



## Legalization of weed: An ongoing debate

Dr. M V Chandramathi

Principal, Anantha Law College, Kukatpally, Hyderabad, Telangana, India

### Abstract

The existence of “Marijuana” has been in our culture for centuries. There is no difference between the cannabis and marijuana. They generally mean the same; the two terms label the same thing. The usage of cannabis can be traced as far back as the pre pottery Neolithic (8800-6500 BCE)—based on archaeological evidence.

“Marijuana” was used before “weed”. It became popular in 1910 while weed came later in vogue in early 1930’s. The initial restrictions ever known on cannabis were reported in the Islamic world by 14<sup>th</sup> century followed by 19<sup>th</sup> century restrictions in colonial countries which were associated with racial and class strains. From 20<sup>th</sup> century, growing International coordination led to sweeping restrictions on cannabis throughout the globe while entering the 21<sup>st</sup> century, nations began to regulate and decriminalize cannabis.

This paper focuses on the use of marijuana as food, medicine, psychoactive properties for recreational and religious purposes and also to realize if countries can make a choice to legalize or illegalize.

**Keywords:** cannabis, marijuana, weed, medicine, culture, legalize, illegalize

### Introduction

Cannabis use is a hot topic with many countries having legalized the drug. This is mostly used for medical and recreational use. The distinction between “marijuana” and “cannabis” is describing the same thing. Marijuana specifically refers to the products of cannabis made from leaves, seeds, stems, dried flowers of the cannabis plant. ‘Weed’ and ‘Marijuana’ both refer to cannabis plant. Marijuana has been controversial in few developed countries like America for decades. Human history dated back to 5,000 years shows that marijuana had medicinal, spiritual and recreational uses. It has been stated by the archeologists where they have found evidences of marijuana paraphernalia as far back in the first millennium BC in Africa, China and India <sup>[1]</sup>. Hemp is a (botanical class of Cannabis) which is grown for medicinal uses <sup>[2]</sup> and it is fastest growing plants on earth <sup>[3]</sup>. It was one of the first plants to be used into usable fiber around 50,000 years ago <sup>[4]</sup>. Hemp has varied commercial uses like textiles, paper, biodegradable plastics, rope, biofuel, food and animal feed <sup>[5]</sup>. Cannabis was a crop in ancient Korea, with samples of hempen fabric dating back to as early as 3000BC <sup>[6]</sup>. It was believed to be consumed by God Shiva as per Hindu practice and culture. “Soma” an ancient drug mentioned in the Vedas was cannabis, although this theory was disputed <sup>[7]</sup>. Several Indian texts dated before 1000 AD has mentioned as ‘Bhanga’, however there is debate among Sanskrit scholars, if bhanga be identified with modern bhang or cannabis <sup>[8]</sup>. The Vedic texts refer to cannabis as a herb which releases anxiety. It is believed that a drop of heavenly nectar falling on the earth and thereby becoming a cannabis plant <sup>[9]</sup>. There are other ancient cultures too which used marijuana like the ancient Greeks used it for, ear aches, inflammation and swellings.

A famous Greek historian Herodotus has described cannabis being smoked for emotional, spiritual and occasionally for recreational purposes. These wild edible plants play an important role in the food and nutrition of large section of

population especially in remote area of India. This section (Tribes) of population living in harsh environments cannabis serves as a good source of minerals and vitamins to take an edge off the malnutrition of these tribes. Various part of the plant such as rhizomes, tubers, roots, seeds, flowers and barks are used for the above mentioned purposes. The earliest users where history dates back were Hindus of India, afterwards it spread to Indo- Aryan culture outside India. It also grows naturally in Southern Siberia, Persia and China. The Chinese had identified 100 medicinal uses of marijuana by 100 AD <sup>[10]</sup>. This paper focuses on the medicinal uses and its legality.

