

**A Case for
De-Criminalization of
Cannabis Use in India**

**This report is
an independent, non-
commissioned piece of work
by
the Vidhi Centre
for Legal Policy,
an independent think-tank
doing legal research to help
make
better laws.**

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Table of Contents

I. INTRODUCTION	1
II. CANNABIS REGULATION IN INDIA	1
A. Extent of Regulation	1
B. Criminalized Prohibition of Cannabis	2
III. ISSUES WITH INDIA’S LAW ON CANNABIS	2
A. Premise of India’s Cannabis Regulation	3
i. India’s Shift Towards Criminalizing Cannabis Use	3
B. Economic Impact	4
C. The Effects of Criminalization of Cannabis Use	5
i. Strain on the Criminal Justice System	6
ii. Perils of a Criminal Record	6
iii. Effect on the Marginalized	7
iv. Promotion of Unsafe Practices	7
IV. DECRIMINALIZATION OF CANNABIS USE: TRENDS ACROSS THE WORLD	8
V. CONCLUDING REMARKS ON HOW INDIA SHOULD RESPOND	9

I. Introduction

This paper looks at the extent of cannabis regulation in India and situates the prohibition in its historical and regulatory context. The paper argues that cannabis consumption was historically permitted in India and the international pressure led by America's war on drugs pushed Indian legislators to criminalize cannabis consumption and cultivation.

This paper then examines the extent of cannabis consumption in India and analyzes the effect of its criminalization. It argues that India consumes vast quantities of cannabis and the State loses precious revenue by strictly regulating cultivation, production and prohibiting cannabis use. It then contends that criminalizing cannabis use puts an undue pressure on an already crumbling criminal justice system and hinders access to healthcare. Being put through the system creates further misery and hardship on an individual, who then has to grapple with the pitfalls of a criminal record. The paper also argues that the implementation of such criminalization tends to target the already vulnerable and leads to further marginalization.

The paper then assesses the trends of decriminalization of cannabis use across the world and concludes by arguing that India must recognize the racist origins of cannabis prohibition and must also acknowledge how criminalization of cannabis is costing its own marginalized population. We rely heavily on our forthcoming research on drug use and

criminalization in Mumbai to make this argument, which finds that amongst those arrested, prosecuted and convicted for illicit drug use, cannabis users form an overwhelming majority.

II. Cannabis Regulation in India

International obligations arising out of the UN Convention on Narcotic Drugs, 1961 and the Convention on Psychotropic Substances, 1971 influenced the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"), which governs the cultivation, production, sale, transport, possession and use of narcotic drugs, psychotropic substances and other manufactured drugs. One of the many narcotic substances regulated by the NDPS Act is cannabis. Under section 2(iii) of the Act, Cannabis is classified in two forms – *charas* & *ganja*. *Charas* is defined as the resin from the cannabis plant, which includes *hashish oil* or *liquid hashish*. *Ganja* is the flowering or fruiting top of the plant. Any mixture of these forms or any drink so prepared also falls within the meaning of cannabis. Section 2(iv) further defines the cannabis plant as any plant of genus cannabis.

A. Extent of Regulation

The NDPS Act regulates cannabis as a plant and as a narcotic and a manufactured drug. Although the definition of cannabis under the

NDPS Act does not include *Bhang*,¹ its production is still regulated.

The cultivation of cannabis plant is prohibited except for medical and scientific purposes. The manner and extent of cultivation is further subject to control, through licenses and permits. Governments are also authorized to permit cultivation of cannabis plant for industrial or horticulture purposes.²

Production, manufacture, possession, sale, transport, import, export, use etc. of cannabis is prohibited. As in the case of cultivation, an exception is carved out for medical and scientific purposes.³

Further, subject to the general prohibition on cultivation, production, use etc. of cannabis, state governments have been authorized to make rules for permitting and regulating cultivation of cannabis plant and production, manufacture, possession, transport or use of cannabis (excluding *charas*).⁴

