

NDPS ACT AND THE DECRIMINALISATION OF CANNABIS IN INDIA

- G.Yogalakshmi¹

Abstract

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), constitutes the cornerstone of India's drug control regime. While enacted to curb illicit trafficking and substance abuse, its application to cannabis has generated sustained legal and policy debate. Critics argue that the Act's prohibitionist framework fails to account for cannabis's historical, medicinal, industrial, and cultural significance in India, resulting in disproportionate criminalisation, barriers to scientific research, and social inequities. Recently, civil society initiatives such as the Great Legalisation Movement India (GLM India) have advocated for decriminalisation and regulated legalisation, emphasising therapeutic potential, environmental sustainability, and economic opportunity. This article critically examines the legal treatment of cannabis under the NDPS Act, analyses the limitations of the existing prohibitionist approach, evaluates arguments for reform and the risk and counter arguments, and proposes a phased regulatory framework for decriminalisation and controlled legalisation consistent with constitutional principles, public health objectives, and international obligations.

Keywords: Cannabis decriminalisation in India, NDPS Act, cannabis and legal reforms, global standards on cannabis decriminalisation.

1. Introduction

¹ LLM(Hons), School of Excellence in Law, The TamilNadu Dr.Ambedkar Law University, Chennai
For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

India's drug control policy has been shaped by a combination of international treaty obligations, domestic legislative choices, and public health considerations. The enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 marked a decisive shift towards a stringent prohibitionist framework governing narcotic drugs and psychotropic substances. The Act criminalises a broad range of activities, including the cultivation, production, possession, sale, transport, and consumption of specified substances, subject to limited exceptions for medical and scientific purposes.¹

Cannabis occupies a distinctive and contested position within this framework. While the NDPS Act classifies certain forms of cannabis—namely charas and ganja—as prohibited substances, it expressly excludes seeds and leaves when not accompanied by the flowering or fruiting tops.² Despite this partial distinction, unlicensed possession and consumption of proscribed cannabis parts remain criminal offences, attracting penal sanctions. This legal treatment represents a significant departure from India's historical engagement with cannabis, which has traditionally featured in indigenous systems of medicine, religious practices, and cultural life.

The continued criminalisation of cannabis has increasingly been questioned on grounds of proportionality, public health efficacy, and social justice. Legal scholars and activists argue that the NDPS Act fails to adequately differentiate cannabis from higher-risk narcotic substances, leading to the criminalisation of personal users, obstruction of medical research, and disproportionate impact on marginalised communities. In this context, civil society movements such as the Great Legalisation Movement India (GLM India), founded by Viki Vaurora, have emerged to challenge the prevailing legal regime and to advocate for decriminalisation and regulated legalisation of cannabis, citing its medicinal, industrial, environmental, and cultural value.³

Against this backdrop, this paper examines the statutory framework governing cannabis under the NDPS Act, critiques the existing prohibitionist approach, analyses arguments supporting reform as well as countervailing concerns, and proposes a phased, evidence-based model for decriminalisation and regulation within the Indian legal system.

2. Historical Use of Cannabis in India

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Cannabis has a long and complex history on the Indian subcontinent, embedded in cultural, medicinal, spiritual, and social practices for millennia. Archaeobotanical and textual evidence suggests that cannabis was present in the region as early as the Vedic period, where it was associated with sacred and medicinal functions rather than being treated solely as a psychoactive substance. The earliest references to cannabis in ancient Indian literature are found in the Atharva Veda (c. 1500–500 BCE), where it is mentioned as one of the “five sacred plants” with diverse roles including healing properties and spiritual significance.²

Traditional Indian medical systems, particularly Ayurveda, incorporated cannabis as a therapeutic agent. Classical Ayurvedic literature, particularly the *Sushruta Samhita* composed during the early centuries of the Common Era, refers to cannabis and its derivatives as substances possessing therapeutic value. Medical practitioners in the ancient period prescribed cannabis-based preparations for problems relating to digestion, respiratory disorders, inflammation, and pain management³. Historical writings also suggest that cannabis was also used for treating toothache and other conditions. This indicates that its medicinal use was recognised within traditional Indian systems of healing.

