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# Legalization of Marijuana

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## ABSTRACT

*To mark 4/20 (April 20) a day dedicated to smoking marijuana. There are numerous theories for the same so the main or at least one of it is. In the seventies, a group of high school students in San Rafael, California would routinely meet up for a sneaky joint by the statue of Louis Pasteur on the campus at exactly 4:20 pm. They use to whisper "Louis420" and then it became a code word later it was adopted as a day for smoking weed. Marijuana has been used since the prehistoric period of Man's existence. And it's one of the most consumed illegal drugs in the world. The global story of cannabis is that it is the most recreational and it's all about the fizz produced in the body after taking the hit. drug According to the world drug report 2019 from the United Nations Office on Drug and Crime (UNODC) the global number of users of marijuana is was 219.02 million approx. Global weed use has grown by 60 percent over the past decade, with people smoking around 130 percent more than before. The biggest issue sees in youth smoking, which can harm the brain. So by legalizing it there can be proper checks and balances or on the other side, there will be a growth in the consumption. In the wake of the past events in which two US states have demanded the legalization of Marijuana other than medical purposes. This paper aims at pointing out all the possible aspects related to marijuana followed by a comparative analysis between India and the rest of the world and whether India should legalize or not.*

*Keyword – Pot, Marijuana, Recreational drug, Joint.*

## I. INTRODUCTION

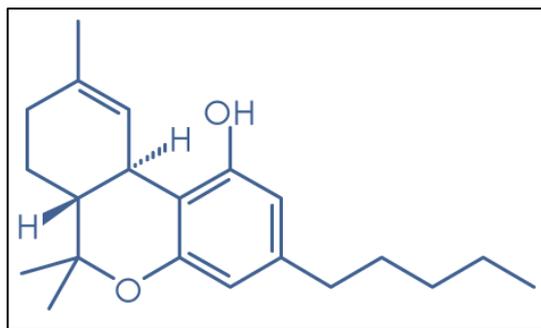
The Cannabis is natural product and a very complicated/cFigure 1 delta -9-tetrahydrocannabinol (C<sub>21</sub>H<sub>30</sub>O<sub>2</sub>) chemicals in it an 80 of them are cannabinoid and have different kind of effect when used, the main component which make it psychotically active is **delta -9-tetrahydrocannabinol<sup>3</sup>(Δ<sup>9</sup>-THC)** Chemical Formula - C<sub>21</sub>H<sub>30</sub>O<sub>2</sub> THC's chemical structure is Similar to that of Anandamide, a chemical which is present in the brain which makes it easy to alter the brain function.

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<sup>3</sup> Zerrin Atakan, Cannabis, a complex plant : different compounds and different effects on individual (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3736954/>)



For example THC affects the functioning of the hippocampus and orbital function the same place where Anandamide works hence after consumption of marijuana leads to impaired thinking and interfere focus. Marijuana is a kind of a recreational drug that means any substance with pharmacologic effect and used for personal pleasure than medical purpose in more common terms it gives euphoria and blocking unhappy memories. There can be various reasons why people may start using recreational drugs like when there is an anxiety attack. Using it as a recreational drug this story is one side of the coin. The other side talks about the medical purpose, it is legal in seventeen states because they play a major role in the treatment of diseases such as HIV. Alzheimer's Cancer and others because it gives positive thoughts and help the patient to be calm and heal properly.

## II. HISTORY OF MARIJUANA

Marijuana is one of the most consumed naturally generated drugs in the whole world. The story of marijuana starts from the early 2700 BC when it was for the very first time consumed by a Chinese emperor Shen Nung. The main focus was not on personal pleasure but to create a medicine for rheumatoid Arthritis and gout and other deadly diseases that were revolving in his state during his time. Later he came to know about the intoxicating property but still the main focus was for medicinal purposes. Later in back 1545 for the very first time, Spanish brought Marijuana to this new world and by the time of 1611, it was the second most crops grown after Tobacco. Even after a thousand years of use of this drug with so much advanced technology we are not fully aware of the societal and biological effect which this drug can cause. Marijuana is classified as a recreational drug. It is the most often used illegal drug in the United States<sup>4</sup>. To date, we do not agree whether or not Marijuana is linked to violence and crime on the contrary National Drug Control Policy of the United States and other research<sup>5</sup> said that legalization would not be effective for public health and safety and might

<sup>4</sup> The facts about Recreational drugs,

(<https://www.urmc.rochester.edu/encyclopedia/content.aspx?contenttypeid=1&contentid=1925>)

<sup>5</sup> Friedman, Alfred S.; Terras, Arlene & Glassman, Kimberly. 2003. The Differential Dis-inhibition Effect of Marijuana Use on Violent Behavior. *Journal of Addictive Diseases*, 22 (3): 64

even do more harm to it. Then there is even research which says that there is no certain evidence which says that no chronic use of Marijuana can lead to any kind of violence.<sup>6</sup>

After the completion of World War II, it can be observed that there was a sudden rise in the availability of recreational drug and consumption, however, this could be related to the number of other things revolving around that time, as there were a large number of people who were affected by some of the other psychological condition, under which major crowd was of the war veteran who was suffering from Post-traumatic stress disorder (PTSD) or guilty of losing their colleagues. The other reason which can be related to the sudden rise in consumption is Tourism in the third world countries where these recreational drugs were available. This phenomenon was grave in India. He World War II brought the establishment of various International Organization that overlooked all the aspects of the multidimensional drug. Around early 900 it was noticed that marijuana can be considered as an effective medicine in certain diseases. However later in 1911, it was outlawed in Massachusetts, United States. Then around 10 new states passed a similar law related to the prohibition of Marijuana in 1915. Then in the United Kingdom added marijuana in Section 4 (b) in a dangerous drug act. 1920.<sup>7</sup> The later year of 1970 even the United States prohibited the sale and criminalized the consumption of Marijuana.

