

## **The legalisation of marijuana and criminal justice**

The legalization of marijuana has become one of the most significant criminal justice debates of the twenty-first century. What was once a universally criminalized substance has increasingly gained legitimacy as both a medicinal and recreational drug in numerous jurisdictions across the globe. This shift has had profound implications for criminal justice systems, influencing policing, prosecution, incarceration rates, public health approaches, and broader debates about justice, equity, and state regulation. Examining both global practices and the Indian context reveals not only the complexity of marijuana legalization but also the challenges and opportunities it poses for criminal law reform.

At its core, the question of marijuana legalization is tied to the historical criminalization of drugs. During much of the twentieth century, marijuana was categorized alongside narcotics such as heroin and cocaine, often with exaggerated claims about its addictive properties and social harms. In the United States, this criminalization was intensified by the “War on Drugs” initiated in the 1970s, which led to harsh penalties, mandatory minimum sentences, and widespread incarceration, disproportionately affecting minority communities. Globally, the 1961 UN Single Convention on Narcotic Drugs also entrenched marijuana as a controlled substance, compelling many countries to adopt strict prohibitions. Over time, however, research, shifting cultural attitudes, and policy experimentation began to challenge this prohibitionist paradigm.

The legalization of marijuana for recreational and medical use has been most visible in North and South America, as well as parts of Europe. Uruguay, in 2013, became the first country in the world to fully legalize marijuana, creating a state-regulated system for production and sale. Canada followed in 2018, legalizing recreational marijuana nationwide. In the United States, while marijuana remains federally illegal, a patchwork of states—including California, Colorado, and New York—have legalized recreational use, while many more allow medicinal use. These reforms have had dramatic criminal justice consequences. Arrests for marijuana possession, once one of the most common drug-related offenses, have plummeted in jurisdictions that legalized the drug. Police forces

have been freed from pursuing low-level drug cases, allowing resources to be redirected toward serious crimes. Courts and prisons, long burdened with nonviolent marijuana offenders, have experienced a reduction in caseloads.

Advocates of legalization argue that this shift reduces unnecessary criminalization, promotes fairness, and addresses systemic inequities. In the U.S., data consistently show that African American and Latino communities were disproportionately targeted under marijuana prohibition, despite similar rates of use across racial groups. Legalization, therefore, is viewed by many legal experts as a corrective step toward racial justice. Moreover, legalization also undermines illicit drug markets, redirecting profits from criminal organizations to regulated industries subject to taxation and state oversight. These tax revenues have been used in many jurisdictions to fund education, healthcare, and drug treatment programs, creating a virtuous cycle that further integrates criminal justice reform with public policy goals.

However, legalization is not without its critics and complications. Some legal scholars warn that legalization has produced new forms of criminal justice disparities. For instance, while arrests for possession decline, minority communities still face disproportionate policing in other areas of marijuana regulation, such as unlicensed sales or public consumption. Moreover, legal markets tend to be dominated by large corporations with access to capital, while individuals previously criminalized for marijuana offenses—often from marginalized groups—struggle to access licenses and benefit from the new industry. Thus, while legalization reduces certain forms of criminalization, it can entrench inequities if not accompanied by restorative justice measures such as record expungement, community reinvestment, and equitable licensing policies.

From a global perspective, marijuana legalization reflects a gradual shift in international law, though tensions remain. The United Nations drug control conventions technically require strict control of marijuana, yet countries like Canada and Uruguay have openly defied these norms. Meanwhile, others, such as the Netherlands, have adopted a pragmatic “tolerance” policy, allowing regulated sales through coffee shops while maintaining formal prohibitions. This evolving global landscape reveals a broader debate about state sovereignty in drug policy, with legalization advocates emphasizing harm reduction, public

health, and individual liberty, while opponents warn of increased consumption, impaired driving, and mental health risks.

Turning to India, the question of marijuana legalization is particularly complex. Marijuana in the form of bhang has long been part of cultural and religious practices, yet its criminalization under the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985, placed harsh penalties on possession, cultivation, and sale of cannabis resin (charas) and flowers (ganja). The NDPS Act prescribes mandatory minimum sentences, reflecting a punitive approach similar to the U.S. “War on Drugs.” This has led to significant criminal justice burdens, with many low-level offenders incarcerated for minor cannabis-related offenses, despite marijuana’s deep cultural roots. Legal experts argue that such mandatory punishments have created overcrowded prisons, strained courts, and diverted police resources from serious crimes.

In recent years, however, debate around marijuana legalization has grown in India. Proponents point to the potential benefits of decriminalization or regulated legalization, including reducing the burden on the criminal justice system, generating tax revenue, and supporting traditional medicinal uses. The Bombay High Court and Delhi High Court have seen petitions challenging marijuana prohibition on grounds of cultural and medicinal significance, though the judiciary has generally deferred to legislative authority. Meanwhile, legal reformers like Arjun Shekhar and Dhruv Mehrotra argue that India’s strict drug laws have failed to curb trafficking or use, and instead disproportionately punish the poor, who lack resources to fight long legal battles.

