



ACCESS TO MARIJUANA: Basic Human Right

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Not all intoxicants cause crime. That's the case with marijuana that is rather beneficial to both individuals and the economy. It was banned due to various political reasons and all these years the people were denied of their right to life and health as guaranteed by the UN Convention and the Indian Constitution. Rather than restricting marijuana, the government can impose certain regulatory measures to ensure a balance is maintained between the right of a person to consume it and state's interest of protecting its citizens. Unlike alcohol or cigarette, marijuana brings with itself a lot of medicinal uses and its ban seems absolutely unfair and illogical. Marijuana has proven to be much more beneficial than the substances mentioned above. Presence of delta-9-tetrahydrocannabinol (often referred to as THC), and cannabidiol (CBD) in it provides wide-ranging benefits to the individuals' life and health. Legalization of marijuana also offers the government a huge opportunity of expanding its treasury by collecting revenue in the form of tax receipts, thereby boosting the economy and increasing the GDP. Every human has a right to live a life with dignity and happiness. That's the least of the human rights he should be assured of. Living happily is a relative term but it shall definitely include recreational activities. Marijuana therefore being a recreational activity, and being beneficial to individuals' health and the economy, should be legalized to ensure basic human rights are granted to everyone.

Introduction

"One of the very most basic of human rights is the right to be healthy and to take care of your health. Nature in all of her wisdom gave us a cure for every ailment there is and every human being has a nature given, a god given, a goddess given right to use the plants that nature has given us" Says Steve DeAngelo, star of Discovery's WEED WARS and Executive Director of the Harborside Health Centre in Oakland, California.

Marijuana, also known as cannabis, is a kind of drug which is prohibited from being consumed, stored, possessed, cultivated, produced or sold in any form or quantity as per Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985. The Act extends to the whole of India and it applies also to all Indian citizens outside India and to all persons on ships and aircraft registered in India. There are places where you can still find for it despite being banned: Kerala, Meghalaya, Manipur, Kashmir, Himachal Pradesh, Uttarakhand, Mysore, even Bihar. Its use is widespread despite being illegal. In Odisha, it is comparatively more acceptable and easier to procure. It has now become a part of tradition and local hospitality. Smoking culture has evolved in India. Presence of Cannabis or Opium has a long history in India and is not something new. According to Vedas, Cannabis / Marijuana was one of five sacred plants and a guardian angel lived in its leaves. Cannabis is considered by Vedas as a source of happiness, joy-giver and liberator that helps human lose their fears and attain delight. Lord Shiva is frequently associated with a kind of cannabis called Bhang. This association has made a lot of Hindu followers



to consume bhang during festivals like Shivratri or Holi. Not only it was consumed in India but was so highly consumed that the British commissioned a large-scale study in 1890s.

One thing that is now lucid is the fact that usage of cannabis or marijuana isn't a borrowed habit but a very integral part of Indian tradition. Over the years India tried to deal with marijuana more as a socially unacceptable thing than an economic good. The global legal marijuana market is expected to be touching USD 146.4 billion by the end of 2025, according to a report by Grand View Research, Inc.¹ India should move forward and try to capitalize the huge industry available as it can give a major boost to economy. Not only can it capitalize the market but also bring the alternate market (illegal) under its ambit and gain revenue (taxation). Existence of an unregulated market having such high potential is a golden opportunity that the government should try to seize upon because an opportunity lost is like delaying growth. India, if it doesn't legalize and control the marijuana, then it may miss out on a sector with high market potential. Legalization isn't only necessary economically but it's a basic human right that cannot be ignored.

“Regulation allows cannabis buyers to know what they're consuming and moderate their intake, in the same way that a drinker can distinguish and choose between a whiskey and a beer. Imposing a tax on cannabis sales can create revenue that can be spent on

educating people about the risks of cannabis use, as we already do with public service information on alcohol and tobacco,” writes Shashi Tharoor, in The Print.

The Dutch had made a slight change in their policy of prohibiting marijuana. The result was that removal of criminal prohibition of marijuana didn't increase the possession or presence of marijuana.² This in fact shows that legalization of marijuana will not just boost the economy but also benefit the health of the individuals in terms of their health and happiness. All that is necessary is adequate planning and right implementation of the policy or the legislations.

