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# Illicit Cultivation of Cannabis Plant/Opium Poppy: Steps to be Taken by an Empowered Officer under the NDPS Act, 1985 and the Offences made out on Account of Illicit Cultivation & the Legal Cultivation of Hemp and Use of Various Parts of the Hemp Plant: An Analysis

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## ABSTRACT

*Illicit cultivation of cannabis plant and opium poppy does take place in various parts of the country and the empowered officers under the NDPS Act, 1985 are required to follow a certain procedure required under Law to secure a conviction.*

*The use of GPS coordinates and Drones to identify illicit cultivation along with the sensitizing the effect of drugs on body and mind is also undertaken in a big way as a part of the social responsibility.*

*The article further highlights the efforts in the use of hemp and the various startup companies which have come into existence in not only generating employment but also in the export of the products to overseas market.*

**Keywords:** *Illicit cultivation of cannabis plant and opium poppy, destruction, sensitizing the villagers, use of hemp and its potential.*

1. The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”) is a Special Act and is a self-contained code and defines various offences under the Act and that includes illicit cultivation of cannabis plants and opium poppy.

2. We now extract some of the definitions from the Act to take forward the article.

*“(iv) “cannabis plant” means any plant of the **genus cannabis**;*

*(viiiib)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant;*

*(xii) “medicinal cannabis”, that is, medicinal hemp, means any extract or tincture of cannabis (hemp);*

*(xvii) “opium poppy” means— (a) the plant of the **species Papaver somniferum L**;*

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and




(b) the plant of any **other species of Papaver** from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to **be opium poppy** for the purposes of this Act;




(xviii) “**poppy straw**” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

(xix) “**poppy straw concentrate**” means the material arising when poppy straw has entered into a process for the concentration of its alkaloids;”

3. At the outset we find the usage of two botanical words “genus” and “species”. It is felt that the empowered officers implementing the provisions of the Act are made aware of the difference for effective understanding and implementation of the Act.

4. To understand the same, we depict the plant kingdom diagrammatically as under:

Plant classification	Kingdom	Cannabis	Opium Poppy
Kingdom			
			
Division			
			
Class			
			
Order			

		
<b>Family</b>		
		
<b>Genus</b>	<b>Cannabis</b>	
		
<b>Species</b>		<b>Papaver somniferum L</b>

5. A study of the diagram would clearly reveal that “species” is at the bottom of the classification list and the above the “species” is “genus”. Hence, from a lay man’s point of view there is no further classification after “species”.

**DIFFERENCE BETWEEN “GENUS” AND “SPECIES”**

6. A moot question that would arise in the minds of the esteemed readers is as to why in respect of “opium poppy”, the term species has been used as against “genus” for “cannabis” Hence, the basic differences between the species and genus and the use of the terminologies in the Act is to be understood in its proper perspective. Now we take up the differences between the two, which is as per Table-1 below:

**Table-1**

<b>Species</b>	<b>Genus</b>
Species is the simplest unit of classification and the same is at the bottom of the classification.	It is a classification which ranks below family and above species. In other words, it is penultimate in the classification list.
A species may have sub-species.	Genus comprises different species and contain a large number of species

**OPIUM POPPY**

7. Reverting to the provisions of the Act, it can be said, with the basic understanding of

the differences being understood, in respect of opium poppy, the **specific species** mentioned in the Act is **Papaver somniferum L.** It is only when the species *Papaver somniferum L.* is illicitly cultivated, the offences under the Act would get attracted.

**7.1** This takes us to the next question as to what would happen if a person is found indulging in illicit cultivation of any other species of opium poppy. To answer this question, it would be extremely useful to refer to the definition of “opium poppy” extracted herein. The cultivator would be liable to penal consequences only if any *other species of Papaver from which opium or any phenanthrene alkaloid can be extracted stands notified to be opium poppy. This notification is to be issued by the Central Government.* As of now, the Central Government has not notified any other species of *Papaver*. Does this mean that there are no other species under genus *Papaver*? The answer is a big NO.

**8.** We may, now, conveniently refer to the following passage for a better understanding of the issue in hand:

*<sup>1</sup>“Other commonly cultivated species of the genus Papaver are Papaver bracteatum Lindl. (Iranian poppy), Papaver rhoeas L. (common poppy or corn poppy), Papaver dubium L., Papaver pseudo-orientale Medw., and Papaver orientale L. P. bracteatum that grow wild in high altitudes in north and northwest of Iran, in Russia and Caucasia regions [9]. P. rhoeas is an important competitive plant in winter cereals in southern Europe under Mediterranean climate [10] and thus called corn poppy. P. dubium is also called long-head poppy. P. dubium is widespread throughout Europe and America and is an important weed in western Iran. P. orientale and P. pseudo-orientale are distributed into the Caucasus area.”*

**9.** Esteemed readers may also note in the original research article published by Michelle G. Carlin, John R. Dean and Jennifer M. Ames, Department of Applied Sciences, Northumbria University, Newcastle upon Tyne, United Kingdom in <https://www.frontiersin.org>, it has been stated thus:

*<sup>2</sup>genus Papaver has two species Papaver somniferum L. and Papaver setigerum D.C containing morphine, codeine, thebaine, noscapine (also called narcotine), and papaverine. Although it is known that alkaloid compounds can be found in both Papaver somniferum L. and Papaver setigerum D.C. the former has considerably higher levels of the five*

major alkaloids, by percent weight, of opium than that present in setigerum ([Table 1](#)).

Alkaloid	Papaver subspecies	
	Setigerum*	Somniferum+ %
Morphine	2.3%	7.65–25.15
Codeine	2.6%	1.21–6.37
Thebaine	Detected but not quantified	0.97–6.38
Papaverine	4.7%	0.51–5.33
Noscapine	10.2%	4.03–15.22

\*as determined by electrophoresis (Panicker et al., 2007), +as determined by HPLC (Krenn et al., 1998).

**10.** Having understood that there are other species under the genus Papaver, it is Papaver somniferum L which finds a place in the Act and the Central Government is yet to notify any other species.

**11.** Another important element to be understood is that the species is **hermaphrodite** (has both male and female organs) and is pollinated by Bees.

**12.** Foraying into a hotly contested issue as to whether the recovered and seized **poppy straw** fell within the ambit of the Act or not, we find that the Hon'ble High Court of Himachal Pradesh had an occasion to deal with the issue as to whether the seized poppy straw was from papaver somniferum-L or the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government has notified to be opium poppy. Criminal Appeal No. 525 of 2004 decided on 02.11.2007 by the High Court of Himachal Pradesh in the case of **Nirmal Kaur @ Nemo v. State of Himachal Pradesh [2007:HHC:2351-DB]** refers. In para 8 of the judgment, it has been recorded as under:

*“8. Referring to the report Ex. PW-13/F and the statement of the Chemical Examiner recorded by us, the substance whereof has been noticed hereinabove, the learned counsel for the appellant urged that there was no evidence on record that the substance that was allegedly recovered from the house of the appellant was poppy straw, within the meaning of Section 2(xviii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. He submitted that poppy straw means all parts (except seeds) of the plant of the species of papaver*

*somniferum-L or the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which (the later mentioned plant) the Central Government might have notified to be opium poppy.”*

12.1 After extracting the definitions of “**poppy straw**” and “**opium poppy**” from the Act, the Hon’ble High Court observed as under:

*“10. From the definition of poppy straw, as reproduced hereinabove, it is clear that to understand the meaning of poppy straw, it is essential to refer to the meaning of opium poppy. Poppy straw, when read alongwith the definition of opium poppy, means (a) all parts (except seeds) of the plant of the species of papaver somniferum-L and all parts (except seeds) of the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may by notification in the official gazette declare to be opium poppy for the purposes of Narcotic Drugs and Psychotropic Substances Act, 1985.”*

12.2 The Hon’ble High Court went on to hold that the **two-test conducted by the Chemical Examiner was not enough evidence to hold that the stuff recovered from the appellant, the sample of which was analyzed by the Chemical Examiner, was poppy straw.** Para 11 of the judgment reads as under:

*“11. In the present case, as is clear from the aforesaid statement of the Chemical Examiner, recorded by us, **the two tests conducted by him to ascertain whether the stuff contained meconic acid and morphine do not indicate that the stuff examined consisted of the parts of either the plant of the species of papaver somniferum-L or a plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may have notified to be the opium poppy for the purposes of the Narcotic Drugs and Psychotropic Substances Act, 1985. If it is so, the report of the Chemical Examiner, Ex. PW-13/F, that the stuff contains contents of poppy husk, which term is similar to the term “poppy straw”, cannot be used as enough evidence to hold that the stuff recovered from the appellant, the sample of which was analyzed by the Chemical***

*Examiner, was poppy straw.”*

**12.3** The Hon’ble High Court, while allowing the appeal preferred by the appellant, held as under:

*“13. In view of what has been stated hereinabove, we hold that the substance allegedly recovered from the appellant has not been proved to be poppy straw, within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985, and, therefore, she is not liable to conviction and punishment for the offence described in and made punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Consequently, the appeal is accepted, judgment of the trial Court convicting and sentencing the appellant for offence under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, is set aside and the appellant is acquitted. She being in jail, serving out the sentence awarded by the trial Court, is ordered to be set at liberty forthwith, in case her detention is not required in any other case.”*

**12.4** Aggrieved by the impugned judgment of the Hon’ble High Court, the matter was carried forward to the Hon’ble Supreme Court and the same came to be decided by the Division Bench of the Hon’ble Supreme Court in **Criminal Appeal No.956 of 2012 on 20.10.2022 - 2022 LiveLaw (SC) 866**. It is essential to reproduce the submissions made for a proper understanding of the issue in proper perspective.

**12.6** The submissions of Ld. Additional Advocate General on behalf of the appellant-State stood recorded in para 11-13 of the judgment as under:

*“11. The learned AAG submitted that different definitions have been given for ‘opium’, ‘opium derivative’, ‘opium poppy’ and ‘poppy straw’ under Clauses (xv), (xvi), (xvii) and (xviii) of Section 2 of the 1985 Act. He submitted that, as per Section 15 of the 1985 Act, when a person, in contravention of any provisions of the said Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter State, exports inter State, sells, purchases, uses or omits to warehouse poppy straw, he shall be punished with rigorous imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both, or for a term up to ten*



years and with fine which may extend to one lakh rupees, or for a term which shall not be less than ten years but may extend to twenty years and a fine which shall not be less than one lakh rupees but may extend to two lakh rupees, depending upon the quantity of 'poppy straw'. He submitted that, similarly, Sections 17 and 18 of the 1985 Act deal with punishment for contravention in relation to 'prepared opium', 'opium poppy' and 'opium' respectively. The learned AAG submitted that the High Court has wrongly relied on the judgment of this Court in the case of *Amarsingh Ramjibhai Barot v. State of Gujarat - (2005) 7 SCC 550*. He submitted that the issue involved in the said case was totally different.

