

CANNABIS AND THE CONSTITUTION:**‘HIGH’ TIME FOR AMENDING THE NDPS ACT?**

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Abstract: *India, like many countries in the world, has criminalized the use of cannabis. Harsh enactments such as the NDPS Act impose severe penalties, extending to the death punishment, upon the use of cannabis. The criminalization of cannabis and the enactment of the NDPS Act lacks historical context, and was mainly done as a response to the UN and the US. Cannabis criminalization is opposed by various groups, who have based their arguments on medical, economical, religious, and occupational grounds. This paper will look at the constitutional aspect of decriminalizing cannabis in India, and shall discuss arguments on the basis of Articles 14, 21, and 25 of the Constitution of India. The paper also analyses Canadian constitutional jurisprudence in decriminalizing cannabis, and how India can borrow it to evaluate the constitutionality of the NDPS Act.*

Keywords: Cannabis, Constitution, NDPS Act, Canada, Decriminalization.

I. Introduction

The Narcotics Drugs and Psychotropic Substances Act, 1985¹ (“NDPS Act”) prohibits the use of narcotic drugs and psychotropic substances, which includes cannabis.

¹ The Narcotics Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of the Parliament, 1985 (India).

² Wayne Hall & Nadia Solowij, *Adverse effects of cannabis*, 352 *The Lancet* 1611 (1998).

³ The Bengal Excise Act, 1909, No. 5, Acts of the Parliament, 1909 (India).

Cannabis includes a group of three plants, namely Cannabis Sativa, Cannabis Indica, and Cannabis Ruderalis, which have psychoactive properties, primarily cannabidiol (CBD) and tetrahydrocannabinol (THC)². Cannabis and its genii are known by various terms, including its synonyms and by-products, like marijuana, weed, pot, dope, hash, *charas*, *ganja*, etc. The conventional arguments advocating the criminalization of marijuana are that it causes psychosis and is a pathway drug as it leads to a consumption of ‘harder drugs’ such as meth, heroin, or cocaine. Cannabis should be prohibited because it allegedly adversely affects work ethic and dulls sensory perceptions. In this paper, I shall review the laws which criminalize cannabis in India (Chapter II), and then I study the case made for its decriminalization (Chapter III). Then I analyze the constitutionality of the laws criminalizing cannabis (Chapter IV), and I subsequently explore how Canada has treated cannabis vis-à-vis their Constitution (Chapter V). Through the means of this paper, I shall explore the possibility of rendering the NDPS Act as unconstitutional.

II. Laws criminalizing cannabis in India

The legislation responsible for criminalizing the use of cannabis in India is the NDPS Act. It’s important to contextualize the enactment of the NDPS Act while assessing its constitutionality. Over time, the Indian legislature had regulated cannabis through statutes such as Bengal Excise Act, 1909³; the Dangerous Drugs Act, 1930⁴; and the Drugs and Cosmetics Act, 1940⁵. None of these legislations had *criminalised* cannabis, and the NDPS Act was the maiden legislation in doing so. The NDPS Act was enacted in light of the global developments against cannabis use, and was prominently influenced by USA’s war on drugs. In 1961, The Single Convention on Narcotic Drugs⁶ was adopted by the United Nations, which criminalized cannabis and other drugs. India had opposed the criminalization of

⁴ The Dangerous Drugs Act, 1930, No. 2, Acts of the Parliament, 1930 (India).

⁵ The Drugs and Cosmetics Act, 1940, No. 43, Acts of the Parliament, 1940 (India).

⁶ Single Convention on Narcotic Drugs, March 5, 1961, ST/CND/1/Add.1/Rev.8.

cannabis and its classification with other drugs, as cannabis was socially and legally sanctioned all over the nation⁷, but US Presidents Ronald Reagan and Richard Nixon had exercised their political influence over Rajiv Gandhi's government to sanction the NDPS Act in 1985. Thus, the NDPS Act was a result of India's international obligations as a signatory to the 1961 Convention, and its concession to Western influence.

