

SHOULD BE MARIJUANA LEGALIZED IN INDIA ?

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Abstract: Marijuana has been used since the Pre-Historic period of Man's existence and is closely integrated with the history of the most Ancient civilizations known to have existed. In India, it is association with religious customs and traditions that date back to the period of thriving gods and goddesses. Legalization of marijuana has always been a debatable topic after the enforcement of Narcotic Drugs and Psychotropic Substances Act, 1985 illegalising sale and possession of marijuana all over India. Despite its use in the medical field no positive step has been taken. In the wake of the recent events in which two US states have voted to legalize recreational use of marijuana, a wave of liberal thoughts have up-roared in this country. This paper aims at drawing a strict analysis of usage of marijuana followed with a comparative study with the rest of the world pin-pointing whether India should legalize marijuana or not.

Keywords: Legalization, Cannabis, Marijuana, Recreational use

I. INTRODUCTION

Marijuana, the excitement surrounding this word is enormous. Ganja, charas, and bhang are some popular forms of marijuana available, two out of three being illegal and the third being sold only at government authorized outlets. The question of whether marijuana is harmful is debatable. The most popular being, 'Why is there a need to illegalize it in a country where tobacco and alcohol are extensively consumed? The story dates back to 1960s, India had been battling American pressure since 1961 to keep marijuana legal. Since 1961, the US has been campaigning for a global law against all drugs, both hard and soft. But by the early '80s, American society was grappling with some drug problems and opinion had grown against the "excesses" of the hippie generation. Therefore, in 1985, the Rajiv Gandhi government buckled under the pressure and enacted a law called the Narcotic Drugs & Psychotropic Substances (NDPS) Act. Cannabis and Marijuana, The difference between these two words is just that, Cannabis is the real name of the plant, the scientific name while marijuana however is a nickname of Mexican origin, coming from the word marihuana.

Cannabis, also known as marijuana among other names, is a psychoactive drug from the Cannabis plant intended for medical¹ or recreational use². The main psychoactive part of cannabis is tetrahydrocannabinol (THC); one of 483 known compounds in the plant, including at least 65 other cannabinoids. Cannabis can be used by smoking, vaporizing, within food, or as an extract. Cannabis is mostly used recreationally or as a medicinal drug, although it may also be used for religious or spiritual purposes. In 2013, between 128 and 232 million people used cannabis (2.7% to 4.9% of the global population between the ages of 15 and 65).³ In 2015, 43% of Americans had ever used cannabis, which increased to 51% in 2016. About 12% have used it in the past year, and 7.3% have used it in the past month. This makes it the most commonly used illegal drug in world.

The possession, use, and sale of cannabis is illegal in most countries of the world. Medical cannabis refers to the physician-recommended use of cannabis, which is taking place in Canada, Belgium, Australia, the Netherlands, Germany, Spain, and 23 U.S. states.⁴ Cannabis use started to become popular in the U.S. in the 1970s. Support for legalization has increased in the United States and several U.S. states have legalized recreational or medical use.⁵

Cannabis is often used for its mental and physical effects, such as a "high" or "stoned" feeling, a general change in perception, euphoria (heightened mood), and an increase in appetite.⁶ Short-term side effects may include a decrease in short-term memory, dry mouth, impaired motor skills, red eyes, and feelings of paranoia or anxiety.⁷ Long-term side effects may include addiction, decreased mental ability in those who started as teenagers, and behavioral problems in children whose mothers used cannabis during pregnancy.⁸ Studies have found a strong relation between cannabis use and the risk of psychosis, though the cause-and-effect relationship is debated.⁹

II. STATUS OF LEGALIZATION OF MARIJUANA AROUND THE WORLD

The legality of cannabis for general or recreational use varies from country to country. Possession of cannabis is illegal in most countries as a result of the agreement about Indian hemp, also known as hashish, in the International Opium Convention (1925).¹⁰ However, many countries have decriminalized the possession of small quantities of cannabis. Since the beginning of the 20th century, most countries have enacted laws against the cultivation, possession or transfer of cannabis.¹¹ These laws have impacted adversely on the cannabis plant's cultivation for non-recreational purposes, but there are many regions where, under certain circumstances, handling of cannabis is legal or licensed. Many jurisdictions have lessened the penalties for possession of small quantities of cannabis so that it is punished by confiscation and sometimes a fine, rather than imprisonment, focusing more on those who traffic the drug on the black market. In some areas where cannabis use had been historically