Marijuana vs. Alcohol and Cigarette **Marijuana vs. Alcohol**

Alcohol, that is an intoxicant ingredient present in wine, beers, spirit and other drinks, is a depressant that slows down the body's system after it reaches the brain. It is a legal recreational substance as drinking it is not life threatening. Consumption of both marijuana and alcohol leads to short-term and long term-effects. When people consume too much alcohol, it may prove to be fatal leading to their death. If the alcohol content is not metabolized as quickly as it is consumed, it affects those parts of the brain that are necessary for survival. In contrast, one can never overdose on marijuana, as its impact is very much subtler. A fatal dose of marijuana would be 15-70gms of TCH content, which is in between 238-1113 joints. That's a lot to be consumed by a single person in one day.

¹Legal marijuana market worth \$146.4 Billion by 2025/ CAGR: 34.6%, GRAND VIEW RESEARCH (April 20, 09:45 PM), <https://www.grandviewresearch.com/press-release/global-legal-marijuana-market>

² R. MacCoun and P. Reuter. 2001. Evaluating alternative cannabis regimes. British Journal of Psychiatry 178: 123-128



Intake of both marijuana and alcohol affects the driving functions of a person. Alcohol intake impacts the driving ability of a person by causing the following effects on the body: Slow reaction time, lack of coordination, reduces concentration, decreases vision and inhibits the ability of making a judgment. The legal limit of BAC (Blood Alcohol Content) as approved by the Union Cabinet is 0.05% or 30mg. Consumption of more than 30mg leads to fatal accidents. Due to an increased awareness of the notion that marijuana results in impairment, its users tend to drive well by utilizing a variety of behavior strategies in more complex tasks that requires conscious control. They drive more slowly, concentrate better on the road, leave adequate space between themselves and the other cars around them, and as such. It is noted that, low concentrations of THC do not cause accident, but in fact lowers the chances of accidents while concentration of THC higher than 5 ng/mL leads to an increased risk of accidents. This suggests that keeping 5 ng/mL as the legal limit can regulate marijuana.³

Alcohol damages brain health more than marijuana does. Alcohol has long term effects to the brain structure that damages its white and gray matter. Gray matter is a brain tissue that consists of nerve cell bodies. White matter is a deeper tissue in the brain. It contains myelinated nerve fibers that transmit electrical impulses to other cells and tissues. Loss in these tissues leads to impairments in the functioning of the brain. It has proved to cause severe damage to a person. On the other hand, research has proven that marijuana does not impact the gray or white matter of the brain. It leads to no such

impairment and is comparatively better to consume than alcohol.

Marijuana is less addictive as compared to alcohol. While thousands of deaths have been accounted due to alcohol use, no deaths have been documented for marijuana use alone. Due to various reasons as such, it can be very well established that although marijuana may have certain negative consequences, it is nowhere near the negative consequences as alcohol. Either alcohol must be banned by the government in the same way as marijuana is, or marijuana must be regulated in the same way as alcohol is!

Marijuana vs. Cigarette

Cigarette contains psychoactive materials like tobacco, which contains around 7000 chemicals in it that is rolled into thin paper for smoking. Nicotine, a chemical in tobacco, is a very addictive substance that makes all its users highly addicted to smoking cigarettes. It harms nearly every organ in the body and causes many health issues and diseases. It causes more death than death due to HIV, illegal drug use, alcohol use, motor vehicle injuries, and firearm-related incidents combined!⁴ While smoking, oxygen from the blood is replaced by carbon monoxide due to which organs stop functioning properly. It is very fatal in large doses. Tar, another chemical present in smoking, coats the lungs and affects breathing. Smoking increases the possibility of a brain stroke by 2 to 4 times, which may cause brain damage and death. Smoking makes bones fragile and brittle. It increases heart-related problems and cardiovascular diseases such as, coronary heart disease, heart attack, heart-related chest

³ Sewekk, R Andrew et al, *The effect of cannabis compared with alcohol on driving*, 18 (3) THE AMERICAN J. ON ADDCTIONS, 185-193, (2009).

⁴ Mokdad AH, Marks JS, Stroup DF, Gerberding JL, *Actual causes of death in the United States*, JAMA 2004, 291(10):1238-45.



pain. It causes a lot of other problems such as gum disease, pregnancy-related issues, cancer, and as such. It ages the skin by 10-20 years, making it dull and grey.

Smoking cigarettes causes huge lung problems that includes respiratory symptoms, chronic obstructive pulmonary disease and lung cancer that accounts for huge number of deaths. Smoking marijuana can be equally harmful to health if taken in the same quantity as cigarettes are. But as the effect of marijuana stays for longer, people smoke less amount of marijuana as compared to cigarettes, which reduces their risk to lungs due to marijuana. As it is said, 'one joint is equal to ten cigarettes.' Nevertheless, marijuana if consumed in any other way than smoking, like in baked goods, edibles, vaporizing, etc. poses no threat as no chemical is added when there is direct intake of marijuana in contrast to when it is smoked.