Apart from its medicinal role, cannabis occupied an important position in the religious and cultural life of India. Bhang, made from cannabis, was used in festivals like Holi and Maha Shivaratri. Cannabis consumption in these settings was not considered a criminal act but it formed part of customary practices⁴. The use of cannabis was often symbolic, devotional, and regulated through social norms instead of formal legal restrictions.

During the British period in India, cannabis consumption continued across different sections of society such as the ascetics, labourers, rural communities and urban populations. The British administration constituted the Indian Hemp Drugs Commission in 1893 to study the effects of cannabis use in India. After conducting extensive inquiries and collecting evidence from medical professionals, administrators, and local communities, the Commission concluded that moderate cannabis consumption generally did not produce serious moral or

²Cannabis use in ancient Indian texts is documented as part of sacred and medicinal culture. See the Atharva Veda references to cannabis as a “sacred grass.” The Atharva Veda describes cannabis with connotations of “Indracana” (food of gods) and “Amrita” (elixir). <https://pmc.ncbi.nlm.nih.gov/articles/PMC10011848/>

³*Sushruta Samhita* mentions cannabis derivatives for medicinal use in treating ailments such as catarrh and biliary fever

⁴Radhakrishnan, S., “Cultural Uses of Cannabis in India,” *Economic and Political Weekly*, Vol. 54, No. 15 (2019)

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physical harm. It further warned that imposing absolute prohibition could encourage illegal trade and create social consequences. The report remains significant as one of the earliest detailed studies on cannabis regulation and presents a notably different approach from the strict prohibitionist framework adopted in later years.

Even after independence, cannabis regulation in India initially remained within the domain of state excise control rather than criminal legislation. Several states continued to permit the regulated sale and consumption of products such as *bhang*, reflecting the continuation of longstanding social and cultural practices. It was only with the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985—largely influenced by international drug control conventions—that India adopted a uniform criminalisation model. This marked a decisive shift from a historically regulated and culturally embedded approach to one based predominantly on prohibition and penal sanctions.⁵

3. The NDPS Act, 1985 — Overview and Legal Position of Cannabis

3.1 Origins and Objectives of the NDPS Act

The Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted to consolidate and amend laws relating to narcotic drugs and psychotropic substances in India. Prior to its enactment, drug control was governed by fragmented statutes such as the Opium Act, 1857 and the Dangerous Drugs Act, 1930. The NDPS Act sought to establish a comprehensive legal framework to regulate narcotic substances, curb illicit trafficking, and impose deterrent penalties for violations.

A key impetus for the enactment of the NDPS Act was India's obligation to align domestic law with international drug control conventions⁶. These treaties emphasised prohibition and strict regulation, influencing the Act's punitive structure. Consequently, the NDPS Act adopted stringent penal provisions, including mandatory minimum sentences and stringent bail conditions, reflecting a strong prohibitionist philosophy.

⁵Vidhi Centre for Legal Policy, *The Case for Decriminalising Cannabis Use in India* (2020).

⁶Particularly United Nations Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971

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Over time, the Act has been amended to address emerging substances, regulate essential narcotic drugs, and introduce limited flexibility in sentencing. Nevertheless, the fundamental approach of criminalisation and strict control remains intact.

3.2 Statutory Definition and Classification of Cannabis

The NDPS Act defines “cannabis (hemp)” under Section 2(iii), which includes:

- (a) charas, being the separated resin of the cannabis plant;
- (b) ganja, being the flowering or fruiting tops of the cannabis plant; and
- (c) any mixture or drink prepared from the above forms.

Significantly, the statute expressly excludes seeds and leaves of the cannabis plant when not accompanied by the flowering or fruiting tops. This statutory exclusion creates a legal distinction between different parts of the cannabis plant, setting cannabis apart from other narcotic substances regulated under the Act. Despite this differentiation, possession, sale, transport, or consumption of prohibited parts without authorisation constitutes an offence.

The Act further categorises offences based on quantity — small, intermediate, and commercial — with punishments increasing in severity as quantities rise. Commercial quantity offences attract rigorous imprisonment and substantial fines, reflecting the Act’s deterrent orientation.⁷

3.3 Regulation, Licensing, and Limited Exceptions

While the NDPS Act imposes broad prohibitions, it permits cultivation, manufacture, possession, and use of narcotic substances under licences issued for medical, scientific, or industrial purposes. It empowers the Central Government to regulate such activities through rules and notifications⁸. In theory, this framework allows for controlled medical and research use of cannabis.

