

DE JURE NEXUS LAW JOURNAL

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1st Year, BBA LL.B.**CANNABIS: A CASE FOR LEGALISATION****ABSTRACT**

Cannabis use in India has seen major changes over the last century. During the colonial age, Marijuana was a fully legal, widely used substance throughout the sub-continent. It was a well-known substance with known medical and therapeutic properties. This trend continued up until 1985, which was when the modern drug laws were implemented that prohibited the use of Marijuana in its entirety. This research paper details the current legal scenario with respect to Marijuana in the country, examines the flaws in present drug laws and provides an objective analysis to present a case in favour of legalisation.

KEYWORDS

Cannabis, Marijuana, NDPS Act, Drug Laws, Public Health, Substance use.

INTRODUCTION

Cannabis/Marijuana is a psychoactive substance derived from the flowers, leaves and buds of the cannabis plant. It is the most widely used illicit drug in the world with an approximate 128 to 232 million users in 2013.¹ In India, there is a strong cultural and religious background surrounding the use of Cannabis. According to a report by the Ministry of Social Justice and Empowerment, about 3.1 crore individuals, which forms 2.8% of the population, reported having used any cannabis product in the year 2018-19.² All such use is categorised as illegal,

¹ 'Cannabis (drug)' (2022) Wikipedia. Available at: [https://en.wikipedia.org/wiki/Cannabis_\(drug\)](https://en.wikipedia.org/wiki/Cannabis_(drug)) (Accessed: 17 February 2022).

² Ambekar A, Agrawal A, Rao R, Mishra AK, Khandelwal SK, Chadda RK. (2019). Magnitude of Substance Use in India. [online] socialjustice.nic.in. New Delhi: Ministry of Social Justice and Empowerment, Government of India. Available at: https://socialjustice.nic.in/writereaddata/UploadFile/Magnitude_Substance_Use_India_REPORT.pdf [Accessed 17 Feb. 2022].

but since the enforcement surrounding Indian drug laws is weak, cannabis use presents itself on the subtle periphery of criminal behaviour. This is the primary reason why there has been a growing demand for the legalisation at the federal level. The main contention of the advocates of legalisation is that existing drug laws have become obsolete. Their argument rests upon the fact that drug use is a dynamic subject which cannot be effectively governed or regulated without timely amendments, which ought to be made by relying on modern scientific research and sociological studies.

EXISTING DRUG LAWS: ISSUES AND CHALLENGES

The statute concerned with regulation of substances in India is the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter referred to as NDPS Act). Section 8 of the NDPS Act criminalises the use, sale, purchase, transport and consumption of substances which are declared as illicit under the schedule of said act. The schedule lists cannabis as a controlled substance. However, the act suffers from certain fundamental issues in the administration and enforcement of the provisions, which have been rightly pointed out by judicial activists. Some of these issues are substantiated as follows :

a) Ineffective Prohibition

The principal problem with respect to regulation of cannabis and other illicit substances lies in the implementation of the NDPS Act. The poor efforts of authorities and investigative agencies in controlling these substances has resulted in an ineffective prohibition. Complete prohibition of cannabis has not been a success in the slightest. Authorities have focused on clamping down on users and small-time peddlers. Since illegal cannabis trade is difficult to track, the main culprits, the producers, have been off the radar of the authorities for quite a long time. As a result, the illegal and unmonitored cannabis trade is flourishing in many parts of the country which has proved to be far more dangerous than a regulated marketplace.

This illegal trade can be described as a parallel to the prohibition of alcohol in the United States. Unchecked prohibition in the 1920s led to numerous unintended and precarious consequences including flourishing criminal activity centered on smuggling and bootlegging and the consequent clogging of the courts with drink-related prosecutions.³ Organised crime and racketeering became more common than ever. It also led to a public health hazard which rooted from the population drinking illegal homemade spirits and moonshines, prepared without focusing on any safety standards. Adulteration of these spirits with other harmful substances became a health crisis.