Section 8(b) of the NDPS⁸ Act prohibits the cultivation of 'any' cannabis plant by persons. Section 20 of the NDPS Act⁹ prescribes the punishment related to cannabis. While the cultivation of cannabis can attract rigorous imprisonment extending to 10 years, its production, manufacture, possession, sale, purchase, transportation, and usage can attract rigorous imprisonment of a year, in case of a small quantity (roughly 100 grams), and up to 20 years in case of a commercial quantity. In 1989, the NDPS Act was amended¹⁰ to provide for a mandatory death penalty provision through Section 31A¹¹, which was later further held to be unconstitutional¹² and amended in 2014¹³, to substitute the mandatory death penalty with "the punishment specified in section 31 or with death". The mandatory death sentence was included in 1989, despite Supreme Court's 1983 decision in *Mithu*¹⁴, which rendered mandatory death sentences unconstitutional. Furthermore, there exist strict bail requirements for convictions under the NDPS Act, and it requires the court to have reasonable reasons to believe that the accused isn't guilty before granting their release¹⁵. The severity of these provisions, including bail and death penalty, unveil the draconian nature of the NDPS Act, and can be juxtaposed with severe anti-terrorism laws.

⁷ James H. Mills, *The IHO as Actor: The case of cannabis and the Single Convention on Narcotic Drugs 1961*, 13 *Hygiea Internationalis* 95, (2016).

⁸ *Supra* note 1, at section 8(b).

⁹ *Supra* note 1, at section 20.

¹⁰ The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, No. 2, Acts of the Parliament, 1989 (India).

¹¹ *Supra* note 1, at section 31A.

¹² Indian Harm Reduction Network v. Union of India, (2012) Bom CR 121.

¹³ The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, No. 16, Acts of the Parliament, 2014 (India), at section 15.

¹⁴ *Mithu v. State of Punjab*, AIR 1983 SC 473.

¹⁵ Shyam Nandan & Deepa Kansra, *Bail under Special Legislation*, Indian Law Institute 153, 155 (2019).

¹⁶ *Cannabis and Cannabinoids*, National Cancer Institute (March 16, 2022), https://www.cancer.gov/about-cancer/treatment/cam/hp/cannabis-pdq#_3.

III. The Case for Decriminalizing Cannabis

Cannabis decriminalisation, with regulation, would seem to be an effective model for India, as there are multiple medical and economic benefits of the plant which are squandered due to its criminalisation. The alleged harms based on which cannabis is criminalised are not scientific and the Government hasn't been active in demonstrating the same. The case for decriminalization is that the benefits derived from cannabis outweigh its harms, and it should thus be decriminalized.

Medicinal Reasons

Cannabis has several medicinal properties, such as aiding in the treatment and prevention of cancer, which is backed by reports published by the National Cancer Institute¹⁶ and American Cancer Society¹⁷. Cannabis is also used to treat neuropathic pain arising out of HIV AIDS¹⁸. The extent of relief brought forth by cannabis-based medicines is evident in approximately 8 lakh people dying from cancer each year, and more than 80,000 cases of HIV being reported. In India, cannabis has been known to control symptoms of diarrhoea and cholera, and helps in the treatment of reproductive disorders¹⁹. Claims have also been made that cannabis acts as an effective analgesic, improving the motor disability scores of persons suffering from Parkinson's disease²⁰.

Economic purpose

Cannabis-based products have a market of \$2.8 Billion, and if indirect uses like construction, paper-making, personal care etc. are included, it inflates to \$4.7 Billion²¹.

¹⁷ *Marijuana and Cancer*, American Cancer Society (August 4, 2020), <https://www.cancer.org/treatment/treatments-and-side-effects/treatment-types/complementary-and-integrative-medicine/marijuana-and-cancer.html>.

¹⁸ ALISON MACK & JANET JOY, *MARIJUANA AS MEDICINE?* Ch. 5 (National Academic Press 2000).

¹⁹ Mia Touw, *The Religious and Medicinal Uses of Cannabis in China, India and Tibet*, 13 *Journal of Psychoactive Drugs* 23, (1981).

²⁰ Ferhat Yenilmez et al., *Cannabis in Parkinson's Disease: The Patients' View*, 11 *Journal of Parkinson's Disease* 309, (2021).

²¹ *Grand View Research*, *Cannabidiol Market Size, Share & Trends Analysis Report By Source Type (Hemp, Marijuana), By Distribution Channel (B2B, B2C), By End-use (Medical, Personal Use), By Region, And Segment Forecasts, 2021 – 2028, (February, 2021)* <https://www.grandviewresearch.com/industry-analysis/cannabidiol-cbd->

Even though India's market share isn't massive, it is still a huge amount excluded from economic calculations. Due to the various laws, growth in the cannabis market is prohibited, which is a loss for the economy as a whole. Delhi and Mumbai were among the highest consumers of cannabis in the world in 2018, amounting to 38.26 and 32.38 metric tonnes respectively²². If cannabis was regulated and taxed like alcohol, the government could raise ₹725 crores in tax revenue in Delhi alone, and ₹641 crores in Mumbai²³, which is now lost.