### **III. EFFECT OF MARIJUANA**

Since early 20<sup>th</sup> - century cannabis has been subject to legal restriction with the possession, use and sale of cannabis preparations containing psychoactive cannabinoid currently illegal in most countries of the world especially in India; the United Nations has said that cannabis is the most – used illicit drug in the world.<sup>8</sup>

#### **(A) Benefits of Smoking Marijuana**

Decrease body fat – The research from Conference of Quebec University Health Center looked at 700 adults aged 18 – 74 and found out that cannabis user tends to have low body mass index score. People who have a lower body mass index tend to have low risk for diabetes. Cannabis i compounds were shown to raise metabolism in rats, leading to lower levels of fat in the liver and lower cholesterol. Human trials are being conducted to find a

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<sup>6</sup> Abel, Ernest L. 1977. The Relationship between Cannabis and Violence: A Review, psychological bulletin 84

<sup>7</sup> The United Kingdom first prohibited cannabis as a drug, by the 1925 International Opium Convention, adding cannabis as an addendum to the Dangerous Drugs Act 1920.

<sup>8</sup> H. Kalant (Aug 2004). "Adverse effects of cannabis on health: an update of the literature since 1996". Progress in Neuro-Psychopharmacology and Biological Psychiatry 28 (5): 849–63 pg6

drug targeting obesity-related diseases<sup>9</sup>

Increase lungs function - smoking weed isn't that bad for your lungs and smokers have improved lungs function when compared to both cigarette smokers – and people who have never smoked either. The researcher writing in the journal of American medical association says that the big drag taken by weed smokers may train lungs to be more efficient.

Increase Creativity- A 2012 study in consciousness and cognition found that marijuana made people more creative at least in terms of how well they used language. The researcher quote that “we investigated the effects of cannabis smoked naturalistically on schizotypy and divergent thinking, a measure of creativity. “One hundred and sixty cannabis users were tested on 1 day being sober and another day high on marijuana and it was found that cannabis increased their verbal fluency in low creatives to the same of highly creative people.

**Medical Use-** Cannabis used medically has several well-documented beneficial effects. Among these are: the amelioration of nausea and vomiting, stimulation of hunger in chemotherapy and AIDS patients, lowered intraocular eye pressure (shown to be effective for treating glaucoma), as well as general analgesic effects (pain reliever)<sup>10</sup>. Most recent studies indicate that cannabis helps in de-stressing and acts as an anti-depressant.

**Addictiveness-** National Institute of Drug Abuse conducted a study on the relative addictiveness of 6 substances –cannabis, caffeine, cocaine, alcohol, heroin and nicotine). Cannabis was ranked the least addictive and caffeine the second least addictive<sup>11</sup>

**Psychoactive drugs** fall in the category of anti-depressants, hallucinogens and cannabis is a mix of all these properties making it most sought after. THC is typically considered the primary active component of the cannabis plant; various scientific studies have suggested that certain other cannabinoids like CBD may also play a significant role in its psychoactive effects

### **(B) Negative effects of smoking Marijuana**

Marijuana is made from the shredded and dried parts of the cannabis plant, including the flower, seeds, leaves and stem. With few other names like pot, weed, hash and dozens of others. While some people smoke it some prefer to vape it. Different methods of taking the drug may affect your body differently.

**Gateway to drugs theory** - This theory states that the use of less deleterious drugs may lead

<sup>9</sup> 5 Cannabis could be used to treat obesity-related diseases. Telegraph. 2012-07-08

<sup>10</sup> "Minimal long-term effects of marijuana use found in central nervous system by UCSD researchers". Health.ucsd.edu. 2003-06-27. .

<sup>11</sup> "Relative Addictiveness of Drugs". The New York Times. Tfy.drugsense.org. 1994-08-02. Retrieved o

to a future risk of using more dangerous drugs. Cannabis, alcohol and tobacco are attributed to this theory. Some scientific studies show that the consumption of cannabis can predict a significantly higher risk for the subsequent use of "harder" illicit drugs, while other studies show that it can not<sup>12</sup> A 10-year long study conducted in Australia found that adults of 24 years used a drug called amphetamines which was preceded by the use of cannabis.<sup>13</sup> In 2006 a counter-study was conducted on rats, in Sweden, which examined the brains of the rats after dosing them with cannabis and found that THC alters the opioid system that is associated with positive emotions, which lessens that effects of opiates on rat's brain and thus causes them to use more heroin. The rats were given THC at the young age of 28 days, it is impossible to extrapolate the results of this study to humans. Also, the previously cannabis-exposed adult rats, despite being desensitized to heroin, were no more likely to get addicted (as measured by the likelihood of self-administration) than the controls<sup>14</sup>

**Controversial view on effects on brain-** A 35-year cohort study published in August 2012 in Proceedings of the National Academy of Sciences and funded partly by NIDA and other NIH institutes reported an association between long-term cannabis use and neuropsychological decline, even after controlling for education. It was found that the persistent use of marijuana before age 18 was associated with lasting harm to a person's intelligence, attention and memory, and was suggestive of neurological harm from cannabis. However, Individuals who started cannabis use after the age of 18 did not show such decline<sup>15</sup> Results of the study came into question when in a new analysis, published January 2013 in Proceedings of the National Academy of Sciences, noted other differences among the study group including education, occupation and other socioeconomic factors that showed the same effect on IQ as cannabis use. Existing research suggests that the 2012 study are likely to be overestimated, and that the true effect could be zero. Three more research studies corroborate this finding<sup>16</sup>

**Controversy as to the safety to the body-** However, no study has proven that cannabis can cause fatality, though occasional strokes and other cardiovascular effects are reported.<sup>24</sup> Smoking cannabis has been associated with an increase in tar level in the lungs as most of the

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<sup>12</sup> Srikameswaran, Anita (2006-12-05). "Researchers say smoking pot not always path to hard drugs drug use". Pittsburgh Post-Gazette

<sup>13</sup> Degenhardt, Louisa; Coffey, Carolyn; Carlin, John B.; Moran, Paul; Patton, George C. (2007). "Who are the new amphetamine users? A 10-year prospective study of young Australians"

<sup>14</sup> Ellgren, Maria; Spano, Sabrina M; Hurd, Yasmin L (2006). "Adolescent Cannabis Exposure Alters Opiate Intake and Opioid Limbic Neuronal Populations in Adult Rats". *Neuropsychopharmacology* 32 (3): 607–15

<sup>15</sup> Meier MH, et al. (2012-07-30). "Persistent cannabis users show neuropsychological decline from childhood to midlife". [www.journalistsresource.org](http://www.journalistsresource.org).