### Global Spread

Since the time where prehistoric hunters and gatherers lived, to Viking ships, cannabis was used across the globe for ages. In a recent report, author (Barney Warf) labels how the use of cannabis originated thousands of years ago in Asia, and since then has found its way to many regions of the globe, eventually spreading to Americas and the United States. Cannabis for the most part was widely used for spiritual and medical purposes. Through the pre-modern times said Warf, (a professor of geography at the University of Kansas in Lawrence.) Medieval Germans used cannabis as a pain reliever during child birth and other aches.

The cannabis plant has two familiar sub-species:

1. Cannabis sativa, and
2. Cannabis sativa L.

Cannabis sativa is famous as marijuana, and has psychoactive properties and Cannabis sativa L. (The L was included honouring botanist Carl Linnaeus.) The subspecies is identified as hemp; is a non-psychoactive form of cannabis, and is used in manufacturing products such as fuel, oil and cloth.

Hemp and psychoactive marijuana were known to be widely used in ancient China for its medicinal use dated back to 4000 B.C. This herb was used to anesthetise the patient

during surgery.. The costal farmers from China brought this plant pot to Korea around 2000 BC or even earlier. Cannabis came to South Asian sub-continent between 2000 –1000 BC, during that time the region was invaded by Aryans. The drug was extensively used in India as Bang.

### **Cannabis from Asia to Europe**

Cannabis was known to Middle East during 2000 B.C. and 1400 B.C., and it was perhaps used there by the Scythians, which is a nomadic Indo-European group. The Scythians also probably passed the drug into southeast Russia and Ukraine, as they occupied both territories for years, Germanic tribes conveyed the drug into Germany, and marijuana pass on from there to Britain during the 5th century with the Anglo-Saxon conquests.

Cannabis is believed to have been introduced by Indian Hindu travellers to Africa when they travelled to South Africa<sup>[11]</sup>. Smoking pipes were discovered in Ethiopia and found carbon dated to around 1320 AD which was conceived to have dashes of cannabis<sup>[12]</sup>. It was used in South Africa by the ethnic<sup>[13]</sup> Khoisan and Bantu peoples earlier to European settlement in the Cape in 1652. The traders took cannabis from the east of Africa, to the Congo Basin in the west.

Over the subsequent centuries, cannabis was voyaged to numerous counties of the world, roving through Africa, reaching South America in the 19th century and being carried north afterwards, eventually reaching North America. The Spanish took industrial hemp to the Western Hemisphere and introduced through cultivation in Chile about 1545<sup>[14]</sup>, by 1607, "hempe" was among the crops (Gabriel Archer observed) being cultivated by the natives at the main Powhatan village, where Richmond, Virginia is now situated;<sup>[15]</sup> and in 1613, wild hemp which was "better than that in England" emerging along the shores of the upper Potomac. In 1619, the first Virginia House of Burgesses passed an Act necessitating all planters in Virginia to sow and spread "both English and Indian" hemp on their plantations<sup>[16]</sup>. Cannabis had really a long trip through the pre-modern to modern worlds finally came to United States of America by the beginning of 20<sup>th</sup> century through Mexico with immigrants feeling that country during the Mexican Revolution in 1910-1911. "Mexicans were frequently blamed for smoking marijuana, seducing children, property crimes and engaging in murderous sprees." As stated by (Warf in his report). The plant was first forbidden in Utah in 1915.

### **Early Restrictions**

Since the times from the middle ages cannabis was banned around the world, perhaps the earliest was in Arabia which prohibited the use in around 1300<sup>[17]</sup> by Soudoun Sheikouni, the emir of the Joneima. Marina Kingdom banned cannabis throughout more stringently by King Andrianampoinimerina of Madagascar after he assumed the throne, implemented capital punishment as a penal sanction for the use of cannabis<sup>[18]</sup>. It initiated to spread to different areas under the European colonial umbrella, causing some alarm. Nepoleon banned the use of cannabis among his solders<sup>[19]</sup>. Cannabis was introduced to Brazil by African slaves or by Portuguese colonists in early 1800 AD with an intent to cultivate hemp fibre, but the Portuguese slaves were familiar with it and were using it for psychoactive purposes which lead to Municipal Council of Rio-de-Janeiro

in 1830 prohibiting cannabis into the city with a punishment of its use by any slave<sup>[20]</sup>.

