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Prosecution under Benami Act Stuck

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- The prosecution of accused persons in even confirmed cases has been stuck as the special courts meant for the purpose have not yet been set up across the country.
- The Act provides that the Central government, in consultation with the Chief Justice of the respective High Courts, will establish special courts through notification.
- Despite the fact that investigations in almost 100 cases have been completed by the I-T Department in different States, including confirmation of attachment of properties by the Adjudicating Authority, the prosecution of accused persons has not started.

Benami Transactions (Prohibition) Amendment Act, 2016

- The Act defines a benami transaction as a transaction where:
 - a property is held by or transferred to a person, but has been provided for or paid by another person.
 - the transaction is made in a fictitious name,
 - the owner is not aware of denies knowledge of the ownership of the property,
 - the person providing the consideration for the property is not traceable.
- Provides for an **Appellate Tribunal** to hear appeals against any orders passed by the Adjudicating Authority. Appeals against orders of the Appellate Tribunal will lie to the high court.
- The **special court** should conclude the trial **within six months** from the date of filing of the complaint.

- The Bill seeks to establish **four authorities** to conduct inquiries or investigations regarding benami transactions: (i) Initiating Officer, (ii) Approving Authority, (iii) Administrator and (iv) Adjudicating Authority.
 - If an **Initiating Officer** believes that a person is a benamidar, he may issue a notice to that person. The Initiating Officer may hold the property for 90 days from the date of issue of the notice, subject to permission from the Approving Authority. At the end of the notice period, the Initiating Officer may pass an order to continue the holding of the property.
 - If an order is passed to continue holding the property, the Initiating Officer will refer the case to the **Adjudicating Authority**. The Adjudicating Authority will examine all documents and evidence relating to the matter and then pass an order on whether or not to hold the property as benami. Based on an order to confiscate the benami property, the Administrator will receive and manage the property in a manner and subject to conditions as prescribed.
 - The amended law empowers the specified authorities to provisionally attach benami properties which can eventually be confiscated.
- Besides, if a person is found guilty of offence of benami transaction by the competent court, he shall be punishable with rigorous imprisonment for a **term not less than one year but which may extend to 7 years** and shall also be liable to fine which may extend to 25% of the fair market value of the property.