B. Criminalized Prohibition of Cannabis

Cultivation of the cannabis plant attracts a jail term which may extend to ten years along with a fine of up to one lakh rupees. Similarly, unlawful possession, production, sale, use etc. of cannabis is punishable with imprisonment,

the duration of which depends upon the quantity of cannabis in possession. For possession of a small quantity of cannabis, the NDPS Act provides for imprisonment of up to six months,⁵ this goes up to ten years for an offence involving intermediate quantity and a minimum of ten years for a commercial quantity offence.⁶ Further, Section 27 of the Act criminalizes consumption of cannabis and provides for a sentence which may extend to 6 months or with fine of Rs. 10,000 or both.⁷

III. Issues with India's Law on Cannabis

The criminalization of use, cultivation and strict controls over medical and industrial use of cannabis, raises multiple questions. Was there a need for the State to intervene with cannabis use and cultivation? Is the intervention well envisaged and proportionate to the need, if any? And, what are the consequences of this State intervention? In an attempt to answer these questions, we evaluate the consequences of criminalization, delve into the historical use of cannabis in India and analyze the reasoning behind the current regulation.

¹ Leaves of the Cannabis Plant.

²NDPS Act 1985, s 14.

³ NDPS Act 1985, s 8.

⁴NDPS Act 1985, s 10(a)(iii).

⁵ The Government has notified the quantities against all narcotic drugs and psychotropic substances. These quantities lay the basis for sentencing under the NDPS Act. Following quantities are specified for cannabis:

Charas/Hashish: Small quantity (100 grams), Commercial quantity (1kg)

Ganja: Small quantity (1 kg), commercial quantity (20 kg).

⁶ NDPS Act 1985, s 20.

⁷ NDPS Act 1985, s 27.

A. Premise of India's Cannabis Regulation

In India, the cultivation of cannabis started as early as 5000-4000 BC⁸. Under the Ayurvedic form of medicine, cannabis was used as an analgesic, antispasmodic, anodyne, sedative etc.⁹ It was used to treat the nervous system, respiratory disturbances, gastrointestinal issues and for various infectious diseases.¹⁰ Cannabis was also used for making cloth¹¹ and as construction material in the Ellora caves.¹² The use of cannabis was entrenched in Indian cultural practices given its association with religious beliefs. Reference to it as a 'joy giver', a 'liberator' and its inclusion in the list of five sacred plants in the *Atharveda*,¹³ ensured its integration in mainstream culture. In 1893, the British appointed the Indian Hemp Drugs Commission to look into the cultivation of the hemp plant in Bengal, the preparation of drugs from it, the effect of their consumption on people, and the desirability of prohibiting the growth of the plant and the sale of ganja and allied drugs. In its report the Commission did not make any adverse observation and

affirmed that moderate use of cannabis did not have any serious detrimental effect on physical, mental or moral health.¹⁴ Over the years, cannabis was regulated through multiple excise legislations, such as the Bengal Excise Act of 1909, the Dangerous Drugs Act, 1930 and the Drugs and Cosmetics Act, 1940.¹⁵ However, cannabis use was not criminalized.

i. India's Shift Towards Criminalizing Cannabis Use

A major force that drove the world towards a prohibitionist approach to drug use was the United States of America ('US'). The US had been 'fighting' opium use since the 1800s and its policy came to increasingly influence the world's perception of drug use. In 1905, the US drug policy was implemented in the Philippines where the US colonial government was allowed to restrict the use of opium.¹⁶ To develop consensus on the need to restrict opium trade, the US helped set up a Commission on Opium in Shanghai in 1909. This led to stopping of opium sales from Britain to China and elimination of China's

⁸ M. Singh, MM Sardesai, 'Cannabis Sativa (Canabaceae) in Ancient Clay Plaster of Ellora Caves India' (2016) 110(5) Current Science 884.

⁹ Mohammed Kuddus, Ibrahim AM Ginawi & Awdah Al-Hazimi, 'Cannabis Sativa: An Ancient Wild Edible Plant of India' (2013) 25(10) Emir J. Food Agric 736.

¹⁰ Mia Touw, 'The Religious and Medicinal Uses of Cannabis in China, India and Tibet' (1981) 13(1) Journal of Psychoactive Drugs.

¹¹ Lallanji Gopal, 'Textiles in Ancient India' (1961) 4(1) Journal of the Economic and Social History of the Orient 53.

¹² Singh & Sardesai (n 8).

