

It is high time we legalise and regulate cannabis in India



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India needs to roll out a law to legalise and regulate cannabis as its derivatives can be used to the benefit of the country in more ways than traditionally used.

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AS the momentum towards the legalisation and State regulation of certain types of drugs takes traction around the world, it seems like a distant dream that it would be ever actualised in India.

Certain countries (Canada, Mexico, South Africa and Thailand) are leading the charge to legalise the recreational use of cannabis and some (Argentina, Australia, Colombia, Greece) are even going further to advocate for the legalisation of other drugs such as cocaine.

Still others are advocating legalisation of psychotropic substances (Portugal, Mexico and Ecuador).

However, in India, recent controversies have marred the discourse around cannabis and made it a taboo subject, even with India's rich cultural and religious history intertwined with the plant.

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Two sides of the same coin (plant)— the use of cannabis has both been celebrated and condemned. The dichotomy is further enhanced by the very thin line of distinction between legality and illegality between its cultivation, recreational and medicinal use, and use of the plant in food, drinks or even in commodities, which vary from State to State.

This article seeks to navigate and discuss the [opportunities](#) that the cannabis industry presents for the country at large in light of the current regulatory regime and argue for a shift to a more holistic, progressive and tolerant regime.

Current regulatory regime

Cannabis is overarchingly regulated by the [Narcotic Drugs and Psychotropic Substances \(NDPS\) Act, 1985](#).

The loopholes and irregularities in the existing legislation can make it tedious to navigate the present system to enter the booming market of hemp supplies— be it in the form of consumables, pharmaceuticals, nutraceuticals or even everyday items that may be made from the cannabis plant.

Before understanding the regulatory regime, close attention must be paid to the different terminologies and their legal definition. 'Cannabis' or 'hemp' or 'marijuana' oftentimes get interchangeably used colloquially as well as by the media.

A derivative of the cannabis plant, [hemp](#) is defined as the resin, flowering or fruiting tops (*charas* or *ganja*) or any combination thereof. The first aspect of legal dissonance can be noted in the definition itself, where leaves and seeds or any mixture or drinks (*bhaang*) thereof are not included in the legal definition as prescribed in the NDPS Act.

The NDPS Act [prohibits](#) the cultivation, possession, sale, consumption, use and inter-state transport of all psychotropic substances, which include cannabis and hemp plants. This definition covers a wide variety of activities, leaving very little wriggle room.

An exception to the above operations is cannabis use for medical or scientific purposes, as notified by the government.

Moreover, while cultivation has been banned by the Union government and the majority of the state governments (since, technically, agriculture and levying taxes on hemp products are both [state subjects](#)), certain state governments (Uttar Pradesh, Madhya Pradesh and Uttarakhand) have exercised their jurisdiction under [Section 10](#) of the NDPS Act and allowed for plucking and cultivation of hemp.

Another exception given to hemp production is for 'industrial purposes', specifically fibre, seed or horticulture purposes as notified by the government.

Hence, the above-mentioned exceptions provide for a sense of ambiguity as to what may be permitted and what may not be— especially as it differs by the state, activity and product.

It is further amplified by the fact that while certain aspects of one plant may be considered illegal (fruiting or flowering tops or resins), some may still be legal (leaves or seeds).

The NDPS Act leaves ample room for ambiguities which have led to the growing use of hemp either by using the seeds or leaves, when not accompanied by a flowering top, by the act of plucking (in certain states where it is legalised) or cultivating it (such as Uttarakhand), depending on the type of product.

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However, other legislations also regulate the production and supply of such products.

For consumables in the form of edibles— Food Safety and Standards Authority of India (FSSAI) has recently [allowed](#) for the use of hemp seed and hemp oil for consumption after obtaining the required licences.

Any derivatives obtained from the seed or oil can also further be processed to be used in such consumables, hence paving the path for acceptance of the medicinal and health benefits of hemp.

Apart from such edibles, hemp can also be used in certain nutraceuticals if it meets the desired standards and can assist in the growth of the cannabis or hemp industry.

