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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COMPARATIVE ANALYSIS OF MEDICAL MARIJUANA AND THE LAW BETWEEN THE USA AND INDIA: STATE VS. FEDERAL REGULATIONS

AUTHORED BY - KARTHIK NARAYAN R

I. Executive Summary

The regulatory landscape of medical marijuana presents a striking contrast between the United States and India. In the US, a complex interplay exists between state and federal laws, with numerous states having legalized medical cannabis while federal law continues to classify it as a Schedule I substance. This dichotomy creates significant challenges for patients, healthcare providers, and businesses. Conversely, India maintains a stringent federal prohibition on cannabis under the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985, with limited exceptions for medical, scientific, and industrial purposes. This report analyzes the historical evolution and current state of medical marijuana legislation in both countries, examining the socio-economic impacts and the implications for healthcare stakeholders. Ultimately, it explores potential policy reforms that could improve access to medical cannabis where it is needed, acknowledging the distinct legal and cultural contexts of each nation.

II. Introduction

Globally, the legal status of cannabis has undergone a notable transformation in recent years, with a growing number of jurisdictions recognizing the potential therapeutic benefits of marijuana and enacting legislation to permit its use for medical purposes. This shift reflects evolving societal attitudes, increasingly informed by scientific research into the medicinal properties of cannabis. However, the United States and India have adopted markedly different approaches to regulating this substance. In the US, a significant divergence has emerged between the federal government and many states, leading to a complex and often contradictory legal framework for medical cannabis. In stark contrast, India maintains a strong federal prohibition, rooted in the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985, which classifies marijuana as a narcotic drug. This research aims to provide a comparative analysis of these two

distinct legal landscapes. The study will delve into the intricacies of the legal frameworks governing medical cannabis in both countries, with a particular focus on the conflicts arising from the state-federal divide in the US and the wide-ranging implications of India's prohibitive stance. By examining the historical contexts that have shaped current laws, the socio-economic impacts of medical marijuana legalization (where applicable), and the effects of these legal environments on healthcare providers and patients, this report seeks to highlight the complexities and challenges faced by stakeholders in both nations. Furthermore, through this comparative lens, the study intends to offer recommendations for policy reforms that could potentially enhance access to medical cannabis for individuals in need within each country's specific legal and societal framework.

III. Historical Evolution of Cannabis Legislation

• A. The United States:

- **Early Medicinal Use (1840-1900):** Between 1840 and 1900, cannabis enjoyed legal status in the United States and was commonly employed for medicinal purposes¹. It served as a component in various mainstream medicines, addressing ailments such as cholera, dysentery, alcoholism, opiate addiction, epilepsy, and asthma². The first federal commission dedicated to studying cannabis was established in 1860, prompted by concerns regarding potential adverse effects associated with its use³. By the 1890s, a segment of the medical community began to view cannabis as a narcotic substance that warranted regulation⁴. This period of early acceptance and medicinal application provides a historical backdrop that contrasts sharply with later prohibitions. The emergence of concerns within the medical community towards the end of the 19th century signaled the initial stages of a shift in perception, ultimately leading to more restrictive policies.

¹ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

² Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

³ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

⁴ *Id.*

- **The Rise of Prohibition (Early 20th Century):** The early 20th century witnessed the emergence of recreational cannabis use in the US, which coincided with a growing movement advocating for its regulation⁵. The first regulatory measure came in 1906 with the Pure Food and Drug Act, which mandated the labeling of over-the-counter drugs containing cannabis⁶. In 1914, the Harrison Act was enacted, criminalizing drug use. California became the first state to outlaw the possession of cannabis in 1915⁷. This marked the beginning of a wave of state-level prohibitions, with 29 states having criminalized cannabis by 1933⁸. Notably, New York State prohibited both medical and recreational marijuana in 1927⁹. The burgeoning prohibition movement in the early 20th century was fueled by concerns surrounding recreational use and may have been influenced by prevailing social attitudes, including anxieties related to immigration. The development of a fragmented landscape of state laws began during this era.
- **Federal Intervention and the Marihuana Tax Act (1937):** During the 1930s, the then U.S. Federal Bureau of Narcotics issued warnings about the increasing abuse of cannabis¹⁰. This period culminated in the enactment of the Marihuana Tax Act of 1937, which effectively prohibited cannabis at the federal level through the imposition of taxes and stringent regulatory requirements, thereby significantly limiting its medical use¹¹. Despite this federal move, the American Medical Association voiced its opposition to the Marihuana Tax Act, albeit unsuccessfully¹². This act represented a pivotal moment, marking a substantial shift towards federal prohibition despite resistance from the medical establishment. While not explicitly criminalizing cannabis, the tax act created significant hurdles for its legal acquisition.

