

ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

ON LAW & MULTIDISCIPLINARY ISSUES

VOLUME I, ISSUE IV

JULY, 2020

Website - journal.lexresearchhub.com
Email - journal@lexresearchhub.com



DISCLAIMER

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

EDITORIAL BOARD

Editor-in-Chief

Mr. Shaikh Taj Mohammed

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

Senior Editors

Dr. Jadav Kumer Pal

Deputy Chief Executive, Indian Statistical Institute

Dr. Partha Pratim Mitra

Associate Professor, VIPS. Delhi

Dr. Pijush Sarkar

Advocate, Calcutta High Court

Associate Editors

Dr. Amitra Sudan Chakrabortty

Assistant Professor, Glocal Law School

Dr. Sadhna Gupta (WBES)

Assistant professor of Law, Hooghly Mohsin Govt. College

Mr. Koushik Bagchi

Assistant Professor of law, NUSRL, Ranch

Assistant Editors

Mr. Rupam Lal Howlader

Assistant Professor in Law, Dr. Ambedkar Government Law College

Mr. Lalit Kumar Roy

Assistant Professor, Department of Law, University of Gour Banga

Md. Aammar Zaki

Advocate, Calcutta High Court

ABOUT US

Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. **Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X)** welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

REGULATION OF CANNABIS IN INDIA

Authors –

Vanshika Malani

Student (B.A. LLB)

KIIT School of Law, Bhubaneswar, Odisha

Chitransh

Student (B.A. LLB)

KIIT School of Law, Bhubaneswar, Odisha

ABSTRACT

“Cannabis is the most popular drugs used in India. Its significant use in ‘Ayurveda’ and in the field of medical science in India makes its way from ancient history, which is about 3000 years old. It also used by the Hindus as a religion offering to God and widely used during the Indian festival. Despite having historic background and religious belief Cannabis is also known as, Marijuana is illegal in India and its production, manufacture, possession, sell, purchase, transportation, import inter-state, export inter-state, cultivation everything is strictly banned in India and yields heavy fines and Punishment if not followed. Even for medical research and industrious purposes, the use of cannabis is highly regulated by the Government. In spite of all these laws, the regulation of Cannabis very well not maintain in India and is illegally cultivated and smuggled all across the country. Teenagers and students are the most affected part of society using these drugs. The International Classification of Diseases and the Diagnostic and Statistical Manual of Mental Disorders designate cannabis as an addictive substance, with recognised dependence disorders. Around 9% of people who try it ultimately become addicts. In India, one can easily find the peddlers who illegally sell these low-quality yields of Cannabis and our police system and laws fail to stop them despite having prescribed laws.”

Keywords – Cannabis, Ayurveda, Atharva Veda, Production, use, Charas, Bhang, Corruption

INTRODUCTION

Cannabis, which popularly known as Weed, Ganja, Marijuana, Hemp is the most common illicit drug used in India. The general use, possession, and plantation of cannabis are illegal in India. Cannabis is categorized under soft drugs in India. Despite being illegal, it is the most debatable topic in the country. In India though there is a central act prohibiting the use of cannabis but there are some states which have their own laws for the regulation of cannabis. Although the sale or use of cannabis is illegal in India but still it is widely used and easily accessible to the citizens. The use of cannabis in India links with the ancient history of the country. India is a land of steeped

religion where Hinduism is the most ancient and most followed religion of the country. According to Hindu's history, Ayurveda, which developed during the Vedic period, is the system of medicine, which helps to cure the human body with the help of natural herbs, which was developed around 3000 years ago. Cannabis was widely consumed in different ways like smoking, chewing, drinking, etc. from the reports came from the 'Atharva Veda', written around 2000 – 1400 BCE. 'It was used in the treatment of Anxiety, Insomnia and depression, headaches, gastrointestinal disorders, and pain. It was also frequently used to relieve the pain of childbirth.'¹ In ancient history, the plant was been used for manufacturing clothes, shoes, ropes, and paper it was also used for treating or alleviating symptoms of several diseases. According to Hindu mythology, Cannabis sativa is recognised as a sacred plant, used as a religious and spiritual element and according to Hindu stories, cannabis is something divine as it is a Prasad from deity Lord Shiva. Then the question arises is why it is illegal in India? The answer takes its way from the long back history from 1961. Since 1961, the United States has been campaigning for a global law against all types of hard and soft drugs and opposed the Indian ideas of cannabis. American society was struggling with the drug problem and it was growing with the coming generations. This made the United States put pressure on other nations to enact laws against the use of all types of drugs. Therefore, in 1985, the Rajiv Gandhi government buckled under the pressure and enacted a law called the Narcotic Drugs & Psychotropic Substances (NDPS) Act in the year 1985. It is alleged that the NDPS was a result of intense international pressure following the UN's Single Convention on Narcotic Drugs, 1961. 'Bhang', which is also commonly known as thandai, is also considered as an extract of cannabis sativa, is somehow legal in India. Bhang is also considered sacred in India and widely used during festivals such as Ganesh Chaturthi, Mahashivaratri, Holi, etc. it is used as recreational consumption and considered a sacred offering to Lord Shiva. However due to the succumbing of International pressure, India has to criminalise the use of Marijuana, but instead of labelling the whole cannabis plant illegal, the laws were made keeping eyes only on the bud & young top leaves have High THC (tetrahydrocannabinol) content. In the case of '*Arjun Singh vs State of Haryana*',² it was ruled "bhang does not fall under the definition of cannabis" in the law

