

LEGALIZATION OF CANNABIS IN INDIA

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ABSTRACT

The underlying object of this research paper is to study and analyze why there is need to legalize cannabis in India. As it deals with the benefit that India will gain by legalizing cannabis as to how government would able to earn more revenue and would able to decrease the unemployment rate, how it would help in decreasing the crime rates in the country and it also explains the medical usage of cannabis. These aspects have been proven in research paper by comparing India with the other countries that have legalized cannabis. This research paper also deals with the current legal status of cannabis in India.

INTRODUCTION

Cannabis, commonly known as marijuana is a drug which is made up from Indian hemp plants like cannabis sativa and cannabis indica. The main active chemical in cannabis is Tetrahydrocannabinol(THC). Cannabis plant is used for medical purposes and recreational purposes. Cannabis is the plants that have played a vital role in the development of agriculture, which had great impact on both human beings and planet. Since many years cannabis has been used as medicinal drug, as an intoxicant and it has also been used in some religious rituals. The Hindu God Shiva is the lord of the bhang as in 'Mahashivratri' there is *Prasad* mixed with bhang and it still plays a very symbolic role in the religious practices of Hindus. Cannabis grows wild in many parts of world and is cultivated in India, Nepal, South America, Africa, Mexico etc. And also cannabis is one of the oldest cultivated non-food plants and is thought to have originated in Asia. In many countries cannabis sativa is considered to be highly valued crop not just because of its medical use or recreational purposes but also that the fibers of the woody trunk which is highly durable are used in the production of hemp rope and afterwards they are woven into fine or rough cloth for the diverse products as blankets, clothes, flags and boat sails. And it is also the most efficient producers of cellulose pulp which is used in paper production and is used in the making of some paper money. There is a long diverse history relationship between cannabis and humans. Cannabis has played the profound role on the stage of human history. Agriculture is the major part of human need it has monumental consequences for human and also for our planet, allowing us to exert more control over our food supply and increase our population and success as a species. Cannabis was the major player in transformational change in human ecology. Our agricultural revolution in fact took millennia to unfold and is still progressing with new scientific approach in genetic engineering and environmental manipulation. By these modern innovation it also affects the impact and role of cannabis in our lives. From thousands of years humans are manipulating the use of cannabis plants through artificial selection of desirable qualities. The saga of human – cannabis relationship has been a long drawn out affair, epic association of people and plant that has influenced history on many fronts in various regions of the world. Earlier hemp was a significant and a crucial source of rope used to rap, harness and command the power and versatility of horses. Cannabis was the vital nutritious food and source of vegetable oil was significant in the past. Its use for drug purposes, medicinal usage and hallucinatory, licit and illicit has been widespread not only in our time but also throughout history. Cannabis is one of

the handful of plants with the power to affect human consciousness. Since ancient times, there are spiritual healers, shamans belong to the diverse diverse culture they have cannabis for their work. Some of the spiritual uses of cannabis are that it helps in quieting the mind for meditation which helps relaxing the body, it also helps in diagnosing and treating diseases of the body, mind and spirit, it also helps in seeing through delusions and shifting perspectives and achieving transcendence, unity and spiritual bliss. In spite of strong disagreement by the extremists on the cannabis controversy major governments of the country come to some surprisingly conclusion regarding the use of the cannabis. Significant changes have taken place in the policy landscape surrounding cannabis legalization, production and use. Shifting public sentiments, conflicting and impeded scientific research and legislative battles have fueled the debate about what if any harms or benefits can be attributed to the use of cannabis or its derivatives for this in USA medical committee was appointed to analyze the potential hazards of marijuana use on user safety and health, analyze the data concerning the therapeutic value of marijuana, and the committee contended that marijuana has some psychological and biological effects on body. But it also has medicinal value which can have a great benefit to the health of the people. Uruguay became the first country to fully legalize marijuana in 2013 and Canada became the second country to do the same in 2018. And it is also legal in some states of the United States.