<sup>16</sup> Ole Rogeberg (2013-01-14). "Correlations between cannabis use and IQ change in the Dunedin cohort are consistent with confounding from socioeconomic status"

consumers mix it with tobacco, making it difficult to study the effect of cannabis on the lungs. A 2012 study conducted by (JAMA) in corroboration with other studies<sup>17</sup> showed that there is no significant relationship between marijuana exposure and impairment of lung function. Even though cannabis contains the same noxious ingredients as tobacco, it causes no damage to the lung due to the anti-inflammatory effects of THC.<sup>18</sup> In 2009, a study published in a British journal recorded that compared to tobacco, alcohol, cocaine, heroin, LSD, ecstasy, consumption of cannabis is least harmful to the body<sup>19</sup>

**Respiratory System** – much like tobacco smoke, marijuana smoke is equally harmful and have chemicals like Ammonia and hydrogen cyanide. If someone is a regular smoker they may end up wheeze, cough and produce phlegm. And are at a risk of bronchitis and lung infection. Marijuana may not but the smoke in it does have some harmful carcinogens which can increase the risk of lung cancer.<sup>20</sup> However, there is no concrete result of it.

**Circulatory System** – THC moves from the lungs to the bloodstream. Within minutes, your heart rate will increase from 20 to 50 beats per minute.<sup>21</sup> If you have a history of heart disease you may end up having a heart attack. Marijuana even expands the blood vessels which result in the bloodshot red eye.

**Central Nervous System** – The effect of Marijuana extends throughout the central nervous system (CNS). Marijuana is thought to ease pain and inflammation and help control spasm and seizure. THC forces the brain to release a large amount of dopamine which gives you a feeling of relaxation and feel good about everything. TCH even cloud the judgment and change the way you think. It also alters the balance and reflex response.

**Digestive System** – Oral THHC can cause nausea and vomiting because it is processed in the liver. An increase in your appetite is common when taking any form of marijuana. However, this can be considered great with the people who are on chemotherapy.<sup>22</sup>

**Immune System**- THC may adversely affect your immune system involving animals showed that THC might damage the immune system making you more vulnerable to illnesses.

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<sup>17</sup> "Study finds no cancer-marijuana connection". Washingtonpost.com. 2006-05-25

<sup>18</sup> O'Connor, Anahad (2012-01-11). "Moderate marijuana use does not impair lung function, study finds". NYTimes.com.

<sup>19</sup> Ibid 12; pg7

<sup>20</sup> <https://www.drugabuse.gov/publications/research-reports/marijuana/what-are-marijuanas-long-term-effects-brain>

<sup>21</sup> Ibid 18

<sup>22</sup> [https://www.cancer.gov/about-cancer/treatment/cam/hp/cannabis-pdq#cit/section\\_4.24](https://www.cancer.gov/about-cancer/treatment/cam/hp/cannabis-pdq#cit/section_4.24)