12. Shri Mukerji submitted that the National Institute of Science and Communication, CSIR, New Delhi, in its first reprint of the Book titled "Wealth of India", which is a dictionary of Indian Raw Materials and Industrial Products, 1966 (hereinafter referred to as "the 1966 Dictionary"), mentions six species of 'papaver'. He submitted that a perusal of the said authority would reveal that '***papaver somniferum L***' is cultivated as the chief source of 'opium'. He submitted that it is only '***papaver somniferum L***' which contains the alkaloids '***morphine***' and '***codeine***'. Shri Mukerji submitted that the United Nations International Drug Control Programme has recommended methods for testing 'opium', 'morphine' and 'heroin' in its Manual for use by the National Drug Testing Laboratories, 1998 (hereinafter referred to as the "1998 Manual"). He submitted that **the two tests which are conducted by the appellant are the only tests which are recommended by the United Nations.** The learned AAG further submitted that the Directorate of Forensic Science Services, Ministry of Home Affairs, Government of India, New Delhi has issued "**Working Procedure Manual : Narcotics**" **in the year 2021** (hereinafter referred to as the "2021 Manual"). He submitted that the said Manual contains the tests which are required to be conducted for finding out the presence of '**opium/crude morphine**' and '**meconic acid**'. The learned AAG submitted that '*papaver somniferum L*' is the only species which contains 'morphine' and 'meconic acid'. It is therefore submitted that the finding of the High Court that these two tests are not sufficient to reach to a conclusion that the species belong to

*'papaver somniferum L' and as such, is not punishable under Section 15 of the 1985 Act, does not lay down a correct proposition of law.*

*13. Shri Mukerji relies on the judgments of this Court in the cases of State of M.P. and Others v. Ram Singh (2000) 5 SCC 88, Swantraj and Others v. State of Maharashtra - (1975) 3 SCC 322 and NEPC Micon Limited and Others v. Magma Leasing Limited -(1999) 4 SCC 253 in support of the proposition that the interpretation which advances the purpose of the Act has to be preferred as against the one which defeats the purpose of the Act."*

**12.7** The other submissions which were recorded are also reproduced as under:

*"14. Shri Jain submitted that since the provisions of the 1985 Act are very stringent in nature, the Court will have to prefer an approach of strict interpretation of the statute. He submitted that the High Court has rightly held that the definition of 'opium poppy' as given under Clause (xvii) of Section 2 of the 1985 Act is in two parts. He submitted that, as per sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act, 'opium poppy' means "the plant of the species 'papaver somniferum L", whereas sub-clause (b) thereof empowers the Central Government to notify any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' can be extracted. It is therefore submitted that, unless any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' can be extracted is notified by the Central Government, the same cannot be considered to be 'opium' for the purpose of the 1985 Act. It is submitted that, as such, unless the prosecution proves that the genus of the material seized was a species of 'papaver somniferum L', the conviction could not be sustained. He, therefore, submitted that no interference would be warranted with the judgment of the High Court. The other counsel have adopted the submissions advanced by Shri Jain*

*15. Shri Nataraj, learned ASG also submitted that since the 1985 Act is both penal and beneficial, the interpretation which advances the purpose of the Act will have to be preferred. The learned ASG relies on the judgment of this Court in the case of NEPC Micon Limited (supra).*

*16. Shri Parameshwar, learned amicus curiae submitted that the following*

three issues arise for consideration in the present matter:

**(i) When the statute identifies only one species as contraband material and when the legislature leaves it open to the Central Government to notify any other species, it will not be permissible for the State to argue that a test which will prove that the contraband material belongs to the species of 'papaver somniferum L' is not necessary;**

**(ii) What is the appropriate test to identify that the contraband belongs to the species of 'papaver somniferum L'; and**

**(iii) Whether the first question is relevant only for 'poppy husk' or 'poppy straw' or for all other forms of 'poppies'?**

17. Shri Parameshwar submitted that there are three families of narcotic drugs which are dealt with by the statute, namely, 'opium', 'cannabis (hemp)' and 'coca leaf'. He submitted that it is only the plant of 'papaver somniferum L' which contains 'opium'. He fairly submitted that the earlier enactments only recognized 'papaver somniferum L' as a source for 'opium'. It is only the 1985 Act which has also included sub-clause (b) in Clause (xvii) of Section 2 which provides for any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' can be extracted. However, such a species, to come under the provisions of the 1985 Act, is **required to be notified by the Central Government. He fairly submitted that no such notification recognizing any other species of 'papaver' has been notified by the Central Government.**

18. Shri Parameshwar also agrees with the submissions made by Shri Mukerji that India is also obligated to honour its obligations as per the decisions taken in various International Conventions. Shri Parameshwar has also taken us through different statutes, enacted by different countries to highlight the relevant provisions with regard to 'opium'. Shri Parameshwar has also taken us to the judgment rendered by Justice Hidayatullah in the case of *Baidyanath Mishra and Another v. The State of Orissa - 1968 (XXXIV) Cuttack Law Times-I*, wherein this Court held that when evidence shows that it could be 'opium', it will not be necessary to conduct any further analysis. However, he submitted that the said position would no longer be valid in view of the subsequent judgment of

*this Court in the case of Harjit Singh v. State of Punjab (2011) 4 SCC 441- , wherein this Court considered the provisions of the 1985 Act and held that chemical analysis of the contraband material is essential to prove a case against the accused under the 1985 Act. Shri Parameshwar submitted that the Gujarat High Court in the case of Hathi @ Mangalsinh Ramdayalji v. State of Gujarat - 1992 SCC OnLine Guj 311 as well as the Himachal Pradesh High Court in the cases of Rajiv Kumar alias Guglu v. State of H.P. - 2007 SCC OnLine HP 120 and State of H.P. v. Des Raj - 2013 SCC OnLine HP 371 have taken a similar view. Shri Parameshwar fairly submitted that, as amicus curiae, **he has placed both the sides before this Court and it is for this Court to take a view in the interest of justice.***

**12.8** The Hon'ble Supreme Court, after hearing the contentions observed in para 39 as under:

*“39. The said Commentary would show that, it was at times difficult to consider as to whether different varieties of the same species or different species of the same genus, i.e., **‘papaver setigerum’ could be considered to be a variety of the species ‘papaver somniferum L’ or a separate species.** It noted that the authors of the Single Convention appeared to have assumed that all plants from which opium can be obtained in significant quantities are only varieties of a single species, i.e., *Papaver somniferum L.* As such, ‘opium poppy’ was defined as the plant of the species ‘*papaver somniferum L.*’. It also noted that though the 1953 Protocol included the plant ‘papaver somniferum L’ within the definition of ‘poppy’, it also included any other species of ‘papaver’ which may be used for the production of ‘opium’. The authors of the said Commentary therefore opined that, if a plant which is considered not to be a variety of the species ‘*papaver somniferum L.*’ but of another species of the genus ‘*papaver*’, be found to yield opium, the plant itself and its product would not be covered by the controlling provisions of the Single Convention, but only by those of the Protocol. The coagulated juice of the plant would, for the purpose of the Single Convention, not be ‘opium’ but could, by the operation of Article 3 of the Single Convention be listed in Schedule I and become a ‘drug’ of Schedule I like the ‘opium’ obtained from the species ‘*papaver somniferum L.*’. **The authors of the said Commentary, therefore, recommended that, for handling such a situation, the definition of***

**'opium poppy' be amended so as to cover the additional species found to yield 'opium'**

**12.9** The Hon'ble Supreme Court in para 40 noted that the international developments need to be taken into consideration and the said para is extracted as under:

*"40. We find that all these international developments need to be taken into consideration while interpreting the 1985 Act inasmuch as the Statement of Objects and Reasons itself mentioned that there had been developments at the international level with regard to control of any drugs and psychotropic substances and the 1985 Act is enacted to give effect to the commitments in the international conventions"*

**12.10** In para 47, it was recorded as under:

*"47. Another publication titled as "Analysis of Plant Poisons" authored by Dr. M.P. Goutam and Smt. Shubhra Goutam establishes that, apart from the six major alkaloids found in 'opium', 'meconic acid' is easily detectible in 'papaver somniferum L'. The study states that 'meconic acid' is invariably found in 'opium' and its presence has long been used to indicate 'opium'. The study shows that some species of 'papaver' which produces no morphine but other morphinanes may also contain this acid. **However, the study shows that, insofar as 'papaver somniferum L' is concerned, 'morphine' and 'meconic acid' are found in it.**"*

**12.11** Analysing the sequence of developments on the subject, the Hon'ble Supreme Court observed as under:

*"55. As already discussed hereinabove, the International Conventions consistently recognized that the 'papaver somniferum L' was used for the production of 'opium'. The 1878 Act as well as the 1930 Act also clearly recognized that 'opium' was derived from 'papaver somniferum L'. The voluminous scientific study has also recognized that the 'papaver somniferum L' contains 'morphine' and 'meconic acid'.*

*56. The 1953 Protocol first noticed that there are other species of 'papaver' which may be used for the production of 'opium'. The said Commentary again noticed this position. It also noticed the difficulty in deciding whether different forms of a plant constitute different varieties of the same species or different species of the same genus, for example, 'papaver setigerum'.*

*It noticed that some considered it to be a variety of the species 'papaver somniferum L' and others considered it a separate species. It also noticed that insignificant quantities of 'morphine' can be obtained from 'papaver setigerum'. The said Commentary noticed that the authors of the Single Convention appeared to have assumed that all plants from which 'opium' can be obtained in significant quantities are only varieties of a single species 'papaver somniferum L'. It noted that they, therefore, defined 'opium poppy' as the plant of the species 'papaver somniferum L'. It also noted that the 1953 Protocol, on the other hand, defined 'poppy' to mean the plant 'papaver somniferum L' and any other species of 'papaver' which may be used for the production of 'opium'. To overcome this difficulty, the said Commentary recommended amendment in the definition of 'opium poppy' so as to cover the additional species found to yield 'opium'”*

*57. It is to be noted that, the Statement of Objects and Reasons of the 1985 Act would reveal that the 1985 Act was enacted since it was found that the earlier three enactments were not found sufficient to meet the challenges thereunder. It is also noticed that, after the enactment of the earlier three Acts, a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols and as such, it was found necessary to bring out a consolidated enactment.*

*58. Viewed from this angle, it is clear that the legislature was aware that the plant of species 'papaver somniferum L' which contained 'morphine' and 'meconic acid' was used for the production of 'opium'. However, it was also noticed that there could be some other species of 'papaver' from which 'opium' or any other 'phenanthrene alkaloid' could be extracted. In this background, Clause (xvii) of Section 2 of the 1985 Act was divided into two parts. In view of subclause (a) of Clause (xvii) thereof, the plant of the species 'papaver somniferum L', which was already known to be used for production of 'opium' was meant to be 'opium poppy' for the purpose of the 1985 Act. However, in view of sub-clause (b) of Clause (xvii) thereof, the legislature provided discretion with the Central Government to declare the plant of any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' could be extracted to be 'opium poppy' for the purpose of the 1985 Act.*

59. The legislature, being aware that scientific studies undisputedly establish that 'papaver somniferum L' contains 'morphine' and 'meconic acid' and as such, it may be used for the production of 'opium', by virtue of sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act, defined it to mean 'opium' for the purpose of the 1985 Act. Whereas, since it was noticed that some other species of 'papaver somniferum L' could also be used for the production of 'opium' which contains 'opium' or any 'phenanthrene alkaloid', it vested a discretion with the Central Government to issue a notification in the Official Gazette to declare such a plant to be 'opium poppy' for the purpose of the 1985 Act.