REVENUE FOR GOVERNMENT

A country like India can make a lot of money by legalizing cannabis. As by imposing the taxes and the sales duties on the sales of the cannabis the government of India can earn a lot of revenue. As we know the reality of India that there many people who consume cannabis just for the recreational purposes and most of them is the youth of our country which is unstoppable. There are mafia who are dealing with cannabis and they are having a huge business and earn a lot of money they exists in India because there are people who are willing to buy it and are ready to pay the money water is demanded by the mafia. If it is legalize then in the sales of cannabis, government can imposes taxes on the sales. And one of the major aspect is also the jobs for unemployed people if the cannabis gets legalize then there would be marijuana industry producing it and for that purposes workmen would be needed in industry, it includes the workers at all ends of the marijuana supply chain from farmers to transporters to sellers and

ultimately it would lead to the increase in employment. The revenue generated from legalizing cannabis can be used in some other important sectors where there is an actual need of development, can be used for public health goals, and to do campaigns for creating awareness for drug, safe use marijuana campaigns and other public good programs. And also the money can be used for the education purposes of the children who are not able to get the education because of poor financial condition. As we can see below how other countries are doing great and making a lot of revenue by legalizing cannabis.

- **UNITED STATES OF AMERICA**

US's largest and most populated state also legalizes the recreational use of marijuana though it is not the first state but California's action is a milestone for the cannabis industry. It important to note the fact that marijuana's recreational legality comes with a major taxes i.e. 15% statewide tax on all recreational and medical cannabis products and additional more taxes and fees. Legalization of cannabis has opened a new massive doors for government for generating the revenue. As of now there are 9 states in U.S. that have legalizes recreational use of marijuana they are California, Alaska, Colorado, Maine, Massachusetts, Nevada, Oregon, Vermont and Washington. They are earning a huge revenue for the state government and they are also creating jobs and opportunities and there are 9397 active licenses for marijuana businesses in the U.S. it includes cultivators, manufacturers, retailers, dispensaries, distributors, delivers and test labs. More than 10,000 people are working around the cannabis plant ant that number is growing.¹ The economic benefits have helped states where marijuana has been legalized by funnelling tax revenue from the sale of the drug to things like education and infrastructure. There have been the reports from the new frontier data which stated that if cannabis gets legalized in all the 50 states it would generate \$131.8 billion in federal tax revenue and also stated that it would generate over a million jobs into the U.S. labor market². As we have seen above U.S. is generating lot of revenue and creating a lot of job opportunities by legalizing marijuana if U.S. can why can't we.

¹ Aaron Smith, *The U.S. legal marijuana industry is booming*, *CNN Monet*, 31 January 2018.

² Jermy Breke, *Marijuana legalization could inject \$130 billion into U.S. tax coffers by 2025- if the trump administration stays hands of*, 13 January 2018.

- **CANADA**

In 2001 Canada legalize the medical use of cannabis, but in 2018 the country has also legalized the recreational use of cannabis by joining Uruguay as the only other nation by legalizing the non-medical consumption of the cannabis. The Canadian government hashed out he plans to tax cannabis sale at 10%. Pot sales would also be subject to Good and Services tax and harmonized sales tax and eventually potential tax would be 20%. According to the recent estimates from Marijuana business daily, an industry publication, annual sales for Canada's recreational marijuana could range between \$2.3 billion and \$4.5 billion by 2021.

DECREASE IN CRIME RATES

As we all know that in India crime rates is generally high and it is been seen that India is the world's second most country with relation to crime. By legalizing the marijuana in India the illegal trade crime rates can be decreased as when we will legalize marijuana there would be no illegal trade or there would no black market production and distribution with an overboard industry. It will be helpful for our country because then there would be rules and regulation regarding possession, production or sale of marijuana and it will be controlled by government, merchants and retailers but not by drug dealers. Before Narcotics Drugs and Psychotropic Substances Act, 1985 and also after this cannabis is easily available in India. As there exists a huge black market of cannabis there is a whole supply chain working from cultivation to harvesting to transportation to distribution and in end to the consumer. And surprisingly law enforcers are also helping smugglers and they keep the productive lands away from the raid. And for the fact it does not take more money to grow cannabis and it is very easy to grow it just need sunlight, supply of water and a humid climate. Cannabis is regarded as one of the most smuggled drug in India. By the illegal transportation and cultivation smuggles or drug dealers are making a lot of money. And if we are not legalizing it we just giving the money in the wrong hand rather this money can be used for other good purposes. It is time to end the war on drugs and the social ailments that comes with it: crime, health issues, homelessness and premature deaths³. When the Narcotics Drugs and Psychotropic Substances (NDPS) Act was