In light of these reasons, it can be argued that cannabis has significant benefits.

IV. Constitutional Challenges to the NDPS Act

There are multiple challenges to the validity of provisions of the NDPS Act, specifically the ones criminalizing cannabis. Pleas have appeared before the Delhi, Bombay, and Himachal Pradesh High Courts, seeking to declare the enactment unconstitutional to the extent of criminalizing cannabis. The Great Legalization Movement India Trust appeared before the Delhi HC, and argued that the classification of cannabis, along with other fatal chemicals such as cocaine, morphine, heroin, and methamphetamine is arbitrary, unreasonable, unscientific, and unconstitutional. It can also be contended that the legislature has ignored the beneficial aspects of cannabis, and its deep-seated cultural and religious significance in the subcontinent. These are valid constitutional challenges to the inclusion of cannabis in the NDPS Act.

A. Article 14

The Constitution of India guarantees equality before the law or the equal protection of the laws to any

person within the territory of India through Article 14²⁴. The Apex Court, in *Maneka Gandhi*²⁵, interpreted Article 14 to be a safeguard against legislative and executive arbitrariness. Thus, if the constitutionality of a statutory provision is called to question under Article 14, it must demonstrate that it is not arbitrary; arbitrariness is antithetical to the Indian Constitution and implementation of laws must be just, fair, and equitable²⁶. An argument under Article 14 can be made to challenge the death sentence provisions of the NDPS Act, viz., Section 31A²⁷. *Bachan Singh*²⁸, upholding the constitutional validity of death sentences, ruled that it may be awarded in the "rarest of the rare cases". This doctrine can be applied to section 31A, which awards the death penalty to repeat offenders, in the 'rarest of the rare cases'. The punishment of death sentence under this doctrine would be violative of Article 14 of the Constitution, as it is arbitrary in nature. There is an absence of guidelines and frameworks to determine the category of repeat offenders falling within 'rarest of the rare cases', and their lies excessive discretionary powers with the judges to award death penalties. The subjective application of 'rarest of the rare cases' with respect to section 31A makes the provision arbitrary in nature and thus, unconstitutional. This can be tied to the origins of the NDPS Act and the current prosecutions under it. The NDPS Act was a result of the American War on Drugs, which initiated as a racist propaganda against the Hispanic and African-American populations²⁹. There were disproportionate arrests against these people, which has translated to India, where reports have stated that most convictions relating to cannabis under the NDPS Act are of daily-wage workers or slum-dwellers³⁰. Certain sections of the population are disproportionately targeted, due to discretionary powers of the judiciary and the executives, which reinforces marginalization. This makes the Act

[market#:~:text=The%20global%20cannabidiol%20market%20size,21.2%25%20from%202021%20to%202028.](#)

²² *Weed Index*, ABCD Agency 2018, <http://weedindex.io/#biggestconsumers>.

²³ Sabah K., *How legalising cannabis can help India ease some of its economic burden*, The Print (February 1, 2018), <https://theprint.in/report/how-legalising-cannabis-can-help-india-ease-some-of-its-economic-burden/32671/>.

²⁴ INDIA CONST. art 14.

²⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²⁶ Deepika Sharma & Raadhika Gupta, *Doctrine of Arbitrariness and Legislative Action: A Misconceived Application*, 5 NALSAR Stud. L. Rev. 22, (2010).

²⁷ *Supra* note 1, at section 31A.

²⁸ *Bachan Singh v. State Of Punjab*, AIR 1980 SC 898.

²⁹ Brian D. Earp et al., *Racial justice requires ending the war on drugs*, 21 American Journal of Bioethics 4, (2021).

³⁰ Neha Singhal & Naveed Mehmood Ahmad, *Case for Decriminalising Cannabis Use in India*, VIDHI Centre for Legal Policy (August 20, 2020), <https://vidhilegalpolicy.in/blog/case-for-decriminalising-cannabis-use-in-india/>.

arbitrary in nature, and thus unconstitutional under Article 14.