**60. Since it is recognized by the earlier three enactments as well as the International Conventions and scientific studies that 'papaver somniferum L' contains 'morphine' and 'meconic acid', in our view, after the two tests positively indicate the sample of 'poppy straw' to contain 'morphine' and 'meconic acid', a further requirement to establish that the contraband species belong to the species of only 'papaver somniferum L' would be contrary to the legislative intent.**

62. It is to be noticed that, though the 1953 Protocol for the first time included any other species of 'papaver', which was being used for the production of 'opium', the subsequent Conventions of 1961 and 1988 restricted the definition of 'opium poppy' to be a plant of the species of 'papaver somniferum L'. It is thus clear that, the legislature by incorporating subclause (a) in Clause (xvii) of Section 2 of the 1985 Act, intended to continue 'papaver somniferum L' in the definition of 'opium poppy'. However, by taking abundant precautions and to take care of a situation where any other species of 'papaver' was found to be used for the production of 'opium', the legislature vested the Central Government with a power to include such a variety to mean 'opium poppy' for the purpose of the 1985 Act.

63. In our view, the defect that was noticed by the legislature was that, though 'papaver somniferum L', which contained 'morphine' and 'meconic acid' and was used for the production of 'opium', was already included in the definition of 'opium' in the earlier enactments, there was also a possibility of other variety of 'papaver' being used for 'opium' production,

*but could not be brought under the prohibitory and regulatory measures. This position would also be clarified by the observations made in the said Commentary referred to hereinabove.*

*64. The remedy, in our view, which the Parliament has provided is by way of incorporating sub-clause (b) in Clause (xvii) of Section 2 of the 1985 Act thereby empowering the Central Government to notify any other species of 'papaver' from which 'opium' or any other Government to notify any other species of 'papaver' from which 'opium' or any other 'phenanthrene alkaloid' could be extracted, to be declared as 'opium poppy' for the purpose of the 1985 Act.*

*65. The true reason for the remedy, in our view, is to empower the Central Government to include any other species of 'papaver' which may be used for the production of 'opium' and bring the same under the purview of the 1985 Act. The reason is that, if it is found that any species of 'papaver' is being used for the production of 'opium', the production of such a variety should not be permitted and the same be brought under the prohibitory and regulatory measures as provided under the 1985 Act."*

**12.12** The Hon'ble Supreme Court observed that while interpreting the provisions of statute, the court must prefer an interpretation which advances the purposes of the statute. It was observed thus:

*"80. It could thus be seen that it is more than a settled principle of law that, while interpreting the provisions of the statute, the court has to prefer an interpretation which advances the purpose of the statute.*

**Conclusion:**

**81. As already discussed hereinabove, since many deficiencies were found in the earlier enactments and the provisions therein were not found sufficient to deal with the problems of drug trafficking, it was found necessary to enact a new law since after passing of the earlier three Acts, there were tremendous developments on an international platform and a vast body of international law in the field of narcotics control had evolved through various international treaties and protocols. The Government of India had been a party to these treaties and conventions which entailed**



several obligations which were not covered or were only partly covered under the old Acts. It was further noticed that the scheme of the earlier Acts was not a sufficient deterrent to meet the challenge of well-organized gangs of smugglers. It was further noticed that the penalty provided under the old Acts was inadequate. Taking into consideration that the country had, for the last many years, been increasingly faced with the problem of trafficking of drugs, which had posed serious problems to governments at the State and Centre, it was found necessary to enact a comprehensive law. It is thus clear that the dominant purpose of the new enactment was to curb the menace of trafficking of drugs and psychotropic substances. Therefore, the interpretation which advances the purpose of the Act has to be preferred rather than adopting a pedantic and a mechanical approach.

82. As already discussed hereinabove, it was well recognized under the earlier enactments, International Conventions and scientific studies that ‘papaver somniferum L’ plant was the main source for the production of ‘opium’. The 1878 Act so also the 1930 Act had recognized this position. In the International Conventions also, this was recognized. Though for the first time in the 1953 Protocol, in addition to “papaver somniferum L’, any other species of ‘papaver’, which may be used for the production of ‘opium’ was included in the definition of ‘opium’, the subsequent conventions of 1961 and 1988 again defined ‘opium poppy’ as a plant of ‘papaver somniferum L’. The scientific study conducted at the national as well as the global level establishes that ‘papaver somniferum L’ consists of ‘morphine’ and ‘meconic acid’. If the construction as adopted in the impugned judgment is to be accepted, then, even if it is found that the Chemical Examiner’s report establishes that the contraband article contains ‘morphine’ and ‘meconic acid’, a person cannot be convicted unless it is further established that the contraband material has a genesis in ‘papaver somniferum L.’”

**12.13** The Hon’ble Supreme Court, in facts and circumstances of the case, while overturning the impugned judgment passed by the Hon’ble High Court of Himachal Pradesh, observed, and held as under:

“83. Shri Kapil Sharma, Chemical Examiner was present in the Court.

**He reiterated that the ‘morphine test’ and the ‘meconic test’ are the only two tests available worldwide to establish that the contraband material is derived from ‘papaver somniferum L’.** As already discussed hereinabove, prior to enactment of the 1985 Act, it was only the plant ‘papaver somniferum L’ which was included in the definition of 1878 and 1930 enactments. By virtue of sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act, the same has been retained. However, noticing that there was some material to show that some other species of ‘papaver’ may also be used for the production of ‘opium’, the legislature, by an abundant precaution, also added sub-clause (b) in Clause (xvii) of Section 2 of the 1985 Act so as to enable the Central Government to notify such a species from which ‘opium’ or any ‘phenanthrene alkaloid’ can be extracted. The legislative intent is clear that the 1985 Act, in addition to retaining the species of ‘papaver somniferum L’ in the definition of ‘opium poppy’, enabled the Central Government to include any other species of ‘papaver’ from which ‘opium’ or any ‘phenanthrene alkaloid’ could be extracted. This declaration has to be done by a notification published in the official gazette. The legislative intent is to bring any other species of ‘papaver’ which can be used for manufacture of ‘opium’ within the prohibitory and regulatory provisions of the 1985 Act

**84. If the view as taken by the High Court is to be accepted, a person who has been found contravening the provisions of the 1985 Act and dealing with a contraband material which has been found in the Chemical Examiner’s report to contain ‘morphine’ and ‘meconic acid’, would escape the stringent provisions of the 1985 Act. The said could never have been the intention of the legislature. In our view, if the view as taken by the High Court is to be accepted, the same would frustrate the object of the Act and defeat its very purpose.”**

**Emphasis applied.**

**12.14** Esteem readers are advised to read the judgment of the Hon’ble Supreme Court in entirety and of the Hon’ble High Court of Himachal Pradesh to understand the issue in proper perspective.

**12.15** This judgment was followed subsequently in Criminal Appeal No. 959 of 2012

decided on 23.11.2022 in the case of **State of Himachal Pradesh v. Angrezo Devi and Ors -2022 LiveLaw (SC) 990**

## **ILLICIT CULTIVATION OF OPIUM POPPY AND PUNISHMENT FOR CONTRAVENTION IN RELATION TO OPIUM POPPY**

**13.** Section 18 of the Act deals with punishment for the contravention in relation to opium poppy. Empowered agencies have booked cases of illicit cultivation of opium poppy. To understand the issue, we extract the provision of section 18, which is as under:

*“18. Punishment for contravention in relation to opium poppy and opium.— Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates **the opium poppy** or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—*

*(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;*

*(b) where the contravention 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 lakh rupees 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;*

*(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.”*

### **13.1 Does this section enable us classify the opium poppy into small or commercial quantity?**

**13.1.1.** The section does give any clue and hence we may make reference to the Statutory Order 1055(E) dated 19.10.2001, which prescribes the small and commercial quantity of the listed contraband therein. We find that in Note No. 3 to the Statutory Order *ibid*, there is a mention that “small quantity” and “commercial quantity” with respect of cultivation of opium poppy is **not specified** as the offence in this regard is covered under clause (c) of section 18 of the Act. The same holds equally good for “cannabis plant”, for which no separate note has been inserted.

**13.2** We may now refer to a decision of the Hon'ble High Court of Gujarat in this regard. R/Criminal Misc. Application No. 2267 of 2022 decided on 25.03.2022 by the Hon'ble High Court of Gujarat in the case of **Bharatbhai Gordhanbhai Zezariya TA. Koli v. State of Gujarat [2022:GUJHC:14013]** covers the issue with reference to illicit cultivation of opium poppy.

**13.3** The facts of the case are that an FIR being II-CR No.3011 of 2018 came to be lodged by the Police Sub-Inspector, Local Crime Branch, Surendranagar, Gujarat on 27.02.2018 alleging therein that on 26.02.2018 an information was received that the applicant-Bharatbhai Gordhanbhai Zezariya TA. Koli was cultivating opium poppy. That, the said PSI along with his team members and panchas visited the said place and found that in certain parts of the agricultural field **held by him**, he was cultivating opium poppy. Accordingly, panchnama was prepared. That, the total weight of the entire cultivation of opium poppy was around 2367.5 kilograms and same were taken into 17 different samples and after sealing the said samples, same were sent to Forensic Science Laboratory for its report. The only issue in this case was as to whether the applicant is entitled to bail under section 439 of the Act.

**13.4** The Hon'ble High Court, after hearing the rival submissions, and after going through the sub-sections (*viii*) and (*xvii*) of section 2, and Note 3 to Statutory Order 1055(E) dated 19.10.2001 as amended, read with section 18 of the Act, observed that there is no definition of commercial quantity as regards opium poppy and therefore, at the best case that can be proved against the applicant was under section 18(c) of the Act for which maximum punishment is up to 10 years and hence the rigours of section 37 of the Act were not attracted and accordingly enlarged the applicant on bail on executing a bond of Rs.25,000 with one local surety of the like amount to the satisfaction of the trial Court and subject to the observance of other conditions laid down by the Hon'ble High Court.

## **CANNABIS**

**14.** Venturing into the other segment of the article, what is required to be remembered by the esteemed readers instantly is that the definition of '*cannabis*' refers to "genus *cannabis*". Hence, all the species get automatically covered for the purpose of the Act.