³ Larry Russell, *Legalize Cannabis and other drugs to reduce crime and improve health*, March 11 2018.

legislated under the pressure from the US to outlaw the drug like marijuana, India puts the complete ban on the drug. Today many states of US has legalized marijuana now it is time for India to do the same. Now let's see the countries that have legalized cannabis are able to decrease their crime rates or not.

- **UNITED STATES**

According to the research study of US states by legalization of marijuana for medical purposes has led to the significant decrease in violent crime rates in several US states bordering Mexico. The study have also found that by introduction of medical marijuana laws the rate of violent crimes like robberies, murdered and aggravated assault fell by 12.5% in states close to Mexico. This law allows people to grow marijuana plants legally within the US.⁴ It ultimately means that people will not buy the illegal marijuana anymore so drug trafficking organization have far few customers. Due to this there is a huge fall in demand of illegal marijuana instance of violence have also fallen. We know that there is much crime related to the smuggling og illegal rughs and when we legalize that drug crime rates decrease because now people can buy that drug legally there is no need of drug dealers or smugglers to buy it. The researchers have found a clear decline in the crimes like theft or violent crimes in the states which share the border with Mexico. As in US by legalizing cannabis crime rates are decreasing and for a fact US is the most crime prone country in the world. And India is the second in relation to crime if India legalizes cannabis we can also see the change in our country as it would decrease the crime rates in our country as there are huge black market for cannabis exists in India and if India legalizes there would be no black market for it and hence there would be no crimes dealing with the smuggling of cannabis.

- **NETHERLANDS**

In Netherlands the use and sake of marijuana has been legalized for the decades and marijuana could be purchased from coffee shop also. As marijuana is decriminalizes since 1970s it helped in decreasing the crime rates in Netherlands as it means that people can use marijuana and so there are no conviction related to possession or use. The Dutch government has introduced that marijuana(less than 5 grams) can only be sold to those

⁴ Judith Vonberg, *Mrijuana legalization causing iolent crimes to fall in US states* , 15 January 2018.

people who have some proof that they reside in Netherlands this requirement is enforced in border towns this is done so as to not increase the rate of drug tourists. The critical determinant of violence is whether the industry is illegal or not. As we can see with the example of alcohol when the federal government banned alcohol in 1920-1933 there were violence and some crimes but not before or after that. And also at that time black market arises increasing more crimes in the country. Let's say today government ban tobacco or cigarette what will happen? Will people stop smoking? No, there would again rise the black market or tobacco or smoking hence increasing the crime rates. So this also goes for cannabis there still exists the huge black market if India legalizes cannabis there can be decrease in the crime rates.

MEDICAL USAGE OF CANNABIS

The most important is the medicinal value of marijuana. Marijuana has dozens of medical benefits. Let's discuss the benefit of the medical marijuana :-

- It was found in the study by the cancer therapeutics that cannabidiol has the ability to slow and can stop cancer by turning off a gene called Id-1.
- THC, the active ingredient in marijuana helps in preventing Alzheimer's disease.
- Cannabis can also be used treating Glaucoma which increase the pressure in the eyeball injuring the optic nerve and can lose vision.
- Cannabis helps in giving relief in arthritis and also control epileptic seizure.
- It also helps in reduce severe pain and nausea from chemo and stimulates appetite.
- It helps in treating the autoimmune disorder Lupus in this body starts attacking itself for unknown reason.

Although India currently considers marijuana use as illegal but it has rich history in the country. The Atharva veda, a notable Hindu script had one of the world's first mentions of smoking cannabis. There are many more medical benefits, and still medical marijuana is not legal in most of the countries and still has the negative reputation. It's time for India to know the medical benefits and think about the people of the country who wants to cure themselves by the marijuana treatment. However, in 1985 India outlawed marijuana in response to America's war on drugs.