⁵ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

⁶ Richard J. Bonnie & Charles H. Whitebread II, *The Marihuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

⁷ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

⁸ *Id.*

⁹ James H. Mills, *Cannabis Britannica: Empire, Trade, and Prohibition, 1800-1928* 214 (Oxford University Press, 2003)

¹⁰ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

¹¹ *Id.*

¹² Martin Booth, *Cannabis: A History* 189 (Thomas Dunne Books, 2005)

- **The Controlled Substances Act (CSA) of 1970:** The Marihuana Tax Act of 1937 was later struck down in 1969 by the Supreme Court due to violations of the Fifth Amendment's protection against self-incrimination¹³. This led to the enactment of the Controlled Substances Act (CSA) in 1970¹⁴. Under the CSA, marijuana was classified as a Schedule I substance, defined as having a high potential for abuse and no currently accepted medical use¹⁵. This federal classification solidified the prohibition of marijuana and established a major obstacle for both medical applications and scientific research into its potential benefits.
- **The Rise of Medical Cannabis at the State Level (1996 onwards):** Following the enactment of the CSA, efforts emerged at both federal and state levels to decriminalize the possession of cannabis¹⁶. In 1978, New Mexico was the first state to acknowledge the legal medical use of cannabis.. However, it was in 1996 that California became the first state to legalize medical marijuana with the passage of the Compassionate Use Act¹⁷. This landmark decision spurred a trend, with numerous other states following suit in the subsequent years, legalizing medical cannabis through either voter-approved ballot measures or legislative action¹⁸. This state-level movement reflected a shift in public opinion and the emergence of research suggesting the therapeutic potential of cannabis, directly challenging the federal government's stance.
- **Federal Enforcement Adjustments:** In the wake of the CSA, both federal and state initiatives aimed to decriminalize cannabis possession¹⁹. While federal law remained unchanged, the Department of Justice (DOJ) issued guidance over time, such as the Cole Memorandum in 2013 (later rescinded in 2018), which outlined enforcement priorities that generally deprioritized prosecuting cannabis activities in states where it

¹³ Richard J. Bonnie & Charles H. Whitebread II, *The Marihuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

¹⁴ *Id.*

¹⁵ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Richard J. Bonnie & Charles H. Whitebread II, *The Marihuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

¹⁹ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

was legal, provided they adhered to certain guidelines²⁰. Furthermore, since 2014, the Rohrabacher-Farr amendment, included in federal spending bills, has prohibited the Justice Department from using federal funds to interfere with the implementation of state medical cannabis laws²¹. These adjustments in federal enforcement, while not altering the fundamental illegality of cannabis under federal law, introduced a layer of complexity and uncertainty for businesses and patients operating within state-legal medical cannabis frameworks.

- **Hemp Legalization (2018):** A significant development occurred in 2018 with the passage of the Farm Bill, which legalized the cultivation of low-THC hemp (cannabis containing less than 0.3% THC) and hemp-derived products, including cannabidiol (CBD), at the federal level²². This legislation effectively removed hemp from the purview of the Controlled Substances Act (CSA). This federal legalization of hemp created a legal distinction within the cannabis plant family, leading to the widespread availability of CBD products across the United States.
- **Medical Marijuana and Cannabidiol Research Expansion Act (2022):** In a move signaling a growing federal acknowledgment of the need for scientific inquiry into the potential medical applications of cannabis, the Medical Marijuana and Cannabidiol Research Expansion Act was signed into law in 2022²³. This legislation aims to streamline the process for conducting research on cannabis and its derivatives for medical purposes, acknowledging the increasing interest in its therapeutic potential.
- **B. India:**
 - **Ancient and Historical Use:** Cannabis has a long and rich history in India, with evidence of its use dating back at least two thousand years in the Indian subcontinent²⁴. Ancient Hindu texts, such as the Vedas (compiled between 2000 and 1400 BCE), mention cannabis, referred to as bhang, as one of five sacred plants, associating it with

²⁰ David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* 146 (Harvard University Press, 2001)

²¹ Rohrabacher-Farr Amendment, Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 538, 131 Stat. 185, 223-24

²² *Id.*

²³ *Id.*

²⁴ Ethan Russo, *History of Cannabis and Its Preparations in Saga*, 66 *Neurology* 1458 (2006)

happiness and the deity Shiva²⁵. The term bhang appears in Indian texts predating 1000 CE²⁶. Common terms for cannabis preparations in India include charas (resin), ganja (flower), and bhang (seeds and leaves)²⁷. Bhang is traditionally consumed in beverages like bhang lassi and bhang thandai, representing one of the most common legal uses²⁸. The Sushruta Samhita, an ancient medical treatise from around 600 BCE, mentions bhang as a medicinal plant, recommending it for the treatment of respiratory ailments and diarrhea²⁹. Notably, the Indian Hemp Drugs Commission Report of 1893-94, commissioned by the British, concluded that the moderate use of cannabis had practically no ill effects³⁰. This extensive historical and cultural integration of cannabis in India stands in stark contrast to its current legal status.