In practice, however, the licensing regime for cannabis-related research and medical use is complex and restrictive. Procedural hurdles, regulatory uncertainty, and the stigma associated with cannabis discourage scientific institutions and pharmaceutical enterprises from pursuing

⁷NDPS Act, 1985, ss. 20, 27A, and related penalty provisions.

⁸NDPS Act, 1985, ss. 8, 9.

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research and development. As a result, the statutory exceptions remain underutilised, reinforcing de facto prohibition.

3.4 Prohibitionist Orientation and Its Implications

The NDPS Act's treatment of cannabis reflects a prohibitionist logic that does not sufficiently distinguish between substances based on relative harm or social impact. By placing cannabis within the same punitive framework as more harmful narcotics, the Act prioritises criminal enforcement over public health and harm reduction. This approach has contributed to the criminalisation of personal users and has limited the scope for evidence-based policymaking.

The rigid statutory structure has therefore become a focal point of criticism, prompting calls for reform that balance regulation, public health, and constitutional proportionality.

4. Critique of the Prohibitionist Approach under the NDPS Act

The NDPS Act adopts a predominantly prohibitionist approach towards cannabis, treating it largely on par with other narcotic drugs irrespective of differences in relative harm, social impact, and historical usage. This approach has attracted sustained criticism from legal scholars, public health experts, and civil society actors on multiple grounds, including criminalisation of personal use, barriers to medical research, cultural dissonance, social injustice, and inefficient allocation of state resources.

4.1 Criminalisation of Personal Use

One of the principal criticisms of the NDPS framework is its criminalisation of cannabis users for personal consumption. Even possession of small quantities may result in imprisonment or fines, while offences involving higher quantities attract stringent penalties, including mandatory minimum sentences.⁹ Critics argue that this punitive model fails to distinguish between traffickers and individual users, effectively treating substance use as a criminal issue rather than a public health concern.

Such criminalisation has long-term consequences, including social stigma, disruption of education and employment, and psychological harm, particularly for first-time or non-

⁹Narcotic Drugs and Psychotropic Substances Act, 1985, ss. 27–31

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dependent users. From a proportionality perspective, the imposition of criminal sanctions for personal cannabis use has been criticised as excessive and inconsistent with contemporary understandings of harm reduction.

4.2 Barriers to Medical and Scientific Research

The NDPS Act permits the use of narcotic substances for medical and scientific purposes under licence; however, the regulatory framework governing cannabis research remains restrictive in practice. Obtaining licences for cultivation, processing, and clinical research involves complex procedures, multiple approvals, and administrative uncertainty¹⁰. These hurdles discourage academic institutions, researchers, and pharmaceutical companies from undertaking systematic studies.

This regulatory rigidity is particularly significant given growing scientific evidence regarding cannabinoids such as tetrahydrocannabinol (THC) and cannabidiol (CBD), which interact with the human endocannabinoid system and may have therapeutic applications in pain management, neurological disorders, and autoimmune conditions¹¹. The prohibitionist approach thus impedes evidence-based policymaking by limiting domestic research and clinical trials.

4.3 Cultural and Historical Discontinuity

Cannabis has historically occupied a recognised place in Indian society, featuring in Ayurvedic medicine, religious practices, and cultural traditions. Its use in certain spiritual contexts and traditional remedies predates modern drug control laws. The criminalisation of cannabis under the NDPS Act, largely influenced by international treaty obligations, represents a sharp departure from these indigenous practices.¹²

Critics contend that the law was enacted without adequate consideration of India's socio-cultural context, resulting in the suppression of traditional knowledge systems and practices that had long coexisted with social regulation rather than criminal prohibition.

¹⁰NDPS Act, 1985, ss. 8, 9; relevant licensing rules.

¹¹Antonio W. Zuardi, "Cannabidiol: From an Inactive Cannabinoid to a Drug with Wide Spectrum of Action," *Revista Brasileira de Psiquiatria*, Vol. 30, No. 3 (2008), pp. 271–280

¹²Viki Vaurora, "Ban on cannabis is harming millions; it must be lifted," *Frontline*, Nov. 27, 2024.