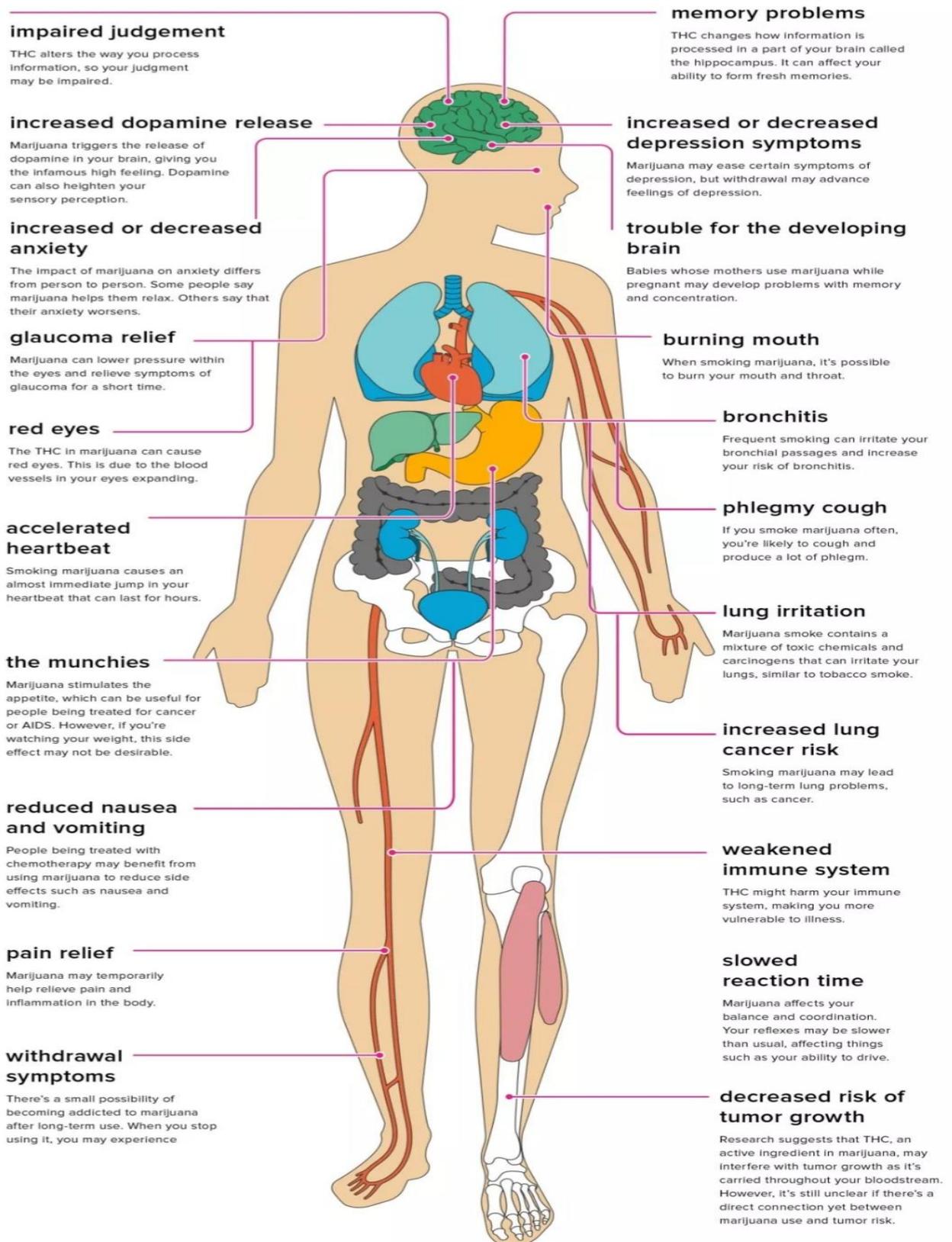


Figure 2 : <https://www.healthline.com/health/addiction/marijuana/effects-on-body#2>

## **IV. MARIJUANA AND WORLD**

### **United States of America**

The consumption, sale, and possession of cannabis in the United States of America is illegal under federal laws. However, some places had made an exception for medical use. In Colorado and Washington consumption and possession of marijuana is legal for both medical and nonmedical purpose.<sup>23</sup> A poll was conducted in 2011 which showed that 50% of the population support legalization of Marijuana.<sup>24</sup> Later Colorado and Washington legalized the existence of Marijuana for no medical purpose. However then President Mr. Obama opposed the legalization of Marijuana and others because he thought that it would make an increase in the availability and use of these kinds of drugs.

As per the Controlled Substance Act, 1970, marijuana is classified as a Schedule I drug, claiming it has a high potential for abuse and has no acceptable medical use. The economic argument put forth by majority of the state is that decriminalizing cannabis would largely reduce costs of maintaining the criminal justice and law enforcement systems, while legalizing cannabis to allow the cultivation and sale would generate a substantial amount of income from taxing cannabis sale. It has been calculated by economist such as Milton Friedman and other Nobel prize winners that marijuana legalization, replacing prohibition with a system of taxation and regulation, would save \$7.7 billion per year in state and federal expenditures on prohibition enforcement and produce tax revenues of at least \$2.4 billion annually if marijuana were taxed like most consumer goods. If, however, marijuana was taxed similarly to alcohol or tobacco, it might generate as much as \$6.2 billion annually.<sup>25</sup> Other arguments point out that the funds saved from cannabis decriminalization could be used to enforce laws for other, more serious and violent crimes.<sup>26</sup>

### **United Kingdom**

Cannabis is illegal to possess, grow to distribute, or sell in the UK without the appropriate licenses. It is a class B drug with penalties for unlicensed dealing, unlicensed production and unlicensed trafficking of up to 14 years in prison, an unlimited fine or both. The Maximum penalty for unauthorized or sanctioned possession in five years in prison.<sup>27</sup> In 2001 the then

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<sup>23</sup> 5 'Marijuana Legalization could be short lived' Reuters U.S Edition(2012-11-07). Retrieved on 04/02/2013

<sup>24</sup> "Half in U.S. support legalizing marijuana use, poll finds". Reuters. October 18, 2011. Retrieved on 03/02/2013

<sup>25</sup> An Open Letter to the President, Congress, Governors, and State Legislatures Prohibition Cost. Retrieved on 04/02/2013.

<sup>26</sup> Report and Recommendations: Governor's Drug Policy Advisory Group". Drug Policy Alliance. January 2001. Retrieved on 04/02/2013.

<sup>27</sup> "Drug Laws". United Kingdom Home Office. Retrieved on 04/02/2013

Home secretary reclassified cannabis as a grade C drug, removing the threat of arrest for possession but not for distribution. The reclassification was made to focus the attention on more dangerous drug rackets.<sup>28</sup> However this effect was overturned in 2008 when cannabis was categorized as a class B drug again. But the wind seems to blow in the other direction when, in 2012, the house of commons declared cannabis will be reclassified from Class B to C and that the 2008 government made the wrong decision. This gives a pathway to the recreational use of cannabis but under the regulation of the government.<sup>29</sup>

## **Canada**

The status of cannabis was under the dispute till last fall but now as it is legalized there are a total of 33 US states where the use of medical or recreational Marijuana is available. Now the banks are not finding comfortable hesitate to get involved in this meaning that cannabis companies are struggling to secure loans and line of credit. Canada became the second country in the world after Uruguay to legalize recreational marijuana. Its passage of the cannabis act created a blueprint that the US could follow. It also put us in the prime position to observe the strength and weakness of the large country's legalization efforts and tailor our approach accordingly, If Canada rollout continues to unfold without any major catastrophes, US lawmaker pushing for federal reform will have a credible model to use to inform their govt.

There has been numerous failed bills trying to decriminalize marijuana in Canada. However, in 2011, Ontario Superior Court has declared in *R v. Mernagh* that Canada's Marijuana Medical Access Regulations (MMAR) and "the prohibitions against the possession and production of cannabis (marijuana) contained in sections 4 and 7 respectively of the Controlled Drugs and Substances Act" are "constitutionally invalid and of no force and effect"<sup>30</sup> However this judgement was considered a bad law and no effect was implemented.

The confusion widens due to the varied stand of the political parties in Canada. The Liberal Party supports legalization of Cannabis; The New Democratic Party supports decriminalization but not legalization; The Conservative Party introduced two bills to increase mandatory minimum prison sentences for offences relating to growth and trafficking of marijuana which was ultimately rejected<sup>55</sup>. The standpoint of Canada as to legalization of marijuana was still disputed. In a nut shell, marijuana is illegal except for medical purposes in

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<sup>28</sup> The Police Foundation (1999). *Drugs and the Law: Report of the independent inquiry into The Misuse of Drugs Act 1971*.

