied retrospectively. The Court held that the 2016 amendment cannot be held as merely procedural.
4. The Legislative enactment can be struck down by Court only on three grounds:
 - I. that the appropriate legislature does not have competence to make the law, and
 - II. That it does not take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions.
 - III. Manifest arbitrariness (Shayara Bano and Ors. v. Union of India, AIR 2017 SC 4609)
5. Manifest arbitrariness must be something done by the legislature capriciously, irrationally and or without adequate determining principle. Also, when something is done which is excessive and disproportionate such legislation would be manifestly arbitrary.
6. Difference between test of classification and manifest arbitrariness
 - (a) Comparative- The classification doctrine is essentially comparative, whereas the arbitrariness doctrine is not essentially so. It means that there must be some comparatively differential treatment between two persons or two classes of persons before the doctrine is even engaged.

The arbitrariness doctrine on the other hand can be invoked for any sufficiently serious failure to base an action on good reasons.

(b) wider scope - Doctrine of manifest arbitrariness has wider scope than Classification test.