**15.** Unlike opium poppy, cannabis plants have male and female reproductive organs in separate plants i.e. we have male and female plants. The THC content in male and female plants vary and in the male plants it contains less THC *vis a vis* the female plants. However, we can still use the male plants for cannabinoids which are found in the leaves, stems, and flowers. Notwithstanding this distinction, esteemed readers may note that the Act **does not distinguish**

**between a male and female plant.** What is required to be known is the THC content in the recovered and seized article is of prime importance. It is required to be stated at this stage that the leaves and seeds are outside the ambit of Act, when not accompanied by flowering tops and fruiting tops.

**16.** Keeping this in background, we now delve deep into the intricacies involved in obtaining a conviction in the cases booked for illicit cultivation of cannabis plant and opium poppy.

**17.** Before we commence the intricacies, what is being emphasized is the “cultivation” of cannabis plant and opium poppy and not wild growth.

### **CANNABIS PLANT**

**18.** Section 8(b) of the Act prohibits the cultivation of the cannabis plant and opium poppy and the punishment for the same is prescribed under section 20(a)(i) of the Act done in contravention of any provision of the Act or any Rule or order made or condition of any licence granted there under.

**18.1** The word cultivation has not been defined under the Act. To understand the term, we use the dictionary meaning to begin with.

<sup>3</sup>Chambers English dictionary online explains the term cultivate as under:

*“cultivate verb (cultivated, cultivating)*

*1 to prepare and use (land or soil) for growing crops.*

*2 to grow (a crop, plant, etc).*

*3 to develop or improve • cultivate a taste for literature.*

*4 to try to develop a friendship, a relationship, etc with (someone), especially for personal advantage.*

*ETYMOLOGY: 17c: from Latin cultivare, cultivatum, ultimately from colere to till or take care of.”*

**18.2** The word “cultivate” has been defined in Merriam-webster online dictionary<sup>4</sup> as under

*“1 : to prepare or prepare and use for the raising of crops*

*Some fields are cultivated while others lie fallow.*

*also : to loosen or break up the soil about (growing plants)*

2

a. : to foster the growth of  
cultivate vegetables  
cultivate coffee”

**18.3** The Hon’ble High Court of Orissa was also seized of the issue in the bail applications. We may profitably refer to order dated 18.04.2016 passed by the Hon’ble High Court of Orissa in BLAPL No. 142 of 2016 in the case of **Jaya Majhi v. State of Orissa -2016 SCC OnLine Ori 193** wherein the term “cultivation” has been explained as under:

*“The expression "cultivate" having not been defined under the N.D.P.S. Act, if the literal dictionary meaning of such expression is adopted, it means to prepare the land and use of soil by way of loosening or breaking up for growing up of the crops by ploughing, watering, fertilizing, fostering growth of plants and taking its care so as to get better crops. It includes tilling or raising crops by fanning or gardening etc. Cultivation means conscious cultivation and not unwanted self-grown cannabis plants.”*

**18.4** Based on the dictionary meaning and order of the Hon’ble High Court of Orissa, the term 'cultivate any Cannabis plant' used under section 20(a)(i) of the Act can be interpreted to mean conscious cultivation, by tilling, watering, manuring, fostering their growth, etc. This term cannot be extended to those cannabis plants, which grow by natural process being watered by rains and lighted by sun. Wild growth is also covered within the natural process.

**18.5** The above detailed analysis holds good for illicit cultivation of opium poppy plant and finds mention in section 18 (c) of the Act.

### **ILLICIT CULTIVATION OF CANNABIS PLANT AND OPIUM POPPY – INTRICACIES TO BE TAKEN CARE OF WHILE BOOKING CASES BY AN EMPOWERED OFFICER**

**19.** Having set out the broad contours of the topic, we now delve into the intricacies of the illicit cultivation of cannabis plant and opium poppy.

**19.1** So, the first step to be taken by an empowered Investigating Officer is to find out as to whether the cultivation of cannabis plant (or for that matter opium poppy) is a conscious decision of the cultivator or not. It should be categorically ruled out that there is sporadic or wild growth in the land visited by the empowered investigating officers. To understand this issue in proper perspective, we conveniently refer to the decision of the Hon’ble High Court in

the case of **Jaya Majhi v. State of Orrisa - 2016 SCC OnLine Ori 193**. In this case, the Hon'ble High Court, while holding the inapplicability of the **Alakh Ram v. State of U.P. - 2003 SCC OnLine All 1708 : 2004 All LJ 1127 : (2003) 46 ACC 603 : 2004 Cri LJ (NOC 212) 64** to the facts of the case, noted as under:

*“The facts of the case cited by the learned counsel for the petitioners is no way applicable to the present case inasmuch as in the case on hand, the materials available on record indicate **72,317 numbers of cannabis plants were cultivated in a systematic and planned manner and in a linear fashion with a standard gap of about 2 to 3 ft. between each plant and those were properly watered and treated with cow dung, chemicals and fertilizers for better growth and fruiting** and those were found to be 3 ft. to 6 ft. in height and **the petitioners were found to be cultivating possession of those plants inasmuch as they were found cleaning grasses from the field and putting earth on the roots of the cannabis plants. Thus, there are prima facie materials on record to indicate that the cannabis plants detected were the result of well-planned cultivation and those were not sprouted there by natural process and the place selected for such cultivation works is a well-thought-out one to avoid detection.**”*

**19.2** In the case relied upon i.e. Alakh Ram, the Division Bench of the Hon'ble Supreme Court, copiously extracted the evidence of PW-1, which is as under, to hold that the appellant Alakh Ram was not guilty of the offence he was charged and accordingly overturned the judgment, reported as (2004) 1 SCC 766, of the Hon'ble Allahabad High Court Alakh Ram v. State of U.P.

*“5. In the instant case, one witness was examined to prove the nature of the offence committed by the accused. It was PW 1 who accompanied the police officers to the appellant's field. The evidence given by PW 1 is to the following effect:*

*“Alakh Ram is a farmer. I do not know the number of those fields. I do not know the number of that field in which ganja was sown. I do not know as to who had cultivated the plants of ganja. That field is irrigated and Madho also works in that field. Neither have I seen anyone planting the ganja plants nor do I know when was it planted.”*

*6. The above evidence is to be appreciated in the background of other*

evidence on record. Appellant Alakh Ram, his father and brothers owned 70 bighas of land. **The prosecution has not produced any document to show that the property from which the ganja plants were uprooted belonged to appellant Alakh Ram exclusively.** The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence, either oral or documentary, to show that the appellant has a right over the property from which the ganja plants were recovered. There is no evidence that the appellant cultivated these ganja plants. **Having regard to the extent of the property and the number of plants recovered from that property, it cannot be said that these plants had been the result of cultivation. They may have sprouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants.** There is no evidence to prove that there was cultivation of ganja plants by the appellant and the Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant.”

**19.3** In the above appeal preferred, the appellant was held not guilty of by holding as under:

**“7. In the result, we find appellant Alakh Ram not guilty of the offence under Section 20 of the NDPS Act. His conviction and sentence is set aside and his bail bonds would stand cancelled.”**

## **ESSENTIALS TO BE FOLLOWED WHILE BOOKING CASES INVOLVING ILLICIT CULTIVATION OF CANNABIS PLANT OR OPIUM POPPY**

**20.** While receiving information with reference to illicit cultivation of cannabis plant or opium poppy, it is essential that the following detailed plan are carefully followed:

- A.** Survey the area.
- B.** Find out the real owner of the land. Further find out whether the land has been leased and cultivated by lessee or cultivated by the owner of the land himself. Do find out whether the owner of the land stays close to the area under illicit cultivation and is monitoring the process by deploying labourers or is staying far away (as this would have an impact on the case). Do find about whether there is a case of absentee landlordism.



**C.** Find out the area using the help of local revenue officers by identifying the land in question using the revenue records and other connected records. The person accused of should be in possession of the land as per the land records. The Revenue officers are to be involved during this process unearthing the real owner of the land

**D.** Categorically get the land identified with reference to the following parameters in the first instance:

- ownership of the land in question
- exclusive possession of the land in question
- demarcation of land i.e. landmarks, bound by east/west/north/south details
- owners of adjoining land
- area under illicit cultivation
- labourers deployed – whether permanent or temporary and their details, including their permanent and temporary addresses are to be captured and their version is required to be recorded
- pattern of cropping
- who did the sowing, weeding, watering and giving care and attention for protection of the cannabis plants/opium poppy is to be ascertained
- whether herbicides, pesticides, chemicals, fertilizers, or manures have been used
- whether there has been linear pattern of cropping (space between two plants, etc.) or sporadic growth
- weight of the plant and the gap between two cannabis plant/opium poppy
- whether the growth of the plant has been shielded from the normal view
- whether any effort made to avoid detection by any enforcement officers
- whether flowering or fruiting tops of the cannabis plant is seen

**E.** Videography of the entire land prior to entering the land.

**F.** Videography the entire area under illicit cultivation in the presence of officers of Revenue department, independent witnesses, other persons involved in any of the activity on the said land (to strengthen the case and to find out whether it is cultivated

or sporadic growth) and land owners of adjoining lands

- G.** Finding out the stage of the growth of the cannabis plant i.e. whether it has flowering or fruiting tops of the cannabis plant or not
- H.** Uprooting of the cannabis plant (in wet condition)
- I.** Weighing of the same using calibrated weighing scale
- J.** Recording of panchnama and seizure memo having signatures of all the Revenue officers, independent witnesses, seizing officer, etc.

**NB: The aforesaid points apply equally to areas under illicit opium poppy cultivation**

### **ILLICIT CULTIVATION CANNABIS PLANT**

**21.** The uprooting of the plants is to be done carefully and all the parameters noted herein are to be taken care of. While weighing the uprooted cannabis plant, it must be ensured that the mud stuck to the root of the plants are removed and it is weighed without the mud.

### **CLASSIFICATION OF THE OFFENCE**

**22.** Cultivation of the cannabis plant is an offence and the offence gets covered under section 20(a)(i) of the Act. This section does not distinguish between small quantity and commercial quantity as is evident from the wording of the section:

*“20. Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—*  
*(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,—*

*(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*

### **ILLICIT CULTIVATION OF CANNABIS PLANT IN KITCHEN GARDEN OR USE OF HYDROPONIC TECHNOLOGY**

**23.** The act of growing a single cannabis plant in the kitchen garden<sup>5</sup> or growing in large quantities in an agricultural field envisages the same punishment, as has been highlighted above.