¹³ GK Sharma, 'Cannabis Folklore in the Himalayas' (1977) 25(7) Botanical Museum Leaflets, Harvard University 203.

¹⁴ W. Mackworth Young et al, 'Report of the Indian Hemp Drugs Commission' (1894) <<https://digital.nls.uk/indiapapers/browse/archive/74464868>> accessed 04 August 2020.

¹⁵ Tripti Tandon, 'Drug Policy in India' (International Drug Policy Consortium, 2015) <http://fileserver.idpc.net/library/IDPC-briefing-paper_Drug-policy-in-India.pdf> accessed 07 August 2020.

¹⁶ Arnold H. Taylor, 'American Confrontation with Opium Traffic in the Philippines' (1967) 36(3) Pacific Historical Review 307; Dale Gieringer, 'America's Hundred Years War on Drugs' <<http://www.drugsense.org/dpfca/DrugWarCentennial1.htm>> accessed 05 August 2020.

own poppy cultivation.¹⁷ The US continued to enforce strict prohibitionist measures at home by enacting the Opium Exclusion Act, 1909 and the Harrison Narcotics Act in 1914. In the following decades, the US internationalized its form of prohibition on drugs and worked through the United Nations to forge a prohibitionist drug regime across the globe.¹⁸ It has often been contended that the UN Convention on Narcotic Drugs, 1961 was a result of a US sponsored resolution and an American policy serving American interests.¹⁹ The 1961 Convention created international obligations to curb traffic, cultivation, use etc. of narcotic drugs, including cannabis. The NDPS Act was enacted to fulfil India's obligations under this Convention and the 1971 Convention on Psychotropic Substances. Thus, the use of cannabis, which was legally and socially sanctioned for thousands of years, was criminalized in one fell swoop in 1985.

B. Economic Impact

As a result of criminalization and strict regulations over cannabis cultivation, there is

¹⁷ Shanghai Opium Commission <https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1959-01-01_1_page006.html> accessed 03 August 2020.

¹⁸ Alfred McCoy, 'America's Drug War is Ruining the World' (*The Nation*, 09 April 2019) <<https://www.thenation.com/article/archive/alfred-mccoy-washington-drug-war-ruining-world/>> accessed 05 August 2020.

¹⁹ JS Rafaeli, 'The War on Drugs is Inseparable from US Imperialism' (*Vice*, 13 August 2018) <https://www.vice.com/en_uk/article/594j8b/the-war-on-drugs-is-inseparable-from-us-imperialism> accessed 05 August 2020.

²⁰ Although CBD and THC have the same chemical formula, different arrangement of atoms leads to different chemical properties. THC is the main

a marked failure in utilizing the exemption provided for industrial use of the cannabis.

A Cannabis plant with higher Cannabidiol ('CBD') content than Tetrahydrocannabinol ('THC') content, has a less psychoactive character and substantial industrial utility.²⁰ In common parlance, this distinction lays the basis for categorizing such cannabis plants as 'industrial hemp'. Hemp products have a global market of around \$ 4.7 billion, spread across various sectors such as construction, paper making, personal care etc. However, India's contribution to the market is a mere 0.001%.²¹ Although hemp cultivation for industrial purposes may be permitted under the NDPS Act, only Uttarakhand and Uttar Pradesh seem to have explored the possibility, reflecting constraints of operating within a prohibitionist environment. Hemp's use as a fibre and in construction over thousands of years has largely been eliminated in less than four decades of cannabis prohibition. As the world cannabis market is estimated to go up to \$15.8 billion by 2027,²² restrictive policies in

psychoactive ingredient and affects locomotor activity, while CBD does not and is stated to have a counter effect; Zerín Atakan, 'Cannabis, a Complex Plant: Different Compounds and Different Effects on Individuals' (2012) 2(6) *Therapeutic Advances in Psychopharmacology* 241.

²¹ Neha Devan, 'Boheco: This Cannabis Startup is Weeding Out the High Notes for a Hemp Economy' (*Economic Times*, 16 April 2019) <<https://economictimes.indiatimes.com/small-biz/startups/features/boheco-this-cannabis-startup-is-weeding-out-the-high-notes-for-a-hemp-economy/articleshow/68899905.cms>> accessed 30 June 2020.

