



# Inoperable Provision of NDPS Act: Tripura High Court

## Why in News

Recently, the Tripura High Court has discovered that an oversight in drafting the 2014 amendments to the [Narcotics Drugs and Psychotropic Substances \(NDPS\) Act, 1985](#) had unintentionally rendered a key provision (**Section 27A**) of the Act inoperable.

## Key Points

### ▪ Narcotic Drugs and Psychotropic Substances Act, 1985:

- India is a signatory to the [United Nations \(UN\) Single Convention on Narcotic Drugs 1961](#), the [Convention on Psychotropic Substances, 1971](#) and the [Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988](#).
  - They **prescribe various forms of control** aimed to achieve the dual objective of limiting the **use of narcotic drugs and psychotropic** substances for medical and scientific purposes as well as preventing the abuse of the same.
- The basic legislative instrument of the Government of India in this regard is the **NDPS Act, 1985**.
- The Act provides **stringent provisions for the control and regulation of operations** relating to narcotic drugs and psychotropic substances.
- It also provides for **forfeiture of property** derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances.
- It also provides for **death penalty in some cases** where a person is a repeat offender.
- The [Narcotics Control Bureau](#) was also constituted in 1986 under the Act.

### ▪ Section 27A of the NDPS Act:

- The provision reads that whoever indulges in financing, directly or indirectly, any of the activities specified in **sub-clauses (i) to (v) of clause (viii) of section 2** or harbours any person engaged in any of the aforementioned activities.
- He 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.

### ▪ Reason of Section 27A getting Inoperable:

- The text of the provision says that **offences mentioned under Section 2 (viii) 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**.
- So, if Section 27A penalises a blank list or a non-existent provision, it can be argued that it is virtually inoperable.

### ▪ NDPS Act 2014 Amendment:

- It 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.
- The 2014 amendment essentially **removed state-barriers in transporting, licensing drugs classified as “essential narcotic drugs”**, and made it centralised.
- This was done by defining **essential narcotic drugs, and allowing the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs**.
  - The amendment to add the definition of essential narcotic drugs **re-lettered the old Section 2(viia) that was the catalog of offences as Section 2(viib)**, and under the Section 2(viia), defined essential narcotic drugs.
  - However, the **drafters missed amending the enabling provision in Section 27A** to change Section 2(viia) to Section 2(viib).

▪ **High Courts Ruling:**

- It **directed the Central Government, Ministry of Home Affairs** to take appropriate steps for **amending section 27A of the NDPS Act 1985**.
  - It noted that the amendment is yet to take place. However, **criminal laws cannot be amended retrospectively**. So even if the amendment is brought in, the result of **the drafting error could lead to more constitutional questions** being raised.
- Ordered that both the **Central Government and the State Government shall publish a notification bringing about the content of this order** in short for the **public notice** so that the requirement of [Article-20](#) of the Constitution of India is not diminished.
  - **Article 20** of the Constitution guarantees **protection against double jeopardy**.
  - **Article 20(1)** says that **no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act** charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

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