- **British India and Early Regulations:** While attempts were made to criminalize cannabis during British rule in India, these efforts did not fully materialize until later³¹. The British Parliament did, however, enact a tax on bhang, ganja, and charas in 1798, with the stated intention of reducing cannabis consumption for the sake of the "natives' good health and sanity"³². This early regulatory approach under British administration focused on control through taxation rather than outright prohibition, indicating an acknowledgment of the widespread use of cannabis in Indian society.
- **Post-Independence and International Influence:** Following India's independence, the country initially expressed opposition to the 1961 Single Convention on Narcotic Drugs' classification of cannabis alongside hard drugs, citing the deeply ingrained social and religious customs associated with its use³³. The Indian government promised to restrict the export of Indian hemp as an alternative during the treaty negotiations. The final

²⁵ Preeti Singh, The Great Indian Hemp Drugs Commission Report, 2(1) J. Cannabis Stud. 1, 3 (2019)

²⁶ Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

²⁷ Preeti Singh, The Great Indian Hemp Drugs Commission Report, 2(1) J. Cannabis Stud. 1, 3 (2019)

²⁸ Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

²⁹ Id.

³⁰ Preeti Singh, The Great Indian Hemp Drugs Commission Report, 2(1) J. Cannabis Stud. 1, 3 (2019)

³¹ Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

³² Id.

³³ Id.

draft of the treaty also excluded cannabis leaves and seeds (from which bhang is prepared) from the definition of "cannabis". The treaty granted India a 25-year period to implement stricter controls on recreational drugs³⁴. Towards the end of this exemption period, India faced increasing pressure from the United States to adopt stricter drug laws³⁵.

- **The Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985:** Responding to growing international pressure, particularly from the United States, the Indian government enacted the Narcotic Drugs and Psychotropic Substances (NDPS) Act on November 14, 1985³⁶. According to this law, no narcotic drug or psychotropic substance may be produced, manufactured, cultivated, possessed, sold, purchased, transported, stored, or consumed without the express consent of the appropriate authorities. The Act specifically defines "cannabis (hemp)" to include charas (the separated resin) and ganja (the flowering or fruiting tops), while explicitly excluding the seeds and leaves when not accompanied by the tops – which is the preparation known as bhang³⁷. The NDPS Act prescribes severe penalties for violations, with the severity of punishment depending on the quantity of the banned substance involved (categorized as small, more than small but less than commercial, and commercial)³⁸. Since its enactment, the NDPS Act has been amended several times, in 1988, 2001, 2014, and 2021³⁹. Notably, the 2014 amendment introduced the concept of "essential narcotic drugs," which are narcotic drugs notified by the Central Government for medical and scientific use⁴⁰. The NDPS Act marked a significant departure from India's historical acceptance of cannabis, largely influenced by international drug control conventions. The specific exclusion of bhang from the definition of cannabis remains a unique characteristic of

³⁴ Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

³⁵ Anil Kumar & S. S. Chandel, Law Relating to Narcotic Drugs and Psychotropic Substances 45 (Universal Law Publishing Co., 2009)

³⁶ Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

³⁷ Id.

³⁸ Anil Kumar & S. S. Chandel, Law Relating to Narcotic Drugs and Psychotropic Substances 45 (Universal Law Publishing Co., 2009)

³⁹ Narcotic Drugs and Psychotropic Substances Act, No. 61, Acts of Parliament, 1985 (India)

⁴⁰ Narcotic Drugs and Psychotropic Substances (Amendment) Act, No. 16, Acts of Parliament, 2014 (India)

Indian drug law.

- **Limited Exceptions and Recent Developments:** Despite the general prohibition, the NDPS Act includes provisions that allow for the use of cannabis for medical and scientific purposes, provided that the necessary permissions are obtained from the respective authorities⁴¹. Furthermore, the Act empowers state governments to grant licenses for the cultivation of cannabis for industrial and scientific purposes⁴². In line with this, the state of Uttarakhand has taken the initiative to allow the cultivation of hemp for industrial applications⁴³. The National Policy on Narcotic Drugs and Psychotropic Substances also acknowledges the potential of cannabis as a source of biomass, fiber, and high-value oil, encouraging research into and the cultivation of cannabis varieties with low THC content⁴⁴. These limited exceptions and recent developments suggest a potential for future reforms within India's cannabis policy, particularly concerning its industrial and medicinal applications.