- **NETHERLANDS**

The Netherlands does not require the patient to get into government programs to receive medical cannabis. In Netherlands patients can get a prescription, just like for any other medication. And they can directly go to the pharmacy to get the medicine prescribed to them. In Netherlands also they have said that only the doctors who have knowledge about cannabis can only prescribe and should only give to the patients who have tried standard treatment to no avail or with too many sides' effects. According to the International Association for Cannabinoid Medicines, about 1200 patients receive marijuana through pharmacies. But they expect the number to increase as in many cases illegal (more than five grams) marijuana in coffee shops is costs less than medical marijuana. In Netherlands they give the legal protection to the patient using medical marijuana the patients don't have to worry about as much as patients in other countries do. Here if the patients has more than five grams his prescription protects him from any legal prosecution. If there medication is seized by the police then the patient prescription acts as a proof that they have legal access to it. This especially help people who cannot leave home without their medicines. So, as taking the example of Netherlands and how marijuana is helping the patient to cure their disease it's time for India to learn from Netherlands and do the same.

LEGAL ASPECTS

The Narcotic Drugs And Psychotropic Substance Act,1985 An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances 1[to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances]and for matters connected therewith.⁵

"cannabis (hemp)" means-

⁵ The Narcotic Drug And Psychotropic Act,1985.

(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 there from;

"cannabis plant" means any plant of the genus cannabis;⁶

The Narcotic Drugs and Psychotropic Act, 1985 puts cannabis as a narcotic drug. Until 1985 marijuana was not illegal in India then NDPS Act was legislated under pressure from the US to outlaw even the benign drugs like marijuana. NDPS allows the people to smoke pot or drink bhang as long as they can prove that they had consumed only the leaves and seeds of the cannabis plant.

Section 20 Punishment for contravention in relation to cannabis plant and cannabis.-

Whoever, in contravention of any provisions of this Act or any rule or order made or condition of license granted there under, (a) cultivates any cannabis plant; or (b) produces, manufactures, possesses, sells, purchases, transports, imports inter- State, exports inter State or uses cannabis, shall be punishable 1 [(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and (ii) where such contravention relates to sub-clause (b),

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees; (C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one

⁶ Section 2(III),(IV); The Narcotic Drug And Psychotropic Act,1985.

lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]⁷

Cannabis is regarded as the illegal drug in India. It has been banned under NDPS Act sec 20 as stated above. In simple words illegality of marijuana is not limited to consumption but it also includes cultivation, use, sale, purchase, possession transportation or distribution if any person is doing any of the above stated activity is liable under NDPS Act. And if they does so they would be given rigorous punishment as mentioned in the section 20 of NDPS Act.

Section 29 Punishment for abetment and criminal conspiracy.-

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which (a) would constitute an offence if committed within India; or (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.⁸

The above stated section means that if any person abets the other person to do an which is contravention to law. Let's say if somebody attempts to abet the other person to sale the marijuana or enter into a criminal conspiracy with regard to marijuana would be punishable under NDPS Act, 1985.

⁷ Section 20, The Narcotic Drug And Psychotropic Act,1985.

⁸ Section 29, The Narcotic Drug And Psychotropic Act, 1985

JUDICIAL ASPECT

In 2015, **Tathagata Satpathy** Lok Sabha MP from Odisha he suggested that weed should be legalized in India as it would help in fighting the alcohol addiction. He also said in the social media he have smoked cannabis in his young days. He said that in his own village old people were used to smoke marijuana, a natural substance since the time of the lord Shiva we have forced a lot of people to move to alcohol.

Earlier **Maneka Gandhi**, Union Women and Child Development Minister has suggested the legalization of marijuana and she quoted the examples of countries like USA, Canada and Australia. She made this suggestion at a meeting of Group of ministers who had met to examine the National Drug Demand Reduction Policy. She suggested this move will help in curbing the drug abuse as it can be seen in countries like US. She also quoted that marijuana should be legalized for the medical purposes as it serves the purpose of curing cancer.