Cannabis practises had also spread to the United Kingdom through the practise of transporting Indian indentured workers. The use of gandia by the labourers steered towards a ban in British Mauritius in 1840<sup>[21]</sup>, the use of ganja by Indian labourers in British Singapore headed to its ban in 1870. Endeavours were made towards criminalising cannabis in British India around 1877 were made and the British Indian Government had conducted a study of cannabis in India where the reports of the same stated that the moderate use of these drugs is the rule and any kind of excessive use is exceptional. It was found that reasonable use produces no ill effects. The Injury caused by excessive use restricted to the consumer itself and effect is seldom appreciable on the society. The remarkable feature was to find out how minute the effects of hemp drugs have interfered themselves on observation—(Report of the Indian Hemp Drugs Commission, 1894-1895)<sup>[22]</sup>.

Many countries in the Islamic world banned cannabis in 1879, Morocco firmly banning cannabis cultivation and trade in 1890<sup>[23]</sup> and Greece's ban on hashish in 1890<sup>[24]</sup>. The start of 20<sup>th</sup> century more and more countries continued to ban cannabis, the first ever restriction on sale of cannabis came in 1906<sup>[25]</sup> in a district of Columbia, later outlawed in Jamaica (then a British Colony) in 1913 by the Ganja Laws, followed by South Africa in 1922, New Zealand and UK in 1920s<sup>[26]</sup>. Canada criminalised in year 1923 through the passing of The Opium and Narcotic Drug Act, 1923.

### **International Regulations**

International conference was held in 1925 in Hague on International Opium Convention which banned exportation of Indian hemp to other countries that which prohibited its use and necessitating those importing countries to issue certificates stating that "exclusively for medical purposes" It was also mandatory for the parties to exercise control to as to prevent illicit International traffic flow in Indian hemp<sup>[27]</sup>. Marijuana Tax Act was passed in 1937, in the United States that prohibited the production of hemp apart from cannabis. Regulation of hemp was included in the act with an intention to destroy the hemp US hemp industry<sup>[28]</sup> soon after which US was required back to promote relatively than discouraging cultivation of hemp. United States had used hemp extensively during the World War-II to make canvas, uniforms and ropes<sup>[29]</sup>. US had produced a short film in the year 1942, 'Hemp for Victory' during World War-II portraying hemp as indispensable crop to win the war. Much of the hemp was cultivated in Midwest and Kentucky.

The cultivation of hemp in Western Europe was not banned in the 1930s but the cultivation for commercial use stopped due to decreased demand to increasingly use of artificial fibres<sup>[30]</sup>.

Russia became the biggest producer of hemp fibre by the early 1940s<sup>[31]</sup>.

India had more practical approach since the colonial days; its restrictions were mainly concentrated on harder substances like opium. United Nations gave 25 years' time to India to abolish the practice of the use of recreational drugs, considering the social aspect and traditional consumption associated with it. India conformed to 1961 treaty, Narcotic Drugs and Psychotropic Substances Act (NDPS) and thus, marijuana became illegal in India.

## UN Regulations

Regulation on cannabis is primarily based on three treaties [32]:

### 1. Single Convention on Narcotic Drugs as amended by the 1972 Protocol, [33] -- 1961

It was signed on March 30, 1961, in New York as amended by 172 protocol and came into effect 8th August 1975. The parties to this convention are 185 member states. According to this treaty, Cannabis is a "flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated" [34]

### 2. Convention on Psychotropic Substances -- 1971

The Convention on Psychotropic Substances was signed in Vienna, on February 21, 1971, entered into force on August 16, 1976, the member parties are 183 [35]. According to this convention World Health Organization (WHO) has the power to determine if the substance produce a state of dependence and affect the central nervous system. The scope of this convention is to control these substances. If the World Health Organization comes across these substances then it must communicate to the commission with recommendation of control measures with an exception of medical purposes.