**24.** The use of kitchen garden<sup>5</sup> or using hydroponic cultivation or high-quality ganja imported


using hydroponic cultivation, is specially mentioned, for it is not necessary to grow cannabis plant in the fields. It is necessary for the empowered officers to note at this stage that there has been a spurt in the use of hydroponic cultivation of cannabis and various cases have been booked by various empowered agencies over a period and the same is as per Table-2 below:

**Table-2**

Sl. No.	Place of occurrence	Reported in or Source	Remarks
1	Ahmedabad	<a href="https://indianexpress.com/article/cities/ahmedabad/first-such-case-in-gujarat-marijuana-grown-using-hydroponics-in-rented-flats-3-held-8926536/">https://indianexpress.com/article/cities/ahmedabad/first-such-case-in-gujarat-marijuana-grown-using-hydroponics-in-rented-flats-3-held-8926536/</a> September 2023	Three persons have been arrested in Ahmedabad in a case of alleged cultivation of marijuana using the hydroponics technique, their two rented flats in an upscale area of the city.
2	Kalyani Village of Bhokardan Tehsil in Maharashtra	<a href="https://www.deccanherald.com/india/maharashtra/cannabis-plants-worth-rs-223-cr-seized-from-farm-in-jalna-one-held-2698154">https://www.deccanherald.com/india/maharashtra/cannabis-plants-worth-rs-223-cr-seized-from-farm-in-jalna-one-held-2698154</a> September 2023	725 cannabis plants were cultivated the contraband illegally. Each plant weighed between 4 and 5 kilogram and stood at an imposing height of 8 to 10 feet.
3	Bidadi, Bengaluru.	<a href="https://sg.news.yahoo.com/bengaluru-based-iranian-mba-graduate-122749699.html?guccounter=1&amp;guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&amp;guce_referrer_sig=AQAAAKQuP5io9Wx7yjCAQwByLMLLeBbDwC4GTbwi0EoW6ZakU7fY0Zc4Tkg54hfpMi0Ua5A-cfCSZxRMUGuLdamRNUtSZjzhKrKtw7p6E92Gb0cvQZ1AX">https://sg.news.yahoo.com/bengaluru-based-iranian-mba-graduate-122749699.html?guccounter=1&amp;guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&amp;guce_referrer_sig=AQAAAKQuP5io9Wx7yjCAQwByLMLLeBbDwC4GTbwi0EoW6ZakU7fY0Zc4Tkg54hfpMi0Ua5A-cfCSZxRMUGuLdamRNUtSZjzhKrKtw7p6E92Gb0cvQZ1AX</a>	Bengaluru-Based Iranian MBA Graduate Arrested from Private Villa in Bidadi For Growing Hydroponic Ganja in Fish Tank

		<a href="https://www.india.com/karnataka/man-grows-ganja-at-home-how-to-grow-cannabis-at-home-shivamogga-man-grows-ganja-at-home-top-news-6131309/">yDzhqWF6UeY4X_Vtm7SAD5wsOj9R8yxpPp_1HjC-2-ucgjKYz276fAUiQ8fa</a>	
4	Shivamogga, Karnataka	<a href="https://www.india.com/karnataka/man-grows-ganja-at-home-how-to-grow-cannabis-at-home-shivamogga-man-grows-ganja-at-home-top-news-6131309/">https://www.india.com/karnataka/man-grows-ganja-at-home-how-to-grow-cannabis-at-home-shivamogga-man-grows-ganja-at-home-top-news-6131309/</a> June 2023	3 including Medical Student Uses Hi-Tech Farming to Grow Ganja at Home in Karnataka, arrested.
5	Chennai	<a href="https://timesofindia.indiatimes.com/city/chennai/hydroponic-weed-worth-rs-24-crore-seized-by-dri-in-chennai-two-arrested/articleshow/97630875.cms">https://timesofindia.indiatimes.com/city/chennai/hydroponic-weed-worth-rs-24-crore-seized-by-dri-in-chennai-two-arrested/articleshow/97630875.cms</a> February 2023	
6	Mumbai	<a href="https://www.business-standard.com/article/current-affairs/dri-seizes-86-5-kg-high-quality-hydroponic-weed-worth-rs-39-5-crore-2-held-122101801518_1.html">https://www.business-standard.com/article/current-affairs/dri-seizes-86-5-kg-high-quality-hydroponic-weed-worth-rs-39-5-crore-2-held-122101801518_1.html</a> October 2022	DRI seizes 86.5 kg high-quality hydroponic weed worth Rs 39.5 crore; 2 held
7	Mundra Port (Was to be sent to Punjab)	<a href="https://www.hindustantimes.com/india-news/ncbhunts-for-smugglers-after-weed-worth-23-crore-seized-at-mundra-port-101644516035676.html">https://www.hindustantimes.com/india-news/ncbhunts-for-smugglers-after-weed-worth-23-crore-seized-at-mundra-port-101644516035676.html</a> January 2022	59 kilograms of hydroponic weed worth over ₹23 crore seized at Mundra Port

8	Coochbehar, Malda, Murshidabad Nadia and Bankura	<a href="https://www.thehindu.com/news/national/other-states/west-bengal-using-drones-to-spot-areas-where-cannabis-and-poppy-seeds-are-grown-illegally/article37953111.ece#:~:text=The%20West%20Bengal%20CID%20is,police%20official%20said%20on%20Tuesday">https://www.thehindu.com/news/national/other-states/west-bengal-using-drones-to-spot-areas-where-cannabis-and-poppy-seeds-are-grown-illegally/article37953111.ece#:~:text=The%20West%20Bengal%20CID%20is,police%20official%20said%20on%20Tuesday</a>  December 2021	West Bengal using drones to spot areas where cannabis and poppy seeds are grown illegally.
9	Malkangiri, Odisha	<a href="https://www.hindustantimes.com/india-news/high-returns-farmers-in-maoist-belt-risk-jail-to-grow-marijuana-101634063538847.html">https://www.hindustantimes.com/india-news/high-returns-farmers-in-maoist-belt-risk-jail-to-grow-marijuana-101634063538847.html</a>  October 2021	High returns: Farmers in Maoist belt risk jail to grow marijuana
10	Dombivali Mumbai	<a href="https://www.indiatoday.in/india/story/ncb-busts-hydroponic-cannabis-cultivation-in-mumbai-2-arrested-1791930-2021-04-17">https://www.indiatoday.in/india/story/ncb-busts-hydroponic-cannabis-cultivation-in-mumbai-2-arrested-1791930-2021-04-17</a>  April 2021	The two accused -Javed Jahangir Sheikh and Arshad Khatri-involved were cultivating cannabis through Hydroponic techniques in the flat. Arshad is an expert in Hydroponic cultivation and Javed used to manage distribution of Harvest. From the site, the empowered officers recovered cultivation setup, PH regulators, plant nutrients, clay pebbles, water pumps, air circulation systems, CO2 gas cylinders, photosynthesis lighting systems etc. The accused were procuring

			seeds from Amsterdam and Netherlands through Dark web. The yield was sold to medium size peddlers of Mumbai and Pune at the rate of Rs 2,500 per gram.
11	Mapusa, Goa	<a href="http://timesofindia.indiatimes.com/articleshow/78863733.cms?utm_source=contentofinterest&amp;utm_medium=text&amp;utm_campaign=cppst">http://timesofindia.indiatimes.com/articleshow/78863733.cms?utm_source=contentofinterest&amp;utm_medium=text&amp;utm_campaign=cppst</a>  October 2020	<p>Now, Goa grapples with home-grown cannabis</p> <p>Past cases, including involvement of foreigners, booked as under:</p> <div data-bbox="970 987 1358 1451" style="border: 1px solid black; padding: 5px;"> <p><b>CULTIVATING TROUBLE</b></p> <p><b>Oct 19</b>   Three were arrested for illegally cultivating cannabis worth over ₹5 lakh</p> <p><b>Oct 14</b>   Police raided a cannabis plantation at Sawantwada in Mandrem and recovered charas and ganja from a Russian Oleg Nazarov</p> <p><b>Oct 14</b>   During another similar raid at Madhrawada in Arambol, cannabis valued around ₹1.7 lakh was recovered</p> <p><b>Oct 21, 2018</b>   Christopher Micheal Pattinson, 20, was arrested for growing ₹3.5 lakh worth of the prohibited herb at his residence in Alto Porvorim</p> <p><b>Aug 18, 2018</b>   Firdous alias Samir Shaikh, 23, was arrested for cultivating cannabis in a vacant plot in Mangor</p> <p><b>July 22, 2018</b>   Russians – Maxim Moskichev and Artem Seregin – were arrested for growing marijuana in a greenhouse set up inside a bungalow at Siolim</p> <p><b>Dec 7, 2017</b>   Calangute police arrested Susanta Sahoo, 26, and Pravesh Salam, 20, for growing cannabis in a property at Arradi, Candolim</p>  </div>
<p><b>All sources acknowledged.</b></p> <p>© with the respective owners</p>			

25. Offence for cultivation, in any form, of cannabis plant *vis a vis* selling, purchasing, transportation and dealing ganja, a narcotic drug and to which the concept of small and commercial quantity is applicable, are different and the pleadings in both the cases would be totally different, as is explained in paras *infra*.

25.1 To illustrate, a reference may be made to R/Criminal Misc. Application (for regular bail – after chargesheet) No. 9655 of 2023 under section 439 of the Cr. P.C., 1973 for enlarging bail applicant **Koyjibhai Mangadiyabhai**, aged 70 years, in connection with FIR being C.R. No. 11184002221143/2022 registered with Chhotaudepur Police Station,

Chhotaudepur for the offences punishable under sections **8(c), 20(b)(ii)(C) of the Act**. The bail application was disposed vide order dated 11.10.2023.

**25.1.1** Esteemed readers may see the sections invoked in this case. The role attributed to the Applicant was to the effect that **he had cultivated 28 Cannabis Plants weighing 33 Kilograms in his field**. The relevant Revenue Record indicated that there were other co-occupants on the land along with the Applicant, who were not arraigned as an accused in the impugned offence.

**25.2** The Hon'ble High Court, after hearing the contentions of both the Ld. Counsels and while enlarging the applicant on bail, held as under:

*“7. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. This Court has also gone through the FIR and police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at initial stage. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial Court, .....”*

**25.3** A perusal of the sections invoked reveal that the prosecution had uprooted the plant and thereupon it was weighed. The invocation of section **20(b)(ii)(C) of the Act** requires discussion. Provisions of section 20 of the Act is reproduced below as under:

*“20. Punishment for contravention in relation to cannabis plant and cannabis.—  
Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—*

*(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,—*

*(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 one year, 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 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.”*

**25.4** The natural question that would arise is as to whether the standing crop of cannabis plant on an agricultural field attracts the provisions of **20(b)(ii)(C) of the Act or not.**

**25.4.1** Section 20 of the Act comprises two clauses, section 20 (a) deals with persons who are accused of cultivating cannabis plant.

**25.4.2** Section 20(b) of the Act deals with situations covering persons who “*produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,*”.

**25.4.3** As already stated section 2(iii) of the Act deals with cannabis (hemp) and which has three sub-clauses and “ganja” is dealt in sub-clause (b) section 2(iii) of the Act.