²² 'Industrial Hemp Market Size, Share & Trends Analysis Report by Product (Seeds, Fiber, Shives), by

India continue to act as barriers to economic gains.

Additionally, the government loses out on revenue from a widely consumed substance. As per the National Survey on Extent and Pattern of Substance Use in India by the Ministry of Social Justice, 2.8% of Indians between the age of 10-75 are current users of cannabis. This accounts to 3.1 crore individuals. Amongst psychoactive substances, cannabis is the second most consumed in India after alcohol.²³ In 2018, New Delhi and Mumbai were amongst the highest consumers of cannabis in the world, consuming 38.26 metric tonnes and 32.38 metric tonnes of cannabis respectively.²⁴ If cannabis was to be taxed like tobacco and alcohol, the government could raise a substantial revenue. A study estimated that around 725 crore could be raised in Delhi alone if cannabis is taxed. This number was pegged at 641 crore for Mumbai.²⁵

C. The Effects of Criminalization of Cannabis Use

Thousands of people are arrested every year for illicit consumption of narcotic drugs and psychotropic substances. In 2018, 81,778 persons were arrested under the NDPS Act. 59% of the those were found in possession of substances for personal use.²⁶ Our forthcoming findings on Mumbai give an insight into how many people are arrested for illicit cannabis consumption, in comparison to other prohibited substances.

During the course of our research, we analysed 10,669 cases from Magistrate Courts in Mumbai, 99.9% of these cases involved consumption of a narcotic substance. Wherever information on the kind of substance involved was available, 87% of the cases involved cannabis. We find therefore, that Mumbai's NDPS arrests, which are the highest in the country,²⁷ are primarily arrests of cannabis consumers. This suggests that criminalization of cannabis consumption is

Application (Animal Care, Textiles, Food & Beverages, Personal Care), and Segment Forecasts, 2020 – 2027' (Grand View Research 2020) <<https://www.grandviewresearch.com/industry-analysis/industrial-hemp-market>> accessed 05 August 2020.

²³ Ministry of Social Justice and Empowerment, 'Magnitude of Substance Use in India', (2019), p. 18. <socialjustice.nic.in/writereaddata/UploadFile/Magnititude_Substance_Use_India_REPORT.pdf> accessed 20 July 2020

²⁴ Cannabis Price Index (ABCD 2018) <<http://weedindex.io/#biggestconsumers>> accessed 03 August 2020; Niharika Sharma, 'Delhi Consumes More Weed than Los Angeles, Mumbai More than London' (*Quartz India*, 10 September 2019) <[\[worlds-biggest-consumers-of-weed/\]\(https://qz.com/india/1705970/delhi-mumbai-among-worlds-biggest-consumers-of-weed/\)> accessed 03 August 2020 and Meera Navlakha, 'Study Finds Delhi and Mumbai are Among the Top 10 cities in Cannabis Consumption Globally' \(*Vice*, 10 September 2019\) <\[https://www.vice.com/en_in/article/bjwj7q/study-finds-delhi-and-mumbai-are-among-the-top-10-cities-in-cannabis-consumption-globally\]\(https://www.vice.com/en_in/article/bjwj7q/study-finds-delhi-and-mumbai-are-among-the-top-10-cities-in-cannabis-consumption-globally\)> accessed 03 August 2020.](https://qz.com/india/1705970/delhi-mumbai-among-</p></div><div data-bbox=)

²⁵ Cannabis Price Index (ABCD 2018) <<http://weedindex.io/#biggestconsumers>> accessed 03 August 2020.

²⁶ Crime in India (National Crime Records Bureau, 2018), Table 19A.3, p. 1183.

²⁷ In 2018, 10006 NDPS cases were registered in Mumbai. Crime in India (National Crime Records Bureau, 2018), Table 1B.5, p. 142.

pushing a substantial number of people into the criminal justice system.

i. Strain on the Criminal Justice System

Criminalization of illicit cannabis use exacerbates the strain on the criminal justice system. The impact is particularly felt by an already overburdened and understaffed police force,²⁸ where the police per lakh population ratio and vacancies have constantly remained a critical governance issue²⁹ and the judicial system, already crumbling under high pendency.³⁰

In order to arrest, prosecute and sentence a cannabis consumer, the state machinery exhausts substantial human and economic resources. The police, judiciary and correctional institutions are systematically made party to a futile exercise, the cost of which is enormous. With over 3 crore cannabis users in the country³¹, if the NDPS Act were to be implemented effectively, with every cannabis user arrested and prosecuted, the crumbling system would cave in entirely.