<sup>29</sup> "Drugs: Breaking the Cycle - Home Affairs Committee Formal Minutes:Monday 3 December 2012". The House of Commons. 10 December 2012

<sup>30</sup> Ontario judge declares criminalization of pot unconstitutional (bad source)".31/01/2013

Canada.

### **Australia**

In the month of September 2019, Canberra became the first city to legalize marijuana for recreational use. Canberra is no less than any US state and this act will permit them to use and grow cannabis is there near. The law takes effect from 31 January 2020.<sup>31</sup> With the rapid expansion in hydroponically grown cannabis cultivation, the Australian Drug Misuse and Trafficking Act (1985) was amended in 2006, reducing the amount of cannabis grown indoors under hydroponic conditions that qualifies as a 'commercial quantity' or as a 'large quantity'.<sup>32</sup> Although cannabis is illegal in Australia, the country has largely avoided a punitive drug policy, instead focusing on harm-minimisation strategies and a treatment framework embedded in a law enforcement regime. There are high levels of support for cannabis legalisation in Australia.

*Illegal cultivation of cannabis is an offence under the NDPS Act. Anyone cultivating cannabis for any purpose other than medical and scientific purpose<sup>33</sup> is liable under section 20 which states that cultivation or production or sell or purchase ganja will amount to five year of imprisonment with a fine extending to fifty thousand rupees, and for any other form of cannabis other than ganja will lead to minimum ten year of imprisonment with a fine extending to one lakh rupees. Also the court has the discretion, based on reasonable justification, to impose a fine exceeding two lakh rupees<sup>34</sup>*

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<sup>31</sup> Local Australian Marijuana legalization law takes effect this week, Marijuana Moment, January 29, 2020

<sup>32</sup> NCPIC Cannabis and the Law Factsheet, ncpic.org.au.

<sup>33</sup> State government has the power to grant license for medical and scientific use of marijuana under sec. 10 read with sec. 8 of the NDPS Act 1985

<sup>34</sup> See sec. 20 NDPS Act, 1985.

Country	Legal Status
France <sup>35</sup>	Illegal (Consumption, selling, owning or consuming cannabis is illegal.)
Brazil <sup>36</sup>	<p>Illegal (Decriminalized for personal use</p> <ul style="list-style-type: none"> <li>• The possession of any drug in Brazil, for personal consumption, entails a warning, community service and education on the effects of drug use. The same applies for the planting and/or preparation of small amounts of any drug.</li> <li>• Selling and transportation of any drugs, as well as the possession or cultivation of larger amounts is characterized as drug trafficking, a criminal act punished with 5 to 15 years in prison and a significant fine</li> </ul>
Japan <sup>37</sup>	Illegal (Possession is punishable by up to five years in prison. Importing or selling cannabis is punishable by up to 10 years imprisonment and up to 30 million yen)
Germany <sup>38</sup>	Illegal (The possession is illegal. The possession of small amounts (5–30 g) is prosecuted, but charges can be dropped.)
Switzerland <sup>39</sup>	<p>Decriminalized</p> <ul style="list-style-type: none"> <li>• Cannabis is illegal to possess, consume or distribute. However, usually only the minimum penalty is imposed for possession and personal use, even for larger amounts.</li> <li>• □ In 2012, the cantons Vaud, Neuchatel, Geneva and Fribourg have allowed the growing and cultivation of up to 4 cannabis plants per person, in an attempt to curb illegal street trafficking</li> </ul>

<sup>35</sup> <https://www.cannaconnection.com/blog/14790-legal-status-france>

<sup>36</sup> Information from planalto.gov.br. Retrieved on 03/02/2013

<sup>37</sup> Information on the official website of the Japan Narcotics department. Nco.gv.jp. Retrieved on 04/02/2013

<sup>38</sup> <https://sensiseeds.com/en/blog/countries/cannabis-in-germany-laws-use-history/>

<sup>39</sup> Ian Sparks (2011-11-17), Swiss cannabis smokers to be allowed to grow four marijuana plants each (to stop them buying drugs illegally), DailyMail.co.uk

Pakistan <sup>40</sup>	<p>Disputed Stand.</p> <ul style="list-style-type: none"> <li>• Laws prohibiting the sale and misuse of cannabis exist, but are very rarely enforced.</li> <li>• As with hash, the occasional use of cannabis in community gatherings is broadly tolerated as a centuries old custom.</li> <li>• The open use of cannabis by Sufis and Hindus as a means to induce euphoria has never been challenged by the state.</li> <li>• Further, large tracts of cannabis grow unchecked in the wild</li> </ul>
Portugal <sup>41</sup>	<p>Decriminalized (up to 25g for weed, 5g for hash and 2.5 g for THC oil)</p> <ul style="list-style-type: none"> <li>• no criminal charges if the amount possessed for any drug is no more than an estimated ten days' supply of the substance (25g for weed, 5g for hash and 2.5g for THC oil)</li> <li>• In 2001, Portugal became the first country in the world to decriminalize the use of all drugs, and started treating drug users as sick people, instead of criminals,</li> <li>• <input type="checkbox"/> arrested or assigned mandatory rehab if caught several times in possession.</li> </ul>

## V. WHY OR WHY NOT INDIA NEED A LEGALIZATION OF MARIJUANA?

Above there was comparison between few countries and there relation with marijuana. Several other countries including India have an orthodox mentality when it comes to marijuana as there was no specific legislation regarding the consumption of the Narcotics back till 1985.

### (A) Religious Value Of Cannabis

<sup>40</sup> Cannabis legal status vault - Pakistan/Peshawar, Erowid.org. Retrieved on 04/02/2013

<sup>41</sup> EMCDDA: Drug policy profiles, Portugal, Emcdda.europa.eu, 2011-08-17. Retrieved on 03/02/2013.

