

Q-2) In Benami Property cases, SC has wisely placed restrictions on retrospective penal action in a civil law. Explain.

The three judge bench of the Supreme Court quashed provisions of Benami Transactions act of being "manifestly arbitrary".

Benami transactions act,

The act was enacted in 1988, the 2016 amendment added penal provisions to the act. It included punitive measures such as confiscation of property, imprisonment upto 1 to 7 years and fine.

Supreme Court's view

The court stated that punitive provisions cannot be treated as civil provisions as it violates to the Article 20(1) of the constitution, which prohibits use of retrospective laws in criminal cases.

The court formulated the Doctrine of colourable legislation i.e., what cannot be done directly, cannot be done indirectly also.

It ruled against the section (3) which regarded to criminal proceedings and section

(5) - confiscation of property retrospectively.

But the prospective stand is open.

With this the apex court has rechristened the soul of article 20(1) which was bypassed by an amendment act.

Concerns the supreme court allowed the confiscation of property in exceptional cases under PMLA - Prevention of Money Laundering Act.
The court's view is subject to interpretation.

The Benami transaction act and Fugitive Economic Offenders act are seen as progressive legislation with penal provisions. Concerns has to be noted to empower these anti-corruption laws.