¹ Touw, Mia (1981). "The Religious and Medicinal Uses of Cannabis in China, India and Tibet". Journal of Psychoactive Drugs. 13 (1): 23–34.

² Arjun Singh vs State Of Haryana, 2005 CriLJ 253.

(NDPS act). “Thus, its possession does not constitute an offense punishable under the law.” By Justice Satish Kumar Mittal. Now, as of the year 2020, the paper aims to throw some light on the laws and regulation of Cannabis in India.

CANNABIS LAW IN INDIA

According to the Indian Government, cannabis is regulated in India by ‘The Narcotic Drugs and Psychotropic Substances Act, 1985’. According to which-

“Cannabis (hemp)” means³ —

- Charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;
- 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;
- Any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink, prepared therefrom;
- “Cannabis plant” means any plant of the genus cannabis.⁴

In India, cannabis (hemp) comprises of different kinds of categories. It includes Charas, Ganja, or any of its mixture prepared in a drink form. According to The Narcotic Drugs and Psychotropic Substances Act, 1985, by general or special order Government may allow the cultivation of any cannabis plant for industrial purposes only for obtaining fibre or seed or for horticulture purposes⁵.

In India, cannabis used for medical purposes is highly controlled by the Government and does not allow all medical research organisations for researches on marijuana. In India, only two medical marijuana research organisation that is ‘Council of Scientific and Industrial Research (CSIR)’ and

³ Section 2 (iii) The Narcotic Drugs And Psychotropic Substances, Act, 1985.

⁴ Section 2 (iv) The Narcotic Drugs And Psychotropic Substances, Act, 1985.

⁵ Section 14 The Narcotic Drugs And Psychotropic Substances, Act, 1985.

‘Central Institute of Medicinal and Aromatic Plants’ has a legal license for the research of cannabis. Indians who want cannabis medication have no legal protection and people who receive any cannabis-related protection are the two organisation that can conduct medical marijuana-related research.⁶ Therefore, we can say that marijuana that is cannabis (hemp) is partially banned in India.

Although, in India, cannabis or any of its extract is totally ban we can frequently see people, mostly teenagers, abusing cannabis as it is easily accessible and police authority or the State Government does not take any serious action against it. ‘According to a study by AIIMS, over 7.2 million people consume cannabis.’⁷

Cultivation of cannabis (hemp) or any of its categories that is charas, ganja or any of the extract of the ‘genus cannabis’ is controlled fully by government under prescribed licence which is issued by the government and according to The Narcotic Drugs and Psychotropic Substances Act, 1985, cultivators who do not possess this licence can be punished. Production, manufacture, possession, sell, purchase, transportation, import inter-state, export inter-state, use of cannabis or cultivation of any cannabis plant without a prescribed licence shall be punished with imprisonment for a term which may extend to ten years or shall be liable to fine which may extend to one lakh rupees.⁸

“There is different punishment in relation to the cannabis plant and use of cannabis depending on the quantity. For small quantity (up to 100 grams of charas and up to 1 kg of ganja) of cannabis, its production, manufacture, possession, sell, purchase, transportation, import inter-state, export inter-state, use of cannabis or cultivation, for such offences the punishment is imprisonment which may extend to one year or with fine which may extend to one thousand rupees, or with both. The involvement of quantity lesser than commercial quantities but greater than small quantity, the punishment for such offence is imprisonment for the term, which may extend to ten years or with fine, which may extend to one lakh rupees. If it involves commercial quantities (up to 1 kg of charas and up to 20 kg of ganja), the punishment for such offence is imprisonment for a term,

⁶ https://www.marijuanadoctors.com/international-patients/india-laws/?fbclid=IwAR1grBdkxBBFT04WbDT0Tu6xKltmzPvuVnZ2uCzdx_TIOe-PCCEuXCSluaQ4.