It has been mentioned in the ancient scriptures such as the “Vedas” that cannabis comes under the “five sacred plants”. The Vedas called cannabis as the source of happiness, joy-giver, liberator that was compassionately given to human to help us attain delight and loss fear<sup>42</sup>

**Hinduism** - Cannabis is related to The god, Shiva is frequently associated with cannabis, called bhang in India. According to the legend, Shiva wandered off into the field after the angry discourse with his family. Drained from the family issue and rising temperature he slept under a leafy tree. The curiosity made him eat those leave which fell above him from the leafy tree. He felt relaxed and rejuvenated instantly. Shiva made the plant his favorite food and he became known as the Lord of Bhang. The festival of Holi invites the consumption of Bhang as it is stated in the Hindu scriptures that to purify the elixir of life.

**Islamism** – The Quran does not directly forbid cannabis and known as khamr (an intoxicant) by many religious scholars and believed to be haraam (sinful). As per the book Hadith which is about the sayings of Prophet Mohammed it is believed that an intoxicant is a Haram. However the liberal muslims believed that the Quran is often misinterpreted by narrow minded orthodox who want to take basic right in the name of religion<sup>43</sup>

**Sikhism** – During middle age soldiers often took a drink of bhang before entering battle, just as westerner took a swig of whiskey. One story tells of the sikh leader, Gobind Sing ji Soldier being scared by the attacking elephant with a sword in his trunk. All the men got terrified then Singh gave a man a mixture of bhang and opium. The herbs gave him the strength agility to go to the elephant and fight. In the report of Indian Hemp Drug Commission it is believed that the consumption of bhang in Sikh brothers is higher<sup>44</sup>.

### **(B) Indian Legislation related to Marijuana**

While discussing various aspect related to alcohol, drugs and HIV, it is desirable that we also examine at least one of the legislation in detail. Narcotic Drug and Psychotropic Substance (NDPS) Act 1984. It was designed to deal with a very important issue that is drug trafficking. This is also one of the special Acts that has come before the courts very frequently and having a large number of conflicting judgments confusing the general public. Prior to the NDPS Act, the statutory control over narcotic drugs was exercised in India through a number of Central and State Enactments. The Principal Central Act, 1930 were enacted a long time

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<sup>42</sup> Abel, E.L. (1980). *The First Twelve Thousand Years*. New York: McGraw Hill

<sup>43</sup> Abdul-Rahman, Muhammad Saed (2003). *Islam: Questions and Answers - Pedagogy Education and Upbringing*. MSA Publication Limited

<sup>44</sup> History of Cannabis in India, Jann Grumbiner, July 16, 2011h9

ago.

Section 2(iii) defines Cannabis as “Cannabis” as Charas, that is the separated resin, in whatever form, whether crude or purified; 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; and any mixture, with or without any natural material, of any of the above forms of cannabis or any drink prepared therefrom. The definition in India excludes leaves and seeds when not accompanied by tops. Bhang is not covered by the Act though it includes charas. Bhang is a preparation made from cannabis leaves consumed in parts of India on some festivals. As it is not made from cannabis resin or from flowering tops, it is not covered under the NDPS Act, 1985. Production and sale of Bhang is permitted by many State Governments.

Also sec. 8 states that no person shall cultivate the opium poppy or any cannabis plant with an exception for medical or scientific purposes in the manner and to the extent provided by the provisions of this Act. Medical use and scientific research of marijuana is, thus, legal in India as per this section; recreational usage is strictly illegal. However, medical use of cannabis has so far been extremely limited and confined to alternate medicine such as homeopathy and ayurveda. State Governments have actually not been licensing cultivation of cannabis<sup>45</sup> Of late, there has been growing international interest among scientists in exploring possible medical uses of cannabis. Cultivation of cannabis will not be permitted given its limited proven uses for medical purposes. Cultivation shall be permitted for research including trials of various varieties of cannabis.<sup>46</sup> In addition to this discrepancy, The Central Government does not grant permission to use cannabis of industrial and horticultural purposes( scientific research).<sup>47</sup> Cannabis plant can be a source of biomass and fibre for industrial purposes. Cannabis seeds can be used to produce cannabis seed oil - a high value oil. Some countries license cultivation of cannabis varieties which have very low content of tetrahydrocannabinol (THC), the active ingredient which has the intoxicating effect. These varieties of cannabis are used to produce fibres which are, in turn, used in production of fabrics and for production of biomass<sup>48</sup>

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<sup>45</sup> State government has the power to grant license for medical and scientific use of marijuana under sec. 10 read with sec. 8 of the NDPS Act 1985.

<sup>46</sup> National Policy on NDPS Act.-

[http://www.unodc.org/documents/southasia/webstories/NationalPolicyonNDPS\\_FINAL.pdf](http://www.unodc.org/documents/southasia/webstories/NationalPolicyonNDPS_FINAL.pdf).

<sup>47</sup> Section 14 of the NDPS Act 1985 empowers the Central Government to, by general or special order, permit cultivation of cannabis exclusively for horticultural and industrial purposes.

<sup>48</sup> *Ibdi* 42 Page 6

Illegal cultivation cannabis (*Cannabis sativa*) is an offence under the NDPS Act. Anyone cultivating cannabis for any purpose other than medical and scientific purposes is liable under Section 20 which states that cultivation or production or sell or purchase ganja will amount to five years of imprisonment with a fine extending to fifty thousand rupees; and for any other forms of cannabis other than ganja will lead to minimum ten years of imprisonment with a fine extending to one lakh rupees. Also the court has the discretion, based on reasonable justification, to impose a fine exceeding two lakh rupees.<sup>49</sup> I submit that this section unfairly classifies ganja, charas with bhang. Why is that if charas and ganja are illegal, bhang is consumed legally on a large scale? Isn't this discrepancy meant to confuse the citizens of India?