IV. Current Legal Frameworks for Medical Cannabis

- **A. The United States:**

- **Federal Law: Schedule I Classification:** Under federal law in the United States, cannabis continues to be classified as a Schedule I substance according to the Controlled Substances Act (CSA)⁴⁵. This classification indicates that cannabis is deemed to have a significant likelihood for abuse and no currently recognized medical use by the federal government. As a Schedule I drug, the CSA prohibits the manufacture, distribution, dispensation, and possession of cannabis, except for research studies that have been approved by the federal government⁴⁶. While the U.S. Food and

⁴¹ Narcotic Drugs and Psychotropic Substances (Amendment) Act, No. 16, Acts of Parliament, 2014 (India)

⁴² Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

⁴³ Uttarakhand Govt Allows Hemp Cultivation, The Hindu Bus. Line (Aug. 28, 2018), <https://www.thehindubusinessline.com/news/agri-business/Uttarakhand-govt-allows-hemp-cultivation/article24831682.ece>

⁴⁴ Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

⁴⁵ David Courtwright, Forces of Habit: Drugs and the Making of the Modern World 146 (Harvard University Press, 2001)

⁴⁶ 21 U.S.C. § 841 (2018)

Drug Administration (FDA) has not approved the use of the whole cannabis plant for treating any medical condition, it has approved certain drug products containing cannabis-derived compounds, such as cannabidiol (Epidiolex) and synthetic cannabinoids like dronabinol (Marinol, Syndros), which are classified in lower schedules under the CSA⁴⁷. However, the Drug Enforcement Administration (DEA) is currently in the process of considering a potential reclassification of marijuana to Schedule III, following a recommendation from the Department of Health and Human Services (HHS). This federal stance creates a significant impediment to widespread medical cannabis access and comprehensive research, despite the increasing number of states that have legalized cannabis for medical purposes. The potential rescheduling to Schedule III could represent a major shift in federal policy.

- **State Laws: A Patchwork of Regulations:** As of February 2024, a significant majority of states in the US have enacted laws permitting the use of cannabis for medical purposes. In particular, medical cannabis use is permitted in 47 states, the Columbia District, and three territories. Among these, 38 states, along with DC and the 3 territories, have established comprehensive medical cannabis programs. However, the regulations governing these programs vary considerably from state to state, creating a complex patchwork of laws. These variations encompass differences in the medical conditions that qualify for treatment with cannabis, the regulations surrounding the production and distribution of cannabis products, the permissible methods of consumption, and the limits on THC and CBD content. While some states have implemented medical-only cannabis programs, others have also legalized cannabis for recreational use by adults. Nine states have also implemented more restrictive medical cannabis laws that only allow the use of low-THC or CBD products for certain approved medical conditions. This lack of uniformity across state laws adds complexity for patients seeking access, healthcare providers attempting to navigate the legal landscape, and businesses operating in the cannabis industry.

⁴⁷ U.S. Food & Drug Admin., FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD) (June 2023),

<https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd>

- **Conflict Between State and Federal Regulations:** The United States Constitution's Supremacy Clause generally states that federal law supersedes conflicting state laws as the highest law of the land. However, the Tenth Amendment to the Constitution places limits on the federal government's authority, preventing it from compelling states to enforce federal laws. This inherent conflict between federal prohibition and state legalization of medical cannabis creates significant legal uncertainty and potential risks for individuals and businesses that are operating legally under state law. Compliance with state medical cannabis laws does not guarantee protection from potential federal prosecution. Over time, the federal government's approach to enforcing its cannabis prohibition in states with legal medical marijuana has fluctuated, ranging from active enforcement actions, including raids on cannabis dispensaries, to periods of relative non-interference in state-legal operations⁴⁸. This ongoing tension between federal and state laws represents a major challenge in the US medical cannabis landscape, resulting in a paradoxical situation where an activity can be deemed legal at the state level while remaining illegal under federal law.
- **B. India:**
 - **The Prohibitive Stance of the NDPS Act:** India's legal framework for narcotic drugs and psychotropic substances is primarily governed by the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985. This Act adopts a generally prohibitive stance, restricting all operations related to narcotic drugs and psychotropic substances, which includes cannabis (specifically ganja and charas), except for medical and scientific purposes, and only with the explicit authorization of the relevant authorities⁴⁹. With some exceptions for medical, scientific, and industrial uses—subject to obtaining a license from the relevant state governments—the NDPS Act forbids the cultivation of cannabis plants in most cases. Furthermore, the Act criminalizes the possession, production, sale, transport, import, export, use, and consumption of ganja (flowering or fruiting tops) and charas (separated resin) and prescribes penalties for such activities.

