

CANNABIS – FROM PROHIBITION TO REGULATION

-Dr. Garima Pal* and Anshika Juneja**

ABSTRACT

Since times immemorial, Cannabis has been a part and parcel of Indian culture, tradition, and medical buckets. The Atharva Ved and the Report of the Indian Hemp Commission makes this fairly evident. Yet, India's proclivity towards the principle of erga omnes and the immense pressure resulting from the War on Drugs initiated by the United States has since the prohibition of Cannabis has resulted in India taking an unfriendly stance towards the substance; one that might even have implications on the Fundamental Rights of its citizens. It has become not only a matter of the doctrine of parens patriae, but also a matter of essential duty required to be discharged by the social welfare regime adopted by the state of India. This article advocates for legalising the use of Cannabis keeping in mind the several innumerable benefits associated with it and the impact it will have on the Right to Health, Right to Privacy, Right to Development and Right to Freedom of Religion. In light of these facts, it is immensely vital to undertake an evaluation of: firstly, the background of Cannabis with special emphasis on its social, medical, and legal aspects; secondly, the legal flaws in the current legal regime and thirdly, the impact of legalization on the economy of the country.

Keywords: Cannabis, NDPS, Legalisation, Medicine, and GDP.

INTRODUCTION

Cannabis is undoubtedly one of the most commonly used illegal drugs globally, with nearly 12.5 crore potential users every year.¹ In India, cannabis is considered a holy plant by most religions² and has been accepted as an alternative form of medicine. Despite its religious and medicinal significance, cannabis is deemed illegal in India, and a person can be held criminally liable if found in possession. The utilisation of *bhang* and *charas* was legal in the past, but in 1985, under the intense pressure from the United States of America led "War on Drugs" campaign, the Indian Government passed "The Narcotics Drugs and the Psychotropic Substances Act, 1985." This Act restricted the production, manufacturing, consumption, selling and warehousing of cannabis. In medical terms, cannabis is considered to be much safer than many other commonly consumed substances such as caffeine, sugar, and even chocolate.³

* Assistant Professor, Maharashtra National Law University Mumbai.

** Student, Amity Law School, Guru Gobind Singh Indraprastha University.

1 Correspondent, 'Legalizing Marijuana in India' (2015) <www.change.org/p/government-of-india-legalize-marijuana-in-india> accessed 17 October 2021.

2 Robert W Fuller, *Stairways To Heaven: Drugs In American Religious History* (1st edn, Westview Press 2000).

3 Michael Tremoglie, 'Marijuana is Less Addictive than Chocolate' (*The Street*, 19 March 2014) <www.thestreet.com/personal-finance/credit-cards/marijuana-less-addictive-chocolate-12785386> accessed 17 October 2021.

Medical practitioners opine that it is physically impossible to be able to consume enough cannabis to inducedeath.⁴ Moreover, cannabis is considered to be among the safest, naturally-found substances to occur among men. On the same basis, AIIMS (2017) recommended that the Home Ministry reconsider the current laws regulating cannabis.⁵ The move was also supported by the then Director of the Narcotics Control Bureau because the result of criminalizing cannabis did not seem to have much of an effect on its consumption.⁶ However, the government failed to take much cognizance of the situation at hand. This led to the continuation of a poorly drafted law in the country.

Today, many countries have already taken the initiative of de-criminalising Cannabis and legalizing it for commercial consumption and medical usage.⁷ In India, the Hemp Commission was instituted in 1893, which concluded in 1894 that ‘the moderate usage of cannabis is beneficial for health⁸ and is attended by no evil repercussions.’ Despite these observations, India succumbed to international pressure and passed laws favouring the international forum rather than understanding the repercussions of the arbitrary law so levied.

BACKGROUND

Cannabis has been a part and parcel of our culture since times immemorial.⁹ From consuming *bhang* during festivals like Holi and MahaShivratri to it being a holy plant as mentioned in the Atharva Veda.¹⁰ Before independence, cannabis was legal with restrictions being imposed on it by the Britishers in the form of excise duty. After India gained independence in 1947, narcotic drugs began to be heavily regulated.¹¹ The restriction imposed on the sale and production of cannabis was initially seen as a contravention to farmers’ right to carry on trade, which was later justified by terming such a restriction on trade to be a ‘reasonable restriction’. The courts outrightly began relying on the International Drug control commitments to justify their excessive

4 Anmol Soin, ‘Cannabis in India: Old Laws to Take a Hit’ (2016) <<http://inpra.in/2016/12/29/cannabis-in-india-legalisation-to-take-a-hit/>> accessed 9 July 2017.