The deterrent penal provisions of the NDPS Act, 1985 and other legislative, administrative and preventive measures were found inadequate to control the illicit transit traffic in drugs. It was, therefore, felt that a preventive detention law should be enacted with a view to effectively immobilize persons engaged in any kind of illicit traffic in narcotic drugs and psychotropic substances. To achieve this objective the President promulgated the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance on 4th July, 1988<sup>50</sup> - based on the **UN Convention and SAARC Convention of 1988**

The Act empowers Central Government and the State Governments have been empowered to make orders of detention with respect to any person (including a foreigner) if they are of opinion that it is necessary so to do with a view to preventing him from committing illicit traffic in narcotic drugs and psychotropic substances. The expression "illicit traffic" had been defined to include cultivation of any coca plant or gathering any portion of coca plants, cultivating the opium poppy or any cannabis plant, or engaging in the production, manufacture, possession, etc., of narcotic drugs or psychotropic substance.

I submit that despite the provisions made by the government illicit trafficking of drugs prevails. I agree that the stringent attitude has helped curb this rampant process to a certain extent, however not a significant extent. This is probably due to the unclear demarcations of the drugs in the above mentioned Acts. How can the government function efficiently if the Acts propagate clarity? It is high time that a proper line is drawn and the government focuses on battling the dangerous drugs and stop defining a mild intoxicant in the same league.

### **(C) Decriminalization of recreational use of Marijuana**

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<sup>49</sup> See sec. 20 NDPS Act, 1985

<sup>50</sup> H. Kalant (Aug 2004). "Adverse effects of cannabis on health: an update of the literature since 1996". *Progress in Neuro-Psychopharmacology and Biological Psychiatry* 28 (5) pg 3

Decriminalization of recreational use of marijuana in India. As per the Connecticut Law Revision Commission has examined laws from other states that have reduced penalties for small amounts of marijuana and the impact of those laws in those states. It was found that:

- the costs of arresting and prosecuting marijuana offenders were significantly lower in states that had done away with criminal penalties for possessing small amounts;
- there was a greater increase in marijuana use in states that continue to treat possession as crime than in states that treated it as a civil offense;
- easing the penalties for marijuana did not lead to a substantial increase in the use of either alcohol or hard drugs<sup>51</sup>

The leaders of our nation have a prejudiced notion that decriminalizing marijuana will be a ‘gateway to harder drugs’ without referring to the studies proving the contrary. A study conducted by Institute of Medicine, Washington showed that there is little evidence that decriminalization of marijuana use necessarily leads to a substantial increase in marijuana use<sup>52</sup> Also, in contrast with marijuana use, rates of other illicit drug use among ER [emergency room] patients were substantially higher in states that did not decriminalize marijuana use. The lack of decriminalization might have encouraged greater use of drugs that are even more dangerous than marijuana<sup>53</sup>

Indian laws should follow the example set by the Dutch laws of Netherlands that have decriminalized personal use of drugs and they have seen an impressive result. The Dutch experience, together with those of a few other countries with more modest policy changes, provides a moderately good empirical case that removal of criminal prohibitions on cannabis possession (decriminalization) will not increase the prevalence of marijuana or any other illicit drug; the argument for decriminalization is thus strong.<sup>54</sup> Decriminalization for personal use has not led to a significant rise in the level of use as compared to the countries which follow a highly repressive policy. Reclassification of marijuana to class C has seen a profound impact in UK. Cannabis use among young people has fallen significantly since its controversial reclassification in 2004, according to the latest British Crime Survey figures.

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<sup>51</sup> Connecticut Law Review Commission. 1997. Drug Policy in Connecticut and Strategy Options: Report to the Judiciary Committee of the Connecticut General Assembly. State Capitol: Hartford.

<sup>52</sup> National Academy of Sciences, Institute of Medicine (IOM). 1999. Marijuana and Medicine: Assessing the Science Base. National Academy Press: Washington, D.C., 102

<sup>53</sup> K. Model. 1993. The effect of marijuana decriminalization on hospital emergency room episodes: 1975-1978. *Journal of the American Statistical Association* 88: 737-747, as cited by the National Academy of Sciences, Institute of Medicine in Marijuana and Medicine: Assessing the Science Base.

<sup>54</sup> R. MacCoun and P. Reuter. 2001. Evaluating alternative cannabis regimes. *British Journal of Psychiatry* 178: 123-128

The Home Office figures showed the proportion of 16 to 24-year-olds who had used cannabis in the past year fell from 25% when the change in the law was introduced to 21% in 2006/07<sup>55</sup>

Following decriminalization, Portugal had the lowest rate of lifetime marijuana use in people. The U.S. has long championed a hard-line drug policy, supporting only international agreements that enforce drug prohibition and imposing on its citizens some of the world's harshest penalties for drug possession and sales. Yet American has the highest rates of cocaine and marijuana use in the world, and while most of the E.U. (including Holland) has more liberal drug laws than the U.S., it also has less drug use.<sup>56</sup>

I submit that decriminalization would be beneficial for India. The fear that marijuana is the gate way to harder drugs is completely nullified by the above studies. The harder we push the more we drain our energy. The harder we try to prohibit the more resources we are going to waste. The quantum of expenditure directed towards fighting marijuana abuse, in India, despite the fact that its use prevails since the ancient times and use of bhang during festivals make it more hard to curb its use, can be redirected towards fighting bigger and higher magnitude of drug rackets. Moreover, people use their own discretion on bhang and other substances such as alcohol and tobacco. Then why not trust them with marijuana too? Do our leaders consider us that immature or incompetent or are they hiding from their inefficiency and lack of responsibility?

#### **(D) Legalization of recreational use of Marijuana**

After discussing the impact of decriminalization of recreational use of marijuana in India I shall discuss the impact its legalization in India. The Central government of India imposed no national criminal prohibitions on marijuana cultivation, production, sale, possession, consumption, or commerce prior to the mid 1980s. After the prohibition premeditated crime level has escalated at an alarming rate. It is to be noted that cannabis plays quite a distinctive role in decreasing this alarming increase in crime. In some cases these drugs not only do not lead to it, but actually act as deterrents. It is observed that one of the important actions of these drugs is to quiet and stupefy the individual so that there is no tendency to violence, as is not infrequently found in cases of alcoholic intoxication<sup>57</sup> Thus I submit that legalization of marijuana will help control the drug wars and other criminal activities.