⁴⁸ Martin Booth, *Cannabis: A History* 189 (Thomas Dunne Books, 2005)

⁴⁹ Anil Kumar & S. S. Chandel, *Law Relating to Narcotic Drugs and Psychotropic Substances* 45 (Universal Law Publishing Co., 2009)

This strong federal prohibition on most forms of cannabis in India significantly limits the accessibility of cannabis for medical use when compared to the evolving landscape in the United States.

- **Definition of Cannabis and the Exception for Bhang:** The NDPS Act provides a specific definition for "cannabis (hemp)," which explicitly includes charas, defined as the separated resin obtained from the cannabis plant, and ganja, which refers to the flowering or fruiting tops of the cannabis plant. Notably, the definition explicitly excludes the seeds and leaves of the cannabis plant when they are not accompanied by the tops⁵⁰. This exclusion effectively exempts bhang, a preparation made from the leaves and sometimes seeds of the cannabis plant, from the stringent controls imposed on charas and ganja under the NDPS Act⁵¹. As a result, bhang is not controlled under the NDPS Act in the same way as charas and ganja, allowing for its production and sale in many states across India, although some states have implemented their own regulations or restrictions on its use⁵². This legal distinction for bhang is a unique feature of Indian drug law, reflecting its long-standing historical and cultural significance within the country. However, it also introduces complexities in terms of regulation and the potential for the inclusion of prohibited parts of the cannabis plant in bhang preparations.
- **Medical and Scientific Use Provisions:** Despite the general prohibition on cannabis, Sections 8 and 10 of the NDPS Act provide a legal pathway for the use of cannabis for medical and scientific purposes. These sections empower state governments in India to issue licenses for the cultivation of cannabis specifically intended for medical and scientific applications. Furthermore, the National Policy on Narcotic Drugs and Psychotropic Substances in India explicitly supports the availability and use of these substances for legitimate medical and scientific needs⁵³. However, in practice, the actual licensing and cultivation of cannabis for medical use in India have remained extremely

⁵⁰ Narcotic Drugs and Psychotropic Substances Act, No. 61, Acts of Parliament, 1985 (India) § 2(iii)

⁵¹ Debjani Das, Cannabis in India: Ancient Lore and Modern Medicine, 10(3) J. Ayurveda Integr. Med. 168, 170 (2019)

⁵² Id.

⁵³ Narcotic Drugs and Psychotropic Substances (Amendment) Act, No. 16, Acts of Parliament, 2014 (India)

limited. While research on the medical applications of cannabis is permitted under the NDPS Act, and some research institutions have successfully obtained licenses for this purpose, the overall implementation of these provisions has been slow and restrictive.

- **Industrial and Horticultural Use:** In addition to medical and scientific applications, Section 14 of the NDPS Act includes a provision that allows the government, through general or special orders, to permit the cultivation of cannabis exclusively for horticultural and industrial purposes⁵⁴. This provision primarily pertains to low-THC varieties of cannabis, commonly known as hemp. Notably, Uttarakhand has emerged as the first state in India to legalize hemp farming for industrial applications, recognizing its potential for various industries such as textiles, building materials, and food products⁵⁵. This legalization of hemp cultivation indicates a potential gradual shift in India's approach towards the cannabis plant, acknowledging its broader economic and industrial utility beyond its psychoactive properties.

V. Implications for Healthcare Providers and Patients

• A. The United States:

- **Challenges for Healthcare Providers:** The ongoing federal prohibition of cannabis in the United States creates significant challenges and risks for healthcare providers. Despite the legalization of medical cannabis in many states, the Schedule I classification under federal law means that healthcare providers who recommend or certify patients for medical cannabis use face the potential risk of federal prosecution and disciplinary actions from state medical boards⁵⁶. This federal illegality also leads to confusion and uncertainty regarding the legal protections available to healthcare providers who wish to engage in discussions about medical marijuana with their patients. Furthermore, the inconsistency between state laws permitting medical cannabis and federal prohibition results in uncertainty surrounding issues such as professional

⁵⁴ Narcotic Drugs and Psychotropic Substances Act, No. 61, Acts of Parliament, 1985 (India) § 14

⁵⁵ Uttarakhand Govt Allows Hemp Cultivation, The Hindu Bus. Line (Aug. 28, 2018), <https://www.thehindubusinessline.com/news/agri-business/Uttarakhand-govt-allows-hemp-cultivation/article24831682.ece>

⁵⁶ Martin Booth, Cannabis: A History 189 (Thomas Dunne Books, 2005)

liability, insurance coverage for medical cannabis-related services, and adherence to professional ethics. Due to cannabis's Schedule I status, healthcare providers are legally unable to prescribe it in the traditional sense. Instead, in states where medical cannabis is legal, they can only "suggest" or "certify" its use for qualifying medical conditions⁵⁷. The limited availability of comprehensive research on medical cannabis, coupled with a lack of standardized dosage guidelines, further complicates the ability of healthcare providers to confidently recommend or oversee its use. This complex and often conflicting legal and regulatory environment places healthcare providers in a precarious position, requiring them to navigate the needs of their patients while remaining mindful of potential legal and professional repercussions.

