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Decriminalization and Legalization of Drug use in India

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A drug means a chemical substance that is administered to people in case of prevention or treatment of an illness or disease. In this modern era, the majority of people perceive drugs narrowly just as a substance consumed only for recreational purposes; as it gives a feeling of pleasure to the consumers. The later use of drugs has become an issue of serious concern as it is majorly responsible for spoiling the life of youths and hence proving to be dangerous to society. Yet, it has to be kept in mind legalizing these drugs would stand out to be really productive as it would help to curb out many serious diseases, would eradicate black-market of drugs, crime syndicate will lose out their grab and it would be beneficial for those also who take drugs for personal consumption as they will get unadulterated drugs in a controlled quantity so there will lesser cases of overdose of drugs and this will stop them from opting illegal ways to obtain drugs. Therefore, though there are undeniable drawbacks to the usage of drugs, the government has to look beyond these barriers as these can be taken into the grab with the help of the establishment of a suitable legal system to that effect. The government should also promote awareness programs on drugs; this will help people to learn about the actual facts of the drugs as there are already a lot of rumors in the air about the drugs and their effects which are quite delusive. Government should also promote drug education, drug treatment, and rehabilitation. If a proper government-regulated and strictly surveilled model comes into working then it would surely be beneficial for the public at large.

Keywords: *drugs, decriminalization, legalization, government, prohibition, criminalization.*

INTRODUCTION

The knowledge of drugs is as old as man himself. Drugs in India have a very long and colorable history. It has its roots deep down up to the Vedic period. One can also find its reference in Indian mythology. We are all very aware of its confederacy with Lord Shiva – the Hindu deity. Drugs in India has been used variedly since historical times; for instance – it was used as medicines to cure many human ailments and diseases, for it has great medicinal properties, evidence of which can be found in Indian Ayurveda.¹ It's been also used on various religious and festive occasions for different rituals and for recreational purposes too.² For example: '*Bhang*' is religiously used on the occasion of '*Mahashivratri*' it's not only offered to Lord Shiva but also consumed by people as '*Prasad*'. Similarly, '*Bhang*' is consumed during the festival of Holi in the form of lassi, sweets, pills, etc.

It was during the Colonial period that regulations and sanctions were laid down over the drug Cannabis and its derivatives.³ The British Government enacted tax laws to tax Cannabis and its derivatives like Bhang, Ganja, and Charas on the pretense of “good health and sanity” of the “natives”.⁴ The British Government didn't criminalize the use of Cannabis in many forms though.⁵ It was only after the *1961 Convention of the United Nations Commission on Narcotic Drugs (UNCND)*⁶ that the criminalization of Cannabis happened and the plant and its derivatives were placed to *Schedule - IV*.⁷

The consumption of Cannabis (Marijuana or popularly known as Weed or Ganja) has been a punishable offence in India since 1985 after the enactment of the *Narcotic Drugs And*

¹ Malavika Jayakumar, 'Legalisation of drugs in India' (2018) 2(1) IJLMH <<https://www.ijlmh.com/wp-content/uploads/2019/04/Legalization-of-drugs-in-India.pdf>> accessed 02 December 2021

² *Ibid*

³ Jyothika George & Hridiya Nambiar, 'Marijuana legalization = control and regulation- why should we legalize marijuana' (*Legal service India*) <<https://www.legalserviceindia.com/legal/article-4009-marijuana-legalization-control-and-regulation-.html>> accessed 06 December 2021

⁴ *Ibid*

⁵ Pradmini Kumari, '15 Countries Where You Can Freely Light Up A Joint Without Landing In Trouble' (*ScoopWoop*, 10 October 2020) <<https://www.scoopwhoop.com/travel/countries-where-you-can-smoke-a-joint/>> accessed 06 December 2021

⁶ Convention of the United Nations Commission on Narcotic Drugs (UNCND) 1969

⁷ *Ibid*

Psychotropic Substances (NDPS) Act,⁸ which was brought up due to *the Nations Single Convention on Narcotic Drugs, 1961*,⁹ which came into effect in 1975. *Section 20(b) of the NDPS Act, 1985*¹⁰ contains punishment for consumption and use of cannabis in three different levels.¹¹ Even after the enactment of criminalization laws,¹² there's no solid evidence that it has succeeded in its purpose.¹³ Also, is it worthy to legislate such stringent laws when it fails to help those to get such drugs that are in actual need of it for medicinal or industrial purposes?