5 Ajith Pillai, ‘Case for Cannabis: A National Workshop Recommends Legalization of Soft Drugs, Outlook Magazine’ (1996) <www.outlookindia.com/magazine/story/case-for-cannabis/202017> accessed 9 July 2017.

6 *ibid.*

7 Jeremy Glass and Alex Robinson, ‘30 Legal-ish Places to Smoke Weed Around the World’ (*Thrillist* November 2019) <www.thrillist.com/vice/30-places-where-weed-is-legal-cities-and-countries-with-decriminalized-marijuana> accessed 17 October 2021.

8 ‘Report of the Indian Hempt Drug Commission (1894-1895)’ (*Medical History of British India*) <<http://digital.nls.uk/indiapapers/browse/archive/74462703>> accessed 17 October 2021.

9 Subodh Varmal, ‘Mankind and Grass go Back 5,000 Years’ *Times of India* (10 November 2012) <<http://timesofindia.indiatimes.com/india/Mankind-and-grass-go-back-5000-years/articleshow/17165592.cms>> accessed 17 October 2021.

10 Gabriel Nahas, *Marijuana- Deceptive Weed* (Raven Press 1973).

11 The Constitution of India 1950, art 13(1).

control.¹² The restriction further strengthened under Article 47 of the Indian Constitution. Though only a directive and not enforceable, it was enough to justify the then government's punitive drug policy. Soon after, three lists were created and drugs were put under the concurrent list wherein both the Centre and the State had the power to legislate.¹³

In 1961, under the 'Single Convention on Narcotic Drugs', cannabis got clubbed with hard drugs and India led the group of countries that proposed strict norms for controlling illicit drugs. It was under the Rajiv Gandhi regime that India signed the 1961 treaty, which led to the enactment of the Narcotic Drugs and Psychotropic Substances Act 1985 (hereinafter 'NDPS Act'), levying a blanket ban on softer drugs like ganja, hashish, and bhang.¹⁴

UNDERSTANDING THE FLAWS IN THE CURRENT LEGAL SYSTEM

There are a lot of flaws and loopholes in the Act. For instance, the governments, whether at the State or Centre, have been given the free charge to frame rules for the purpose of medicine and science, the clear demarcation and the parameters of which are not clearly defined within the Act.¹⁵ The other big loophole present in the Act is that the ban levied is not on the consumption of cannabis leaves but on the resins and buds, for they contain a higher concentrate of THC. Further, it is pertinent to note that on the one hand, the cultivation of bhang is punishable under NDPS Act even when it is not included within the definition of Cannabis (Hemp), but on the other hand, the personal use and sale of bhang is not considered as an offence within the contours of NDPS Act.¹⁶ The Act has defined the term 'Cannabis' under Section 2(iii) of the NDPS Act, and even though the illegality of cultivating cannabis has been iterated under Section 20, the Act seems to be silent about harvesting cannabis plant leaves from the wild and also fails to deal with the issue of certain sections of society like the mafia or other criminal elements having a huge black market for the drug.¹⁷

Owing to the slack provisions mentioned above, many states took initiative and began formulating rules and regulations that were more beneficial to the locals. Here, it is pertinent to note the instance of the state of Uttarakhand, which has become one of the first states in the country to have legalised cannabis cultivation. This happened

¹² The Constitution of India 1950, art 37.

¹³ *ibid*.

¹⁴ Correspondent, 'The Joint Campaign: Should We Not Legalize Recreational Use of Cannabis?' (*Times of India*, 10 November 2012) <<https://timesofindia.indiatimes.com/india/the-joint-campaign-should-we-not-legalize-recreational-use-of-cannabis/articleshow/17165613.cms>> accessed 17 October 2021; Manoj Mittal, 'Recreational Use of Marijuana: Of Highs and Laws' *The Times of India* (10 November 2012) <<http://timesofindia.indiatimes.com/india/Recreational-use-of-marijuana-Of-highs-and-laws/articleshow/17165524.cms?referral=PM>> accessed 17 October 2021.

¹⁵ Narcotic Drugs and Psychotropic Substances Act 1985 (hereinafter 'NDPS Act 1985').