Presence of nicotine in tobacco causes health problems such as cancer, and heart diseases. While THC in marijuana is a bronchial dilator that opens up the lungs and clears the smoke and dirt. It causes relaxation, and improves the health and well being. People smoke marijuana as vaporizers, inhalers, water pipes are not easily available as it is illegal. The reason why people don't eat it is because a large quantity of it required for it to affect your body if taken that way. Due to its

illegality, it isn't cheap and thereby consuming large quantity of it becomes expensive. If properly regulated, the more legal marijuana gets, the safer it is.

Benefits of Marijuana to the Individuals

- Studies indicate that marijuana users have comparatively lower body mass than nonusers. It is argued that marijuana users inculcate snacking behavior that in turn increases their body mass. But according to a study, there is no effect on food intake on **normal individuals** that consume low doses of it.⁵
- The good part about its usage (oral and smoked cannabinoids) by **HIV/AIDS and cancer patients** is that it increases food and calorie intake in them and thereby helps them in gaining weight and body mass. Marijuana is also promising as a means of treating nausea among cancer patients.⁶
- It is an anti-depressant and changes mood causing feelings of energy and relaxation. It changes perceptions and increases creativity of a person. Other **psychoactive effects** include sensory perception, euphoria, concentration, coordination and changes in blood pressure.⁷
- It kills cancer cells in leukemia patients and is helpful in curing lowered intraocular eye pressure, pain, inflammation, muscle control problems, controlling epileptic seizures, mental disorders, migraine as well as general analgesic effects.⁸

⁵ Foltin RW, Brady JV, Fischman MW. *Behavioral analysis of marijuana effects on food intake in humans*, Pharmacol Biochem Behav. 1986, 2:577-582.

⁶ Haney M, *Effects of smoked marijuana in healthy and HIV+ marijuana smokers*, J Clin Pharmacol, 2002; 42:34S-40S. Also refer, Voth EA, Schwartz RH, *Medicinal applications of delta-9-tetrahydrocannabinol and marijuana*, Ann Intern Med, 1997; 126:791-798.

⁷ Fusar-Poli P, Crippa JA, Bhattacharyya S, et al., *Distinct effects of delta-9-tetrahydrocannabinol and Cannabidiol on Neutral Activation during Emotional Processing*, Archives of General Psychiatry 66 (1); 95-105.

⁸ Carly Schwartz, *Marijuana May Stop The Spread of HIV, Study Finds*, The Huffington Post (April, 1, 2019, 04:16 PM), https://www.huffingtonpost.in/2014/02/11/marijuana-hiv_n_4767901.html. Also refer *Marijuana as*



- Endocannabinoid, a chemical compound in brain that is linked to feelings of overall well being, becomes lower during chronic stress. Marijuana contains THC that activates the same receptors as endocannabinoids. Therefore, it can be used in restoring endocannabinoids function and diminishing symptoms of **depression**.
- Numerous pre-clinical investigations in the U.S.A have validated the role of endocannabinoids in preventing **headache disorders** like migraine, trigeminal autonomic cephalalgias, chronic headaches, cluster headache, medication overuse headache and idiopathic intracranial hypertension. This suggests that a mechanistic role of cannabis (containing THC that activates the same receptors as endocannabinoids) can be used to cure headache disorder.⁹ It also helps in **Obsessive Compulsive Disorder** as endocannabinoid plays a role in it.
- A person going through **spinal cord injury** has to deal with chronic pain, muscle spasms, spasticity and experiences difficulty in sleep everyday. Cannabis is well known for treating chronic pain as it activates specific receptors around central nervous system that helps relieve pain. It triggers a neuroprotective response that is very helpful for people suffering with such an injury. It also improves muscle spasticity, sleep and motor functions.¹⁰
- Marijuana can be used to control the use of other harmful drugs as it has fewer side effects and is a better symptom management. It can be used as an **alternative** for alcohol, cigarettes and other illicit drugs.
- Marijuana can help prevent **diabetics** as it stabilizes blood sugar levels, lowers arterial inflammation due to its antioxidant properties, reduces neuropathic pain, provides relief from muscle cramps, relieves gastrointestinal pain and cramping, and keeps blood vessels open which reduces blood pressure overtime and improves circulation.
- **Cerebral malaria** is a life-threatening disease that affects over half a million children every year and can affect the sufferer throughout the course of their life. It has the potential to cause permanent neurological and behavioral deficits. It has been discovered that cannabidiol (CBD) can decrease the neurological damage caused by this disease.
- Studies show that legalization of marijuana shall lead to decrease in traffic fatalities, reduction in rates of homicide and assault, and improvement in creativity. It is also proven that one can never overdose on marijuana.