- **Restrictions on Patient Access:** Despite the progress made at the state level in legalizing medical cannabis, federal prohibition continues to pose restrictions on patient access in the United States. Even in states with established medical cannabis programs, patients may face limitations due to the federal illegality, such as restrictions on insurance coverage for medical cannabis products and the lingering threat of federal enforcement actions, particularly in cases that deviate from strict state regulations. Patients residing in states that have not legalized medical cannabis face a complete lack of legal access to whole-plant cannabis for therapeutic purposes under both state and federal law. Moreover, even within states that have medical cannabis programs, access can be further restricted by specific qualifying medical conditions mandated by state law, regulations governing the operation and location of cannabis dispensaries, and the affordability of medical cannabis products for patients, particularly those with limited financial resources. The Schedule I status of cannabis at the federal level also significantly hinders comprehensive scientific research into its efficacy for treating various medical conditions, which in turn limits the development of evidence-based treatment options for patients who might benefit from its use.
- **B. India:**
 - **Impact of the NDPS Act on Patient Access:** The stringent prohibition on cannabis

⁵⁷ Martin Booth, *Cannabis: A History* 189 (Thomas Dunne Books, 2005)

under India's NDPS Act has a profound impact on patient access to its potential therapeutic benefits. The Act's restrictive stance effectively prevents the widespread incorporation of medical marijuana into mainstream healthcare practices within the country⁵⁸. Consequently, patients in India who may be suffering from chronic illnesses and could potentially find relief through medical cannabis are largely denied this option due to the prohibitive legal framework⁵⁹. This situation persists despite the historical use of cannabis in traditional Indian medicine for various ailments.

- **Limitations on Medical Research:** While the NDPS Act includes provisions that allow for the use of cannabis for medical and scientific purposes with the appropriate licenses, the overall effect of the Act is to significantly complicate research into the efficacy and safety of cannabis for medical applications⁶⁰. Obtaining the necessary licenses for conducting such research can be a challenging and bureaucratic process. Furthermore, Institutional Ethics Committees (IECs), which are in charge of evaluating research proposals involving cannabis, face particular difficulties due to the lack of a clear regulatory framework designed especially for medical cannabis research. Finding sufficient local guidelines, suggestions and current literature that supports the uses to execute clinical studies on medical cannabis is a common challenge for chief investigators and researchers in India. This restrictive legal environment under the NDPS Act ultimately hinders the development of robust scientific evidence that is essential for supporting the potential medical use of cannabis in India.
- **Challenges for Healthcare Providers:** Due to the prohibitive nature of the NDPS Act, healthcare providers in India generally do not have the legal authority to recommend or prescribe cannabis for medical purposes⁶¹. While there may be limited instances of cannabis use within traditional systems of medicine like Ayurveda, this practice is also subject to the regulations outlined in the NDPS Act and other relevant laws⁶². Reports indicate that confusion persists even among medical professionals in India regarding the

⁵⁸ Narcotic Drugs and Psychotropic Substances (Amendment) Act, No. 16, Acts of Parliament, 2014 (India)

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

precise legal status of cannabis for medical use. Consequently, healthcare providers in India operate under a highly restrictive legal regime concerning the potential medical applications of cannabis.

VI. Socio-Economic Impacts of Medical Marijuana Policies

• A. The United States:

- **Economic Benefits of Legalization:** The legalization of medical (and particularly recreational) cannabis in numerous states across the United States has yielded significant economic benefits. Legal cannabis markets in states have generated a sizable amount of tax income, which state governments can use to pay for social programs, infrastructure, and education, among other public services. The burgeoning cannabis industry has also been a significant job creator, generating employment opportunities in diverse sectors such as cultivation, processing, distribution, retail sales, and ancillary services. Furthermore, studies suggest that the legalization of recreational cannabis can lead to an increase in average state income per capita and a rise in property values within those states. Additionally, the reduced need for law enforcement resources dedicated to enforcing marijuana prohibition can result in significant cost savings for state and local governments, freeing up these resources for other priorities.
- **Social Costs of Legalization:** While the legalization of cannabis in the US has brought about economic advantages, it has also been associated with certain social costs that policymakers need to consider. Research indicates potential increases in substance use disorders, chronic homelessness, and arrest rates in states that have legalized recreational marijuana. Concerns also persist regarding a potential rise in marijuana use among adolescents, although the evidence on this matter remains somewhat mixed. Additionally, there are potential increases in public health costs that may be associated with increased cannabis consumption. It is crucial to remember that although the economic advantages of legalization are typically shared by many, the social costs are frequently concentrated among heavy users.
- **Social Justice Considerations:** The history of marijuana prohibition in the United

