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Ethical Aspects Regarding the Legalization of Cannabis in India

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ABSTRACT

The twenty first century, would be marked with the infusion of a renewed interest and vigour in the field of law and order. Particularly in the Indian context, the growth and development of the society has reflected in the growth and development with regards to the social order and awareness about the various statutes. The ambivalent character of 'Cannabis' being indispensable for relief of pain and other therapeutic use but addictive and destructive when misused or abused led the community of nations to evolve a global control mechanism intended to limit the availability of cannabis and other natural drugs to medical and scientific needs. Through this paper I aim to achieve and establish the ethical aspects regarding legalization of cannabis in India, by drawing sharp contrasts with its historical use and then arriving at a desired conclusion.

I. INTRODUCTION

Cannabis or as mentioned in India's ancient Veda texts as "one of the five most sacred plants" has been a part of our civilization for thousands of years, and has existed in many forms. It has also been part of our religious rituals and was used in Ancient Ayurveda as an active ingredient in medicines, curing a number of health problems, most widely used under the name of hemp. The plant grows wild throughout the country and it is been said that, this unique opportunity could harness the plant for economic growth.

Like the Westerners who took a swig of whiskey before battle, Indian soldiers during the Middle Ages, often took a drink of bhang before entering battle field. But despite its long history, the plant still remains illegal. It (*bhang*) is only used in Government authorized premises, where they produce and sell it for various purposes, mostly medicinal.

II. HISTORICAL INSIGHT AND DEVELOPMENT OF STATUTE

The Britishers commissioned a large-scale study after they found the use of cannabis so extensive, in the late 1890s (Iverson, 2008). They were that its use was endangering the health of the people and driving them insane. Therefore, British government asked the government of

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India, to appoint a commission to look into such cultivation, preparation, trade of these drugs, the social and moral impact, and the possible prohibition.

Over 1,000 interviews were conducted throughout India. Eminent British and Indian medical experts were involved in this process. It was all systematic and thorough. A large and diverse group of people showed up, from farmers to hospital psychiatrists.

And after years of detailed work, The Indian Hemp Drugs Commission Report was produced with six volumes of data and conclusions. Commissioners were also concerned whether cannabis caused psychoses. The Commission after years of thorough study, concluded that suppressing such use of herbal cannabis (bhang), would be totally unjustifiable. They concluded that it has some religious sanction among Hindus, and is harmless in moderation. In fact, more harm was done by alcohol. ²

The ambivalent character of 'Cannabis' being indispensable for relief of pain and other therapeutic use but addictive and destructive when misused or abused led the community of nations to evolve a global control mechanism intended to limit the availability of cannabis and other natural drugs to medical and scientific needs. Concerned with the health and welfare of mankind, the international community brought Cannabis (flowering or fruiting top/ ganja), Cannabis plant and Cannabis resin (Charas) under the ambit of Single Convention on Narcotic Drugs, 1961. India being a party to 1961 Convention and Convention on Psychotropic Substances, 1971 enacted the Narcotic Drugs and Psychotropic Substances Act, 1985.

Under the NDPS Act, 1985 cultivation of cannabis plant and all activities namely possession, use, sale, purchase etc. in relation to charas, ganja, hasish etc are prohibited except for medical or scientific purposes.

III. REGULATION IN INDIA

Under the *Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985*, both trade and consumption are punishable offences and anyone found with it, could face up to 20 years imprisonment. Cannabis is misapprehended, both industrially and legally. There's a strict ban on its production in India. Cultivation of Cannabis plant and all other activities in relation to Cannabis for medical and scientific purposes come under the purview of State Government. The State Government is empowered to control and regulate such activities by making rules. State government does have few powers of granting licenses for its cultivation for the purpose of research and medicinal use but only a few research organizations have obtained it. Only

² <https://www.psychologytoday.com/us/blog/the-teenage-mind/201106/history-cannabis-in-india>.

Uttarakhand and Uttar Pradesh regions, have received hemp cultivation licenses and both are in northern India.