**25.4.4.** On the other hand, we find that “cannabis plant” has been defined under section 2(iv) of the Act.

**25.5** To invoke the provisions of section 20(b), the accused should have dealt with “cannabis”.

**25.6** In the given case, we find that there were standing crops on an agricultural field and the said cannabis plant had flowering buds and fruiting tops. It is only when the accused uproots the illicitly cultivated plants and then transports the same and the plants having fruiting tops and flowering buds, the same gets shifted to category of “ganja” under section 2(iii)(b). The prosecution agency uprooting the plant and then making it fall under the section 2(iii)(b) of the



Act appears to be erroneous.

**25.6.1** This view is buttressed by wording of the section 20(b) which specifically deals with “*produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,*”. At this stage, it may be noted that it is for the cultivator to uproot and thereupon engage in any of the activity of producing, manufacturing, possessing, selling, purchasing, transporting, importing inter-State, exporting inter-State or using cannabis. It is emphasised at the cost of repetition that to shift the offence from clause (a) of section 20 to clause (b) of section 20, the ingredients of section 20(b) should have been done by the cultivator or any other person, who is accused of the offence. The standing crop of cannabis plant on an agricultural field, irrespective of its having attained the full growth and having fruiting tops and flowering top does not make it “ganja” until and unless it is uprooted by the cultivator or any other person accused of the offence under section 20(b). It is only thereupon the offence falls under section 20(b), the concept of small, intermediate, and commercial quantity would come into picture.

**25.6.2** To illustrate the above contention, we may conveniently refer to the judgment dated 08.06.2020 of the Kalaburagi Bench of the Hon’ble High Court of Karnataka in the case of **Rajkumar v. State of Karnataka** Represented by Additional State Public Prosecutor, Circuit Bench, Gulbarga (Through Zalaki Police Station). The facts of the case as recorded in para 2 of the judgment are reproduced as under:

*“PW.1-Complainant who was Deputy Superintendent of Police, Indi on receipt of credible information that on the land belonging to Rajkumar Bhairshetty of Bhataganaki (the accused) besides lemon tree some cannabis plants were cultivated and accordingly he had requested the Tahasildar (PW-2) to come as pancha while conducting the raid and after informing to his superior officer, conducted raid along with other officials on 18.02.2021 by going over government Jeep bearing Reg.No.KA-28-414 and found that a person was watering the plaint(sic) on the land and upon seeing the jeep the said person tried to escape from the spot but he was apprehended and the said apprehended person is the accused in the present case and taken out his name with full address and the said apprehend person (the accused) had stated that he is cultivating his father's land and cultivated cannabis plants amidst of lemon trees and accordingly conducted search of the land and found that there were 145 ganja plants were cultivated and plucked them from the root itself and upon weighing the same they weighed totally 28 kilograms and*

**among them five plants were taken as sample and the weight of the sample plants** is 04 kilograms and accordingly packed and sealed separately both samples and the other plants and conducted panchanama as per Ex.P.1 in presence of panchas and other officials and thereafter came to the police station and lodged first information statement (FIS) and then FIR is registered by PW.5. Therefore, on the basis of FIS lodged as per Ex.P.2 the PW.5 had started investigation and conducted investigation and since sufficient material found against the accused, therefore, filed charge sheet against the accused for the offence punishable under Section 20(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity hereinafter referred to as NDPS Act).

The accused was released on bail. After filing of charge sheet the Special Court started trial on case and **framed charges against accused for the offence punishable under Section 20(a) of the NDPS Act** and the accused pleaded not guilty and claims to be tried. After recording his plea the Special Court had started examination of witnesses and the prosecution has totally examined six witnesses as PWs.1 to 6 and got marked documents Ex.P.1 to Ex.P.8 and got marked material objects as M.Os.1 and 2.

After completion of evidence of the prosecution, the accused examined under Section 313 of Criminal Procedure Code and the accused had simply denied the incriminating circumstances stated before him. The accused did not place any documents and also has not lead any defence evidence and the accused has totally denied the prosecution case.

***The Special Court after conducting trial and hearing the arguments on both sides found that the accused had committed the offence punishable under Sections 20(a) of the NDPS Act and accordingly convicted for the offence under Section 20(a) of the NDPS Act and passed order on sentence to undergo rigorous imprisonment for one year and directed to pay fine of Rs.10,000/- with default clause further shall undergo simple imprisonment for three months, if fails to pay the fine amount.***

**25.6.3** In para 19 of the judgment, the evidence of the Scientific Officer, Forensic Science Laboratory Bengaluru was reproduced as under:

***“19. PW.6 is the Scientific Officer, Forensic Science Laboratory, Bengaluru***

***had stated that he had received sealed cloth bag on 26.05.2011 and found the sealed bag was intact and later on tested the sample plants and found that the sample plants are found to be cannabis plant having element of ganja and accordingly prepared a report and submitted as per Ex.P.6.***

**25.6.4** The issue gets amply clear that the standing crop or the standing crop when uprooted, continues to be cannabis plant (and should not be called ganja plant) and offence under section 20(a) of the Act gets attracted in such cases. The judgment of conviction, recorded by the Ld. Trial Court, was affirmed by the Hon'ble High Court and while rejecting the appeal preferred by the convict-accused under section 374(2) of the Cr. P.C., 1973 (provision of filing under appeal under section 36B of the Act is available), it was held as under:

***“40. In the present case the Special Court has convicted the appellant for the offence under Section 20(a)(i) of the NDPS Act. The sentence imposed is rigorous imprisonment for a period of one year with fine of Rs.10,000/- and with default clause in case of failure of payment of fine amount to undergo simple imprisonment for three months.***

*41. Upon considering the nature of sentence imposed and the period of imprisonment as it is only one year with fine of Rs.10,000/- which is not heavy fine deposit amount, this court is of the opinion that the nature of sentence imposed is found to be correct and there is no need to cause any interference in the order on sentence. Therefore the order on sentence rendered by the Special Court is found to be correct. Therefore upon considering the entire case as discussed above and for the reasons stated above, the appeal is found to be devoid of merits and is liable to be dismissed, accordingly dismissed.”*

**Emphasis applied.**

**26.** Another issue, which requires attention is as to whether the fruiting tops and flowering tops are to be segregated in cases where the cannabis plant is accompanied by the stems, leaves, and seeds of the cannabis plant. This issue takes us to the definition of the term “ganja”, which is reproduced herein for the sake of ease of understanding:

*“(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;*

**27.** A plain reading of the above definition reveals that

- **Ganja is the flowering or fruiting tops of the cannabis plant**
- **The seeds and leaves of the cannabis plant are outside the purview of the Act**
- **The seeds and leaves of the cannabis plant are outside the purview of the Act only when the same is not accompanied by the flowering and or fruiting tops**

**28.** A reference to the case of **Ibrahim Khwaja Miya Sayyed @ Raju** decided by the Hon'ble High Court of Bombay would be extremely relevant to the point of discussion.

**29.** The case of the prosecution is that Ibrahim Khwaja Miya Sayyed @ Raju was found moving around in a suspicious manner with two travel bags. When the police team went towards him, he attempted to run away from the place of the incident. He was caught and his travel bags were seized and opened in presence of panchas. He was allegedly carrying 10 kilograms of 'Ganja' in one bag and 11 Kilograms of 'Ganja' in the second bag. The sample of 'Ganja' was drawn in presence of the panchas and was sent to the FSL, which confirmed it to be 'Ganja' well within definition of section 2 (iii) (b) of the Act. Codal formalities were completed subsequently. The accused-applicant preferred a bail application bearing Bail Application No.1296 of 2022 before the Hon'ble High Court of Bombay and the same was decided vide order dated 17.03.2023

**29.1** The Ld. Counsel for the bail applicant submitted that

- apart from the **flowering buds**, the Investigating Officer has also attached stalks, **leaves and seeds**;
- leaves, seeds and stalks cannot be considered as 'Ganja' unless accompanied by the tops for which reliance was placed on the following decisions:

- Rahul Bhimrao Pawar v. State of Maharashtra in Bail Application No.2977 of 2021
- Kunal Kadu v. Union of India in ABA No.2173 of 2022
- Hari Mahadu Walse v. State of Maharashtra in Bail Application No.2299 of 2019 &
- Amit Shankar Devmare v. State of Maharashtra in Bail Application No.4203 of 2021

**29.2** The Ld. Counsel for the Applicant further submitted that **the actual flowering or**

**fruiting tops were not separately weighed, and this raises a doubt whether the ‘ganja’ seized from the Applicant was of commercial quantity.** It was further submitted that the police had not drawn sample from each of the travel bags but had mixed the substance from both the bags and thereafter drawn the sample, which was sent to FSL for examination. The decision of the Hon’ble High Court of Delhi in *Ram Bharose v. State (Govt. of NCT of Delhi)* in Bail Application No.1623 of 2022 to substantiate her contention that the samples, which were sent to FSL were not representative sample and that mixing of the contents contained in both the travel bags before drawing from the bags lost the sanctity of the entire process.

**29.3** The Ld. Counsel for the respondent, while opposing the bail application placed reliance upon the decision of the Hon’ble Supreme Court in **Shivkumar Mishra v. State of Goa (2009) 3 SCC 797** as well as the decision in **Santosh Apposo Naik v. State of Maharashtra** in Bail Application No.951 of 2022 to counter the submissions that leaves, seeds and stalks ought to have been excluded while weighing the seized ‘Ganja’.

**29.4** The Hon’ble High Court, after hearing the rival contentions, while enlarging the applicant on bail, held as under:

*“9. The forensic report reveals that **flowering/fruiting tops, seeds, leaves and stalks were received in a sealed packet marked as Exhibit- A-1.** The report reveals that the contraband, which was recovered from the Applicant is ‘Ganja’ within the meaning of Section 2(iii) (b) of the NDPS Act. **The term ‘Ganja’ as defined in Section 2(iii) (b) means the flowering or fruiting tops of the Cannabis Plant (excluding the seeds and leaves when not accompanied by the tops),** by whatsoever name they may be known or designated. A plain reading of this section **would reveal seeds and leaves would not be covered under the definition of ‘Ganja’ unless they are accompanied by the flowering or fruiting tops of the Cannabis plant.** This has been the consistent interpretation of this Court in *Rahul Bhimrao Pawar, Kunal Dattu Kadu, Hari Mahadu Walse, Amit Shankar Devmare, (supra)*. **In the instant case, the material on record does not prima facie indicate that the leaves, seeds and stalks were accompanied by the flowering or fruiting tops of the Cannabis plant.** A perusal of the decision in *Shivkumar (supra)* and *Santosh Appaso Naik (supra)* reveals that seized ‘Ganja’ in the aforesaid cases was accompanied by flowering or fruiting tops. In this fact situation, the aforesaid decisions are distinguishable.*

10. It is the case of the prosecution that the Applicant was in possession of commercial quantity of 'Ganja' i.e. more than 20 kgs of 'Ganja'. The records prima facie reveal that the total weight of 'Ganja' allegedly seized from the Applicant was 21 kgs., which is 1kg in excess of the quantity specified by the Government in the notification. **As noted above, the substance, which was seized contained leaves, seeds, stalks and flowering fruiting tops. The total weight of the substance, which was seized was 21 kgs. and this includes the weight of leaves, seeds and stalks, which prima facie were not accompanied by the flowering or fruiting part.** The fact that the entire substance was weighed together without quantifying the weight of the flowering or fruiting tops, casts a doubt whether 'Ganja' seized from the Applicant was of commercial quantity as to attract provision under Section 20(c) of the NDPS Act."