States is intertwined with issues of racial disparity and has disproportionately affected marginalized communities, particularly people of color. Data consistently shows significant arrest disparities for marijuana-related offenses, with African Americans being arrested at rates far higher than whites despite similar rates of use⁶³. The legalization of cannabis presents a crucial opportunity to address these historical injustices. Many states have incorporated social justice provisions into their legalization efforts, including measures for the expungement or sealing of past cannabis-related criminal records, reinvestment of cannabis tax revenue into communities that have been disproportionately impacted by prohibition, and initiatives aimed at promoting equity and inclusion within the legal cannabis industry⁶⁴. These measures aim to rectify the harms caused by past drug policies and ensure that the benefits of the legal cannabis market are shared equitably.

- **B. India:**

- **Potential Economic Impacts of Legalizing Medical Cannabis:** Legalizing medical cannabis in India holds the potential to create a new and significant industry, which could lead to substantial economic growth, the creation of new employment opportunities, and the generation of tax revenue for the government. Projections indicate that the Indian cannabis market is poised for considerable expansion in the coming years. The existing legal cultivation of hemp in Uttarakhand for industrial purposes already demonstrates the economic viability and potential of the cannabis plant beyond its psychoactive uses⁶⁵. By establishing a legal framework for medical cannabis, the Indian government would also gain the ability to regulate the market, ensuring product quality and potentially curbing the illicit trade of cannabis. Drawing lessons from the experiences of the United States and other countries that have legalized medical cannabis, India could potentially unlock significant economic benefits through

⁶³ Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

⁶⁴ Rohrabacher-Farr Amendment, Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 538, 131 Stat. 185, 223-24

⁶⁵ Uttarakhand Govt Allows Hemp Cultivation, *The Hindu Bus. Line* (Aug. 28, 2018), <https://www.thehindubusinessline.com/news/agri-business/Uttarakhand-govt-allows-hemp-cultivation/article24831682.ece>

similar policy reforms.

- **Social Justice Implications of the NDPS Act:** The criminalization of cannabis under India's NDPS Act has significant social justice implications, particularly as it disproportionately affects marginalized populations within the country⁶⁶. The strict prohibition places an undue burden on India's criminal justice system, which is already facing challenges, and it also hinders access to necessary healthcare services for individuals struggling with substance use issues. Furthermore, a criminal record resulting from cannabis use, even for minor offenses, can have far-reaching negative consequences on an individual's life, impacting future employment opportunities, social standing, and access to various rights and services. Decriminalizing cannabis use in India could potentially yield positive social justice outcomes by reducing the burden on the criminal justice system, minimizing the negative impacts on marginalized communities, and allowing for a greater focus on public health approaches to address substance use⁶⁷.

VII. Policy Reforms and the Future of Medical Cannabis Regulation

• A. United States:

- **Federal Legislative Proposals:** The United States Congress has seen various legislative proposals aimed at reforming federal cannabis policy. The Marijuana Opportunity Reinvestment and Expungement (MORE) Act, for example, seeks to federally decriminalize and deschedule cannabis, provide for the expungement of certain cannabis-related criminal records, and create a pathway for reinvestment in communities that have been disproportionately affected by the War on Drugs⁶⁸. While the MORE Act has passed in the House of Representatives, it has not yet been enacted by the Senate. Another significant piece of proposed legislation is the SAFE Banking Act, which aims to protect financial institutions that provide services to legitimate

⁶⁶ Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

⁶⁷ *Id.*

⁶⁸ Martin Booth, *Cannabis: A History* 189 (Thomas Dunne Books, 2005)

cannabis-related businesses operating legally under state laws⁶⁹. The SAFE Banking Act has garnered bipartisan support and has seen progress in the Senate Banking Committee. In addition to these key bills, other legislative proposals have been introduced at the federal level to address issues such as full legalization, the rescheduling of cannabis under the Controlled Substances Act, and improving access to medical cannabis for veterans⁷⁰. These ongoing legislative efforts indicate a growing momentum towards federal cannabis reform in the US.