Benefits of Marijuana to the Economy

Legalization of marijuana not only grants one a basic human right but also brings with itself a major economic boost. At once it brings the complete black market of marijuana under the regulation of government. The most direct and immediate impact would be in the

Medicine, National Institute of Drug Abuse (April 2, 2019, 08:18 PM) <https://www.drugabuse.gov/publications/drugfacts/marijuana-medicine>.

⁹ Russo E, *Hemp for Headache: an in-depth historical and scientific review of cannabis in migraine treatment*, J Cannabis Ther, 2001; 1:21-92.

¹⁰ Rachel Garland, *The Astounding Ways Cannabis Can Treat Spinal Cord Injuries*, GREEN FLOWER (May 20, 09:25 PM), <https://www.green-flower.com/articles/261/the-astounding-ways-cannabis-can-treat-spinal-cord-injuries>



form of increased tax revenue. Legalization of marijuana has an important advantage over restriction because it allows for the Government to collect taxes from the legalized drug. A huge black market of marijuana in India indicates that legalizing the drug can significantly benefit the government. Currently the price of marijuana is high due to it being illegal and having high demand with limited supply. Due to this the free market price of marijuana would be much lower than the current level of price. This gives the government an opportunity to levy high taxes on marijuana post legalization also ensuring it gives proper competition to alcohol, tobacco and other intoxicants.

The taxation revenue of legalized marijuana products has already been proven in Colorado, in the United States, where marijuana is legalized since January 1, 2014. Colorado became one of the first states in the United States to allow for legal buying and selling of marijuana. The results from Colorado's first two years of legalization show significant monetary tax revenue. With recreational and medicinal sales reaching almost \$1 billion in 2015, Colorado collected more than \$135 million in taxation revenue and fees.¹¹ If a state of USA is able to make such huge economic benefits, then a huge country like ours shall ensure it makes most out of this opportunity. The generated tax revenue from marijuana can be used for

state's public school capital construction assistance fund and public programs such as substance abuse and regulation of marijuana use. This will ensure positive income along with considerable economic boost. This ensures that its own generated tax revenue can be used for the adverse effects caused by the legalization.¹²

Apart from the tax benefits it also ensures that the government reduces its spending as it would have on prohibiting marijuana pre-legalization. Setting up marijuana nurseries and dispensaries would be the first step for the states that voted in favor of medical marijuana. This would not only create job opportunities but would also give rise to economic activities around it. In the case of states like California and Nevada where such infrastructure already exists, the economic impact has become more quantifiable as the sector has matured.¹³ Now that the economy has included this sector, the workers who weren't included in workforce earlier by economists will now be included. This will give a boost to the GDP of the nation. Legalization with itself brings in the whole chain of manufacturers, traders, agents and for obvious the consumers. This in turn generates considerable amount. It also could help to secure the investment portfolios of investors across the country and further afield as well.

¹¹ Marijuana Tax Data, COLORADO DEPARTMENT OF REVENUE (may 15, 05:27 PM), <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

Also refer, *Marijuana Taxes, Licenses, and Fees Transfers and Distribution*, COLORADO DEPARTMENT OF REVENUE (May 15, 05:45PM),

<https://www.colorado.gov/pacific/sites/default/files/1215MarijuanaTax%2CLicense%2CandFeesReport.pdf>

¹² See *id.*

¹³ Mrinalani Krishna, *The Economic Benefits of Legalizing Weed*, INVESTOPEDIA (May 16 12:30 PM),

<https://www.investopedia.com/articles/insights/110916/economic-benefits-legalizing-weed.asp>



While marijuana remains illegal on the federal level, it is difficult for investors to capitalize on the growth of the industries. Should marijuana become legal on the national level, marijuana companies would be free to list their stocks on all exchanges, thereby enhancing liquidity and opening up access to many more investors. Should the growth rates for the cannabis space continue as they have in recent years, it's likely that investors would express a keen interest in the industry.

Basic human right

Right to health, which is a basic human right under Article 25 of the United Nations' Universal Declaration of Human Rights and WHO Constitution, and is also a fundamental right under Article 21 of the Indian Constitution, allows for a broader conception of 'health'. The conflict here is between state's interest (that restricts the use of marijuana to protect the health, welfare, morality and/or safety of its own citizens) and individual's right (right to privacy and to be left alone unless it harms anybody else). The definition of health constitutes for both externalist (biological condition) and internists (social condition) view. While the former is supported by the state, individuals support the latter. Determination of what constitutes as 'good health' is a crucial tension and it is important to consider the definition of health given by WHO as it is helpfully broad: 'a state of complete physical, mental, spiritual and social well-being and not merely the absence of disease or infirmity'. The definition clearly states that it is important for the state to consider both

externalist view that can focus on what they believe to be good for citizens and internist view of what is beneficial for the individuals. While restrictions can be imposed, a total ban on the use of marijuana is completely unfair and violates basic human right to health.