¹⁶ *Jangir Singh v State of Punjab* 2018 SCC OnLine P&H 3674.

¹⁷ NDPS Act 1985, s 2(iii).

because the state government granted a license to the Indian Industrial Hemp Association (IIHA), a Non-Profit Organization, in July 2018¹⁸ by invoking Sections 10(a) read with Section 8 of the NDPS Act. Farmers under the current laws are allowed to grow Cannabis Sativa anywhere in the state barring regions of Terai and Bhabar¹⁹ with the dictate from the government restricting the sale of their products only to the government and not to any private buyer. This has been an economic booster for many farmers in the state, as cannabis is considered a cash crop. While some states have adopted similar laws, many have continued to grow cannabis openly, like in Kerala, where the produce is sold by the name of Kerala Gold openly.²⁰ But it is often reported that the mafia is highly involved in cooperation with the police who once in a while to maintain the records burn a part of the produce.²¹ After Uttarakhand, Himachal Pradesh became the second state to legalise cannabis as announced in April 2019.²² The state government, however, went back on its statement on legalizing cannabis cultivation as it became a major issue during the election.²³ Consequently, it is 2020 and no action has been taken in that regard.

VIABILITY AND ACCELERATION OF THE ECONOMY BY LEGALISING CANNABIS IN INDIA

In 2018, the Indian GDP was evaluated at 2,690 billion US dollars, which amounted to just 3.17% of the global economy,²⁴ and the reports of 2019 further portray a continuous fall in the scale of Indian GDP, which has now become a matter of concern for the government. So, though the debate on legalizing cannabis is not a matter at present, legalizing cannabis will benefit the falling GDP of the country. What can fairly be estimated is that the illegal drug industry's profits are valued at \$500 billion per year or about 16,000 Euros per day, which is nearly what the textile industry earns globally during one financial year.²⁵ This is a clear indication that if cannabis is legalised, it will create tax revenue on the one hand, and on the other, it may create a market-driven approach for the countries where sustainable cultivation of cannabis is

18 TV Jayan, 'Cannabis Cultivation is Now Legal in Uttarakhand' *The Hindu Business Line* (10 July 2018) <www.thehindubusinessline.com/economy/agri-business/cannabis-cultivation-is-now-legal-in-uttarakhand/article24381601.ece> accessed 2 June 2019.

19 Bobins Abraham, 'Uttarakhand to Become The First Indian State to Legalize Cannabis' (*India times*, 18 April 2017) <www.indiatimes.com/news/india/uttarakhand-to-become-first-indian-state-to-legalise-cannabis-cultivation-247769.html> accessed 17 October 2021.

20 NDPS Act 1985 (n 499).

21 Central Bureau of Narcotics, *National Policy on Narcotic Drugs and Psychotropic Substances* <www.cbn.nic.in/html/NationalPolicyEnglish.pdf> accessed 17 October 2021.

22 Vishal Gulati, 'Himachal Goes Back on Cannabis Cultivation decision' *Business Standard* (1 May 2019) <www.business-standard.com/article/news-ians/himachal-goes-back-on-cannabis-cultivation-decision-119050100228_1.html> accessed 17 October 2021.

23 *ibid.*

24 'GDP of India' (*Statistics Times*, 7 June 2019) <<https://statisticstimes.com/economy/gdp-of-india.php>> accessed 27 January 2022.

25 *World Drug Report 2012* (United Nations Publication 2012) <www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf> accessed 27 June 2019.

still not possible. The fact that the Californian economy considerably rose after the legalization of medicinal cannabis²⁶ cannot be ignored. The Colorado State University-Pueblo's Institute of Cannabis Research Report found that the legal cannabis industry contributed more than \$80.8 million to the local economy in 2017, primarily through taxes and other fees.²⁷ These are admirable examples for any developing country. Apart from that, legalizing cannabis will promote farmers' avenues of growth since there will be one extra crop that could be grown and such a crop that requires easier conditions for its cultivation. A new market of business and trade will be opened, which will increase job opportunities, positively affecting employment rates²⁸. A 2016 RCG Economics and Marijuana Policy Group study on Nevada revealed that legalizing recreational marijuana in the state could support over 41,000 jobs till 2024 and generate over \$1.7 billion in labour income.²⁹ Further, an ICF study has estimated that at least 81,000 additional direct, indirect jobs have been induced in California because of legalized marijuana sales.³⁰ The study also estimates an increase in total labour income by at least \$3.5 billion by 2024.³¹