Today, the discussion over “decriminalization and legalization of drug use in India” is on fire and has become a national issue of serious concern as there's been a tremendous hike in drug abuse and other illegal activities related to it in recent years. This has led to chaos all over the country. Though these two terms ‘decriminalization’ and ‘legalization’ look synonymous, they both carry a very different meaning. Decriminalization means an act of abolishing criminal sanction against an act, behavior, or thing.¹⁴ Decriminalization of drugs means it will still remain to be illegal but will amount to non-prosecution of those offenders who possess it in a specific amount for personal consumption or for commercial use.¹⁵ Also, the penalty system will range from no penalties at all to criminal penalties and civil penalties which could include reference to fines, drug education, or drug treatment. Whereas, legalization of drugs means the elimination of all legal prohibitions against it. An adult can thus avail it generally from a govt. registered booth or pharmacy and can administer it on one's own will just like alcohol, cigarettes, and tobaccos.¹⁶

⁸ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985

⁹ Convention on Narcotic Drugs 1961

¹⁰ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 20(b)

¹¹ Sebastian Marincolo, (Goodreads, 2021) <<https://www.goodreads.com/quotes/tag/legalization>> accessed 07 December 2021

¹² *Ibid*

¹³ *Ibid*

¹⁴ Basit Aijaz, 'From Canada to Uruguay, Here Are Some of The Countries Where Marijuana Is Legal' (*India times*, 15 October 2021) <<https://www.indiatimes.com/trending/social-relevance/countries-where-marijuana-is-legal-551710.html>> accessed 6 December 2021

¹⁵ *Ibid*

¹⁶ *Ibid*

So, to get rid of this chaos the Central Government is planning to decriminalize personal consumption of drugs including cannabis, narcotics, and psychotropic substances.¹⁷ The government has already decriminalized the medical use of drugs looking to its medicinal benefits.¹⁸ The central government's proposal aims at decriminalization of personal consumption by bringing out amendments to S.39 of the NDPS Act¹⁹ including some other sections like S. 15,²⁰ 16,²¹ 17,²² 18,²³ 20,²⁴ 21²⁵ , and 22²⁶ of the Act, 1985 which deals with procurement, consumption, and financing of drugs. The core ideology behind these proposed amendments is to reform the act and to provide rehabilitation to the sufferers.²⁷ This will help the Court to act leniently towards those victims who possess a small number of drugs for personal consumption or for commercial use.²⁸ In this proposal, the *Ministry of Social Justice* has also proposed for '**30-days assessment and mandatory de-addiction treatment**' program for those who suffer from drug addiction. Presently, the de-addiction treatment is voluntary.

One of the Senior Officials from the *Ministry of Health Affairs (MHA)* said - "Drug decriminalization is a critical step towards achieving a rational drug policy that puts science and public health before punishment and incarceration..."²⁹ He further added-"The UN has supported decriminalizing drug possession for personal consumption and in small quantities. 28 countries across the world have decriminalized possession with sanctions such as fines,

¹⁷ K Sabah, 'How Legalising cannabis can help India ease some of its economic burden' (The Print, 01 February 2018) < <https://www.google.com/amp/s/theprint.in/report/how-legalising-cannabis-can-help-india-ease-some-of-its-economic-burden/32671/%3famp>> accessed 05 December 2021

¹⁸ *Ibid*

¹⁹ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 39

²⁰ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 15

²¹ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 16

²² Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 17

²³ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 18

²⁴ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 20

²⁵ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 21

²⁶ Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, s 22

²⁷ Alcohol and Drug Foundation, 'Overview: Decriminalisation vs Legalisation' (*Alcohol and Drug Foundation*, 28 April 2021) <<https://adf.org.au/talking-about-drugs/law/decriminalisation/overview-decriminalisation-legalisation/>> accessed 03 December 2021

²⁸ *Ibid*

²⁹ Shagun Suryam, 'Is it time to decriminalise Cannabis use in India?' (*Bar and Bench*, 23 October 2021) <<https://www.barandbench.com/columns/is-it-time-to-decriminalise-cannabis-use-in-india>> accessed 03 December 2021

redirection to educational and social centers.³⁰ This has helped in reducing hindrances for people to access healthcare, harm reduction, and legal services.”

Taking a few steps further ahead towards liberalization and a progressive future, the Indian government should also now start planning for legalizing cannabis and other such drugs.³¹ India should look towards those countries that have legalized cannabis using well regularized legal systems and learn from them and try to adopt their model of legalization of the drug to build a new India;³² for example, *URUGUAY*- The South American Nation- that became one of the first countries in the world to legalize the use of cannabis for recreational purpose in 2013. People there who have attained the age of 18 years must make sure that they are officially registered with the government for buying, selling, and growing. Since 2017 the government has also permitted the purchasing of commercial grass in Uruguay from a regular pharmacy. This is what moving ahead towards actual liberalization looks like and this is what liberals expect out from their government. There are furthermore countries that have legalized the use of cannabis like *Portugal, Canada, Mexico, Netherlands, and South Africa, etc.*³³ Legalization will not only be beneficial for the manufacturers, sellers, and consumers but for the Government as well and will ultimately be beneficial to the country at large.³⁴