Although there is no current research on the cost of enforcing cannabis prohibition in India, studies conducted abroad find that on an average, incarceration costs are 2-6 times higher than money spent on health and social services.³² A study of budgetary implications of cannabis prohibition in the US indicated that legalization of cannabis would save \$7.7 billion per year in government expenditure.³³

ii. Perils of a Criminal Record

Criminalization of illicit cannabis use ignores the many ills that a criminal record brings, the effect it has on social, economic, physical and mental wellbeing of the person.

A history of any drug offence, even one as minor as consumption of cannabis, can have considerable bearing on sentencing in a subsequent offence, employment opportunities, securing custody of a child, getting visa etc.

Human Rights Watch and American Civil Liberties Union have drawn attention to the effect that criminalization of drug use can have on families, job opportunities, welfare assistance, voting etc. More importantly, it

²⁸ Common Cause & Lokniti – CSDS, ‘Status of Policing in India Report’ (2019) <https://www.csdn.in/uploads/custom_files/1566973059_Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf> accessed 04 August 2020.

²⁹For 2018, the police per lakh population ratio against sanctioned total police was 198.65. With an overall vacancy of 5,28,165 police personnel against the total sanctioned strength, the ratio further falls to 158.22; Bureau of Police Research and Development, ‘Data on Police Organizations’ (2019) <<https://bprd.nic.in/WriteReadData/userfiles/file/202001301028101694907BPRDDData2019-19forweb-2.pdf>> accessed 29 June 2020.

³⁰ 2.4 Crore criminal cases are pending before courts in India. National Judicial Data Grid <https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard> accessed 19 August 2020.

³¹ Ministry of Social Justice and Empowerment (n 23).

³²European Harm Reduction Association, ‘Criminalization Costs’ <<https://harmreductioneurasia.org/criminalization-costs/>> accessed 05 August 2020.

³³ Jeffrey A. Miron, ‘The Budgetary Implications of Marijuana Prohibition’ (2010) <https://scholar.harvard.edu/files/miron/files/budget_2010_final_0.pdf> accessed 06 August 2020.

underscores the discrimination and stigma that accompanies a criminal record.³⁴ Criminalization of cannabis use subjects thousands of individuals every year to these hardships, while all they might really need is to be left alone or given access to appropriate health services.

iii. Effect on the Marginalized

While there are numerous other drugs, with higher abuse potential, cannabis - a relatively cheap substance, remains central to our drug law enforcement. Our forthcoming research from Mumbai shows that nearly every person arrested and convicted for cannabis consumption was a daily wage worker and a slum/street dweller. These drug offenders are sentenced to minor imprisonment and/ or fines ranging from one hundred rupees to eight thousand rupees. This demonstrates how the law, though meant to be applied uniformly across social and economic strata, disproportionately targets the poor and further marginalizes the already vulnerable. This finding also mirrors a trend in the US, which

witnesses a clear racial disparity in its cannabis arresting pattern.³⁵ Human Rights Watch has reported that black adults were more than four times more likely to be arrested for cannabis possession than white adults.³⁶ Similarly, low income neighbourhoods have been shown to be more prone to drug related arrests.³⁷ This impact of bias in drug law enforcement has historically been intergenerational and socially and economically devastating to whole populations.³⁸

iv. Promotion of Unsafe Practices

Criminalization of drug use is in direct conflict with the principles of harm reduction. The stigma associated with criminalization results in social exclusion and isolation, which then inhibit access to healthcare and harm reduction services.³⁹ Criminalization also drives users to unsafe practices, making them prone to disease and overdose.

Criminalization of drug use creates a parallel market of prohibited substances, taking them out of the regulatory apparatus. This leads to unrestricted access and unsupervised use of

³⁴ Human Rights Watch, 'Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States' (2016) <<https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>> accessed 05 August 2020.