There are three major reasons which led the researcher to believe that there is a rationale behind making cannabis legal :

1. Arrests will no longer be required if an individual is caught trading in accordance with the law.
2. The extra costs incurred by the government on adjudicating matters involving cannabis trade, possession, consumption and prison maintenance will be reduced.
3. There is an additional benefit from taxation that the government will be able to levy a tax both at the production and sales end.³²

26 Emily Witt, 'How Legalization Changed Humboldt County Marijuana' (*The New Yorker*, 20 May 2019) <www.newyorker.com/news/dispatch/how-legalization-changed-humboldt-county-weed 2019> accessed 27 June 2019.

27 Colorado State University-Pueblo, 'Pueblo County Cannabis Impact Study Technical Study 2017' (*Institute of Cannabis Research*) <https://mountainscholar.org/bitstream/handle/10217/192586/ICR_TechReport2017-1.pdf?sequence=1&isAllowed=y> accessed 15 September 2020.

28 Namrata Reddy Sirupa, 'Why Cannabis Should be Legalized in India' (*BW Business World*, 13 January 2019) <www.businessworld.in/article/Why-Cannabis-Should-Be-Legalised-In-India/13-01-2019-166025/> accessed 24 July 2019.

29 'Economic Benefits of Legalized Adult-Use Marijuana in Nevada' (*RCG Economics*, 14 July 2016) <<https://rcg1.com/nevada-by-the-numbers-blog/econ-perks-adult-use-legal-pot-nv/>> accessed 18 September 2020.

30 Elizabeth Johnston, 'The Economic Impacts of Marijuana Sales in the State of California' (*ICF*, April 2016) <www.icf.com/insights/health/economic-impact-of-marijuana-sales-in-california> accessed 18 September 2020.

31 *ibid.*

32 Nikola Kovic, 'Economic Benefits of Marijuana' (2014) Central European University Research Paper <<https://www.coursehero.com/file/72034258/kovic-nikolapdf/>> accessed 16 February 2022.

Usually, governments may use one of two methods to reduce the consumption of cannabis; (a) reduce the supply or (b) reduce the demand. Criminalizing, which is the current state of cannabis consumption, production, and sale, affects the supply side and confronts market forces. This method often fails for the simple reason that the demand for cannabis is high which will forever encourage the mafia to feed the demand through the black market. The ways that regulation and legalization would help the economy indirectly is that:

1. There could be a possible cannabis dependency that is not known now, which could lead to a loss in productivity.
2. There could be an enormous gain from the higher productivity with higher employment rates.
3. There could be increased socio-economic mobility which would be a valued improvement.³³

A two-step method can be used for computing a tax revenue on cannabis. Firstly, the tax can be estimated as per the new legal regime and the projected consumption, or secondly, by estimating the future consumption levels and analyzing if consumption is more or less than during the prohibition.³⁴ In order to efficiently account for the magnitude of tax receipts for India, the projections must be made by taking into consideration the trade models of tobacco and alcohol.

JUSTIFYING THE NEED TO LEGALIZE CANNABIS IN INDIA

There are many reasons that can be cited as to why it is imperative that, like many other developed nations, India should take the initiative to legalize cannabis.

1. In the year 2019, to understand the 'big picture' of the drug scenario in India, the Ministry of Social Justice and Empowerment and the Government of India conducted a National Survey on Extent and Pattern of Substance Use in India through the National Drug Dependence Treatment Centre (NDDTC) and All India Institute of Medical Sciences (AIIMS), New Delhi to present data on users of various drugs and those affected by drug addiction. Interestingly, the proportion of people with Cannabis use (i.e., those with harmful or dependent patterns of cannabis use) was relatively modest. At the national level, about 0.25% (one in eleven cannabis users) suffers from Cannabis dependence.³⁵ Therefore, it is clear that Marijuana addiction is

³³ ibid.

³⁴ ibid.