*Emphasis applied.*

29.5 An analysis of the extracted paragraph 10 reveals as under:

*"As noted above, the substance, which was seized contained leaves, seeds, stalks and flowering fruiting tops."*

29.6 However, in the very next line, it has been recorded as under:

**The total weight of the substance, which was seized was 21 kgs. and this includes the weight of leaves, seeds and stalks, which prima facie were not accompanied by the flowering or fruiting part.**

29.7 **The issue is when the leaves, seeds, stems are accompanied by flowering tops or fruiting tops, the entire quantity has to be taken into account and treated as "ganja" or not.**

29.7.1 Esteemed readers may refer to the definition of "ganja" extracted herein. There is no question of segregation of flowering tops or fruiting tops and weighing them separately.

29.7.1.1. At this juncture, it would be extremely fruitful to the Hon'ble Supreme Court judgment in the case of **Shiv Kumar Mishra v. State of Goa -2009(3) SCC 797 : AIR 2009 SC 2011**. This judgment deals with two issues. One what constitutes ganja and whether moisture content in ganja is to be excluded. The Hon'ble Supreme Court while referring to the definition of 'ganja' contained in section 2(iii)(b) of the Act **observed that when the seized Ganja consisted of greenish brown colour leafy and flowery parts of the plant, then it will fall**

within the definition of Ganja and would include the seeds and leaves of the cannabis plant since the seized ganja was accompanied by the flowery parts of the plant

#### **WHETHER MOISTURE CONTENT IN GANJA IS TO BE EXCLUDED?**

**29.7.1.2** Generally, it is seen that the contention of Ld. Counsels for the petitioners/applicants is that moisture should be excluded from the gross weight of the seized ganja. The Hon'ble Supreme Court in the case of **Shiv Kumar Mishra v. State of Goa through Home Secretary -2009(3) SCC 797 : AIR 2009 SC held that** the moisture content is not to be excluded while ascertaining the total weight of seized material. Para No. 11 of the judgment covering the issue in question is extracted herein below for ease of understanding:

**“11. The submissions made by learned counsel for the appellant are not convincing since from the evidence on record it has been established that the seized Ganja consisted of a greenish brown colour leafy and flowery parts of the plant (in moist condition) which, in terms of the definition of the expression “Ganja”, would include the seeds and leaves of the cannabis plant since the seized Ganja was accompanied by the flowery parts of the plant. As far as exclusion of the moisture content of the seized Ganja is concerned, there is nothing in the Narcotic Drugs And Psychotropic Substances Act to suggest that when the weight of a quantity of Ganja is to be ascertained, the moisture content has to be separately ascertained and excluded. On the other hand, we are of the view that the weight of the contraband would be the weight taken at the time of seizure.”**

#### **WEIGHT OF THE SEIZED CONTRABAND WOULD BE WEIGHT TAKEN AT THE TIME OF SEIZURE**

**29.7.1.3** In Shiv Kumar Mishra (*supra*), the Hon'ble Supreme Court further held that **weight of the contraband would be the weight taken at the time of seizure. Hence, esteemed readers may note this vital point for countering arguments on such issues/points raised by the opposite party-respondent.**

**29.7.2** This view of the author is again buttressed by the judgment of the Hon'ble High Court of Bombay in the case of **Raju Mohanrao Rathod v. State of Maharashtra - 2008 Cri. L. J 1131**, which reads as under:

***“12. A bare reading of the above definition would make it manifest***

*that the seeds and the leaves are excluded from the operation of the definition of word “ganja” only when the same are **not accompanied** by the flowering tops or the fruiting tops. The report of the C.A. Reveals that greenish leaves, seeds and stalks were noticed at the time of analysis. **Thus, when the leaves and seeds were accompanied by the fruiting tops then it will have to be said that the seized stock was of ganja.”***

**29.7.3** The Hon’ble Madras High Court had an occasion to deal with the subject issue in **Criminal Appeal 685 of 2004 decided on 09.09.2009 in the case of K.V. Ramasamy v. The Superintendent of Police Preventive Unit, Salem** and it was held as under:

*“18. The first thing to be noted is that as per the report, **apart from flowering top, seeds, leaves, stem was found in the samples.** The definition of **Ganja excludes the seeds and leaves when not accompanied by the tops.** Therefore, **when the Ganja is seized, with the flowering or fruiting tops, seeds and leaves, totally it has to be taken as Ganja. If the seeds and leaves are separate, not accompanied with the flowering or fruiting tops, they could not be termed as Ganja.** This makes it clear that **mainly the flowering or fruiting tops of the cannabis plant is a ganja.** As far as the stem is concerned, it is doubtful whether it could be regarded as ganja. Normally, the plant includes stem and therefore the cannabis plant must be with stem and also with other parts such as flowering or fruiting tops, seeds and leaves. **Therefore, when a cannabis plant is seized, if it contains flowering or fruiting tops, seeds and leaves being accompanied, it is not necessary to mention separately, it contains stem also. As mentioned above stem also is part of the plant. At the same time, like seeds and leaves, stem is not accompanying the flowering top and broken stem is available, it could not be termed as ganja. The stem may be long or short, normally it is long thin part of the plant***

**29.8** In view of the above position, the empowered officers may note the subtle differences and place the arguments through their Ld. Counsels accordingly.



## DIFFERENCE BETWEEN HEMP AND MARIJUANA

30. Hemp is a variety of the *Cannabis Sativa L* plant. Cannabidiol (CBD) and tetrahydrocannabinol (THC) are naturally present as chemical compounds in the cannabis plant. Hemp contains 0.3% or less THC content (by dry weight) and Marijuana contains more than 0.3% THC (by dry weight). We find that the THC content of not more than 0.3% on a dry weight basis finds mention in the ‘Agriculture Improvement Act of 2018’ (of the USA)<sup>6</sup>, under “Subtitle G—Hemp Production. An extract of the same would be extremely useful at this juncture for the benefit of the esteemed readers:

### **“SEC. 297A. DEFINITIONS**

. ‘In this subtitle:

“(1) HEMP.—The term ‘hemp’ means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

## DOES THE ACT MAKE ANY DISTINCTION BETWEEN HEMP AND MARIJUANA?

31. The Act, as of now, does not make any distinction between the different species based on THC.

## MEDICINAL CANNABIS

32. Now we move to the medicinal cannabis. In terms of section 8 of the Act, cultivation of cannabis for medical or scientific purposes is allowed, which is, however, subject to restrictions

33. “Cannabis Research Project” of CSIR-IIIM Jammu is a first of its kind in India initiated under Private Public Partnership with a Canadian firm, which has a great potential to put substance of abuse for the good of mankind especially for patients suffering from neuropathies, cancer and epilepsy. A scientific agreement between CSIR-IIIM and IndusScan was signed for the purpose. The license was granted to CSIR-IIIM, Jammu for research and protected cultivation by J&K Government<sup>7</sup>. Pertinently CSIR-Indian Institute of Integrative Medicine is the pioneer in the Cannabis research and obtained the first license for cultivation in the country. Following this, many other states like Uttarakhand, Utter Pradesh, Manipur, Madhya Pradesh and Himachal Pradesh have started making the policy and rules for use of Cannabis for scientific purpose.

## DESTRUCTION OF ILLICIT CULTIVATION BY CENTRAL BUREAU OF

## **NARCOTICS AND SENSITISING VILLAGERS ABOUT ADVERSE EFFECTS OF DRUGS ON BODY AND MIND.**

**34.** The Central Bureau of Narcotics (CBN) plays a crucial role in the identification and destruction of illicit cultivation of cannabis plant and opium poppy using GPS coordinates and Drone.<sup>8</sup>

### **ACTION IN THE STATE OF HIMACHAL PRADESH**

**34.1** During September 2022, the officers of CBN, in close coordination with the other empowered agencies destroyed 1032 hectares of illicit cannabis plant cultivation.

### **ACTION IN OTHER STATES OF INDIA**

**34.2** Apart from the destruction of illicit cultivation of cannabis in the State of Himachal Pradesh, the CBN, had effected destruction of more than 25000 hectares of illicit cultivation of opium poppy and cannabis plant cultivation over the years in West Bengal, Jammu & Kashmir, Arunachal Pradesh, Manipur, Uttarakhand, etc. and approximately destroyed 3600 hectares of illicit opium poppy in the State of Arunachal Pradesh during February and March 2022.

### **DISSEMINATION OF KNOWLEDGE ON THE ILL EFFECTS OF DRUGS BY CBN**

**34.3** Apart from destroying the illicit cultivation, the CBN also plays a crucial role in the dissemination of knowledge on the adverse effects that the threats of drugs tend to pose to citizens of the country, especially the youth. This was done through community mobilisation.

### **SPECIAL PROVISION RELATING TO CANNABIS**

**35.** Notwithstanding the provisions contained in section 8 of the Act, Government may, in terms of **section 14 of the Act**, by general or special order allow cultivation of any cannabis plant for industrial purposes only of obtaining fibre or seed or for horticultural purposes.

**36.** <sup>9</sup>The Government of Uttarkhand issued a letter to Excise Commissioner through letter no. 639/XXX111/2016/04(02)201 dated 05.12.2016 for the cultivation of Industrial Hemp within the limits of 0.3 THC.

**37.** <sup>9</sup>The Government of Uttarakhand has authorized through letter number 581/XXIII/2018/04(11)/2012 dated 29.05.2018, Centre for Aromatic Plants, Selaqui, Dehradun, and National Botanical Research Institute, Lucknow as a technical testing lab of testing crop sample for delta-9-tetrahydrocannabinol concentration in Industrial Hemp as described in the state government order to Excise Commissioner on 05.12.2016.

**38.** <sup>9</sup>The Government of Uttarakhand issued a letter no. 348 dated 18.04.2018 to Excise

Commissioner on Medical and Scientific use of cannabis plants by the R&D institutions.

**39.** <sup>9</sup>The Centre for Aromatic Plants, Selaqui, Dehradun is nominated as a nodal agency for the cultivation of Industrial Hemp through Government order number 984/XVI-2/19/19(23)/2019 dated 30.12.2019.

