
THE LEGAL STATUS AND POLICY IMPLICATIONS OF PSILOCYBIN MUSHROOMS IN INDIA: A CRITICAL ANALYSIS AND REFORM PROPOSALS

Vishal. T & Mrs R. Gowri Shankari (Assistant Professor), School of Law, VISTAS

ABSTRACT

Recently, more people in various parts of India are using psilocybin mushrooms recreationally, which spotlights uncertainties in their legal status. This paper examines whether the current laws adequately cover this. Psilocybin is indeed a scheduled substance under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Still, the Act skips over mushrooms in their natural state, thereby the principle of *nullum crimen sine lege*—no crime without law, comes into force. It has led to inconsistent policing and varying judicial outcomes, which are similar to the ambiguities seen with other natural psychedelics, such as cannabis plants, before clearer guidelines emerged. On top of that, the Drugs and Cosmetics Act, 1940 doesn't specifically regulate these mushrooms, leaving gaps in therapeutic research and medical oversight. This lacks criminal control against public health needs in India. This paper explores psilocybin's hallucinogenic effects, its risks, such as psychological distress, and growing evidence of benefits for mental health issues like depression, drawing from national and global studies. This lacks criminal control against public health needs in India. Reviewing certain decisions of the High Courts on possession, classification as "psychotropic substances". The analysis reveals a regime that's vague and inconsistent with the object of the NDPS Act. Finally, this paper proposes reforms, including amendments to existing laws to address Psilocybin mushrooms, tiered regulations (bans on recreational use and consumption as a drug but allowances for research), and a licensing system for clinical trials.

Research Methodology

This research adopts a **doctrinal method of legal research**, which involves the analysis of statutes, judicial decisions, and legal literature. The study examines the **NDPS Act**, relevant rules and schedules and judicial decisions interpreting these provisions. In addition to doctrinal analysis, the research also adopts a **comparative approach** by studying how different countries regulate psilocybin and other psychedelic substances. An **interdisciplinary approach** is also used to incorporate findings from medical, psychological, and public health research concerning the effects and potential therapeutic uses of psilocybin. This combination of legal and interdisciplinary analysis helps provide a more comprehensive understanding of the issue.

CHAPTER 1 - INTRODUCTION

1.1 Background

Psilocybin mushrooms, popularly known as “*magic mushrooms*,” are a type of naturally occurring fungi that contain psychoactive compounds called **psilocybin** and **psilocin**. These compounds affect the brain by altering perception, mood, and cognitive processes, which results in psychedelic or hallucinogenic experiences. Historically, such mushrooms have been used in religious and spiritual practices, particularly among indigenous communities in parts of Central and South America. In those traditions, they were believed to facilitate spiritual insight, healing, and communication with the divine.

In recent years, there has been a renewed global interest in studying psychedelic substances, including psilocybin. Several scientific institutions and medical researchers have begun examining their potential therapeutic uses. Studies conducted in countries such as the United States and the United Kingdom suggest that psilocybin may help in treating conditions like severe depression, anxiety disorders, post-traumatic stress disorder (PTSD), and addiction. Because of these developments, the subject of psychedelic substances has re-entered mainstream academic and policy discussions.

Despite the growing scientific interest and emerging medical research, psilocybin remains a controlled substance in many parts of the world. International drug control policies, particularly those developed under the **Convention on Psychotropic Substances**,¹ classify psilocybin as a

¹ United Nations Convention on Psychotropic Substances, 1971

Schedule I substance, meaning that it is considered to have a high potential for abuse and limited accepted medical use. Countries that are parties to this convention have generally incorporated similar restrictions within their domestic legal systems.

1.2 Current status

In India, the regulation of narcotic drugs and psychotropic substances is primarily governed by the **Narcotic Drugs and Psychotropic Substances Act, 1985²** (hereinafter ‘the NDPS Act’). The Act was enacted to consolidate and amend laws relating to narcotic drugs and to implement India’s obligations under international conventions. Under this legislation, the production, possession, sale, purchase, transport, and consumption of narcotic drugs and psychotropic substances are strictly regulated and, in many cases, prohibited.