³⁵ Andrew Golub, Bruce Jhonson et al, 'The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City' (2007) 6(1), Criminal Public Policy 131; Jesse Wegman, 'The Injustice of Marijuana Arrests' (*The New York Times*, 28 July 2014) <<https://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html>> accessed 06 August 2020.

³⁶ Human Rights Watch (n 34).

³⁷ Barbara Warner & Brandi Coomer, 'Neighbourhood Drug Arrest Rates: Are They a Meaningful Indicator of Drug Activity?' (2003) 40(2), Journal of Research in

Crime and Delinquency 123; German Lopez, 'These Maps Show the War on Drugs is Mostly Fought in Poor Neighbourhoods' (*Vox*, 16 April 2015) <<https://www.vox.com/2015/4/16/8431283/drug-war-poverty>> accessed 30 June 2020.

³⁸ Joanne Csete, Adeebe Kamarulzaman, Michel Kazatchkine et al. 'Public Health and International Drug Policy' (2006) 387(10026) *Lancet* 1427.

³⁹ Jessica Murray, 'The Ideological Conflict Between the Criminalization of Drug Use and Harm Reduction Programming' (University of Ontario Institute of Technology, 2019) <https://ir.library.utoronto.ca/xmlui/bitstream/handle/10155/1046/Ideological_Conflict-DrugCriminalizationVS.HarmReduction%20%28Murray%20Master%27s%20Project%202019%29.pdf?sequence=1> accessed 05 August 2020.

substances. In these illegal markets the quality of substances remains unchecked, leading to adulteration and sale of toxic substances. Studies across the world have identified adulteration in various substances,⁴⁰ mainly intended to increase quantity or enhance potency.⁴¹ This aggravates the risk of an overdose or addiction to substances unknowingly consumed. In India, cannabis is adulterated with shoe polish and battery acid.⁴² Cannabis is also often adulterated with benzodiazepine, a prescription sedative, which can lead to addiction to sedatives without the person's knowledge or consent.⁴³

IV. Decriminalization of Cannabis Use: Trends Across the World

In the past hundred years, the approach towards cannabis use has evolved substantially. After internationalizing its model of a criminalized form of drug prohibition, the US initiated crucial reform in the law. Decriminalization of cannabis use was

the first step, which was followed by legalization of cannabis for medicinal purposes and then by legalization of personal consumption in some jurisdictions.⁴⁴ The changing legislative framework reflected the failure of the much-touted war on drugs.

Twenty-six states in the US have now decriminalized possession and consumption of cannabis. Eleven states and the District of Columbia have legalized small amounts of cannabis for adult use.⁴⁵

It can be concluded that there are two models in the US that are different from traditional criminalized cannabis prohibition. One that considers cannabis consumption a civil violation or a low-level offence attracting no jail term and the other that has legalized possession of cannabis for personal consumption.

Similarly, various other countries have decriminalized or legalized cannabis consumption. Belgium decriminalized possession of cannabis for personal consumption in 2003.⁴⁶ Under Portuguese law consumption of cannabis is categorized as an

⁴⁰ R.N Kling, Yuko Baljak et al, 'Perceptions of Adulteration and Quality Assurance Practices Reported by People Who Use Drugs: A Review of the Literature' (BC Centre for Disease Control, 2015) <<http://www.bccdc.ca/resourcegallery/Documents/Educational%20Materials/Epid/Other/CDAFinalReport.pdf>> accessed 30 July 2020.

⁴¹ Claire Cole, Lisa Jones et al, 'Adulterants in Illicit Drugs: A Review of Empirical Evidence' (2011) 3(2), Drug Testing and Analysis 89.

⁴² 'Grass is Not Greener, Cleaner in Garden City' (*New Indian Express*, 11 October 2017) <<https://www.newindianexpress.com/cities/bengaluru/2017/oct/11/grass-is-not-greener-cleaner-in-garden-city-1671468.html>> accessed 30 June 2020.

⁴³ Information received during our interactions with doctors at the JJ Hospital in Mumbai in September 2019.