⁷ <https://www.businessinsider.in/ganja-cannabis-addiction-on-rise-after-alcohol-says-aiims-study/articleshow/68081096.cms>.

⁸ Section 20 (a) (b) (i) The Narcotic Drugs And Psychotropic Substances, Act, 1985.

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.”⁹

Therefore, in India, there is strict punishment for production, manufacture, possession, sell, purchase, transportation, import inter-state, export inter-state, use of cannabis, or cultivation. However, in India we can see that there is no strict following of these laws and people using cannabis in India is a common sight. Whenever police catches any student, major or minor, individuals or any personal with the use of cannabis, they simply let them go by taking a little bribe, such as five hundred to two thousand rupees, and dismisses the cases. These cases never reaches the door of any court because the level of corruption is high and the court system is not very serious regarding these offences. If any college authority catches its student with the use of cannabis, they levy fine, give warnings, and simply let the student go. Therefore, with these examples, we can see that although there is a pledged act for the use of cannabis in India it is not followed in an orderly fashion and is violated. There is a lack of seriousness regarding the issue of Marijuana. In terms of cannabis, Delhi, Punjab, Sikkim, Chhattisgarh, and Uttar Pradesh tops the chart with a maximum number of addicts.¹⁰

According to The Narcotic Drugs and Psychotropic Substances Act, 1985, it empowers the police to enter, search, seize, and arrest in offences and offenders related to cannabis.¹¹ If there is any illegal cultivation of cannabis and such holder of the land knowingly neglects to give such information to the police, the person is liable for punishment.¹²

OVERVIEW OF INDIA'S CANNABIS IN 2018-20

“Delhi is the world’s third-largest cannabis consumer according to the ABCD 2018 cannabis price index report. Mumbai ranked in the sixth position on the same list. As reported by Times of India,

⁹ Section 20 (ii) (A) (B) (C) The Narcotic Drugs And Psychotropic Substances, Act, 1985.

¹⁰ <https://www.businessinsider.in/ganja-cannabis-addiction-on-rise-after-alcohol-says-aiims-study/articleshow/68081096.cms>.

¹¹ Section 44 the Narcotic Drugs and Psychotropic Substances Act, 1985.

¹² Section 46 The Narcotic Drugs and Psychotropic Substances Act, 1985.

the ABCD 2018 index shows that Delhi and Mumbai consumed 38.3 tonnes and 32.4 tonnes of cannabis respectively. Cannabis is sold at rupees 315 per gram in Delhi and rupees 329 per gram in Mumbai which is the cheapest rates globally, says the report. Even though cannabis is not legal in India for individual use but Delhi and Mumbai figure among the highest ten cities in the world while Delhi consumed 38,260 kg of weed, the commercial capital Mumbai consumed 32,380 kg.”¹³

The Ministry of Social Justice and Empowerment's “Magnitude of Substance Use in India 2019” survey found that 2.83% of Indians aged 10-75 years (or 31 million people) were current users of cannabis products, with 0.66% of the population considered to be using cannabis “in a dependent pattern”. The survey found that 2.02% of the population consumed bhang and 1.21% consumed charas or ganja. It also noted that most cannabis users were male with 5% of the male population consuming cannabis compared to 0.6% of the female population. The survey found that cannabis use was most prevalent in Sikkim, where 7.3% of the population reported using cannabis, followed by Nagaland (4.7%), Odisha (4.7%) Arunachal Pradesh (4.2%) and Delhi (3.8%). The lowest cannabis use reported in Puducherry, Kerala, Rajasthan, Tamil Nadu, Lakshadweep, Dadra, and Nagar Haveli, Gujarat, and the Andaman and Nicobar Islands, all of which recorded about 0.1% of the population as having used cannabis.¹⁴

“The Narcotic Drugs and Psychotropic Substances Act, 1985”, is the central act for prohibiting the use of Cannabis throughout the country but some states in India have their own legislation for Cannabis in their state. For Example, In Assam, The Assam Ganja and Bhang Prohibition Act, 1958, prohibits sale, purchase, possession, and consumption of ganja and bhang. ‘Bhang’, which is also considered as an extract of Cannabis is legal in some states of India. On 21 February 2017, Gujarat legalized bhang by removing it from the list of "intoxicating drugs" covered by section 23 of the Gujarat Prohibition Act. However, there were several urges and petition filed in High courts and the Supreme Court for legalising Marijuana. In several instances such as on 12 December 2017, Viki Vaurora, the founder of the Great Legalisation Movement India, penned an open letter

¹³ <https://www.indiantoday.in/education-today/latest-studies/story/delhi-3rd-largest-cannabis-consumer-in-the-world-mumbai-6th-study-1598845-2019-09-13>.