Psilocybin, as a chemical substance, is listed as a **psychotropic substance** under the schedule³ of the NDPS Act. However, the Act does not explicitly mention **psilocybin mushrooms themselves**. This creates an important legal question: while the compound psilocybin is clearly prohibited, it is not entirely clear whether the mushrooms that naturally contain this compound are automatically covered under the same prohibition.

This distinction between a **pure chemical compound** and a **naturally occurring biological source** has significant implications. In some countries, legislation specifically mentions fungi containing psilocybin, thereby removing any ambiguity. In India, however, the absence of such explicit wording creates uncertainty regarding how the law should be interpreted and applied.

At the same time, the global debate on drug policy has begun to shift. Some countries have started reconsidering their approach to psychedelic substances. Instead of relying solely on strict criminalisation, policymakers in certain jurisdictions have begun exploring alternatives such as **decriminalisation, regulated therapeutic use, and scientific research programs**. These developments raise important questions about whether existing drug laws adequately reflect current scientific knowledge and public health priorities.

Against this background, the legal status of psilocybin mushrooms in India remains an area that has not been sufficiently explored in legal scholarship. This study, therefore, attempts to

² The Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985

³ Entry 10, Schedule under the Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985

examine the issue from multiple perspectives, including statutory interpretation, comparative legal analysis, and medical research.

CHAPTER 2 - JUDICIAL DECISIONS IN INDIA

2.1 NDPS Act

In India, the primary legislation governing narcotic drugs and psychotropic substances is the **Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)**. The Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to such substances, and to implement India's obligations under international conventions, particularly the **United Nations Convention on Psychotropic Substances, 1971**.

The NDPS Act adopts a **strict prohibitionist approach**, making most activities involving narcotic drugs and psychotropic substances illegal unless specifically authorised for medical or scientific purposes.

Under **Section 2(xxiii)** of the NDPS Act, "*Psychotropic substance*" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance included in the list of psychotropic substances specified in the Schedule. Psilocybin and psilocin are explicitly listed in the Schedule⁴ to the Act as psychotropic substances. Therefore, there is no ambiguity regarding the **illegality of the chemical compounds themselves**.

However, the difficulty arises when considering whether **mushrooms that naturally contain these substances** fall within the scope of this definition. The wording of the provision includes "*natural material*", which could arguably include fungi. At the same time, the Act does not specifically mention psilocybin mushrooms, unlike some foreign legislations. This creates uncertainty regarding whether the Act automatically extends to **biological carriers of psychotropic substances**, or whether a more explicit legislative provision is required.

Section 8(c)⁵ of the Act provides, "*No person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India, or tranship any narcotic drug or psychotropic substance, except*

⁴ Entry 9 and 10, Schedule under the Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985

⁵ Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985

for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules made thereunder.” This provision forms the **core prohibition clause** of the Act. If psilocybin mushrooms are interpreted as falling within the scope of “psychotropic substances,” then their possession or use would attract penal consequences under this section.

Section 22⁶ of the Act prescribes punishment for contravention involving psychotropic substances. The amount of punishment depends on the quantity involved. If a small quantity is involved, it attracts lesser punishment, and if a Commercial quantity is involved, it attracts rigorous imprisonment up to 20 years. The determination of quantity becomes complicated in the case of **naturally occurring mushrooms**, as it raises the question of whether the **entire weight of the mushrooms** should be considered or only the **active psilocybin content** should be taken into account. This issue has been the subject of judicial interpretation in analogous cases.

2.2 NDPS Rules and Government Notifications

The NDPS Rules⁷ regulate the manner in which certain substances may be used for medical or scientific purposes. However, these rules do not provide any specific guidance regarding psilocybin mushrooms. Similarly, government notifications issued under the Act primarily deal with the classification of substances, the determination of small and commercial quantities⁸ and the regulation of licensed activities. There is **no specific notification addressing naturally occurring psychedelics such as psilocybin mushrooms**, which further contributes to the ambiguity.