³ Blocker, J.S. (2006). Did Prohibition Really Work? Alcohol Prohibition as a Public Health Innovation. American Journal of Public Health, [online] 96(2), pp.233–243. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470475/>.

A similar series of consequences can be observed with respect to cannabis prohibition in India. There are no quality or safety checks in an unregulated market. And since users have no recourse to assess the quality of cannabis, are unaware of what they are consuming. According to Dr. Rajkumar, a licensed psychiatrist, “There are a lot of adulterated cannabis products in the market. These are far more harmful than the pure plant. But there is no way to control quality for an illegal drug.”⁴

Moreover, a syndicate or an oligopoly, which controls the majority of the illegal trade at upper levels, has seriously damaged the economic well-being of the country at a macroeconomic level.

b) Penal Focus Rather Than a Rehabilitative Focus

Another fundamental issue is that the current drug laws approach the drug crises with a penal focus in contrast to a rehabilitation-oriented approach. The NDPS Act does not differentiate between the small-time recreational users and the traders, producers, and transporters. This means that even individuals who use small quantities for personal medical/recreational use are penalised in the same manner as someone who is engaged in unlicensed production of the cannabis plant (nonetheless, it must be noted that the only distinction made under the law to classify offenders is the categorisation of commercial and non-commercial quantities).

Section 20 of the NDPS lays down the punishment for offenders for using cannabis. The punishment includes fine and rigorous imprisonment which may exceed up to 10 years of jail-time. The Directive Principles of State Policies imposes a duty on the state for improvement of public health.⁵ Therefore, it becomes the state responsibility to treat the patients of substance abuse and the drug epidemic via suitable rehabilitation and not label them as criminals and put them in jail. Studies have shown that such kind of incarceration is not a constructive approach to treat addicts. Punishment alone is a futile and ineffective response to drug abuse, failing as a public safety intervention for offenders whose criminal behaviour is directly related to drug use. Addiction is a chronic brain disease with a strong genetic component that in most instances requires treatment.⁶ The NDPS Act wrongly views the offenders, who are more than likely recreational users, as criminals instead of patients who are suffering from a medical condition. Putting end users in prisons is not solving any real problems. The law fails to provide for rehabilitative treatment to drug users which is a major drawback.

⁴ Acharjee, S. (2020). Should India make Cannabis legal? [online] IndiaToday.in. Available at: <https://www.indiatoday.in/magazine/cover-story/story/20200928-should-india-make-cannabis-legal-1723088-2020-09-19> [Accessed 18 Feb. 2022].

⁵ Constitution of India, Art. 47

⁶ Chandler, R.K., Fletcher, B.W. and Volkow, N.D. (2009). Treating Drug Abuse and Addiction in the Criminal Justice System. JAMA, [online] 301(2), p.183. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2681083/>

c) Selective Enforcement

There is less stigma associated with smoking Marijuana in India. Given the cultural and religious significance, millions of people smoke Marijuana recreationally out in the open. Sadhus/Sants of the Hindu community regularly smoke Marijuana in temples and other religious events like the Kumbh, citing their spiritual and religious beliefs. These offences often remain unenforced. However, authorities are quick to take action against certain individuals against whom there might exist some prejudice. This means that the authorities have adopted a pattern of selective enforcement. Such selective enforcement sets quite a dangerous precedent with respect to law and order in the country as it is violative of the constitutional principle of equality before the law.

d) India's vote in favour of Marijuana

The UN Commission on Narcotic Drugs (UNCND) has voted to reclassify cannabis as a non-dangerous substance in 2020. This was done following a detailed recommendation provided by WHO. India has voted in favour of this decision.⁷ Consequently, this would mean that India's drug laws have become obsolete, given the contrast between listing cannabis as a controlled substance alongside lethal opiates in the NDPS Act and India's official stance in the international forum supporting cannabis de-regulation. There is a growing need to revise the statute and recognize cannabis as a less dangerous substance in the law.