¹⁴ “Magnitude of Substance Use in India 2019” (PDF). Ministry of Social Justice and Empowerment.

to Prime Minister Narendra Modi and all members of Parliament advocating the urgent need to legalise the cultivation of cannabis (hemp) for medical and industrial use.¹⁵ ¹⁶ In February 2018, the Prime Minister's Office sent a notification to the Ministry of Health and Family Welfare directing the ministry to examine the potential benefits associated with cannabis and issue a response to the letter.¹⁷ On 5th June 2018, Lok Sabha MP from Thiruvananthapuram, Shashi Tharoor wrote an opinion piece expressing support for the legalization of cannabis and concluding that it was "high time for India to embrace the health, business, and broader societal benefits that legally regulating cannabis can bring".¹⁸ In July 2019, the Delhi High Court agreed to hear a petition, filed by the Great Legalisation Movement Trust, challenging the ban on cannabis. The public interest litigation argues that grouping cannabis with other chemical drugs under the Narcotic Drugs and Psychotropic Substance Act is "arbitrary, unscientific and unreasonable".¹⁹ On 1 February 2020, India's first medical cannabis clinic opened its door in Bangalore, Karnataka.²⁰ High levels of THC (Tetrahydrocannabinol) that is present in Cannabis is responsible for the psychoactive nature of cannabis. Cannabis with low THC content can be used for industrial and horticulture purposes. It can also be used for biomass and production of cannabis seed oil. CBD (Cannabidiol) which is also an extract of Cannabis can be used in oils and food supplements and also has medicinal use. In India, Bhang, which is also an extract of Cannabis is used as offerings to Hindu God Lord Shiva and is popular in Hindu festivals like Holi and Mahashivaratri. The ancient method of curing people as mentioned in the Atharva Veda, Consists of several treatments with the help of Cannabis. Thus, we can say that although there are rules for regulating Cannabis in India since Cannabis is religiously as well as used for medical purposes, it is believed to be very useful and hence there are still debates going on for its legalisation.

¹⁵ Vaurora, Viki (16 Dec. 2017), Open letter to the Hon'ble Prime Minister of India, Shri Narendra Modi. Facebook. Retrieved 7 June 2018.

¹⁶ "Projects". Great Legalisation Movement. Retrieved 7 June 2018.

¹⁷ "Check benefits of cannabis, Prime Minister's office tells health ministry". Hindustan Times. 17 February 2018. Retrieved 7 June 2018.

¹⁸ Shashi Tharoor; Avinash Tharoor, High time India, the land of bhang, legalises marijuana, (5 June 2018).

¹⁹ Jul 20, Abhinav Garg. "Delhi HC to examine plea to legalise cannabis use". The Times of India.

²⁰ <https://bangaloremirror.indiatimes.com/bangalore/cover-story/dr-cannabis-will-see-you-now/articleshow/74035813.cms>.

CONCLUSION

To summarize, we can say that although there are prescribed laws in India for the regulation of Cannabis we can really see that it is not followed very well. Corruption, Bribery, smuggling, and illegal cultivation of Cannabis still prevails in India. Cannabis and its extracts are easily accessible to the people, and because of this fake cannabis, unfiltered cannabis and bad yield cannabis are distributed among the people, whose consumption results in their bad health. When the Government regulates its use, it checks, maintains, and sells pure cannabis, which is of a good yield. Therefore, the people consuming it would not have an adverse health effect. Apart from it, the amount sold to people is also limited and the Government makes sure that minors do not consume Cannabis. In Country like India, with such a huge population, it is hard for the Government to regulate the sale of Cannabis all around the country. Cannabis is also associated with religious purposes in India and Naga Sadhus are often seen smoking cannabis. Hence, to conclude we can say that people in India illegally consume cannabis in a huge amount and the Government of India is unable to regulate it. There are several requests to the Government to legalize the use of Cannabis but until date, Government other than for medical or industrial purpose does not allow cannabis for any other purpose or personal use.