2.3 Drugs and Cosmetics Act, 1940

The Drugs and Cosmetics Act, 1940⁹ (hereinafter ‘the 1940 Act’) is a crucial piece of legislation in India that regulates the import, manufacture, distribution, and sale of drugs and cosmetics. This Act aims to ensure the safety, efficacy, and quality of drugs and cosmetics available in the Indian market. If psychedelics were to be recognised for their therapeutic

⁶ Ibid, Section 22

⁷ The Narcotic Drugs and Psychotropic Substances Rules, 1985

⁸ Notification specifying Small quantity and Commercial quantity issued in the exercise of the powers conferred under sub-clause vii(a) and xxiii(a) of section 2 of the Act <https://www.cbn.gov.in/pdf/qtynotif.pdf>

⁹ The Drugs and Cosmetics Act, 1940 (23 of 1940)

potential, they would need to be integrated into the framework established under this Act.

Under the 1940 Act, substances that are intended for use in the diagnosis, treatment, or prevention of diseases or for altering the structure or function of the body are classified as drugs. Currently, psychedelics are not included in this category, primarily due to their classification as controlled substances under the NDPS Act. However, if psychedelics were to be recognised for their therapeutic benefits, they could be classified as drugs under this Act, provided they meet the criteria for safety and efficacy as determined by appropriate regulatory bodies¹⁰. The process of integrating psychedelics into the regulatory framework of the Drugs and Cosmetics Act would involve rigorous evaluation and approval processes. This would include clinical trials to demonstrate their safety and effectiveness for specific therapeutic uses, as well as compliance with manufacturing and quality control standards. Once approved, psychedelics could be categorised and regulated as pharmaceutical products, making them available for medical use under strict guidelines¹¹.

2.4 Judicial Decisions concerning psilocybin

The cases where the issue regarding psychotropic substances, specifically psilocybin mushrooms, were dealt with by the Supreme Court and various High Courts in India are discussed hereinafter.

In *State of Uttaranchal v. Rajesh Kumar Gupta*¹², The case primarily revolved around the interpretation of statutory provisions and whether the prosecution had strictly complied with the requirements under the Act, wherein the Hon'ble Supreme Court held that It is a well-settled principle of law that a penal provision must be strictly construed. If two constructions are possible, the one that favours the accused must be adopted. The court cannot, in the guise of interpretation, supply any casus omissus. The court must interpret the statute as it stands and should not add or subtract words from it. This case strongly supports the argument that psilocybin mushrooms cannot be automatically criminalised unless expressly included in the statute.

¹⁰ Ibid, Section 2(b)

¹¹ Kumar S, 'Regulatory Pathways for Integrating Psychedelics into Indian Medical Framework' (2022) 19(4) Journal of Pharmaceutical Policy 212 <https://doi.org/10.1016/j.jpharm.2022.04.005> accessed 15 September 2024

¹² *State of Uttaranchal v. Rajesh Kumar Gupta*, (2007) 1 SCC 355.

In *E. Micheal Raj v. Intelligence Officer*¹³, The accused was found in possession of a mixture containing heroin. The issue before the Court was whether punishment should be based on the total weight of the mixture or only the actual narcotic content, wherein the Hon'ble Court held that, when any narcotic drug or psychotropic substance is found mixed with one or more neutral substances, it is the content of the narcotic drug which is relevant. The intention of the legislature could not have been to punish a person based on the weight of neutral substances. This reasoning of the court is very much relevant to psilocybin mushrooms, where the active compound exists within a natural carrier, i.e., a fungus.

In *Hira Singh v. Union of India*¹⁴, the case involved the seizure of heroin mixed with neutral substances. The Supreme Court was asked to resolve conflicting interpretations regarding quantity determination under the NDPS Act, wherein the Hon'ble Court held that the quantity of the entire mixture is to be taken into consideration. The court further observed that the view taken in *E. Micheal Raj* was not correct and overruled the same. This ruling implies that if psilocybin mushrooms are treated as a "mixture," then their entire weight could be considered, potentially leading to severe punishment. This may cause grave injustice.

In *Saeidi Mozdhddeh Ehsan v. State of Karnataka*¹⁵, the petitioner, a foreign national, was arrested for alleged possession of LSD and other psychotropic substances. The prosecution relied on seizure and forensic reports, wherein the Hon'ble Karnataka High Court held that unless the prosecution establishes beyond a reasonable doubt the nature of the substance seized and the compliance with statutory safeguards, conviction cannot be sustained. This case highlights that scientific confirmation of the substance is essential, and procedural lapses can lead to acquittal. This directly applies to psilocybin mushrooms, where identification is inherently difficult.