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4.4 Social Justice and Discriminatory Enforcement

Enforcement of cannabis-related offences under the NDPS Act disproportionately affects economically and socially marginalised groups. Small-scale users, informal cultivators, and low-level intermediaries are more likely to be arrested and prosecuted, while individuals with greater economic or social capital often evade enforcement. This selective impact raises concerns of inequality before the law and undermines the legitimacy of the criminal justice system.

Moreover, prolonged pre-trial detention and stringent bail conditions exacerbate the punitive impact on vulnerable populations, reinforcing cycles of poverty and exclusion.

4.5 Inefficient Use of Law Enforcement Resources

Another significant critique relates to the diversion of law enforcement and judicial resources towards prosecuting minor cannabis offences. Police and courts frequently devote time and effort to small-quantity possession cases, contributing to docket congestion and prison overcrowding. Critics argue that such resource allocation does little to dismantle organised trafficking networks and may weaken the overall effectiveness of drug control efforts.

5. International Perspectives on Cannabis Decriminalisation and Legalisation

In recent decades, a growing number of countries have reconsidered strict prohibitionist approaches to cannabis, moving instead towards models of decriminalisation or regulated legalisation. These reforms have been influenced by empirical research, public health considerations, human rights discourse, and economic policy objectives. Comparative international experience provides important insights into the limitations of criminalisation and the potential benefits of regulatory alternatives.

5.1 Decriminalisation Models

Decriminalisation typically involves the removal of criminal penalties for possession and use of small quantities of cannabis for personal consumption, while retaining sanctions for trafficking and large-scale distribution. Portugal represents a widely cited model in this regard. In 2001, Portugal decriminalised the possession of all drugs for personal use,

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replacing criminal prosecution with administrative responses such as fines or referrals to health and counselling services.¹³ Studies evaluating the Portuguese approach indicate reductions in drug-related deaths, HIV transmission, and incarceration rates, without evidence of a significant increase in overall drug use.

Other European jurisdictions have adopted tolerance-based or quasi-decriminalised approaches. In the Netherlands, possession of small quantities of cannabis remains formally illegal but is not prosecuted under a policy of regulated tolerance. Licensed “coffee shops” are permitted to sell cannabis under strict conditions, thereby separating users from illicit markets and prioritising harm reduction.¹⁴ Spain has similarly adopted a system that permits private consumption and cultivation for personal use within regulated cannabis social clubs.

5.2 Legalisation and Regulatory Frameworks

Some countries have progressed beyond decriminalisation to establish fully regulated legal cannabis markets. Uruguay became the first country to legalise cannabis nationwide in 2013, introducing a state-controlled system governing cultivation, distribution, and sale.¹⁵ The objectives of the Uruguayan model include undermining organised crime, ensuring product safety, and promoting public health through state oversight.

Canada legalised recreational cannabis in 2018 through the Cannabis Act, creating a comprehensive regulatory framework that includes licensing requirements, age restrictions, quality control, advertising limitations, and taxation.¹⁶ The Canadian model reflects a public health-oriented approach, seeking to regulate consumption while reducing the harms associated with illicit markets. Evidence suggests that legalisation has facilitated medical research, generated tax revenue, and reduced reliance on illegal supply chains.

In the United States, although cannabis remains prohibited under federal law, several states have legalised cannabis for medical and recreational use. States such as Colorado and California have implemented regulatory regimes that generate substantial tax revenues and

¹³ Caitlin Elizabeth Hughes & Alex Stevens, “What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?” *British Journal of Criminology*, Vol. 50, No. 6 (2010), pp. 999–1022.

¹⁴ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *Cannabis Legislation in Europe: An Overview* (2018).

¹⁵ John Walsh & Geoffrey Ramsey, “Cannabis Policy in Uruguay,” *Brookings Institution* (2015).

¹⁶ Government of Canada, *Cannabis Act*, S.C. 2018, c.16.