Nevertheless, legalization in India faces significant challenges. Critics warn that legalization could increase public health risks, particularly in a country already grappling with addiction to alcohol and tobacco. Law enforcement agencies also argue that loosening marijuana laws could complicate efforts against narcotics like heroin and synthetic drugs, given that traffickers often operate across substances. Furthermore, societal attitudes in India remain ambivalent, with marijuana often stigmatized as a dangerous drug despite its cultural presence in certain rituals.

From a criminal justice perspective, the way forward for India may lie in incremental reforms rather than wholesale legalization. Experts suggest

decriminalizing small amounts for personal use, removing mandatory minimums for cannabis-related offenses, and expanding research into medicinal marijuana. These steps could reduce incarceration rates, ease judicial burdens, and bring India closer to a harm-reduction model, while avoiding the abrupt transition to full legalization. Lessons from global practice also suggest that any legalization in India must be accompanied by equitable licensing, community reinvestment, and robust public education to prevent health risks.

The evolution of marijuana legalization also highlights broader questions about criminal justice philosophy. Should the criminal law focus primarily on deterrence and punishment, or should it prioritize harm reduction, rehabilitation, and social justice? Legal experts like Douglas Husak argue that the criminalization of drug use lacks moral justification when the behavior poses limited harm to others. Similarly, in India, scholars such as Prabha Kotiswaran emphasize that punitive drug laws reflect colonial legacies rather than contemporary needs. These perspectives push policymakers to rethink not just marijuana laws but the role of criminal justice in regulating personal behavior more broadly.

In conclusion, the legalization of marijuana has transformed criminal justice landscapes across the world. It has reduced arrests, eased prison overcrowding, and opened new conversations about justice and equity, particularly in relation to marginalized communities disproportionately affected by prohibition. Yet challenges remain, including persistent disparities, risks of corporate monopolization, and concerns about public health. For India, the global trend offers valuable lessons, but domestic reforms must be tailored to cultural, social, and economic realities. By carefully balancing legalization with regulation, restorative justice, and public health safeguards, India and other countries stand to reshape not just marijuana policy, but the philosophy of criminal justice itself.

## **Landmark Indian Cases on Marijuana and NDPS Act**

### **1. Arjun Singh v. State of Haryana (2004)**

- The Supreme Court held that **compliance with procedural safeguards under the NDPS Act is mandatory**, especially with search, seizure, and sampling.

- Any lapse in procedure can vitiate the trial. This highlights how strict NDPS penalties require equally strict procedural protections.

## 2. **State of Punjab v. Baldev Singh (1999)**

- A Constitution Bench ruled that **informing the accused of their right to be searched before a Magistrate or Gazetted Officer** under Section 50 of the NDPS Act is mandatory.
- This is often compared with Miranda-style rights in the U.S., since it ensures procedural fairness even in drug cases.

## 3. **E. Michael Raj v. Narcotics Control Bureau (2008)**

- The Supreme Court clarified how to determine the “small” and “commercial” quantity of narcotics, ruling that punishment must be based on the actual content of the narcotic substance, not the total weight of the mixture.
- This case curtailed excessive punishment and brought proportionality into sentencing.

## 4. **Mohd. Sahabuddin & Anr. v. State of Assam (2012)**

- The Court stressed **strict compliance with the NDPS Act’s provisions**, including Section 42 (power of search, seizure, and arrest without warrant).
- Failure to follow procedure can lead to acquittal, showing how loopholes in enforcement undermine convictions.

## 5. **Tofan Singh v. State of Tamil Nadu (2020)**

- A landmark judgment where the Supreme Court held that **confessions made to NDPS officers are not admissible as evidence**, since NDPS officers are treated as “police officers.”
- This decision significantly reshaped NDPS prosecutions and provided stronger safeguards against coerced confessions.

## 6. **Rajesh Dhiman v. State of Himachal Pradesh (2020)**

- Reiterated that **procedural lapses, especially with Section 50, render NDPS trials invalid.**
  - Reinforced that the stringent nature of punishments demands equally stringent compliance with rights.
7. **Akhil Gogoi case (2021, Assam High Court)** – though not directly on marijuana, this case reflected on **NDPS misuse in political/activist targeting**, showing how the law's broad sweep can be weaponized.