INTERNATIONAL APPROACH

A drastic measure to better regulate and control cannabis as a substance has been adopted by several countries across the globe, that is, to legalise it. A solution that might seem counter-productive at first, has created a major shift in the current socio-legal environment surrounding cannabis - simply because it is working. Uruguay and Canada have made cannabis legal for medical, therapeutic and recreational uses along with several states in the USA. Portugal has utilised a slightly different approach which is detailed below.

Decriminalisation in Portugal: A Case Study

Background: Towards the end of the century, Portugal was facing a major opioid epidemic. Heroin use was the most common, among other substances. The major public health crisis had led to thousands of users dying due to overdoses. Consequently in 2001, Portuguese legislators took a radical step and introduced the Portuguese Drug Policy Model (PDPM) via Law no. 30/2000 of November 29, 2000. This new law had "decriminalised" the personal use, acquisition and possession of all kinds of illegal substances (including far more lethal ones like

⁷ United Nations Office on Drugs and Crime (2020). CND Votes on Recommendations for Cannabis and Cannabis-Related Substances. [online] [www.unodc.org](https://www.unodc.org/unodc/en/frontpage/2020/December/cnd-votes-on-recommendations-for-cannabis-and-cannabis-related-substances.html). Available at: <https://www.unodc.org/unodc/en/frontpage/2020/December/cnd-votes-on-recommendations-for-cannabis-and-cannabis-related-substances.html> [Accessed 19 Feb. 2022].

cocaine, heroin, MDMA, etc), as long as it does not exceed the quantity required for an average individual consumption during a period of 10 days.⁸ Even though the trade of these substances remained illegal, simple possession and personal use was categorised as a misdemeanour (which would lead to a nominal fine) and was eliminated from the criminal process.

Outcomes: In contrast to the fears of those opposing the legislation, there has been no recorded increase in the use of drugs by the population since 2001. Lifetime drug prevalence rates have been declining since the reform. Moreover, substance use in critical age groups, that is, ages 13 through 18, has steadily declined since decriminalisation. A link between declining rates of overdose-related deaths, HIV/AIDS infections, Hepatitis B and Hepatitis C infections has also been observed.⁹ In 2000, there were 2,758 newly diagnosed cases of HIV-infected persons, of which 1,430 were drug users (52 percent). In 2008, the total number of newly diagnosed cases was 1,774, of which 352 were drug users (20 percent).¹⁰ Decriminalisation removed the stigma and fear of criminal prosecution from the minds of troubled users and helped them avail the benefits of educational reforms and other harm reduction initiatives by the Portuguese Government. Decriminalisation helped the Portuguese to take effective steps to deal with the disease and not the patient.

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WHY LEGALISE?

Certain groups and activists are pushing towards the legalisation of cannabis in India, following the footsteps of other states which have done the same. From a legal perspective, the argument of these groups' rests on the fact that since Cannabis is not a highly dangerous substance, like tobacco or alcohol, an individual ought to be able to exercise his right to life and personal liberty to use a naturally occurring substance. This raises a jurisprudential question. Is there any inherent "right to smoke cannabis"? According to Kant's philosophy, we are rational and judicious beings who are able to discern right from wrong on a moral compass intelligently, therefore the state should prevent any interference in matters which involve personal decisions as to whether an act is morally right or wrong in an individual's own autonomous capacity.¹¹ For example, a state should not interfere with an individual's decision as to whether he should cheat on his spouse or not, as reinstated by the Supreme Court in *Joseph Shine v Union of India*¹². Nonetheless, a state may interfere with personal decisions, as and when those decisions

⁸ Law n.o 30/2000, of 29 November. Article 2 [online] Available at: https://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf [Accessed 20 Feb. 2022].

⁹ Connolly, J. (2009). Reports examine effects of decriminalisation of drugs in Portugal. *Drugnet Ireland*, [online] Issue 30, Summer 2009, pp.22–23. Available at: <https://www.drugsandalcohol.ie/12204/>.