BENEFITS FROM THE LEGALIZATION OF CANNABIS

Revenue Potential: According to the study done by an Israel-based firm SEEDO which provides devices that allow growing weed at home,³⁵ reveals monetary gains through legislation of drugs.³⁶ The firm reveals that as per the study conducted by it if taxed similar to

³⁰ *Ibid*

³¹ Dragan M. Svrakic & Patrick J. Lustman, ‘Legalisation, Decriminalisation & Medical Use of Cannabis’ (2012) *Mo Med V* 109 (2): 90-98 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6181739/>> accessed 04 December 2021

³² *Ibid*

³³ Ananya Bhardwaj and Neelam Pandey, ‘Modi govt. plans changes to NDPS Act, could decriminalise possession of small quantities of drugs’ (*The Print*, 14 November 2021) <<https://theprint.in/india/modi-govt-plans-changes-to-ndps-act-could-decriminalise-possession-of-small-quantities-of-drugs/765692/>> accessed 02 December 2021

³⁴ *Ibid*

³⁵ Nalini Chandrakar & Vineet Kumar, ‘Should Marijuana Be Legalized In India’ (*iPleaders*, 2017) <<https://www.google.com/amp/s/blog.ipleaders.in/marijuana-legalized-india/%3famp=1>> accessed 05 December 2021

³⁶ *Ibid*

famous cigarettes brands, cannabis would generate gains worth \$384.87millions.³⁷ Keeping cannabis under legal control would generate revenue which will help to boost the Indian economy and will further ensure a reduction in its misuse. Prominent leaders like Maneka Gandhi, Tathagata Satpathy, and Dr. Dharamvira Gandhi have already extended their support for the legalization of cannabis.

Reduction in Illicit Drug Trade: Since, production, possession, sale, and use of drugs are illegal, it results in the unavailability of drugs in open markets for the general public. Recently, a large part of the population demands such drugs. Taking the advantage of this the criminal organization hikes up the prices and earns profits in millions under this illicit trade. Legalization and decriminalization will help in eliminating this black market of illegal production and distribution of drugs.³⁸

Effects on Youths: Tathagata Satpathy once said: “Anything that is banned or prohibited becomes attractive for the younger people. If something as bad as alcohol can be legal, what’s wrong with something that’s natural?”³⁹ Though he said this in support of medical and industrial use of drugs only. But it’s a bitter truth that children especially between 14-16 years of age and adults between 18-30 years of age are involved with drugs as some find it very cool and attractive or because of peer pressure.⁴⁰ In countries with less stringent laws, it’s been seen that crime involving drugs and drug usage is lesser as compared to those with harsh laws.

Medical use of Drugs: Drugs like cannabis are very well known for their medicinal properties and are used to cure diseases such as⁴¹:

- Prevents spread of cancer to the other organs of the body;

³⁷ Vikram Patel, ‘India must join other countries in decriminalizing marijuana’ (*The Indian Express*, 02 December 2020) < <https://indianexpress.com/article/opinion/columns/cannabis-in-india-marijuana-legalization-7076059/> > accessed 04 December 2021

³⁸ *Ibid*

³⁹ Prabhaskar K Dutta, ‘Will India legalise cannabis after UN vote?’ (*India Today*, 04 December 2020) <<https://www.indiatoday.in/news-analysis/story/will-india-legalise-cannabis-after-un-vote-1746631-2020-12-04>> accessed 04 December 2021

⁴⁰ *Ibid*

⁴¹ Marc-Antoine Crocq, ‘Historical and cultural aspects of man’s relationship with addictive drugs’ (2007) 9(4) *PMC* < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3202501/> > accessed 09 December 2021

- Glaucoma;
- Reduces anxiety;⁴²
- Slows down the increase of Alzheimer;
- Improves metabolism and helps in weight loss;
- Helps in the treatment of Migraines and improves the mental health of those suffering from depression, etc.⁴³

Others like Magic Mushrooms are used for treating Alcoholism and reducing Anxiety, Ketamine for Bipolar disorders, sometimes MDMA is professed to patients to take up arms against Post-Traumatic Stress Disorders. Countries that have legalized drugs for their medical use include- Australia, Argentina, Barbados, Canada, Chile, Columbia, Croatia, Cyprus, Finland, Germany, Greece, Ireland, Israel, Italy, Jamaica, Lebanon, Netherlands, New Zealand, Portugal, Spain, Sri Lanka, etc.⁴⁴

Help in Drug Exploration: Scientists and researchers lack sufficient information regarding drugs- their nature, what are its possible repercussions, how efficacious it is, etc. due to its unavailability, as it is illegal.⁴⁵ This gives the illicit drug market the plausibility to spread out fallacious information regarding drugs. Legalization would make the drugs available to the scientists and researcher students congruously and this would help them to unfold the actual veracity of drugs and bring out the same in front of the society which is living under a fallacy.