The ultimate gateway which may eventually pave the way for legalisation and regularisation is the recognition of hemp or cannabis as a part of the '[traditional ayurvedic proprietary medicines](#)', thereby allowing the sale of certain products if they are duly testified by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy ([AYUSH](#)).

Another dimension to this is to prove the medicinal benefit and 'traditional' source of hemp to avail this certification— however, certain states such as Uttar Pradesh, Madhya Pradesh and Uttarakhand are leading the way by providing such certification in tandem with the Department of Revenue.

Such products would come under the Unani, Siddha, and homeopathic systems of medicines under the [Drugs and Cosmetics Act, 1940](#) (DCA) and its subsequent [Rules, 1945](#).

While the Ministry of AYUSH has ancillary powers to grant these licences, it has to follow the procedure prescribed under the DCA and Rules for producing, manufacturing, licensing, selling and distributing such products which are said to have 'medicinal' properties.

If such products are claimed to have 'medicinal' purposes, it also has additional requirements of toxicity testing, composition and cautionary labelling attached.

Another ambit where certain manufacturers of such products may be granted relief is in the form of import and export licences that may be granted by the Department of Revenue of each state on subsequent application.

While it still imposes restrictions in terms of quantity, quality and bureaucratic hurdles— it shows a glimmer of hope and the movement toward its legalisation.

Hence, such legal exceptions, albeit very narrow and akin to walking on an extremely thin tightrope, have provided certain entities in the market to claim first-mover advantage and exploit these regulatory loopholes to their benefit.

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Instead of marring the reputation of a medicinally, agriculturally, economically, and even environmentally beneficial plant, there needs to be a movement towards acceptance of this plant through the instrument of regulation.

The Central government can take a cue from the government of Uttarakhand and start by allowing the cultivation of the cannabis plant and putting a restriction on the tetrahydrocannabinol (THC) content at 0.3 percent. THC is the principal psychoactive constituent of cannabis.

This will balance the need to engage with a competitive market worldwide as India races to become a [US \\$5 trillion](#) economy with societal concerns, especially relating to health.

Paving the path for the legalisation of the entire plant and for the production and manufacturing of certain products, private entities have willingly taken it upon themselves to also educate the masses.

Apart from highlighting the economic aspects, these entities have also detailed websites that elucidate on the legal process, the required licences that they have obtained, the medicinal and health benefits, the distinctions between plant varieties, as well as distinctions between CBD and THC— and information about whether such elements are intoxicants or not.

Arguments for the decriminalisation of cannabis

Apart from India's stance in the [United Nations](#) to declassify cannabis from a Schedule IV or 'most dangerous substances', there is also a worldwide shift towards the legalisation of cannabis.

India's unique agro-climate eases the cultivation and production of cannabis, which will result in significant economic benefits. Additionally, the cannabis industry also seeks to provide livelihood and employment opportunities in the agriculture sector.

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This would also promote sustainable agriculture and increase the use of hemp fibre in different products such as textiles. The protein derived from hemp can be used as a vegan substitute.

Overwhelming scientific studies are highlighting the medicinal benefits of cannabis, especially in pain management. Recently, it has also been found that cannabis has [environmental and agricultural benefits](#) which could be used as an impetus to further bat for its legalisation, at least at an industrial scale.

Apart from industrial use, arguments for recreational use have also gained traction in recent years. Studies across the world have shown that the legalisation of cannabis for recreational use often leads to access to a better quality of substances, thereby reducing risks of spurious drugs.

It also helps in monitoring the levels of consumption in the country and helps in regulating any overdose.

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While in India, alcohol, drugs and even cigarettes often draw sharp criticism from the masses, judiciary, and government alike, citing health concerns— if properly regulated and balancing economic rights along with the right to health— India may stand to gain from such legalisation.

Looking at Uttarakhand as a blueprint by measuring its successes and learning from its failures, India can hope to move towards a tolerant regime starting with the industrial use of hemp or cannabis.

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