³⁵ Ministry of Social Justice and Empowerment, *Magnitude of Substance Use in India 2019* (Government of India 2019) <www.google.com/url?sa=t&source=web&rct=j&url=http://socialjustice.nic.in/writereaddata/UploadFile/Magnitude_Substance_Use_India_REPORT.pdf&ved=2ahUKEwidy6nju_XrAhXizIsBHaDcCAgQFjAAegQIAhAB&usg=AOvVaw2s58I7BIHS5DPFsUiHen_9> accessed 18 September 2020.

rare.³⁶

1. The withdrawal symptoms of marijuana users are also limited and its use has a very low chance to result in fatalities.³⁷
2. Legalization would eliminate the black market and other illegal trades and associated crimes.³⁸
3. Taxing would increase the governments' revenue and the country's economy³⁹
4. It will help in increasing the job opportunity and alleviate some of the burden caused by the current unemployment situation in the country⁴⁰.
5. Medically marijuana has a lot of known and tested benefits.⁴¹ Cannabis-based drugs have the potential to meet the unmet needs of terminally ill cancer patients and those suffering from epilepsy and sickle-cell anaemia, which is a hereditary disease.⁴² In fact, countries like Thailand, Canada and select states of the US like Arizona reflect the optimum illuminations of what, why, and how the regulation of Cannabis should be undertaken in India. For instance, firstly, in the case of *State of Arizona v. Rodney Christopher Jones*,⁴³ the Supreme Court of Arizona unanimously with the majority of 7:0 decided that medical "cannabis extracts" are legal. In addition to this, the Court also provided that medical cannabis patients are protected from arrest for possessing cannabis extracts as long as they do not occupy more than the amount permitted as per the law. Secondly, in order to further the traditional usage of Cannabis (relieves pain and fatigue), Thailand, in the year 2018, amended its Narcotic Act, 1979 and approved the use of Marijuana. Thirdly, ad rem is the honourable

36 'Marijuana Can Be Addictive: Who Gets Hooked and Why' (*Healthline*, August 2016) <www.healthline.com/health-news/marijuana-addiction-rare-but-real-072014> accessed 17 October 2021.

37 Siddhartha Ravi, 'Joint Effort: India Must Start a Discourse on Marijuana' (*News Laundry*, December 2014) <www.newslaundry.com/2014/12/26/joint-effort-india-must-start-a-discourse-on-marijuana> accessed 17 October 2021.

38 Ioan Grillo, 'US Legalization of Marijuana has Hit Mexican Cartels Cross Border Trade' (*TIME*, 8 April 2015) <<http://time.com/3801889/us-legalization-marijuana-trade/>> accessed 5 March 2017.

39 Mark L. Bryan, Emilia Del Bono and Stephen Pudney, 'Licensing and Regulation of the Cannabis Market in England and Wales: Towards a Cost- Benefit Analysis' Institute for Social and Economic Research (2013) <www.iser.essex.ac.uk/d/153> accessed 5 March 2017.

40 Drug Policy Alliance, 'Status Report: marijuana regulation in Colorado after 6 months of retail sales and 18 months of decriminalization' (2014) <https://drugpolicy.org/sites/default/files/DPA_Status_Report_Colorado_Marijuana_Regulation.pdf> accessed 17 October 2021.

41 Jennifer Welsh and Kevin Loria, '23 Medical Uses of Marijuana' (*Business Insider*, 21 April 2014) <www.businessinsider.in/23-medical-uses-of-marijuana/articleshow/34015633.cms> accessed 17 October 2021.

42 TV Jayan, 'Medical Cannabis May Get Nod in India' *The Hindu Business Line* (New Delhi, 23 November 2018) <www.thehindubusinessline.com/news/medical-cannabis-may-get-nod-in-india/article25580469.ece> accessed 27 June 2019.

43 *State of Arizona v Rodney Christopher Jones* CR-18-0370-PR (Ariz 2019).

Supreme Court's judgment of Canada in the case *R v. Smith*⁴⁴ wherein it was observed that the blanket prohibition on medical access to cannabis violates the guarantee of life liberty, and security of person and is contrary to Section 7 of the Canadian Charter.