tolerated, new restrictions were instituted. Simple possession can carry long prison terms in some countries, particularly in East Asia, where the sale of cannabis may lead to a sentence of life in prison or even execution. In December 2012, the U.S. state of Washington became the first state to officially legalize cannabis in a state law¹² (but still illegal by federal law), with the state of Colorado following close behind.¹³ The California Supreme Court decided in May 2013 that local governments can ban medical marijuana dispensaries despite a state law in California that permits the use of cannabis for medical purposes. At least 180 cities across California have enacted bans in recent years. In 2014, Uruguay became the first country to comprehensively legalize the production, sale and consumption of recreational marijuana.¹⁴ The South American country allows adults to buy up to 40 grams of marijuana every month from approved pharmacies. Canada is the second nation to legalise the drug.¹⁵ In November 2015, Uttarakhand became the first state of India to legalize the cultivation of hemp for industrial purposes.¹⁶ In December 2015, it was reported that the Canadian government had committed to legalizing cannabis, but at that time no timeline for the legalization was set out. On 20 June 2018, legalization date was set for 17 October 2018, delayed from 1 July 2018.¹⁷ In Amsterdam, The Netherlands, one of the world's most well-known tourism destinations for pot smokers. But it's not. Rather, it's tolerated. The possession and sale of small amounts of pot up to 5 grams has been decriminalized in the country for just over 40 years, according to the research publication Crime and Justice¹⁸. However, cultivation of the plants is illegal. This means the country's famous coffee shops can legally sell marijuana to customers, but owners have to source their product from criminal elements.¹⁹ The sale of marijuana is technically illegal in Spain, but the country is home to hundreds of cannabis clubs, according to a blog post by Nadja Vietz of the international law firm Harris Bricken.²⁰ In 2001, Spain's next-door neighbour Portugal became the first country in the world to decriminalize the use of all drugs. The measure was not found to result in an increase in cannabis use by young people or any further attendant problems for law enforcement, according to a report by the European Monitoring Centre for Drugs and Drug Addiction²¹. As the drug has increasingly come to be seen as a health issue instead of criminal behavior, marijuana has also been legalized or decriminalized in: Czech Republic²², Colombia, Ecuador, Mexico²³ and Portugal²⁴ and Canada.

III. STATUS OF MARIJUANA IN INDIA

Cannabis in India has been used since as early as 2000 BCE. In Indian society, common terms for cannabis preparations include charas, ganja, and bhang, with a milkshake made from bhang being one of the most common licit usages in India. As of 2000, per the UNODC the "prevalence of abuse" of cannabis in India was 3.2%.²⁵ According to the UNODC's World Drug report 2016, the retail price of cannabis in India was US\$0.10 per gram, the lowest of any country in the world.²⁶ Marijuana is illegal in India but is tolerated in several provinces, due in large part to its close association with Hindu spirituality and traditional medicine. Because cannabis is a native plant in India, it is often grown unchecked in forests and on mountains²⁷.

Attempts at criminalising cannabis in British India were made, and mooted, in 1838, 1871, and 1877.²⁸ The 1961 international treaty Single Convention on Narcotic Drugs classed cannabis with hard drugs. During the negotiations, the Indian delegation opposed its intolerance to the social and religious customs of India. As a compromise, the Indian Government promised to limit the export of Indian hemp, and the final draft of the treaty defined cannabis as.²⁹

"Cannabis" means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.

— *Commentary on the Single Convention on Narcotic Drugs, 1961: Paragraph I, subparagraph (b)*³⁰

Bhang was left out from the definition of "cannabis". This allowed India to carry on the tradition of large-scale consumption of bhang during Holi. The treaty also gave India 25 years to clamp down on recreational drugs. Towards the end of this exemption period, the Indian government passed the Narcotic Drugs and Psychotropic Substances Act in 1985.³¹ The NDPS maintained the same definition of "cannabis", excluding bhang from its purview:

"cannabis (hemp)" means:

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;
(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

— *NDPS Act, 1985: I.2.iii*³²

NDPS banned the production and sale of cannabis resin and flowers, but permitted the use of the leaves and seeds, allowing the states to regulate the latter.³³ Cultivation of cannabis for industrial purposes such as making industrial hemp or for horticultural use is legal in India. The National Policy on Narcotic Drugs and Psychotropic Substances recognizes cannabis as a source of

biomass, fibre, and high-value oil. The Government of India encourages research and cultivation of cannabis with low THC content.³⁴