### **Relevance to Legalization Debate**

- These cases collectively reveal the **tension between harsh mandatory punishments under NDPS and constitutional safeguards** like fair trial, proportionality, and protection against self-incrimination.
- They also demonstrate how **Indian courts, much like in the U.S.**, have stepped in to curb excesses and ensure procedural fairness, even without legalization.
- Legal scholars often argue that the **need for judicial correction itself is evidence that NDPS criminalization is too rigid and ripe for reform.**

### **The Way Forward in Indian Legislation Pertaining to Marijuana Laws**

The legislative framework governing marijuana in India, primarily through the **Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)**, is one of the most stringent in the world. While the law criminalises possession, use, and trafficking of cannabis products (with minor exceptions for bhang under state excise laws), global trends are moving toward decriminalisation or legalisation. India, therefore, stands at a critical crossroads in determining how its cannabis laws should evolve to balance public health, social justice, and international obligations.

The first step forward must be **differentiating between users and traffickers**. Presently, the NDPS Act often treats individuals found with small quantities of cannabis as criminals rather than potential victims of dependency. Despite

amendments that distinguish between “small quantity” and “commercial quantity,” implementation remains harsh, leading to incarceration of thousands of first-time or casual users. Moving toward **decriminalisation of personal use** would relieve the criminal justice system of overburdened prisons and courts, while shifting focus to treatment and rehabilitation. This approach has worked in Portugal, which decriminalised all drugs in 2001, leading to reduced overdoses, lower HIV infection rates, and a drop in drug-related incarcerations.

Second, India needs to **revisit mandatory sentencing provisions**. The NDPS Act prescribes severe minimum punishments even for non-violent offences, which restricts judicial discretion. This rigidity has been criticised by the judiciary itself, as seen in *E. Michael Raj* (2008) and *Tofan Singh* (2020), where the courts stressed proportionality and procedural safeguards. Reforming the law to allow judges discretion in awarding lighter sentences for small-scale offences could better align with principles of justice under Article 21 of the Constitution.

Third, there is scope for **regulated medicinal and industrial use**. The Indian government has cautiously allowed some pilot projects on medicinal cannabis cultivation in states like Uttarakhand and Madhya Pradesh. With growing scientific evidence supporting cannabis use for pain management, epilepsy, and cancer care, India can expand its medical marijuana framework through licensing, research, and monitored supply chains. This would not only improve healthcare access but also generate economic opportunities in pharmaceuticals and agriculture. At the same time, the **industrial hemp sector** has vast potential in textiles, food supplements, and construction materials, and could provide sustainable alternatives for rural economies.

Fourth, any reform must integrate **public health approaches**. Rather than criminalising users, the state should provide counselling, detoxification, and harm-reduction services. This is in line with India’s constitutional commitment to the right to health and dignity. Integrating marijuana users into mental health programs, especially under the Mental Healthcare Act, 2017, would reduce stigma and enable treatment-oriented interventions.

Fifth, reform must address the **social justice dimension**. Studies have shown that drug laws disproportionately affect marginalised and poor communities who cannot afford legal representation. Many prisoners under NDPS are under-trials

for small quantities, languishing in jails for years. By decriminalising possession for personal use and introducing community-based corrections, India could reduce systemic injustice and uphold equality before law under Article 14.

Sixth, India must also consider **global obligations under international drug control treaties**. While the UN Single Convention on Narcotic Drugs (1961) places marijuana under strict controls, many countries, including Canada and Uruguay, have adopted legalisation models by prioritising domestic constitutional values and public health needs over rigid compliance. India could pursue a similar path by advocating reforms at the UN level, while simultaneously experimenting with controlled domestic frameworks.

Seventh, there should be **clearer distinction between cannabis and harder narcotics**. Presently, the NDPS Act lumps cannabis with substances like heroin and cocaine, creating a one-size-fits-all punitive structure. A reclassification could allow cannabis to be regulated separately, acknowledging its lower risk profile while keeping strong enforcement against synthetic and highly addictive drugs.

Eighth, **judicial reform must accompany legislative change**. Special NDPS courts are overburdened with petty cases. Redirecting minor offences away from criminal courts to administrative or health tribunals could speed up justice delivery and free up judicial resources for serious trafficking cases.

Finally, **public awareness and social acceptance** will be key. Any reform must be accompanied by campaigns that educate citizens on responsible use, risks of abuse, and available treatment options. Without social readiness, reforms risk being misunderstood or misused. Civil society, healthcare professionals, and educational institutions should play an active role in reshaping public perception away from criminalisation toward compassion and rational regulation.

In conclusion, the way forward for India's marijuana legislation lies in **shifting the paradigm from punishment to regulation, from stigma to rehabilitation, and from rigidity to proportionality**. By learning from global best practices and tailoring them to India's socio-legal context, policymakers can craft a balanced framework that protects public health, reduces the burden on the criminal justice system, and creates new socio-economic opportunities. Such reform would not only align Indian law with constitutional values of justice, liberty, and

dignity but also position the country as a progressive player in evolving international drug policy.