¹⁰ Artur Domosławski, Global Drug Policy Program, Helsińska Fundacja Praw Człowieka, Open Society Foundation, Open Society Foundations and Open Society Institute (2011). *Drug policy in Portugal : the benefits of decriminalizing drug use*. Erscheinungsort Nicht Ermittlbar: Open Society Foundations, p.40.

¹¹ Rohlf, M. (2010). Immanuel Kant. In: E.N. Zalta, ed., *The Stanford Encyclopedia of Philosophy*, Fall 2020 Edition. [online] Metaphysics Research Lab, Stanford University. Available at: <https://plato.stanford.edu/entries/kant/#ThePraAut> [Accessed 21 Feb. 2022].

¹² *Joseph Shine v Union of India* 2018 SC 1676

obstruct the rights of others. Using cannabis is a personal decision which does not interfere with the rights of others. An argument could be formed that a user of cannabis may potentially be a threat to society at large as it temporarily impairs decision making ability. However, alcohol is a fully legal, regulated substance that has the similar effects on decision making capabilities of a user as cannabis, if not more, which weakens this argument. Similar to alcohol, responsible use of Cannabis should be promoted to ensure safety while at the same time provide citizens with liberty and autonomy.

OUTCOMES OF LEGALISATION

It is evident that complete prohibition of cannabis is not practically possible. India is an agrarian economy with almost 60% of the population dependent on farms for livelihood, it is realistically not viable to regulate cannabis plant growth. A farmer can grow cannabis in a small chunk of his farmland, making it impossible to trace. Strict control over such a substance, from a law enforcement point of view, is improbable. Legalisation and effective regulation of cannabis would solve numerous legal and sociological problems. Potential positive outcomes of legalisation would include:

Promote Research

Legalisation of Cannabis would open up the door to reliable scientific research, which could be funded/incentivised by the government. With the backing of the state, the medical uses of Cannabis as a therapeutic drug could be identified. It would allow for various studies and surveys to be conducted which would further help assess how safe Cannabis is as a recreational drug. Current research supports that medical use of marijuana can help lessen tremors in those suffering from Parkinson's disease, help manage nausea, treat glaucoma, help with PTSD symptoms and also manage anxiety disorders¹³. Gaining a legal assent would create a better research environment to clear other doubts and reservations regarding Cannabis use.

Open Up a Forum For Dialogue And Discussion

As seen in the case of Portugal, decriminalisation helped users and addicts get the help they need, without the fear of prosecution. It would help clear out the stigma surrounding the use of substances in general and at-risk users would be viewed with empathy instead of facing social exclusion. People would get educated and informed about the responsible use of Cannabis, which would result in an automatic decrease in crimes and other dangers that are caused by substance abuse.

Economic Boost

One of the major incentives available to the governments for legalising weed are the economic benefits that come along with it. Especially in a country like India, where illegal peddlers and dealers are present in almost every city already, the government should take advantage of this already available high demand, cut out the middlemen and regulate the industry by setting up

¹³ Grinspoon, P. (2020). Medical marijuana. *Harvard Health Blog*. Available at: <https://www.health.harvard.edu/blog/medical-marijuana-2018011513085> [Accessed 21 Feb. 2022].

licensed government stores (like licensed liquor stores) to make profits. These licensed stores and cannabis dispensaries would lead to creation of jobs in areas of production, transportation, administration and retail. A report by ICF has estimated at least 81,000 additional direct, indirect, and induced jobs in the US state of California as a result of legalised marijuana sales. It also projects an increase in total labour income by at least \$3.5 billion.¹⁴ Given India's current volume of Cannabis trade, New Delhi could raise up to Rs 725 crore a year, while Mumbai could raise Rs 641 crore if weed were taxed at the same rate as the most popular cigarette in the city. If the average US tax rate on marijuana is applied, Delhi could raise Rs 225 crore and Mumbai Rs 199 crore.¹⁵ The economic benefits of legalising Marijuana do not stop at taxation alone as various other industries can also benefit from legalisation. Hemp, which is a special botanical class of Cannabis grown specifically because of its application in industrial use, can be used extensively as a natural substitute to environmentally dangerous artificial fabrics in the textile industry. Hemp is also an eco-friendly substitute to plastics as it is fully biodegradable and recyclable and can be used in ropes, bags, cosmetics, etc.