IV. EFFORTS TO MAKE MARIJUANA LEGAL IN INDIA

In 2015, the first organised efforts to re-legalise cannabis in India appeared, with the holding of medical marijuana conferences in Bengaluru, Pune, Mumbai and Delhi by the Great Legalisation Movement India.³⁵ Many articles and programs in the popular media have also begun to appear pushing for a change in cannabis laws. In March 2015, Lok Sabha MP Tathagata Satpathy stated on a Reddit AMA that he supported the legalisation of cannabis, and also admitted to having consumed the drug on several occasions when he was in college. He later repeated his comments on television and during interactions with the media.³⁶ On 2 November 2016, Lok Sabha MP Dharamvir Gandhi announced that he had received clearance from Parliament to table a Private Member's Bill seeking to amend the NDPS Act to allow for the legalised, regulated, and medically supervised supply of "non-synthetic" intoxicants including cannabis and opium.³⁷ In July 2017, Union Minister of Women and Child Development Maneka Gandhi suggested the legalization of medical marijuana on the grounds that it would reduce drug abuse and aid cancer patients at the second meeting of the group of ministers to examine the draft Cabinet note for the National Drug Demand Reduction Policy.³⁸ About a week after the minister's statement, the Union Government issued the first-ever license to grow cannabis for research purposes to the Council of Scientific and Industrial Research (CSIR), in collaboration with the Bombay Hemp Company (BOHECO). In February 2018, the Prime Minister's Office sent a notification to the Ministry of Health and Family Welfare directing the ministry to examine the potential benefits associated with cannabis and issue a response to the letter.³⁹

V. CONCLUSION

In India, marijuana use has been historically bound to faith and mysticism. It is said to be a drug that helps the user attain "ecstasy in the original sense of the word". India has consumed and celebrated charas(hash), bhang and weed for centuries. Marijuana legalization (or decriminalization) will replace the black market production and distribution with an 'overboard industry'. There will be rules and regulations but the trade will be 'populated by the government, farmers, merchants and retailers clerks, not by criminals or drug dealers'. An epidemiological study showed that only 9 percent of those who use marijuana end up being clinically dependent on it. The 'comparable rates' for tobacco, alcohol and cocaine stood at 32 percent, 15 percent and 16 percent respectively, so addiction of Marijuana is rare. By legalizing and taxing marijuana, the government will stand to earn huge amounts of revenue that will otherwise go to the Italian and Israeli drug cartels. In an open letter to US President George Bush, around 500 economists, led by Nobel Prize winner Milton Friedman, called for marijuana to be "legal but taxed and regulated like other goods". Legalization of marijuana for recreational and medical purposes in Colorado has created 10,000 new jobs in the area. There are a plethora of jobs that can be created by the marijuana industry and help reduce India's unemployment rate. Studies have shown that marijuana use has dozens of medical benefits. It treats glaucoma, prevents cancer from spreading to other parts of the body, reduces anxiety, slows the progress of Alzheimer's disease, improves metabolism and is even said to spur creativity in our brain. In states like Himachal Pradesh and Tamil Nadu, where cannabis plants grow, marijuana is the only source of income for many locals. However, being a banned substance, the farmers are forced to sell it at a very cheap price to the drug dealers and they face additional pressure from the police as well, who are paid to destroy the cannabis plantations. Legalizing marijuana will end this 'war on drugs' targeting our own countrymen. It is said that 60,000 kilograms of hash and 40,000 kilograms of opium is produced in Himachal Pradesh. Out of that, only 500 kilograms is seized annually. As per reports, "more than 1,600 hectares of cultivable farmland and an additional 500 hectares of illicitly felled public forests are currently under cannabis cultivation". The rate is only increasing. Moreover, these days, it is pretty easy to buy marijuana in India and its consumption is widespread among the youth. So it is fair to say that prohibition has failed to curb the 'problem'.

In conclusion, marijuana laws are outdated and more harmful than the drug itself. After withstanding the United States' pressure for 25 years, India finally gave into the demands of its Western counterpart in 1986 by clubbing marijuana with other hard drugs and criminalizing it. However, by making it illegal, more problems have come up. True, marijuana should be kept away from the adolescents, but its moderate use will not pose any risk to adults. Instead of spending money on arresting drug offenders and cutting down marijuana plantations, why can't our government save itself from all this trouble and legalize a culturally accepted substance that can help in socio-economic development of the country ?

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