### DECONSTRUCTION OF DIFFERENT PARTS OF HEMP AND ITS USES

**40.** Table-3 brings out the different uses of the hemp plant briefly:

**Table-3**

Hemp Seeds	Hemp Roots	Hemp Stalks	Hemp Leaves
<b>For Industrial Products, Food and Body Care</b>	<b>For Medicinal Value</b>	<b>For Textiles, Paper etc</b>	<b>For Pharmaceuticals, Animal Bedding and Compost</b>
Hemp Seeds are used as food supplements and Hemp Oil is used for paints, ink, and personal care products	Hemp Roots are mainly used for their medicinal benefits to treat inflammation, muscular pains and cramps, arthritis, and sprains	Hemp Stalks can produce fibre, rope, carpets, clothes, handbags, and paper.	Hemp Leaves are used for medicinal and agricultural benefits. They are also used for soil improvement.

### USE OF HEMP SEED AND ROLE OF FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA (FSSAI) IN PROMOTION THEREOF

**41.** The Food Safety and Standards (Food Products Standards and Food Additives) Fifth Amendment Regulations, 2021 was notified *vide* Notification dated 15.11.2021 by FSSAI<sup>10</sup>. In terms of the same, the following amendments were made to the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. The following were included *vide* the amendment in the Regulations, 2011. They are as under:

**“2.16. Hemp seeds and seed products:**

*(1) For the purpose of these regulations, hemp seed means the hulled<sup>1</sup>, non-viable<sup>2</sup> seeds<sup>3</sup> obtained from Cannabis sativa/other indigenous Cannabis species. The cultivation of Cannabis species for the purpose of hemp seeds in India shall comply with Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and rules made thereunder.*

(2) *The hemp seed, hemp seed oil and hemp seed flour shall be sold as food or used as an ingredient in a food for sale subject to conforming to the following standards:*

**(i) Hemp seed:**

<b>S. No</b>	<b>Parameters</b>	<b>Requirements</b>
<b>1</b>	<i>Moisture, percent m/m, Max.</i>	<b>7.0</b>
<b>2</b>	<i>Protein (N x 6.25), percent m/m, Min</i>	<b>30.0</b>
<b>3</b>	<i>Fat, per cent m/m, Min.</i>	<b>45.0</b>
<b>4</b>	<i>Ash, per cent m/m, Max</i>	<b>6.0</b>
<b>5</b>	<i>Total THC<sup>4</sup>, mg/kg, Max.</i>	<b>5.0</b>

**(ii) Oil extracted from hemp seeds**

<b>S. No</b>	<b>Parameters</b>	<b>Requirements</b>
<b>1</b>	<i>Free fatty acid (expressed asOleic Acid), per cent m/m, Max.</i>	<b>0.50</b>
<b>2</b>	<i>Peroxide value, mEq/kg, Max.</i>	<b>10.0</b>
<b>3</b>	<i>Total THC<sup>4</sup>, mg/kg, Max.</i>	<b>10.0</b>

(iii) **Hemp seed flour** means solid product after seeds are milled to a powder with or without extraction of oil. The flour prepared after hemp seed has been pressed to extract oil shall clearly be labelled as 'Deoiled hemp seed flour'.

<b>S. No</b>	<b>Parameters</b>	<b>Requirements</b>
<b>1</b>	<i>Total THC, mg/kg, Max</i>	<b>5.0</b>

(iv) *The total THC shall not exceed 0.2 mg/kg in any beverages made from hemp seeds.*

(v) *Any other food for sale that consists of hemp seed or seed products shall not exceed Total THC content of 5 mg/kg.*

(3) *The level of cannabidiol<sup>5</sup> (CBD) in any food for sale consisting of hemp seed or seed*

*products shall not exceed 75 mg/kg.*

*(4) Cannabinoids<sup>6</sup> in any food for sale consisting of hemp seed or seed products shall only be present naturally in or on the seeds.*

*(5) The food for sale that consists of hemp seed or seed products shall not be labelled or otherwise presented for sale in a form which expressly or by implication suggests that the product has a psychoactive effect.*

*(6) The label for the food containing hemp seed or seed products for sale shall not include:*

*(a) a nutrient content claim about cannabidiol; or*

*(b) a health claim about cannabidiol; or*

*(c) an image or representation of any part of the Cannabis plant (including the leaf of that plant) other than the seed; or*

*(d) the words 'cannabis', 'marijuana' or words of similar meaning.*

*(7) The label for the food containing hemp seed or seed products for sale may include the word 'Hemp'.*

*(8) No person shall manufacture, import or sale any food product containing hemp seed or seed products intended for administration to infant upto the age of 24 months*

*Note:-*

*1. Hulled seeds mean seeds from which the outer coat or hull of seeds has been removed.*

*2. Non-viable seeds mean seeds that are not able to germinate.*

*3. Seeds include a part of a seed.*

*4. Total THC means the total amount of delta 9-tetrahydrocannabinol (THC) and delta 9- tetrahydrocannabinolic acid.*

*5. Cannabidiol (CBD) is the non-psychoactive component of Cannabis species.*

*6. Cannabinoids means any of various naturally-occurring, biologically active, chemical constituents such as cannabidiol or cannabinol of Cannabis species including some that possess psychoactive properties like delta 9-tetrahydrocannabinol (THC)."*

## **HOME GROWN HEMP INDIAN BRANDS AS A PART OF STARTUP INDIA PROGRAM OF THE GOVERNMENT OF INDIA**

**42.** As a part of the Startup India program of the Department for Promotion of Industry and Internal Trade, Government of India, the following startup entities have been set up by various

entrepreneurs promoting Hemp and its products. The list is illustrative in nature.

 <p>HEMPED UP!</p>	 <p>HEMPD SKIN PROTEIN REPAIRING FORMULA</p>	
 <p>Hempbuti™</p>	 <p>HEMA Puffed™</p>	 <p>HEMPTYFUL</p>
 <p>HOLI HERB HEAL THE SACRED WAY   CANNABIS REDEFINED</p>	 <p>HIMALAYAN TROOPER</p>	 <p>India Hemp AND Co.®</p>
 <p>INDIA HEMP ORGANICS</p>	 <p>MediCann</p>	 <p>og hemp</p>





 <p>UNITED TESLA HEMP COMPANY</p>	 <p>Wildleaf</p>	 <p>VANN MANTRA</p>
 <p>ZERO CBD</p>	 <p>ZenOnco.io Integrative Oncology</p>	 <p>YETI'S REMEDY Organic Hemp Solutions</p>
 <p>SATLIVA</p>	 <p>saral sutra</p>	 <p>NUOR NATURAL CARE</p>
 <p>mksa Expect Miracles</p>	 <p>mount bloom</p>	 <p>LILY ayurved</p>

		
<p><b>Source:</b> <a href="https://itshemp.in/brands">https://itshemp.in/brands</a></p> <p>© of Logos and brands with respective owners.</p> <p>All sources acknowledged.</p> <p><b>“Its Hemp” is recognised as a startup by Department for Promotion of Industry and Internal Trade, Government of India</b></p>		

### BOOKS AND STEP-BY STEP GUIDE BOOKS ON GROWING MARIJUANA

**43.** The methods of growing cannabis or marijuana is available on the Amazon.in platform. A lot of books on growing marijuana and including step-by step guide books are available on this platform. While there is no restriction on the import or sale or dealing with such book, these books can be subjected to misuse for the purpose of illicit cultivation and given the involvement of Tech graduates in the hydroponic cultivation of cannabis, it is always better to keep a watch on the buyers of the book through private-public co-operation by the leading empowered agencies. However, the links are given below:

1	<a href="https://www.amazon.in/Cannabis-Beginners-Guide-Growing-marijuana/dp/1571748466">https://www.amazon.in/Cannabis-Beginners-Guide-Growing-marijuana/dp/1571748466</a>
2	<a href="https://www.amazon.in/Growing-Marijuana-Step-Step-Mind-Blowing/dp/1802514163">https://www.amazon.in/Growing-Marijuana-Step-Step-Mind-Blowing/dp/1802514163</a>
3	<a href="https://www.amazon.in/Growing-Marijuana-Home-Growers-Guide/dp/1976325803">https://www.amazon.in/Growing-Marijuana-Home-Growers-Guide/dp/1976325803</a>
4	<a href="https://www.amazon.in/Growing-Marijuana-Complete-Cannabis-Indoors/dp/1542555183">https://www.amazon.in/Growing-Marijuana-Complete-Cannabis-Indoors/dp/1542555183</a>
5	<a href="https://www.amazon.in/growing-marijuana-beginners-hydroponic-">https://www.amazon.in/growing-marijuana-beginners-hydroponic-</a>

	<a href="https://www.amazon.in/system/dp/B08T46DX7W">system/dp/B08T46DX7W</a>
6	<a href="https://www.amazon.in/Cannabis-Growing-Techniques-Excellent-Marijuana/dp/B09DMW9S83">https://www.amazon.in/Cannabis-Growing-Techniques-Excellent-Marijuana/dp/B09DMW9S83</a>
7	<a href="https://www.amazon.in/Growing-Marijuana-Beginners-Everything-Start/dp/1088202462">https://www.amazon.in/Growing-Marijuana-Beginners-Everything-Start/dp/1088202462</a>
8	<a href="https://www.amazon.in/Growing-Marijuana-Beginners-Seed-Harvest/dp/1088205089">https://www.amazon.in/Growing-Marijuana-Beginners-Seed-Harvest/dp/1088205089</a>
9	<a href="https://www.amazon.in/Growing-Marijuana-Step-Step-Mind-Blowing/dp/1802870210">https://www.amazon.in/Growing-Marijuana-Step-Step-Mind-Blowing/dp/1802870210</a>
10	<a href="https://www.amazon.in/Growing-Marijuana-Brandon-Westra/dp/154117870X">https://www.amazon.in/Growing-Marijuana-Brandon-Westra/dp/154117870X</a>
11	<a href="https://www.amazon.in/Growing-Marijuana-Beginners-Cannabis-Growguide/dp/9492788020">https://www.amazon.in/Growing-Marijuana-Beginners-Cannabis-Growguide/dp/9492788020</a>
12	<a href="https://www.amazon.in/Cannabis-Grow-Bible-Definitive-Recreational/dp/1931160171">https://www.amazon.in/Cannabis-Grow-Bible-Definitive-Recreational/dp/1931160171</a>

**44.** In view of the aforesaid position, it is essential that the empowered officers of various prosecuting agencies go through the provisions of the NDPS Act, 1985 and the judgments relating to illicit cultivation of opium poppy and cannabis plant and make out cases keeping in view the place of seizure, particularly that of standing cannabis plants. Apart from this, it is equally for the empowered officers to understand the inter play between the provisions of the Act, as has been discussed herein.

**45.** At the same time, a tab on the sale of books from the platform mentioned herein in para 42 *supra* also needs to be monitored in public interest.

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