

NDPS ACT



Issue

The Lok Sabha has passed the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2021.

Background

The amendment was passed to correct a drafting anomaly in 2014 amendment, which had created confusion in the law.

Details

- The amendment bill says that Section 2 clause (viii a) corresponds to clause (viii b) in Section 27, since 2014, when the provision was first introduced.
- The provisions of the Section 27A of the NDPS Act, 1985 prescribes punishment for financing illicit traffic and harbouring offenders.

The 2014 amendment

- For allowing better medical access to narcotic drugs, an amendment in 2014 was made to the NDPS Act.
- Section 2(viii)a defined 'essential drugs'. The section 9 allowed manufacture, transport, sale, purchase and consumption of essential drugs.

The anomaly

- The Section 2 was re-numbered while defining "essential drugs" in 2014. The offences that were to be listed under Section 2(viii)a, was now under Section 2(viii)b.

- The drafters missed the enabling provision in Section 27A to change Section 2(viii)a to Section 2(viii)b.

Implication

- Offences given under Section 2(viii a) sub-clauses i-v were punished under Section 27A. The catalogue of offences under Section 2 (viii a) sub-clauses i-v does not exist after the 2014 amendment.
- The Section 27A was inoperable after Section 2 (viii a) sub-clauses i-v became Section 2(viii b).

Identification of error

- The Tripura High Court identified the drafting error while hearing a reference made by the district court.
- In 2016, an accused had sought bail before a special judge in Agartala, citing this omission in drafting. He could not be charged under the offence since Section 27A penalised a blank list.
- The government said that a drafting error should not be a ground for seeking bail and the provisions should be read in the way it was intended and not drafted.

Retrospective application

- The Article 20 (1) of the constitution says that an individual cannot 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.
- This means that an individual cannot be punished for an offence that was not a "crime" under the law when it was committed.

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