Arguments can also be made that the inclusion of cannabis within Schedule-1 of the NDPS Act, along with other lethal drugs such as cocaine, morphine, heroin, and methamphetamine, isn't based on reasonable classification, as cannabis has prominent socio-cultural importance in the country. Since cannabis is a plant that is used for scientific and religious purposes, there is no reasonable nexus with the object of the Act, which is a requirement under Article 14 as per *Navtej Singh Johar*³¹. The failure of the government to show the intelligible differentia in relation to cannabis, renders the inclusion of cannabis within the NDPS Act arbitrary, and thus unconstitutional under Article 14. Furthermore, drawing jurisprudence from *Anwar Ali*³², discretionary categories which aren't based on intelligible differentia are unconstitutional due to arbitrariness. The discretion to grant the death sentence under section 31A of the NDPS Act doesn't seem to fall within the classification of reasonable nexus or intelligible differentia, and is susceptible to abuse; and can be thus rendered unconstitutional under Article 14.

B. Article 21

Article 21 of the Constitution protects persons from deprivation of their life and personal liberty, except according to procedure established by law³³. *Maneka Gandhi*³⁴ read 'procedure established by law' to mean that the procedure must be just, fair, and reasonable to be constitutionally valid. This paper argues that the procedure under section 31A of the NDPS Act, which grants death penalties to repeat offenders, is not just, fair, and reasonable, and is thus, unconstitutional. Another argument based on Article 21 is that there's a 'negative duty' on the State to restrict interference with the life and liberty of a person; as cannabis has significant medical benefits, restricting these

benefits without a fair and reasonable procedure would be unconstitutional.

Firstly, the procedure within section 31A to deprive a person of their life and liberty is unjust and unreasonable. The Act grants personal discretion to the judge to choose between the death sentence and other prescribed punishments, which is subject to prejudices and defects in human nature³⁵. There is no mechanism present within the NDPS Act which would empower a valid distinction between repeat offenses that warrant life imprisonment, and those that warrant the death penalty. Therefore, this procedure is unreasonable, as there is no mechanised distinction in the nature of 'repeat' offenses³⁶. Additionally, an argument can be made along the lines of *Shatrughan Chauhan*³⁷, where the SC held that delay in executions was unconstitutional. Death penalties awarded under section 31A of the NDPS Act have never survived the appeals over the past 15 years, as most of the sentences have been mitigated. The fact that higher courts find that the accused do not deserve a punishment as harsh as the death sentence points at its arbitrariness, and section 31A should thus be unconstitutional. Furthermore, the absence of a reasonable classification for the placement of cannabis with other harmful substances makes the provisions unjust and unfair, as cannabis is of significant medical and religious use. Therefore, since the provisions relating to cannabis in the NDPS Act are not just fair and reasonable, they are unconstitutional.

The second argument based on Article 21 is that the State has the duty to restrict interference with the life and liberty of a person. *Rakesh Chandra* held that "no law of the state can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession"³⁸. This means that any law enacted by the Government must not intervene with the medical treatment of a person. The State has the obligation to preserve life under Article 21, and this obligation is absolute, total, and

³¹ *Navtej Singh Johar & Ors. v. Union of India* thr. Secretary Ministry of Law and Justice, AIR 2018 SC 4321.

³² *The State Of West Bengal v. Anwar All Sarkarhabib*, AIR 1952 SC 75.

³³ INDIA CONST. art 21.

³⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

³⁵ *Dhananjay Chatterjee v. State of West Bengal*, (2004) 9 SCC 751.

³⁶ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 409.

³⁷ *Shatrughan Chauhan & Anr. v. Union of India & Ors.*, (2014) 3 SCC 1.

³⁸ *Rakesh Chandra v. State of Bihar*, AIR 1989 SC 348.

paramount. The medical basis justifying the importance of cannabis as an essential drug has been discussed earlier. The SC in *Paschim Banga Khet Mazdoor Samity*³⁹, held that the Constitution has envisaged the establishment of a welfare state of India, and thus it's the duty of the State under Article 21 to prevent human life by providing the adequate facilities necessary. In this context, the State's justification to deprive the people of the beneficial effects of cannabis on the grounds of 'procedure established by law' must be compulsorily backed by scientific evidence. If the State fails to provide the *scientific* justification for including cannabis within the scope of the NDPS Act, the relevant provisions interfering with the right to medical aid shall be unconstitutional under Article 21. There have been numerous applications seeking this scientific justification, such as the Right to Information application filed by a Mumbai advocate named Aditya Barthakur, whose application moved between the Ministry of Health and Family Welfare, the Indian Council of Medical Research and the National Institute of Nutrition⁴⁰, but was of no avail. The State hasn't provided satisfactory scientific justification for the inclusion of cannabis within the NDPS Act, and thus, the provisions should be deemed unconstitutional under Article 21.