Various NGOs/activists have filed court petitions, demanding its legalization. This has helped the cannabis market gather some attention. Around the summer of 2019, the Delhi High Court admitted a writ petition filed by Great legalization Movement (an NGO) seeking decriminalisation of cannabis under the NDPS. The PIL argues that the grouping of cannabis with other chemical drugs under the NDPS Act is, “*arbitrary, unscientific and unreasonable.*”

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In India, there has also been some traction among some government officials for Cannabis legalization. Maneka Gandhi and Tathagata Satpathy, both have spoken in favour of its decriminalisation. In November 2019, Madhya Pradesh (the second largest state in India) government, decided to legalize the cultivation for both medicinal and industrial purposes. Being one of the poorest states in the country, it is hoped that this move will attract new businesses to the fore. Even more recently, in February 2020 it was announced that the BJP government in Manipur, is also considering decriminalisation of cannabis and legalize its cultivation for medicinal purposes.

IV. AN ETHICAL CONUNDRUM

Ongoing research strongly suggest with evidence that Cannabis due to presence of Delta-9-Tetrahydrocarbinol (THC) alkaloids in it, can reduce nausea and vomiting during Chemotherapy, improve appetite in people with HIV/AIDS, reduces chronic pain and muscle spasms. The therapeutic or medicinal properties of Cannabis are not less than ‘Opium’ another narcotic drug. India is one of the major legal producing country of ‘opium’.

The cultivation of opium poppy (plant), production of opium for medical and scientific purposes is governed by the Narcotic Drugs and Psychotropic Substances Rules, 1985 issued by the Central Government under the provisions of the NDPS Act, 1985.

Very strong fibres are yield by hemp plants, which can be used to make fabric, rope, and paper, etc. It also yields very high in protein seeds.

On the other hand, many people think that legalizing marijuana will lessen the problems associated with it. End of prohibition, would bring the biggest change in the economy. But before any of the laws can be changed, though, the public and the government would have to

³ https://cannabisindustryjournal.com/feature_article/indias-cannabis-market-examining-regulatory-frameworks-then-now/.

agree on how harmful or helpful the drug actually is. Public needs to be re-educated as to the truths and myths of marijuana consumption, and once it's done, the work could begin on the cultivation, distribution, and uses of cannabis.⁴

But first of all, we must ask ourselves, how would this hurt people?

The first concern would be the lost of productivity in the workplace. Unfortunately, this is true, some people will abuse this new found freedom, and workplace is no place to be high. The lack of motivation that a person often feels with marijuana use, can slow him down at workplace. A need for a new type of drug test would become necessary.

V. CONCLUSION

“The legalization of marijuana is not a dangerous experiment – the prohibition is the experiment, and it has failed dramatically, with millions of victims all around the world.”

— Sebastian Marincolo

The basic idea of legalizing cannabis cultivation is to produce high value-added medicinal products for export. Similar control mechanism like in case of ‘opium’, in respect to Cannabis, shall make India progress in medical science in international competition in the field of medical research. Many countries have already legalised Cannabis for medical and scientific purposes. Recently, the Lebanese parliament legalized cannabis farming for medicinal use. It would be a potentially lucrative export for an economy in dire need of foreign currency as it grapples with a paralyzing financial crisis.⁵

Many people still don't understand what happens when they smoke cannabis and get “high.” A chemical THC is released and gets absorbed into the bloodstream through the lungs. Then it breaks down into metabolites that travel to the brain. This causes no proven cellular damage. After a period of time, these chemicals are washed out by natural elements and the feeling of being “high” is lost. This euphoria makes sensations seem more intense, and emotions are enhanced. It produces no hangover.

One of the major concerns with the legalization is the operation of motor vehicles. No person shall operate a motor vehicle under the influence of anything. Alcohol being the biggest factor in highway accidents. Though pot and other drugs are responsible for only about 8% of these accidents. If the availability widens, this number could rise. Very recently government of

⁴ The Problems With Legalizing Marijuana - StateUniversity.com Blog <https://www.stateuniversity.com/blog/permalink/The-Problems-With-Legalizing-Marijuana.html#ixzz6UAOBEImB>.

⁵ <https://www.reuters.com/article/us-lebanon-crisis-cannabis/lebanon-legalizes-cannabis-farming-for-medicinal-use-idUSKCN2232YI>.

Uttarakhand and Uttar Pradesh have permitted cultivation of Cannabis plant as a pilot project. Many private industries are also showing interest for cultivation of Cannabis plant primarily for industrial use of hemp. Considering the medical and industrial use of Cannabis the Central Government should bring all activities relating to Cannabis under the control and regulation mechanism of Central Government similar to 'Opium'. Such regulation shall not only promote the Pharmaceutical industries but also generate revenue.