### 3. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances -- 1988

This treaty was signed in Vienna on December 20, 1988. The parties to this treaty are 189 member states. This convention advocates the parties for the adoption of criminal offences in their domestic laws for, cultivation, possession, trafficking, and personal consumption. Each country has different rules of usage of cannabis for personal use.

Under these treaties, the use of cannabis is allowed only for medical and scientific purposes. The member states of United Nations have effected these treaties through organs and bodies of the United Nations. The Economic and Social Council (ECOSOC) established a Commission on Narcotic Drugs (CND), in 1946, which was created to oversee the application of the international treaties on drug control. The authority of Commission on Narcotic Drugs was extended by General Assembly to empower it to be the governing body of the United Nations Office on Drugs and Crime (UNODC) to achieve Millennium Declaration's three goals:

1. To counter world drug Problem
2. To develop research
3. To develop policies to control illicit drugs

## Liberalizing and Legalizing

In much of the ongoing debate on drug policy, 'decriminalization' is used homologous with 'legalisation'. Decriminalization means removal of sanctions of criminal nature for certain offences [36]. Dutch Government in 1972 divided the drugs into more and less dangerous categories, with cannabis being placed in the lesser category where possession of up to 30 grams was made a malfeasance [37]. Cannabis products were not only sold in few local coffee shops but also been available for recreational use in the coffee shops since 1976 [38] and custody of holding up to 5 grams for personal use is decriminalized, though the police may still seize it, which frequently occurs in checks of vehicles near the border. Other modes of sales and transportation are not permitted, while the general attitude

toward cannabis was lenient even much before official decriminalization [39].

A majority of Unites States of America including Columbia and several other countries like Uruguay, Spain and Portugal have liberalized their cannabis legislations by legalizing the use of the same for recreational and medical tenacities [40]. Cannabis users were benefited due to regulated access. Cannabis is certainly a foundation of addiction and could also lead to deleterious health consequences even in the short term usage which could result in impairments in concentration and memory [41], risk of injury or respiratory problems as well. It began to appeal renewed interest as medicine in the 1970s and 1980s, more specific due to its use by cancer and AIDS patients who affirmed relief from the effects of chemotherapy and wasting syndrome [42]. California in 1996 became the first state in US to legalize cannabis for medical purposes in defiance of federal law [43]. Canada in 2001 was the first country to approve a regulatory system for medical use of cannabis [44]. Portugal decriminalized all drugs in 2001 yet maintaining the prohibition on sale and production and reduced the criminalization to administrative one [45]. Successively, number of European and Latin American countries like, Belgium in 2003, Chile in 2005, Brazil in 2006, and the Czech Republic in 2010 decriminalized cannabis. Uruguay in December 2013, legalized cannabis and there by became the first country in the modern era followed by Canada passing a bill to legalize cannabis in 2018 [46].

Marijuana once became legal, it turned out to be difficult and complex to restrict. World Drug Report of United Nations indicated that cannabis "was the world's most widely produced, trafficked, and consumed drug in the world in 2010", and around 238 million users in the world by 2015.

## Medicinal Cannabis: Its Legal Status in India

India faced the pressure for 25 years from United States and finally gave into the demands in 1986 by clubbing marijuana with other drugs and criminalizing it. However by making it illegal, it became more problematic for India to nab and arrest the drug offenders, but instead should have legalized marijuana because it is culturally accepted substance and has been historically bound to faith and mysticism. The consumption of charas (Hash), bhang and weed was in vogue for centuries in India. There are many reasons why marijuana must be made legal in India. One of the chief reasons is due to its medical uses. Marijuana can treat certain medical conditions. Pharmaceutical drugs on cannabis have been made available for medical use.