The above arguments could also be tied with Article 47 of the Constitution⁴¹, which is a part of the Directive Principles of State Policy, and directs that the State has the primary duty to improve public health. As improving public health is one of the paramount principles of governance⁴² under Article 47, laws criminalising cannabis, which is scientifically beneficial, shall be unconstitutional. Article 47 being a part of the DPSPs does not undervalue the merits of the arguments, as the SC held in *Minerva Mills*⁴³ that the

DPSPs and Fundamental Rights are complimentary, and courts should read them in a harmonious construction.

C. Article 25

Article 25⁴⁴ of the Constitution guarantees to persons the right to freely profess, practice, and propagate religion. Arguments have been made that cannabis has always been an integral part of the Hindu culture, as *Ganja* is consumed by many deities, and *Bhaang* is served as an offering to Lord Shiva, especially on the festival of *Mahashivratri*⁴⁵. A petition before the Himachal Pradesh HC claimed that the local culture in Himachal is guided by '*devtas*', who treat cannabis as '*shivji-ki-butli*', and thus, of religious significance⁴⁶. Cannabis was treated as *amrit* ('nectar of immortality')⁴⁷, and the *AtharvaVeda* names it as one of the five sacred plants⁴⁸. Thus, a probable argument could be that criminalisation of cannabis would be violative of the fundamental right to freedom of religion under Article 25.

In order to be held as unconstitutional, it must be established that consumption and cultivation of cannabis is an 'essential religious practice' of the Hindu faith⁴⁹. Even though cannabis could have occupied significant spaces in the historical, social, and cultural domains of the Hindu religion, there is no authority to establish that cannabis is imbibed within the 'core and fundamental belief' of Hinduism⁵⁰. Furthermore, there is no consistency in the use of cannabis as an offering, or for consumption, within Hinduism, and thus it cannot be treated as an essential religious practice⁵¹. As per *Shayara Bano*⁵², the Courts also look at the impact of the absence of the practice while determining its essentiality. Fundamentally, Hinduism as a religion wouldn't be altered if cannabis is criminalised, and

³⁹ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, AIR 1996 SC 2426.

⁴⁰ Aamir Khan, *Marijuana central to our culture, how is it illegal? Lawyer asks in PIL*, The Indian Express (April 20, 2015), <https://indianexpress.com/article/cities/mumbai/marijuana-central-to-our-culture-how-is-it-illegal-lawyer-asks-in-pil/>.

⁴¹ INDIA CONST. art 47.

⁴² *Ratlam Municipal Council v. Shri Vardhichand*, AIR 1980 SC 1622.

⁴³ *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

⁴⁴ INDIA CONST. art 25.

⁴⁵ Aditya AK, *PIL in Bombay HC to decriminalise cannabis goes up in smoke*, Bar and Bench (September 10, 2015), <https://www.barandbench.com/news/pil-in-bombay-hc-to-decriminalise-cannabis-goes-up-in-smoke>.

⁴⁶ *Petition in Himachal Pradesh High Court to legalise Cannabis cultivation for industrial and medical use*, Legistify (January 12, 2018), <https://www.legistify.com/legalnews/1385-petition-in-himachal-pradesh-high-court-to-legalise-cannabis-cultivation-for-industrial-and-medical-use/>.

⁴⁷ Michael R. Aldrich, *Tantric Cannabis Use in India*, 9 Journal of Psychedelic Drugs 227, (1977).

⁴⁸ *Supra* note 19.

⁴⁹ The Commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt, 1954 AIR 282.

⁵⁰ Dr. M. Ismail Faruqui v. Union Of India, AIR 1995 SC 605 A.

⁵¹ The Commissioner Of Police & Ors v. Acharya Jagdishwarananda Avadhuta, (2004) 12 SCC 77.

⁵² *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

its absence wouldn't have a significant deteriorating effect on it. Furthermore, *Shayara Bano* held that the fact that a practice is prevalent for a long time, and is performed by numerous people, isn't sufficient to establish that it's an essential religious practice⁵³. Therefore, on the basis of this holistic assessment of the essentiality of cannabis within Hinduism, it can be held that the NDPS Act cannot be deemed to be unconstitutional to the extent of Article 25.

V. Canadian Jurisprudence on the Constitutionality of Cannabis

On 17th October 2018, Canada enacted the Federal Cannabis Act⁵⁴, making Canada the second country in the world to legalize cannabis and its by-products. The question of the constitutionality of decriminalizing cannabis was taken up by the Canadian Supreme Court, and this section shall discuss two of the landmark judgements rendered.

