

Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985

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In news

Recently, the High Court of Tripura in its verdict, discovered that an oversight in drafting the 2014 amendments to NDPS act 1985 had unintentionally rendered a key provision of the Act, Section 27A which provides for punishment of those financing illicit trafficking, inoperable.

What does Section 27A of the NDPS act say?

It prescribes the punishment for financing illicit traffic and harbouring offenders.

The provision reads:

“Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of clause (viiiia) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

Is this provision inoperable?

- The provision says that offences mentioned under Section 2(viiiia) sub-clauses i-v are punishable through Section 27A.

- However, Section 2 (viii) sub-clauses i-v, which is supposed to be the catalog of offences, **does not exist after the 2014 amendment.**
- If Section 27A **penalises a blank list or a non-existent provision**, it can be argued that it is virtually inoperable.

2014 amendment to NDPS act

- The amendment was made to allow for better medical access to narcotic drugs.
- Since the regulation under NDPS was very stringent, despite being a leading manufacturer of morphine, an opioid analgesic used as a painkiller, it was difficult to access the drug even for hospitals.
- This **amendment essentially removed state-barriers in transporting, licensing drugs classified as “essential narcotic drugs”**, and made it centralised.
- This was done by first **introducing a provision in Section 2** that defines essential narcotic drugs, and subsequently in Section 9 of the act.
- The amendment to add the definition of essential narcotic drugs re-lettered the old Section 2(viii)a that was the catalog of offences as Section 2(viii)b, and under the Section 2(viii)a, defined essential narcotic drugs.
- However, **the drafters missed amending the enabling provision** in Section 27A to change Section 2(viii)a to Section 2(viii)b.

NDPS act 1985

- It is the principal legislation through which the state regulates the operations of narcotic drugs and psychotropic substances.
- The Act is widely regarded as a prohibitionist law which seeks to grapple with 2 kinds of offences: trafficking of prohibited substances i.e. cultivation, manufacture,

distribution and sale, as well as their consumption.

- It provides for establishment of specialized courts to deal with offences set out in the Act.
- The quantum of punishment under the NDPS Act is based on the quantity of drugs found which may be classified into 3 categories: small, less than commercial and commercial.
- Sec. 8 of the Act explicitly prohibits the cultivation of opium, poppy, coca or cannabis plants
- It also prohibits the production, manufacture, distribution including warehousing, transport, purchasing and selling of prohibited drugs and psychotropic substances.
- it also prohibits their financing as well as consumption and harboring offenders guilty under the Act.
- The act provides procedural safeguards to prevent innocent civilians from being unnecessarily harassed.
- The 2014 amendment provides for the accreditation of treatment centres by relevant government authorities.
- Nodal agency: Department of Social Welfare(awareness)
- The Narcotics Control Bureau is tasked with the responsibility of overseeing the activities undertaken by various law enforcement agencies.
- The Ministry of Finance looks into cases grappling with drug trafficking, money laundering and other offences which are closely linked with drug abuse.