⁴⁴ R. Pacula & R. Smart, 'Medical Marijuana and Marijuana Legalization' (2017) 13 Annual Review of Clinical Psychology 397.

⁴⁵ 'Marijuana Overview' (NSCL 2019) <<https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>> accessed 06 August 2020.

⁴⁶ Steve Rolles, Niamh Eastwood, 'Drug Decriminalization Policies in Practice: A Global Summary' <https://www.hri.global/files/2012/09/04/Chapter_3.4_drug-decriminalisation_.pdf> accessed 06 August 2020.

administrative offence.⁴⁷ Canada on the other hand allows adults to possess up to 30 grams of cannabis.⁴⁸

The changing nature of laws, even in prohibitive legislative frameworks, which are now exploring a decriminalized model suggests an international shift towards an approach that recognizes the futility of criminalization of cannabis use.

V. Concluding Remarks on How India Should Respond

Three and a half decades after cannabis prohibition was implemented in India, cannabis use has continued unabated. Crores of people still consume cannabis and thousands of vulnerable persons are arrested, prosecuted and convicted every year for such use.

Far from deterring users, criminalization of cannabis consumption has only led to stigmatization and overburdening of an already crumbling criminal justice system. It has also created a strictly prohibitionist environment that has prevented effective utilization of cannabis for commercial purposes.

Further, cannabis criminalization also disregards the racist origins of the US war on drugs. Association of opium use with Chinese culture, largescale immigration of Chinese into the US and increasing opium addiction led to the enactment of a patently racist Chinese Exclusion Act in 1882.⁴⁹ Similarly, narcotics use was associated with the non-white population and was considered outside of Euro-American cultural values.⁵⁰

The prohibition on cannabis use was a consequence of a racist propaganda against Mexican immigrants.⁵¹ The Commissioner of Narcotics Harry Anslinger, a major force behind this propaganda, while linking cannabis consumption to African Americans and Hispanics, argued that cannabis leads to insanity, criminality and death. He added that it is the most violence causing drug in the history of mankind.⁵² Anslinger, called the architect of the modern war on drugs, represented the US in the Commission of Narcotic Drugs at the UN and played a major role in internationalization of the US model of drug prohibition.⁵³

As the countries across the world begin to now relax norms for personal consumption of cannabis, it is time India also shuns an archaic

⁴⁷ Law No. 30/2000, Article 2(1).

⁴⁸ Cannabis Act, 2018, s 8.

⁴⁹Patrick Mccaffrey, 'Drug War Origins: How American Opium Politics Led to the Establishment of International Narcotics Prohibition' (2019) <<http://nrs.harvard.edu/urn3:HUL.InstRepos:42004195>> accessed on 30 June 2020.

⁵⁰ Ibid.

⁵¹Kenneth Michael White & Mirya R. Holman, 'Marijuana Prohibition in California: Racial Prejudice

and Selective Arrests' (2012) 19(3-4) Race, Gender & Class 75.

⁵² Dave Bewley, Tom Blikman, Martin Jelsma, 'The Rise and Decline of Cannabis Prohibition' (Transnational Institute - Global Drug Policy Observatory 2014) <https://www.tni.org/files/download/rise_and_decline_web.pdf> accessed 03 August 2020.

⁵³ Robert Solomon, 'Racism and Its Effect on Cannabis Research' (2020) 5(1) Cannabis Cannabinoid Res. 2.

perception towards drug use in general and cannabis use specifically.

Envisioning alternatives to criminalization is an important first step and countries across the world have paved a path in this direction. There is a promising indigenous de-criminalization model that India could consider following. The Sikkim Anti-Drugs Act, 2006 (“SADA”) does not utilize deterrence to curb drug use and relies on a public health approach to protect the best interests of a drug user.⁵⁴

Our forthcoming research on the enforcement of the NDPS Act in Mumbai and SADA in Sikkim will present a more comprehensive picture of how models based on criminalization and de-criminalization can have a contrasting impact on societies and its people and will reinforce the need for decriminalization of drug use and adoption of a public health approach to address drug addiction and use.

⁵⁴ Sikkim Anti-Drugs Act 2006 decriminalizes personal consumption of all drugs and mandates a psychiatric

evaluation to determine the need for rehabilitation and de-addiction.

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