Reduction in Drug Abuse: The legalization of drugs will help to fight against drug abuse to a serious extent and will also ensure that lesser or no adulteration of drugs; as this is under the strict surveillance of the Government of India. Also, studies have proved that drugs like cannabis are of less harm as compared to alcohol.⁴⁶

⁴² *Ibid*

⁴³ Jayant Sriram, 'India's drug laws- The debate on legalization | The Hindu In Focus podcast' (*The Hindu*, 10 October 2020) <<https://www.thehindu.com/podcast/indias-drug-laws-the-debate-on-legalisation-the-hindu-in-focus-podcast/article32820061.ece>> accessed 03 December 2021

⁴⁴ *Ibid*

⁴⁵ Louise Gaille, '16 Decriminalisation Pros and Cons of Drugs' (*Vittana Personal Finance Blog*, 30 January 2018) <<https://vittana.org/16-decriminalization-of-drugs-pros-and-cons>> accessed 03 December 2021

⁴⁶ *Ibid*

CRITICISM AGAINST LEGALIZING DRUGS

- If legalized, then people will fearlessly experiment out with the drugs as there will be no prosecution and therefore no punishment at all.
- The medical system will be burdened unnecessarily with the treatment and rehabilitation of new drug addicts emerging due to the change in the legal system.⁴⁷
- The Government and the legal system will get over-burdened with the rise in social issues caused by the legalization of drugs as there's already a lot of pressure on the government and legal system to cope up with the chaos created by the alcohol and tobacco addicts and it would become even more challenging for them to bring a healthy and peaceful society to live in.⁴⁸
- There would be probable chances of an increase in violence and other criminal activities.⁴⁹
- The legalization of drugs will open a gateway to many other drugs- both natural and synthetic; which will be very harmful to human health and society.

CONCLUSION

To conclude up, legalization and decriminalization of drugs is a hugely debatable issue and there are many eminent personalities out there who advocate in favor of the legalization of drugs whether it is for medical or industrial purposes or for recreational or economical purposes. On Whereat one hand we find so many positive aspects of drugs there are still undeniable negative aspects of it too like an increase in the cases of a drug overdose, an increase in crimes relating to drugs, over-burdening of government with the unnecessary rise in social issues. After going through the pros and cons of decriminalization and legalization of drugs, I have reached a conclusion that what once Sebastian Marincolo said "The legalization

⁴⁷ 'Pros and cons of decriminalizing drug addiction' (*Foundation Recovery Network*, 23 April 2018) <<https://wwwFOUNDATIONSRECOVERYNETWORK.COM/pros-and-cons-of-decriminalizing-drug-addiction/>> accessed 09 December 2021

⁴⁸ *Ibid*

⁴⁹ MW Staff, 'High As A Kite: Maneka Gandhi And Other Indian Politicians Who Support Marijuana' (*Means World India*) <<https://www.MANSWORLDINDIA.COM/uncategorized/high-kite-indian-politicians-support-marijuana/amp/>> accessed 05 December 2021

of marijuana is not a dangerous experiment – the prohibition is the experiment and it has failed dramatically, with millions of victims all around the world.” stands to be true in all aspects.⁵⁰ This is because India has long seen the criminalization laws on drugs which proved to be an absolute failure as millions of people are still consuming and using these prohibited drugs by procuring them in illegal ways.⁵¹

So, the Government should now plan up for the legalization of drugs but this shouldn't be done all in one single step but should be indifferent levels one by one. This would be helpful in the betterment of society. Legislation of proper laws for drugs would also allow the government to set up a regulated drug market under their own surveillance. All this will also lower down the cases of a drug overdose. All government should do is to promote drug education, promote programs on drug awareness, and should also make up proper guidelines and instructions regarding the use and consumption of drugs and warnings against it, this all will help and result in safer drug usage.

Indian Government should learn and take lessons from the models of those countries that have already legalized drug use whether it is for medical use, commercial use, or personal consumption.⁵² This should be done in the near future because, in recent years, there is a sudden rise in crimes involving drugs and what needs here to be focused upon is that about fifty percent of the cases are of personal consumption. The most effective way to put an end to all these problems is the establishment of a well regularized legal system.⁵³ The aficionados from Manali to Candolim are all eagerly waiting for the legalization of the drugs now and it won't take too long that millions of people could be seen singing with might and main 'Dum Maro dum' or the very famous lyrics of Bob Marley-' I feel so high, I even touch the sky, so here I come again.

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² Sesha Kethineni and others, 'Drug use in India: Historical traditions and current problems' (*Taylor & Francis Online*, 01 June 2011)

<<https://www.tandfonline.com/doi/abs/10.1080/01924036.1995.9678548?journalCode=rcac20>> accessed 09 December 2021

⁵³ *Ibid*