

**Decriminalization of offences under Drugs and Cosmetics Act, 1940 by  
the Jan Vishwas (Amendment of Provisions) Act, 2023.**

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**I) Object:-**

The Central government has enacted the Jan Vishwas (Amendment of Provisions) Act, 2023 (18 of 2023) on 11.08.2023. Under the said Act, the Central Government has amended certain provisions of the Drugs and Cosmetics Act, 1940 and other forty-one Acts. The object of the Act is to decriminalize and rationalise offences to further enhance trust based Governance for ease of living and doing business.

**II) Amendment to Drugs and Cosmetics Act, 1940 – At a glance**

- (1) Section 29 which provides penalty for use of Government Analyst's Report for advertising has been amended and now after amendment, instead of maximum fine of five thousand rupees, maximum fine of one lakh rupees can be imposed.
- (2) Section 30(2) which provides penalty for subsequent offence for advertising the Government Analyst Report has been amended. By the said amendment, the punishment of two years in the existing Act is now removed and only fine not less than five lakh can be imposed.
- (3) The offences of manufacture, sale and distribution of not of standard quality drug and contravention of any other provisions of the Act and Rules and offence of manufacture, sale and distribution of cosmetics other than spurious and adulterated cosmetics have been made compoundable by inserting Section 27A(ii) and 27(d) of the Act in Section 32B of the Act.
- (4) The aforesaid amendments will be effective from the date as may be notified.

- (5) The fines provided under the amended provisions will increase by 10% of minimum amount every three years from the commencement of Jan Vishwas (Amendment of Provisions) Act, 2023.

**III) The details and implications of the aforesaid amendments are as under:-**

The said Act has amended certain penal provisions under Drugs and Cosmetics Act, 1940 as under:-

- (1) **Section 29** → Under the existing Act, Section 29 provides penalty for use of Government Analyst's Report for advertising. The said Section is reproduced below for ready reference:-

*29. Penalty for use of Government Analyst's Report for advertising. - Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug or cosmetic, shall be punishable with fine which may extend to five thousand rupees.*

Under the Jan Vishwas Bill, the said Section 29 has been amended and instead of fine which may extend to five thousand rupees, now, fine which may extend to one lakh rupees can be imposed.

- (2) **Section 30(2)** → Existing Section 30 provides penalty for subsequent offences. Section 30(2) provides penalty for subsequent offence for advertising the Government Analyst Report. The said Section 30(2) is reproduced below for ready reference: -

*Whoever, having been convicted of an offence under Section 29 is again convicted of an offence under the said Section shall be punishable with imprisonment which may extend to two years, or with fine which shall not be less than ten thousand rupees or with both.*

Under Jan Vishwas Bill, the said Section 30(2) is amended and the penalty of imprisonment which may extend to two years is removed and only fine which shall not be less than five lakh rupees is provided.

In view of the amendment to Section 30(2), now if someone is again convicted for offences of advertising Government Analyst Report will have to pay the fine which shall not be less than five lakh rupees. Such convicted person will not be required to undergo any imprisonment.

In any case, the amendment to Section 29 and 30(2) is more of academic interest as to the best of our knowledge and belief, there is hardly any case in which any person is even convicted under Section 29 of the Act.

- (3) **Section 32-B** → Existing Section 32B which specifies offences which can be compounded is reproduced below for ready reference: -

*32-B: Compounding of certain offences – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under clause (b) of sub-section (1) of Section 13, Section 28 and Section 28A of this Act (Whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government or by any State Government or any officer authorized in this behalf by the Central Government or a State Government, on payment for credit to that Government of such sum as that Government may, by Rule made in this behalf, specify:*

*Provided that such sum shall not, in any case exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded:*

*Provided further that in cases of subsequent offences, the same shall not be compoundable.*

It can be seen that existing Section 32B provides for compounding of following offences,

- (a) *Section 13(1)(b)* – Penalty for import of drug or cosmetic which is prohibited under Section 10 of the Act or any Rule made under Chapter III.
- (b) *Section 28* – Which provides penalty for non disclosure of the name and address of the manufacturer or the supplier as provided under Section 18A of the Act.
- (c) *Section 28A* – Which provides penalty for not keeping documents and for non disclosure of information as required under Section 18B of the Act.
- (d) All above Sections provide for penalty of imprisonment or fine or both.

Under Jan Vishwas (Amendment of Provisions) Act, 2023, the offences under Section 27A(ii) and offences under Section 27(d) of the Act have been made compoundable by inserting the said sections under Section 32B of the Act. It may be noted that while Section 27A(iii) provides for imprisonment or fine, Section 27(d) provides imprisonment and fine.

- (i) **Section 27A(ii)** – The said Section provides penalty for manufacture, sale and distribution of any cosmetic other than spurious and adulterated cosmetics. The penalty provided is imprisonment which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

- (ii) Section 27(d) – Provides penalty for manufacture, sale and distribution of not of standard quality drug or for contravention of any provision under the Act and Rules. The penalty provided is imprisonment for a term which shall not be less than one year but which may extend to two years and fine which shall not be less than twenty thousand rupees.
- (iii) In this regard, it may be noted that Section 32B provides that for the purpose compounding under Section 32B, the officer authorized by the Central Government or State Government can compound the offences on payment of such sum as the Central Government may specify in the Rules. However, Section 32B also provides that such sum cannot exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded. This means, if the offence under Section 27A(ii) and 27(d) is compounded, the concerned person will have to pay maximum twenty thousand rupees for compounding of offences. As compared to advertisement of Government Analyst Report, the offences under Section 27A(ii) and 27(d) are more serious, however, only fine for compounding is twenty thousand rupees by the concerned person on compounding. On the other hand, fine for subsequent conviction for using Government Analyst Report for advertising is Rupees five lakhs. This is surprising contradiction.
- (iv) In our view, from the language used in Section 32B, offences wherein only imprisonment or imprisonment or fine is provided are compoundable. However, under Section 27(d) both imprisonment and fine has to be imposed. Therefore, the said offences should not have been incorporated under Section 32B as amended without amending Section 27(d) for providing imprisonment or fine.
- (v) The scope and implications of the aforesaid amendments will have to be examined afresh based on enactment of the proposed Drugs Medical Devices Cosmetics Act.