In 2016 **Dharamvira Gandhi**, Lok Sabha MP from Patiala received clearance for “non-synthetic” intoxicants in the legislative branch for amendment of NDPS Act, 1985. He proposed a legislation to legalize and regulated supply of natural intoxicants such as opium and cannabis and this bill will be presented in parliament as private member bill in winter session. This bill seeks to amend the NDPS Act of 1985 that has been brought to fulfil the convention on drug policy laid out by the United Nations. He said that NDPS Act has been in enactment for more than 30 years but it has not able to achieve its goal but this “war on drugs” has given the result just opposite of what it aimed to achieve. The war on drugs has created the dangerous mafia, there have been human rights violation and innumerable precious lives have been destroyed. He said that if the recreational use of cannabis will be legalized there would be no drug cartels, mafia and no other human right violation due to cannabis market. He said that this bill seeks to the changes in the act that the traditional drugs be used for medical purposes of for common use. He also stated that this bill also seeks to separate the hard drugs from the soft ones. As currently soft intoxicant like cannabis(bhang) , opium(afem) are mixed with artificial hard drugs like cocaine, smack, heroine etc. Dr. Gandhi referred to the statistics from the Narcotic Control Bureau (NCB) according to it 88% of the drug related arrest are of drug users and not directly related to the illegal drug trade. Only 2 % arrest were of traffickers and distributors. There were no arrest of financiers or of the drug mafia who are running the trade in large scale. He further argued that the common man’s recreational substances were banned

or then there came the newer substances which were addictive or more dangerous to health flooded the drug markets. As above I mentioned about clubbing the soft drug and the hard drug as Heroin replaced opium, cocaine replaced cannabis and so on. As we have already discussed that drug market creates a super profit and when it the markets start gaining profit there comes rivalries spilling into gang wars and on the other hand it promotes the ruthless and aggressive markets of drugs and the people who were used to petty traditional drug users they moved to the easily available drugs and more addictive or harmful drugs and hence pushing more people into drug world.

CONCLUSION

To conclude my research paper, Cannabis is a very useful drug and should be legalized in India. Cannabis and human have a long diverse history relationship between them. Cannabis has played the profound role on the human history. Cannabis should be legalized because it is useful for our country to create the revenue as by imposing tax or sales duty on cannabis government can earn a huge revenue. As there exists a huge mafia or black market they are earning a lot of money they are earning because there are people who are willing to buy at any price. If cannabis gets legalizes in India government would earn money instead of mafia and this money can use for some other important purposes like education or for the development of our country. It can also help in reducing the unemployment rate in our country if cannabis get legalizes there would cannabis industry and for industry workmen would be needed. There would be chain for marijuana industry and in every level of chain workmen would be needed like from farmers to transporters to sellers. Other major reason why cannabis should be legalized is that by legalizing cannabis there won't be black markets or smugglers and it would be decreasing the crime rates in our country. As when it will be legalized there would be rules and regulation regarding the use or possession and it would be controlled by government and not anymore by drug dealers and hence can reduce the crime rates. Regulation is not only beneficial for people who want to use cannabis safely; it also enhances security for all of society, as it helps undermine criminal markets.⁹ And the most important reason for cannabis to be legalized in India is because of its medicinal value. As cannabis can was proven to provide relief from many types of diseases such as cancer, AIDS etc and it sometimes provide relief

⁹ Shashi Tharoor and Avinash Tharoor , Legalizing weed in India, June 2018

from types of pain that morphine type drug could not. If I gets legalizes a person can get his disease cure without the worry of getting caught or arrested. And also cannabis should be legalized because it is soft drug and as in India it is illegal so people are moving to the hard drugs like cocaine or heroin which is easily available o addictive and dangerous. Previous to The Narcotic Drugs and Psychotropic Substance Act, 1985 cannabis was not illegal rather opium and marijuana cultivation was encouraged and taxed. It was made illegal under the pressure of US to outlaw the most benign drug like marijuana. Many states of US have also made cannabis legal now it's time for India to do the same.

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