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fund public services, including healthcare, education, and substance-abuse prevention programs.¹⁷

5.3 Rationale for Global Reform

The global shift away from strict cannabis prohibition is driven by multiple factors. First, empirical evidence increasingly suggests that criminalisation does not effectively deter use and disproportionately impacts marginalised communities. Second, public health approaches emphasise harm reduction, treatment, and education over punitive enforcement. Third, legalisation enables scientific research into the therapeutic applications of cannabis, which has gained growing acceptance in modern medicine. Fourth, regulated cannabis markets offer economic benefits through employment generation, taxation, and reduced law enforcement expenditure.¹⁸

6. Constitutional and Legal Implications of Cannabis Criminalisation in India

The criminalisation of cannabis under the NDPS Act raises potential constitutional issues, particularly under Articles 14, 19, and 21 of the Indian Constitution. Article 14 guarantees equality before the law. Disproportionate penalties for minor cannabis use may violate this principle by affecting small users and marginalised groups more severely than real traffickers. Articles 19 and 21 protect personal freedoms and Right to Life and personal liberty. These rights could be violated in case of punitive measures against personal consumption. The criminalisation of low-risk substances would be inconsistent with the principle of proportionality in criminal justice system. The Courts in India, such as in *Common Cause v. Union of India* and privacy-related judgments, have increasingly recognised that public health and personal autonomy must guide legislative measures, suggesting a constitutional space for reconsidering blanket prohibitions on cannabis.¹⁹

7. Public Health Perspective and Harm Reduction Approach

¹⁷ Beau Kilmer et al., *Assessing the Impact of Cannabis Legalization*, RAND Corporation (2019).

¹⁸ United Nations Development Programme, *What Does Decriminalisation Have to Do with Development?* (2015).

¹⁹ *Common Cause v. Union of India*, (2018) 5 SCC 1; relevance of public health and proportionality.

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Evidence from global and domestic studies emphasises that punitive approaches to cannabis do not reliably reduce use and often exacerbate social harm.²⁰ Public health models advocate harm reduction, education, and regulated access rather than incarceration. Decriminalisation allows individuals to seek treatment without fear of criminal sanctions and enables health authorities to provide counselling, risk education, and quality control of products.²¹ Additionally, regulated medical access facilitates clinical research on therapeutic uses, supporting evidence-based interventions. The emphasis shifts from moral or punitive considerations to minimising health risks, preventing substance dependence, and promoting informed consumption.

8. Economic, Industrial, and Environmental Dimensions of Cannabis Reform

Legalising and regulating cannabis and hemp can create significant economic and environmental benefits. Industrial hemp offers sustainable alternatives for textiles, paper, and biodegradable plastics, reducing dependence on environmentally harmful crops.²² Rural communities can benefit from licenced cultivation, processing, and value-added production, generating employment and stimulating local economies.²³ Taxation of legal cannabis sales can also provide government revenue streams, while promoting formalisation of previously illicit markets. Moreover, environmentally sustainable cultivation reduces chemical inputs and soil degradation compared to conventional cash crops, aligning economic incentives with ecological objectives.²⁴

9. Role of Civil Society and Reform Movements in India

Civil society organisations have played a pivotal role in advocating cannabis law reform. Groups like the Great Legalisation Movement India (GLM India) have raised awareness about medicinal, industrial, and social justice dimensions, highlighting the disproportionate impact of criminalisation on marginalised populations.²⁵ Strategic litigation and policy

²⁰Hall, Wayne & Lynskey, Michael, "Evaluating the Public Health Impacts of Legalising Recreational Cannabis Use," *Annual Review of Public Health*, Vol. 37 (2016).

²¹Global Commission on Drug Policy, *Regulation: The Responsible Control of Cannabis*, 2018.

²²Small, Ernest, *Hemp: A New Crop with New Uses for North America* (Centre for New Crops & Plant Products, Purdue University, 2016).

²³Vidhi Centre for Legal Policy, *A Case for Decriminalising Cannabis Use in India* (Vidhi Legal Policy Research, 2020).

²⁴Global Commission on Drug Policy, *Regulation: The Responsible Control of Cannabis*, 2018.

²⁵Vaurora, Viki. "Ban on cannabis is harming millions; it must be lifted," *Frontline*, Nov 27, 2024.