In February 2020, India opened its first ever medical cannabis clinic---by name Vedi Wellness Centre in Bengaluru which prescribes cannabis infused medication through tablets form for improved health and wellness. There are lot many benefits of medicinal cannabis. There are strong evidences that marijuana can ease chronic pain, symptoms of multiple sclerosis and chemotherapy- induced nausea. It is also used to treat certain forms of epilepsy, weight loss and nausea in AIDS patients, it helps to improve sleep disorders, such as insomnia due to its relaxing effects and sleep may occur when pain is reduced from marijuana usage.

Marijuana is shown to be less addictive than tobacco and cigarettes, when alcohol and tobacco could be legal, then

why must not cannabis be legal? It is less lethal as well. There has been no death cause by marijuana overdose. It takes a huge quantity to induce lethal response when injected in 15 min.

The strong reasons for legalization of marijuana in India can reduce illegal cross border trafficking, reduce illicit pot farms and create not only more regulated and effective market for meeting the demands of this drug but also create a new industry that produces marijuana. Since it can be used for smoking and the hemp can be put to use for textiles too. There could be more employment due to this!

### Conclusion

The present trend in the world is to legalize cannabis for non-medical and non-scientific purposes. This might represent violation of international treaties. It is a high time that United Nations must amend the drug treaties concerning cannabis regulation. The existing situation demonstrates cannabis for personal use has been decriminalized in many countries and they are in support of legalization. The libertarian view point is individuals must be allowed to put whatever they want into their bodies. This is not a sufficient argument to legalize a substance for recreational purposes that might seriously impair one's health and judgment. Yet it is a simple judgment call that marijuana was a part of Indian culture which kept its use to minimum. The country which imposed the restriction is changing its stance. Further question is, must we move on with an outdated law? Which was not even India's in the first place.