Better Regulation and Control

Legalisation of weed would make it easier for the government to regulate it. THC (tetrahydrocannabinol) is the main psychoactive ingredient in Cannabis. A licensed and authorised production would help the government set mandates (like alcohol percentage limits in spirits) to define an upper limit on THC in a given volume of Cannabis. If marijuana were legal, there would be more options for consumers, and regulators could, for example, insist on a lower level of THC. A comparison may be drawn with alcohol - Just like most people don't drink an after-work bottle of vodka, many people might gladly consume the after-work beer version of marijuana.¹⁶ In addition to that, the health and safety of users could also benefit from direct government control over Cannabis. There are far more dangerous substances than Cannabis that are often added as adulterants by illicit sellers to make the product more addictive, however, there is no way to regulate the quality of a drug that is illegal. Such practices can be curbed through a well-supervised production and trade process under the direct governance of the state.

Legalisation of Cannabis would save the government agencies a major chunk of time and resources which could be better used to focus on more harmful substances (eg. opiates, including heroin) that are a threat to public health and society at large.

¹⁴ Johnston, E., Segal, K. and Cooper, W. (2016). The Economic Impacts of Marijuana Sales in the State of California. [online] icf.com. ICF International. Available at: <https://www.icf.com/insights/health/economic-impact-of-marijuana-sales-in-california> [Accessed 21 Feb. 2022].

¹⁵ Acharjee, S. (2020). Should India make Cannabis legal? [online] IndiaToday.in. Available at: <https://www.indiatoday.in/magazine/cover-story/story/20200928-should-india-make-cannabis-legal-1723088-2020-09-19> [Accessed 18 Feb. 2022].

¹⁶ Vigneshwar, R. (2019). The Case for Legalising and Regulating Cannabis. [online] thewire.in. Available at: <https://thewire.in/health/cannabis-marijuana-india-legal> [Accessed 21 Feb. 2022].

CONCLUSION

To sum it all up, Cannabis is still a mystery in the Indian context. Legislators, judicial officers, politicians and other activists have to understand and study the influence of cannabis in the country at a greater level. It all boils down to the main question - Would there be more negative than positive consequences of legalisation? To answer that question, one must focus on the fact that illicit trafficking, adulteration, underage-use, black marketing, price manipulations would decline dramatically, given direct state authority and supervision following legalisation. Researchers at Victoria University of Wellington and Harvard University found that medical marijuana laws essentially have a null effect on crime rates, with one big exception: A nearly 20 percent reduction in violent and property crimes in California following the legalisation of medical cannabis there.¹⁷ Also, decriminalisation would lay down a better foundation for educating the population about substance-use and at the same time allow the at-risk users to step up and get the help they need without fear of prosecution.

Legalisation of the drug would not lead to increased abuse of the drug as the number of users would largely remain the same. However, legalisation would protect the users from other kinds of harms arising from drug use, by providing a gateway for safer consumption and education surrounding responsible use. The addictive nature of drugs would not change, legal or illegal; but a controlled, guarded and well-regulated experience can surely be constructed.

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¹⁷ Kyle Jaeger (2021). Impact Of Marijuana Legalization On Crime Reduction Is Being Underestimated, New Study Finds. [online] Marijuana Moment. Available at: <https://www.marijuanamoment.net/impact-of-marijuana-legalization-on-crime-reduction-is-being-underestimated-new-study-finds/#:~:text=The%20previous%20year%2C%20a%20federally> [Accessed 21 Feb. 2022].