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advocacy efforts, including petitions in the Delhi High Court, aim to challenge the blanket prohibition of cannabis while promoting research, regulation, and harm reduction.²⁶ These initiatives contribute to shaping public discourse, informing policymakers, and demonstrating domestic demand for evidence-based cannabis reforms.

10. International Treaty Obligations and Scope for Domestic Reform

India is a signatory to international drug control treaties, including the 1961 Single Convention on Narcotic Drugs and its 1972 protocol, which require regulation of cannabis.²⁷ However, the treaties permit flexibility for medical and scientific use, and decriminalisation for personal consumption is not explicitly prohibited. Comparative experiences in countries like Canada, Uruguay, and Portugal show that adopting public health-oriented reforms does not violate the Treaty.²⁸ India can also develop a domestic legal framework that balances international obligations with public health, social justice and economic objectives.

11. Risks, Counterarguments, and Regulatory Concerns

Though reform offers multiple benefits but other concerns exist. Heavy cannabis use can lead to mental health issues, particularly among adolescents.²⁹ Legal frameworks must establish clear limits, licensing standards, and quality control to prevent diversion to illicit markets. Social, political, moral or religious objections, may hinder implementation. Advanced research should be facilitated to understand therapeutic applications. Liberalisation should be promoted with appropriate safeguards, public awareness and monitoring mechanisms.

12. Proposed Framework for Decriminalisation and Regulated Legalisation in India

India may consider adopting a gradual and carefully regulated approach towards cannabis reform in order to balance public health concerns with potential medicinal, economic, and social benefits.

²⁶ GLM India, Public Interest Litigations in Delhi High Court, 2019–2024

²⁷ United Nations, *Single Convention on Narcotic Drugs, 1961* (as amended by the 1972 Protocol).

²⁸ Room, Robin, et al., “Cannabis Policy: Moving Beyond Prohibition,” *Global Drug Policy Observatory*, 2018.

²⁹ Hall, Wayne, et al., “Cannabis use and the risk of psychiatric disorders,” *The Lancet Psychiatry*, Vol. 2, No. 5 (2015).

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At the initial stage, personal consumption may be decriminalised by removing criminal sanctions for limited individual use. Instead of punitive measures, emphasis can be placed on awareness initiatives, counselling, rehabilitation, and harm-reduction mechanisms.

A separate regulatory structure may be developed for medical and scientific use. Cultivation, manufacture, and distribution for therapeutic or research purposes could be permitted through a licensing system subject to quality control and governmental supervision.

In addition, the promotion of industrial hemp with low THC content may provide economic and environmental advantages. Hemp-based industries relating to textiles, biodegradable materials, and food products could contribute to rural employment and sustainable agricultural development.

A broader recreational framework, if introduced in the future, may require strict regulation through age restrictions, taxation policies, monitored distribution channels, and public education measures aimed at reducing misuse and dependency.

A balanced regulatory model of this nature would allow India to recognise the cultural, medicinal, and industrial significance of cannabis while maintaining safeguards necessary for public health and legal compliance.

13. Conclusion

The NDPS Act's blanket prohibition of cannabis has resulted in disproportionate criminalisation, suppression of traditional and medicinal practices, and lost economic and environmental opportunities. Comparative global experiences, emerging domestic research, and civil society advocacy increasingly indicate that strict prohibition may not fully address the social and public health concerns associated with cannabis use. The NDPS Act already creates separate categories for consumption, possession, cultivation, manufacture, and medical or scientific use. But critics argue that the present framework continues to impose disproportionately restrictive controls on cannabis in comparison with its demonstrated medicinal, cultural, and industrial significance. Several jurisdictions that have adopted models of decriminalisation or regulated legalisation have reported good outcomes. These include reduced criminalisation, improved public health oversight, greater scope for scientific

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research, and regulated economic development. In India, any future reform would require a cautious and phased approach that strengthens regulatory clarity regarding personal consumption, medical cannabis, and industrial hemp cultivation while maintaining safeguards against illicit trafficking and abuse. Civil society organisations such as GLM India have further contributed to informed debate by encouraging evidence-based discussion on cannabis law and policy reform. These developments collectively indicate the possibility of moving towards a more balanced and scientifically informed regulatory framework.

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