6. It will help in magnifying the local producer's business⁴⁵

7. In a scenario where marijuana stands less harmful and depreciative as compared to alcohol, tobacco, caffeine, and chocolate, it still carries the status of being illegal and a criminal offence.⁴⁶

8. As a matter of privacy which is the core facet of the right to dignity⁴⁷, it is significantly essential that a person be given a right to choose the private use of cannabis. This has become more significant in the times when the South African Supreme Court's 10 judges bench judgment very rightly has concluded in the case of *Minister of Justice and Constitutional Development v. Prince*⁴⁸ that the prohibition on involvement of private individuals in any activity which is related to Cannabis cultivation for personal consumption does not align with the right to privacy as entrenched in the Constitution and is constitutionally invalid. Further, in furtherance of its resolve to uphold and protect the Right to privacy vis-à-vis Cannabis, the Court also provided a formula to determine whether or not a person is in possession of cannabis for a purpose other than for personal consumption. Inter alia, it held that a crucial factor to be considered is the amount of cannabis found in the subject's possession because the greater the amount of cannabis a person is in possession of, the greater is the possibility that it is possessed for a purpose other than for personal consumption.

PROPOSED POLICY CONSIDERATIONS

There are different ways by which the government can formulate mechanisms to keep a check on the production of Cannabis like:

1. Licensing– Only certain companies or government agencies would be allowed to produce cannabis and strains. Permissible limits of production would be specified in Indian law. The production and sale need to be linked in a way that it minimizes the transactions in the supply chain, enabling cannabis to be tracked from germination to sale or 'seed to sale,' which would limit it from reaching the illicit market.

⁴⁴ *R v Smith* 2015 SCC 34.

⁴⁵ Surya Solanki, 'Ten Reasons Why Marijuana Should be Legal' (*Scoopwhoop*, 19 November 2014) <www.scoopwhoop.com/inothernews/legalize-marijuana/#.9bumg5g4b> accessed 17 October 2021.

⁴⁶ Marijuana Policy Coalition of Maryland, 'Regulation Works- It's Time for a New Approach to Marijuana' <<https://www.marylandcannabispolicy.org/resources/regulation-works/#:~:text=It's%20time%20for%20a%20new,revenue%20in%20fiscal%20year%202018>> accessed 5 March 2017.

⁴⁷ *Justice KS Puttaswamy v Union of India* (2017) 10 SCC 1.

⁴⁸ *Minister of Justice and Constitutional Development v Prince* Case CCT 108 of 17.

2. Controlling the quality– India would have to develop a quality assurance and safety testing mechanism to check for any adulteration or contamination. This would be akin to food safety checks, like in case of Maggie when it was found to be sub-standard and removed from the market.⁴⁹ Taking inspiration from the Cannabis Economy Experiment by Canada, India may make standards and rules for cannabis manufacturing industries including quality and packaging standards.
3. Security–The production site should be away from private dwellings. It should be within restricted areas and be licensed, subject to controlled access, and visual monitoring, which is easy in today’s time and age. The Ministry of Health would give only certain personnel in-access security clearance.
4. Limiting the produce of the producers–India can develop tiers for which licenses can be awarded accordingly.

Tier 1	Less than 2000 sq. feet
Tier 2	2000 – 10000 sq. feet
Tier 3	10,000 – 30,000 sq. feet

1. Development of the National Marijuana-Education Programs- In all the contexts, awareness is a key to prevent the offenders at the very initial stage and cannabis is no exception to it. Awareness and knowledge about what is out there, what is legal, what is dangerous, and what is the acceptable limit should be a sine qua non of the first step towards the regulation of Cannabis. Education Programs should include information about how marijuana use can affect future employment opportunities, the various levels of THC in certain products, differences in social norms regarding marijuana use in different areas, and medical issues that are especially incompatible with marijuana use.

Many policymakers continue to argue that legalizing would negatively impact the society, but the justifications for legalizing are fair and simple:

1. Usage: In the Netherlands, Cannabis is legal, and for more than 20 years now, it has been permissible for citizens above 18 years of age to buy and utilize cannabis from regulated coffee shops. Though the government reviews its policy, their

⁴⁹ Jessica Ware, ‘Maggie Noodles Banned in India Over Concerns of Excess Lead Levels’ *The Independent* (5 June 2015) <www.independent.co.uk/news/world/asia/india-bans-popular-maggi-noodles-after-concerns-over-excess-lead-levels-10298937.html> accessed 12 May 2018.

stand on decriminalizing has been the same.⁵⁰ In the latest developments with regards to cannabis utilization in India, there have been dialogues over legalizing the consumption of medical marijuana without having legal implications because of the various medical benefits that may be derived from hemp.⁵¹

2. Incarceration cost: This is the cost that is incurred by a person who is kept confined behind bars. Mostly, criminal laws are made keeping in mind the society in which they are applied. In that sense, criminal laws related to cannabis, if they are made in a way that is sympathetic to cannabis usage and its benefits, will drastically lessen the number of drug-related incarceration.⁵²
3. Consumption and cost: What decriminalization adds to the debate is that in a scenario where its consumption is made legal, the price, its operation, and its trade can be regulated legitimately, which will affect its consumption and cost.⁵³
4. Illegal Trade: Legalizing cannabis would make related transactions formal and open. This would stop the illegal trade and supply of the herb and will kill the black market⁵⁴. In addition to this, tracking as a tool can also be adopted for keeping the procured number of illegal markets into accounts.