The history of ban on marijuana provides that there was no appropriate scientific or legal standing for the imposition of its ban. The first ever policy formed for the restriction of marijuana is the Marijuana Tax Act, 1937 in the USA. After the Mexican revolution in 1900's, the Mexicans brought their native language, customs and traditions into the American country. Use of marijuana as a medicine and relaxant was one of their customs. The ban of marijuana was mainly to demonize Mexicans and the leading charge given against it was criminal insanity, moral decline and its role as a gateway to other drugs. It has been done with no scientific backing to prove the same.¹⁴ Since it's ban in USA, India was pressurized by them as they were campaigning for a global law against all drugs. Therefore, the Rajiv Gandhi government enacted a law called Narcotic Drugs and Psychotropic Substance Act in 1985.

Right to health is incorporated in the constitution under Article 21 to attain highest attainable mental and physical health. A healthy mind and body leads to a healthy and happy life. In the case of *Vincent Parikurlangara v. UOI*,¹⁵ the Supreme Court held that right to maintenance and improvement of public health is included in the right to live with human dignity enshrined

¹⁴ James B. Slaughter, *Marijuana Prohibition in the United States: History and Analysis of a Failed Policy*, 21 Colum. J.L. & Soc. Probs. 417, 474 (1988)

¹⁵(1987) 2 SCC 165.



in Art. 21. The foundation for all human activities is a healthy body. In a welfare state this is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health. Right to health and medical care was upheld as a fundamental right even in the case of *Consumer Education and Research Centre v. Union of India*.¹⁶ The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization that makes life worth living.¹⁷ Marijuana users tend to enjoy its use. It can also be used to treat a lot of diseases or health problem. It is not justified how marijuana is banned for no proper reason. Our country needs to give a close look at its history and realize that as there is no apt reason for its ban, it is now time to legalize it and protect the basic human right of the citizens as enshrined upon them by the constitution.

CONCLUSION

It is to be duly noted and pointed out that the regulation of marijuana in the history is an error that has no scientific or legal backing. It is important to realize that even though marijuana is a soft drug, it is only mildly addictive and its effects can be compared to that of alcohol and cigarette. It is reported that around 65% who smoked marijuana are experimenting users and discontinues its use further. Around 25% of them smoke merely on social occasions, usually with the group. Only the other 10% are chronic users of the drugs and if regulated right by spreading proper awareness, they can be controlled.¹⁸ If marijuana is legalized and put in par with cigarettes and alcohol, its manufacture,

cultivation and sale would require license to be freely available in the market. This will create a barrier and restrict its use for the people. Furthermore as mentioned above, proper regulation and promotion of the advertisements showcasing the effects of marijuana will help the chronic users. A system must be developed with appropriate taxation, careful licensing to both manufacturers and retailers and if required, stricter penalties to those growing and selling it unlicensed.

It is now time to let go of the myth that marijuana users causes violence and crime as there are no records to prove the same. If anything, marijuana users tend to be more calm and passive. Marijuana has proven to have no short-term effects on the body. To know the long-term effects, it is important to conduct a study and scientific research on the same. It has proven to be difficult due to its illegal nature. If legalized, scientists and doctors will be free to conduct research on the substance. Total prohibition of marijuana is not justified based on the existing knowledge.

THC helps to cure various diseases and the citizens must be allowed to use the same. It is for the benefit of the citizens and the society to have a healthy lifestyle. Besides there is no appropriate for denying the citizens from the same. Denying the use of it is violating their right to health and privacy. There are more addictive and dangerous hard drugs like cocaine, heroine, etc.; that needs to be distinguished from marijuana. Those drugs are extremely dangerous and it is not logical to provide the same punishment for all of

¹⁶ (1995) 3 SCC 42.

¹⁷ DR. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA, 288 (Dr. Surendra Sahai Srivastava, 55 ed. 2018)

¹⁸ Nicholas N. Kittrie, *Marijuana- The right to Truth*, 23 S. C. L. Rev. 361 (1971)



them. As excessive use of marijuana is likely to produce adverse affects, it is pertinent to develop a public policy to restrain and restrict excessive use of it and limiting it to adults. It is important to provide the citizens with a sensible, responsible and truthful legislation.