### References

- Hill K. Marijuana: The Unbiased Truth about the World's Most Popular Weed. Hazelden Publishing. Center City, MN, 2015.
- Britt Erickson. "USDA releases hemp production requirements". C&EN Global Enterprise, 2019;97(43):17. doi:10.1021/cen-09743-polcon4. ISSN 2474-7408. S2CID 213055550.
- Robert Deitch. Hemp: American History Revisited: The Plant with a Divided History. Agora Publishing, 2003, 219. ISBN 978-0-87586-226-2.
- Tourangeau Wesley. "Re-defining Environmental Harms: Green Criminology and the State of Canada's Hemp Industry", Canadian Journal of Criminology & Criminal Justice, 2015;57(4):528-554, doi:10.3138/cjccj.2014.E11, S2CID 143126182
- Johnson Renée. Defining Hemp: A Fact Sheet (PDF). Washington, DC: Congressional Research Service, 2015.
- Chris Duvall. Cannabis. Reaktion Books, 2014, 30- ISBN 978-1-78023-386-4.
- Rudgley Richard. Little, Brown; *et al.* (eds.). The Encyclopedia of Psychoactive Substances, 1998. ISBN 978-0-349-11127-8.
- Ethan Russo. Raphael Mechoulam (ed.). Cannabis in India: ancient lore and modern medicine (PDF). Cannabinoids as Therapeutics. Springer, 2006, 3-5. ISBN 9783764373580.
- Newton D. Marijuana: A Reference Handbook. ABC-CLIO: Inc. Santa Barbara, CA, 2013.
- Hill K. Marijuana: The Unbiased Truth about the World's Most Popular Weed. Hazelden Publishing. Center City, MN, 2015.
- Watt, John Mitchell (1 January 1961). "UNODC - Bulletin on Narcotics". United Nations Office on Drugs and Crime, 1961(3):002.
- Vera Rubin. Cannabis and Culture. Walter de Gruyter ISBN 978-3-11-081206-0. Cannabis Smoking in 13th-14th Century Ethiopia: Chemical Evidence, 1975, 77.
- de Vos, Pierre "Dagga judgment: there are less drastic ways to deal with its harmful effects". Constitutionally Speaking, 2017.
- Daryl T. Ehrensing "Feasibility of Industrial Hemp Production in the United States Pacific Northwest, SB681", 1998.
- Gabriel Archer. A Relatyon of the Discoverie of Our River..., printed in Archaeologia Americana 1860, 44.
- Proceedings of the Virginia Assembly, 1619.
- Bankole A. Johnson Addiction Medicine: Science and Practice. Springer Science & Business Media, 2010, 303. ISBN 978-1-4419-0338-9
- Gwyn Campbell. David Griffiths and the Missionary "History of Madagascar". BRILL, 2012, 437-. ISBN 978-90-04-20980-0.
- Booth M. Cannabis: A History. St. Martin's Press, 2015, 76-77. ISBN 978-1-250-08219-0.
- Robert C. Clarke; Mark D. Merlin. Cannabis: Evolution and Ethnobotany. Univ of California Press, 2013. ISBN 978-0-520-27048-0.
- A Collection of the Laws of Mauritius and Its Dependencies. By the authority of the Government, 1867, 541
- "(298) Page 264 - India Papers, Report of the Indian Hemp Drugs Commission, Medical History of British India - National Library of Scotland", 1894-1895, 1.
- India. Hemp Drugs Commission (1893-1894); Sir William Mackworth Young (1969). Marijuana: Report of the Indian Hemp Drugs Commission, 1893-1894.
- Abel EL. Marihuana: The First Twelve Thousand Years. Springer Science & Business Media, 2013, 135. ISBN 978-1-4899-2189-5.
- "Statement of Dr. William C. Woodward". Drug library.
- "Debunking the Hemp Conspiracy Theory".
- W. W. Willoughby "Opium as an international problem". Baltimore: The Johns Hopkins Press, 1925.
- Laurence Armand French; Magdalena Manzanárez. Nafta & Neocolonialism: Comparative Criminal, Human & Social Justice. University Press of America, 2004, 129. ISBN 978-0-7618-2890-7.
- Armagnac, Alden P. "Plant Wizards Fight Wartime Drug Peril". Popular Science, 1943, 62-63.
- "Dr. Ivan BŰcsa, GATE Agricultural Research Institute, Kompolt - Hungary, Book Review Re-discovery of the Crop Plant Cannabis Marihuana Hemp.
- Dewey LH. "Fiber production in the western hemisphere", 1943.
- United Nations Office on Drugs and Crime, International Drug Control Conventions,
- United Nations Treaty Collection, Single Convention On Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, Status of Treaties, Chapter VI Narcotic Drugs and Psychotropic Substances, 1961.
- The Single Convention as amended by the 1972 Protocol, *supra* note 2, at art., 1961:1(1)(b).



35. United Nations Treaty Collection, Status of the Convention of Psychotropic Substances
36. In the US, the term is sometimes used more narrowly to mean that you can no longer go to prison for a particular offence
37. Martin Booth. Cannabis: A History. Picador, 2005, 338. ISBN 978-0-312-42494-7.
38. Michael Tonry. Crime and Justice, Volume 44: A Review of Research. University of Chicago Press, 2015, 261. ISBN 978-0-226-34102-6
39. "Drugs Policy in the Netherlands". Ukcia.org.
40. Klieger SB, Gutman A, Allen L *et al.* Mapping medical marijuana: state laws regulating patients, product safety, supply chains and dispensaries. *Addiction*,2017;112:2206-16.
41. Volkow ND, Swanson JM, Evins AE *et al.* Effects of Cannabis use on human behavior, including cognition, motivation, and psychosis: a review. *JAMA Psychiatry*,2016;73:292-7.doi:10.1001/jamapsychiatry.2015. 3278 Google Scholar
42. Joy, Janet E, Watson Stanley J, Benson, John A. "Marijuana and Medicine -- Assessing the Science Base", 1999.
43. "History of Marijuana as Medicine – 2900 BC to Present". ProCon.org
44. "Marijuana's journey to legal health treatment: the Canadian experience". CBC News
45. "EMCDDA:Drug policy profiles, Portugal, 2011.
46. "Federal marijuana legislation clears House of Commons, headed for the Senate | CBC News"