50 Eric Fromberg, 'The Case of the Netherlands: Contradictions and Values in Questioning Prohibition' (1994) <http://old.radicali.it/search_view.php?id=55543&lang=&cms=> accessed 16 February 2022; UNDOC, *World Drug Report 2012* (United Nations Publication 2012); Robert MacCoun and Peter Reuter, 'Evaluating Alternative Cannabis Regimes' (2001) 178 (2) *The British Journal of Psychiatry* <www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/evaluating-alternative-cannabis-regimes/A39B9E61C94564FC46D1391246D9B78C> accessed 16 February 2022; Eric W Single, 'The Impact of Marijuana Decriminalization: An Update' (1989) 10 (4) 456-66 *Journal of Public Health Policy* <www.jstor.org/stable/3342518> accessed 6 July 2017; JP Sandwijk and others, *Licit And Illicit Drug Use In Amsterdam II: Report of a Household Survey in 1994 on the Prevalence of Drug use Among the Population of 12 years and over* (Universiteit van Amsterdam 1995).

51 TV Jayan, 'Medical Marijuana May Get Nod in India' *The Hindu Business Line* (New Delhi, 23 November 2018) <www.thehindubusinessline.com/news/medical-cannabis-may-get-nod-in-india/article25580469.ece> accessed 24 July 2019.

52 Drug Policy in Connecticut and Strategy Options Report to the Judiciary Committee of the Connecticut General Assembly, Connecticut Law Review Commission (1997) <<https://www.cga.ct.gov/lrc/drugpolicy/drugpolicyrpt1.htm>> accessed 10 July 2017.

53 Robert S Gable, 'Acute Toxicity of Drugs Versus Regulatory Status' (2006) in Jefferson M Fish (ed), *Drugs and Society: US Public Policy* (Rowman & Littlefield Publishers 2005) <<https://psycnet.apa.org/record/2005-14597-007>> accessed 16 February 2022; Jefferson M Fish (ed), *Drugs and Society: U.S. Public Policy* (Rowman & Littlefield Publishers 2005); Craig Reinerman, Peter DA Cohen and Hendrien L Kaal, 'The Limited Relevance of Drug Policy: Cannabis in Amsterdam and in San Francisco' (2004) 94 (5) *American Journal of Public Health* <https://www.researchgate.net/publication/8587005_The_Limited_Relevance_of_Drug_Policy_Cannabis_in_Amsterdam_and_in_San_Francisco> accessed 16 February 2022.

54 Namrata Reddy Sirupa, 'Why Cannabis should be Legalized in India' (*BW BusinessWorld*, 13 January 2019) <www.businessworld.in/article/Why-Cannabis-Should-Be-Legalised-In-India/13-01-2019-166025/> accessed 17 October 2021.

5. Job Opportunities: Cultivation and trade of hemp will prove to be advantageous towards employment avenues in India. Farmers will benefit since there will be an extra crop that can be cultivated and harvested. This will open markets to new and legal forms of business in cannabis. This development will in turn give rise to an increase in jobs opportunities for both skilled and unskilled labour that would be required for the newly found job⁵⁵.

6. Special Marijuana Excise Tax- An increment in the total revenue that a developing country receives is a sure-shot benefit. Accordingly, the decriminalization of Cannabis must be accompanied with the Special Marijuana Excise tax to be divided between the Centre and the State Government.

One of the points of this decriminalizing debate is that the cannabis ban has had its failing moments. This means that even though cannabis is illegal in India, its usage and dissemination are widespread. This spread of cannabis includes both drug use and abuse, so an umbrella ban is clearly not the solution for the same.⁵⁶

The aforementioned discussion over decriminalizing cannabis is a key toward lifting the ban of the same. Effective and useful cultivation, possession, trade, and consumption of the drug, with proper regulation, can focus on the stakeholders involved in the transaction related to cannabis rather than incarcerating them. The former might help regularize cannabis and not the latter, which this paper seeks to put forward.