Having a strict drug policy in India has not brought any significant change in reducing drug

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<sup>55</sup> An Open Letter to the President, Congress, Governors, and State Legislatures Prohibition Cost, page 11

<sup>56</sup> Cannabis legal status vault - Pakistan/Peshawar, Erowid.org pg 16

<sup>57</sup> United Nations Bulletin on Narcotics, 1957

rackets or hard drugs usage. This policy was made amidst the rising support of international conventions by USA and other countries, which has brought about futile results. Infact, the data provide no evidence that strict cannabis laws in the United States provide protective effects compared to the similarly restrictive but less vigorously enforced laws in place in Canada, and the regulated access approach in the Netherlands<sup>58</sup>

As per the International Journal of Drug Policy, 2007 liberalization of cannabis laws, medical cannabis laws do not appear to increase use of the drug in any country.<sup>75</sup> Even in India legalization of marijuana will not lead to increase in drug use. I submit that it is natural human tendency to indulge more into a substance that has more prohibitions on it. If the prohibitions are removed the attraction level to that substance decreases significantly. The same applies to marijuana. Moreover, the faulty gateway theory is just an excuse put forth by the government. In fact, if a mild intoxicant like marijuana is made legal then use of drug will also reduce. I submit this with the aforementioned studies above

## **VI. RECOMMENDATION AND SUGGESTIONS**

From the above sections it can be said that I strongly favour the legalization of marijuana in India. As absolute power leads to absolute corruption, absolute liberalization should not be enforced as it might result otherwise. India should legalize marijuana but should impose regulations over it to keep control the level of usage. Just like Colorado and Washington a model of taxation and regulation should be enforced and maybe India will be able to generate \$ 6.2 billion.<sup>59</sup>

There are many other models of regulation; depending on the substance being regulated these regulations can be very loose (apples, tomatoes) or very strict (alcohol, tobacco, prescription drugs). A regulatory scheme for marijuana that is similar to the scheme described above for alcohol would be favourable compared to the present prohibition. Ideally, such a regulatory scheme for marijuana would maintain the existing controls that presently govern commercial alcohol production, distribution, and use – while potentially imposing even stricter limits regarding the commercialization, advertising, and mass marketing of the product. My recommendations for regulation are as follows:

1. First and foremost, the commercial production of marijuana will be limited to only licensed producers. Except these producers, commercial production should be made punishable by law.

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<sup>58</sup> International Journal of Drug Policy, 2007

<sup>59</sup> Ibid 47, pg 8

2. The sale of the produce from these licensed producers should be regulated by the state government by setting up licensed retail stores (liquor stores, restaurants, bars, package stores, etc.)<sup>60</sup>
3. The Central government should fix the legal age for recreational use of marijuana as 21 years and above only.
4. Also the State government should mandate it for the retail stores to grant a licensed customer cards (like a credit card, with full details of the customer with the store).
5. The retail stores should be allowed to sell maximum 5 gms of marijuana per person who are above 21 years who hold licensed customer card.
6. This card should be treated like a book keeping system which would account for the amount of marijuana purchased by the person per day (maximum limit being 5 grms).
7. If possible this card should be linked with the Adhar card, which is a unique identification card. This interlinking would serve as a better mode of regulating the quantum of usage.
8. Also the State Government can provide marijuana at a limited quantity so as to regulate consumption
9. Quality control and potency of marijuana should be strictly regulated by the state, and the potency of the product is made publicly available to the consumer. The potency level should be fixed after medical consultations.
10. The State government must revoke the retail sale and cancel the license of the distributor of the above points are not followed.
11. Strict limits should be put for the commercialization, advertising, and mass marketing of the product. This is to avoid promotion of consumption of marijuana.

## **VII. CONCLUSION**

The roots of marijuana are deep and intensely spread throughout the ancient India. Since 2000-1400 BC to up until 1980s' marijuana was legally sold, even at normal shops, and used extensively by the people. However there was a huge setback to the same with the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act 1985) which made marijuana illegal in India. With the development of the NDPS Act, there was an increase in drug wars and premeditated crimes.

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<sup>60</sup>Working to reform Marijuana Laws, norml.com

Legalization of marijuana will save time and effort spent by our government on a petty drug such as marijuana, which could be effectively utilized towards more serious and dangerous drugs such as heroin, cocaine etc. Studies do reveal that crimes and wars happen mostly due to aggressive and violent streaks in humans. With the help of marijuana they can be quiet and stupefied which will, in turn, decrease the tendency to violence. This comes as a helping hand for the government in times of such violence and disruptions in the nation (such as terrorist acts, religious outburst etc.). Also with the availability of milder drugs, such as marijuana, the tendency to indulge into more dangerous drugs will drastically decrease. Economically speaking also, legalizing marijuana will aid as an extra income for the newly licensed distributes and sellers. Also regulation over the sale can generate huge tax revenues which can free the indebted India from WHO and UN.

I would like to conclude that it is time that India - considering the age old tradition of using cannabis off-spring (bhang) for worshipping gods and goddesses and also for personal pleasure/recreational use- should set an example, being the subcontinent, and legalize marijuana. Studies across the world show that moderate consumption of marijuana is far less harmful than tobacco or alcohol, it makes little sense to uphold the ban on its recreational use. Of course, excessive consumption of marijuana can be detrimental. But that's also true of alcohol - banning which is seen, rightly, as impractical. If tobacco and alcohol can be sold over the counter and consumers expected to use their discretion regarding their use, there is no reason why the same policy cannot be adopted for marijuana. Besides, the benefits of medical marijuana are widely acknowledged, which bolsters its credentials as a mild drug. Legalizing marijuana will, taken together with an enlightened drug policy, will stop the spread of more dangerous intoxicants and lead towards a more modern India

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