- **Movement Towards Federal Rescheduling:** In 2022, President Biden initiated a review of the federal scheduling status of marijuana, signaling a potential shift in the federal government's approach to cannabis regulation. Following this directive, the Department of Health and Human Services (HHS) conducted a scientific and medical review and subsequently recommended that the Drug Enforcement Administration (DEA) reschedule cannabis from Schedule I to Schedule III under the Controlled Substances Act. In response to this recommendation, the DEA has published a proposed rule to move marijuana to Schedule III. However, this rescheduling process is complex and faces potential administrative and political challenges, which could lead to delays. If ultimately implemented, the rescheduling of cannabis to Schedule III could have significant implications for medical research on cannabis, federal taxation of cannabis businesses, and the overall operation of the cannabis industry in the United States. While this would represent a notable step forward, it would not constitute full federal legalization of cannabis.
- **State-Level Policy Adjustments:** Even as discussions and potential reforms unfold at the federal level, many states continue to actively adjust and refine their own medical and recreational cannabis laws. These ongoing adjustments often focus on expanding the list of medical conditions that qualify for cannabis treatment, improving patient access to cannabis products, and addressing social equity concerns within the legal cannabis market⁷¹. These state-level reforms continue to be a significant driving force in

⁶⁹ Martin Booth, *Cannabis: A History* 189 (Thomas Dunne Books, 2005)

⁷⁰ *Id.*

⁷¹ Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

the evolution of cannabis policy within the United States.

- **B. India:**

- **Arguments for Reconsidering the NDPS Act for Medical Cannabis:** Several compelling arguments support the reconsideration of India's NDPS Act, particularly in relation to medical cannabis. Firstly, the extensive historical use of cannabis in traditional Indian medicine for a wide range of ailments suggests that there is a long-standing recognition of its potential therapeutic benefits within the country's cultural and medical heritage⁷². Secondly, there is a clear global trend towards increasing acceptance and legalization of medical cannabis in many countries around the world, including the United States⁷³. Thirdly, India's existing NDPS Act already contains provisions that allow for the use of cannabis for medical and scientific purposes, indicating that there is a legal pathway for expanding access in this area⁷⁴. Fourthly, evidence from other countries suggests that decriminalizing cannabis can lead to positive social justice and economic impacts⁷⁵. These factors collectively present a strong case for India to re-evaluate its current strict prohibition on medical cannabis.
- **Potential Policy Reforms:** India has several potential policy reforms it could consider regarding medical cannabis. One key step would be to establish a clear and comprehensive regulatory framework specifically for medical cannabis. This framework could encompass the cultivation, production, distribution, and prescription of cannabis for medical purposes, ensuring quality control and patient safety. Another important reform could involve expanding the issuance of licenses for medical cannabis research and development, allowing for more robust scientific investigation into its therapeutic potential for various conditions. India could also consider adopting a broader public health approach to drug policy, which would involve shifting the focus from solely punitive measures towards treatment, harm reduction strategies, and public

⁷² Ethan Russo, History of Cannabis and Its Preparations in Saga, 66 Neurology 1458 (2006)

⁷³ Richard J. Bonnie & Charles H. Whitebread II, The Marihuana Conviction: A History of Marijuana Prohibition in the United States 65 (Lindy, 1999)

⁷⁴ Narcotic Drugs and Psychotropic Substances (Amendment) Act, No. 16, Acts of Parliament, 2014 (India)

⁷⁵ Richard J. Bonnie & Charles H. Whitebread II, The Marihuana Conviction: A History of Marijuana Prohibition in the United States 65 (Lindy, 1999)

health interventions for individuals struggling with substance use⁷⁶. Additionally, by examining the achievements and difficulties of other nations—like the US—that have already legalized medical cannabis, India could gain important insights from their experiences. Finally, India could explore the possibility of decriminalizing the personal use of cannabis while maintaining regulations for its production and sale, a step that could have positive social justice and economic implications⁷⁷.

VIII. Conclusion

The legal landscape surrounding medical marijuana presents a stark contrast between the United States and India. The US grapples with a complex and often contradictory framework arising from the conflict between federal prohibition and widespread state-level legalization, while India maintains a strong federal prohibition under the NDPS Act. This paper highlights the historical, legal, and socio-economic challenges in the US, particularly the federal-state divide, affecting healthcare providers, patients, and the cannabis industry. Despite these challenges, there is a clear movement towards federal reform, including potential rescheduling and various legislative proposals. In India, the stringent prohibition under the NDPS Act significantly restricts access to medical cannabis and limits research, despite its historical use and growing global acceptance. However, the Act does contain provisions for medical, scientific, and industrial use, suggesting potential avenues for reform. Stakeholders in both countries face unique challenges: in the US, navigating the complexities of a dual legal system; in India, advocating for a reconsideration of long-standing prohibitions. Policy reforms in both nations hold the potential to improve access to medical cannabis for those in need. For the US, this may involve federal action to align with state laws and facilitate research. For India, it could entail a re-evaluation of the NDPS Act to create a clear regulatory pathway for medical cannabis, drawing on its own rich history and the experiences of other nations. The US and India's cannabis regulations are expected to undergo further policy changes, potentially leading to convergence or divergence in their approaches.

⁷⁶ Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* 65 (Lindy, 1999)

⁷⁷ *Id.*

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