CONCLUSION AND SUGGESTIONS

The NDPS Act, 1985, needs to be reviewed and the shortcomings that plague it need to be addressed. The Act does not ban the consumption of cannabis leaves, but only its buds and resins, for they contain higher concentrations of THC. The Act nowhere talks about the harvesting of cannabis plant leaves in the wild, which is why there is a rampant growth of cannabis in various areas of Himachal Pradesh and Kerala. Cannabis falls within Schedule I along with the other hard drugs. Now when it has been proven that it is medically beneficial and useful for many industrial purposes and controlled consumption too has no negative health impacts, there is a need to decriminalize cannabis. The case for legalization is especially strengthened when other potential cancer-causing ingredients like tobacco, coffee, sugar, and alcohol are legal in the country. Cannabis needs to be regulated rather than criminalized, with the sole proprietorship of production, sales, and licensing being vested with the government bodies only, like the Health Ministry. Policy options which are easy to

⁵⁵ *ibid.*

⁵⁶ Correspondent, 'The Joint Campaign: Should We Not legalize Recreational Use of Cannabis?' *Times of India* (10 November 2012) <<https://timesofindia.indiatimes.com/india/the-joint-campaign-should-we-not-legalize-recreational-use-of-cannabis/articleshow/17165613.cms>> accessed 17 October 2021.

implement and aim to reduce consumption while avoiding violence associates with drug lords are available worldwide. The tax component levied on Cannabis needs to be based on the THC content in the cannabis and only those strains should be made legal and be grown which have a lower THC: CBD ratio. Licenses should also be given to producers and retailers after reviewing their applications. Policy models of tobacco and alcohol set a good foundation for India to develop regulations on similar lines. Advertisements should be restricted and before the screening of movies, health advisories should be issued in public interest. Appropriate dosages should also be mentioned on the bottles, age limits should be set for the potential users for better regulations and a specific drug distribution system should be implemented so that the drugs do not fall into young hands. A health response team should be activated which would be prepared for any situation that might occur to the potential users in case of an overdose or improper consumption. To avoid drugged driving, the police would need to be trained and provided with highly developed breath analysers like the ones that are used to measure alcohol intoxication levels in subjects and on-spot fines to be levied on potential defaulters. The evidence iterated in the present study showcases how prohibition is not effective in reducing consumption or supply and production of cannabis. Instead, black-market supplies are created causing a hole in the economy and making potential criminals. Effective regulatory model needs to be developed, drawing inspiration from countries which have already legalized cannabis and are economically gaining from the same, like Uruguay, the USA, Netherlands. The model that suits India the most needs to be reviewed and tested.

In the current scenario, the country needs to move from a prohibition regime to a regulatory regime since cannabis law has lost its relevance and deterrence. Though the economic benefits that are sought by legalizing cannabis are not trivial, they are not going to be too overwhelming either as soon as it is regulated. Legalizing cannabis is not going to put a complete end to the fiscal deficits faced by India today but will surely aid in providing some significant relief.

This research article has added value by evaluating the deficiencies in the current law and by providing some regulatory models which can be adopted while drafting a framework and evaluating alternatives rather than being stuck with an ineffective prohibition law adopted only under pressure by the international players, who themselves have taken a back step and legalized cannabis, understanding the failure of the 'war on drugs'. The study here also tries to draw out the spill-over that will be made by the decriminalization on the society, making it an important variable that most certainly needs reconsideration by the country's policymakers. In this contemplation, it should be borne in mind that cannabis can ensure relief from some of the major medical illnesses, strengthening human life.

Rather than labelling the youth as criminals for the usage of a 'soft drug' like cannabis, a more effective system should be incorporated that combines elements of tax, health

regimes, education, licensing, and age restrictions. It needs to be successfully implemented to ensure that quality cannabis is available at a reasonable price after being taxed, age limits are enforced with the product labels specifying details of the contents and potent values of THC: CBD content, etc.

Undoubtedly, alternatives are needed to an overtly aggressive law which is more often than not, an ineffective deterrent. Legalizing cannabis will provide some much-needed respite and bring economic benefits that could potentially rejuvenate the Indian economy.