In *R v. Parker*⁵⁵, Terrance Parker was epileptic, and a regular consumer of marijuana. Marijuana consumption reduced the intensity and frequency of his seizures, and he was prescribed the drug despite its illegality in Canada by his doctor. Parker was unsatisfied with the quality of cannabis traded by local dealers, and began growing the plant himself, and supplied it to other persons suffering from similar ailments. He was charged with sections 4(1) and 5(2) of the Canadian Controlled Drugs and Substances Act ("CDSA")⁵⁶, and he moved the Canadian Supreme Court challenging the validity of these laws. He based his arguments on Section 7 of The Canadian Charter of Rights and Freedoms ("Charter")⁵⁷, which protected the "right to life, liberty, and security" of persons. Parker argued that marijuana criminalisation infringed not only upon his section 7 rights,

but also of those who suffered from similar ailments. He argued that he had to choose between committing a crime to obtain effective medical treatment, and inadequate medical treatment⁵⁸. This infringes upon his, and other patients', right to security, and the Court upheld his arguments, and allowed the use of medical cannabis in Canada.

In 2015, Canada's Supreme Court reiterated the permissibility of medical marijuana in the unanimous decision of *R v. Smith*⁵⁹. In addition to the arguments based on section 7 of the Charter, the Court found that limiting medical options by criminalizing cannabis violated the liberty of the individual, and the prohibitions were arbitrary in nature. The criminalization of cannabis, aimed to protect the health of citizens, was contradicting this very purpose as its restrictions served more harms than benefits. Lastly, the Court also identified that there was no 'rational connection' between criminalizing cannabis and protecting the health of the citizens⁶⁰.

The rationale in the above decisions can be placed within the Indian context, as Section 7 of the Charter is similar to the guarantee offered by Article 21 of the Constitution. The case for decriminalizing medical marijuana in India would be strengthened through the use of these precedents, as there is significant historical evidence supporting the use of cannabis as medical equipment. The intersection of arbitrariness in Indian and Canadian constitutionalism gives adequate grounds to make a case for decriminalizing cannabis with respect to Article 14 of the Constitution. One could compare 'rational connection' used in Canadian jurisprudence to the doctrine of 'reasonable classification' vis-à-vis Article 14 in the Indian context. Juxtaposing the NDPS Act and CDSA, it's clear that the arguments and rationale used in Canadian jurisdiction can be applied in India.

⁵³ *Ibid.*

⁵⁴ The Cannabis Act, C-44, 2018 (Canada).

⁵⁵ *R v Parker*, OJ No 2787, 2000 (Canada).

⁵⁶ Controlled Drugs and Substances Act, C-19, 1996, at sections 4(1) and 5(2) (Canada).

⁵⁷ The Constitution Act, 1982, at section 7, Part I (Canada).

⁵⁸ Peter Bowal & Dustin Bodnar, *The Constitutional Right to Marijuana in Canada: R v Parker*, LawNow (May 1, 2020),

<https://www.lawnow.org/famous-cases-the-constitutional-right-to-marijuana-in-canada-r-v-parker/>.

⁵⁹ *R v Smith*, 1 S.C.R. 1045, 1987 (Canada).

⁶⁰ Julia Heron, *Canada: Supreme Court Rules That All Forms of Medical Marijuana Are Permissible*, Library of Congress (June 19, 2015), <https://www.loc.gov/item/global-legal-monitor/2015-06-19/canada-supreme-court-rules-that-all-forms-of-medical-marijuana-are-permissible/#:~:text=Article%20Canada%3A%20Supreme%20Court%20Rules,v>

VI. Conclusion

This paper looked at the various aspects of decriminalizing cannabis vis-à-vis the Constitution, specifically with respect to Articles 14, 21, 25, and 47. The paper concluded that the provisions of the NDPS Act are arbitrary and there is an absence of intelligible differentia, and thus they're violative of Article 14. The procedure established isn't fair and reasonable, and the State has failed to fulfill its duty, rendering the provisions to be violative of Article 21. It could not be established that cannabis was an essential religious practice, and thus NDPS was not unconstitutional as per Article 25.

In *toto*, it can be held that based on Articles 14 and 21, the NDPS Act should be held to be unconstitutional with respect to the provisions related to cannabis, especially section 31A. Legalizing marijuana can have a significant beneficial impact on the treatment of ailments and on the economy due to the tax revenue that could be generated. The paper leaves some questions unanswered: if the decriminalization does take place, what would be the procedure of its mechanization, so as to garner the best possible benefits with respect to the State and its citizens.