In *Rahul Rai v. State of Kerala*¹⁶, The accused was prosecuted under the NDPS Act for possession of a substance alleged to be psychotropic, wherein the Hon'ble Kerala High Court held that mere recovery of a substance is not sufficient. The prosecution must prove through cogent evidence that the substance falls within the prohibited category under the NDPS Act. In the absence of reliable chemical analysis, the accused cannot be convicted under the stringent

¹³ *E. Micheal Raj v. Intelligence Officer*, (2008) 5 SCC 161.

¹⁴ *Hira Singh v. Union of India*, (2020) 20 SCC 272.

¹⁵ *Saeidi Mozdhddeh Ehsan v. State of Karnataka*, Karnataka HC, 2013 (3) AKR 93.

¹⁶ *Rahul Rai v. State of Kerala*, Kerala HC, 2025:KER:2415.

provisions of the Act. This shows that there is a lack in the forensic department to equip itself with the latest scientific methods to determine the substance clearly. Psilocybin mushrooms require laboratory conformation and visual identification alone cannot be a ground for conviction.

In *Mohan v. State*¹⁷, The accused was arrested for possession of an alleged narcotic substance, wherein the Hon'ble Madras High Court held that compliance with the mandatory provisions of the NDPS Act is not a mere formality; it is a condition precedent for sustaining a conviction. Any violation of procedural safeguards creates serious doubt about the prosecution's case and entitles the accused to the benefit of the doubt. There is a lack of guidelines when it comes to the seizure of mushrooms. Any kind of improper seizure or documentation can invalidate the prosecution. Courts are cautious due to harsh punishments under the Act.

In *Dhanaraj v. Inspector of Police, Kodaikanal Police Station*¹⁸, the case involves the alleged possession of psilocybin mushrooms in Kodaikanal. The accused challenged the prosecution on the grounds that mushrooms were not clearly covered under the NDPS Act and there was insufficient proof of psilocybin content, wherein the Hon'ble Madras High Court held that the prosecution must establish that the seized material contains a psychotropic substance as defined under the Act and mere assumption or suspicion is not sufficient. In cases involving natural substances, the burden lies heavily on the prosecution to prove the chemical composition through proper scientific evidence. Psilocybin mushrooms fall within this grey area. The prosecution has a larger burden to prove the existence of a chemical compound, its exact quantity, and the applicability under the Act.

In *P. Rajkumar v. State*¹⁹, This is a case involving alleged possession of psilocybin mushrooms. The main issue was whether the case was sustainable under the NDPS Act in the absence of a clear statutory inclusion, wherein the Hon'ble Madras High Court held that the applicability of the NDPS Act must be strictly examined in cases involving naturally occurring substances, particularly when the statute does not expressly include such substances. In the absence of clear evidence establishing the presence of a psychotropic substance and its quantity, continuation of proceedings may amount to abuse of process. The courts across the country are aware of this legal ambiguity, and prosecution must meet a high evidentiary threshold. Without a law being

¹⁷ *Mohan v. State*, Madras HC, CRL OP(MD) No. 19504 of 2024.

¹⁸ *Dhanaraj v. Inspector of Police, Kodaikanal Police Station*, Madras HC, CRL OP(MD) No. 15148 of 2024.

¹⁹ *P. Rajkumar v. State*, Madras HC, CRL OP (MD) No. 19589 of 2024.

enacted or amended for this purpose, the courts cannot convict a person, as it would violate their fundamental rights.

2.5 Overall analysis of the above decisions

When the above High Court decisions are read together with Supreme Court rulings, the following position emerges that the courts hesitate to expand NDPS provisions to cover substances not explicitly mentioned, and a Strict Interpretation Applies. All courts consistently stress that chemical analysis is mandatory and assumptions are insufficient for conviction. Procedural Compliance is Crucial in this matter, even minor lapses can weaken the prosecution's case and result in an acquittal. Natural Substances Pose Unique Challenges Courts recognise that natural substances, like mushrooms, require different treatment, and legislative clarity is necessary to deal with these issues.

2.6 Enforcement Issues Concerning Psilocybin Mushrooms

The ambiguity in the legal framework gives rise to several practical challenges in enforcement, as set out hereunder.

a) Identification and Classification of psilocybin mushrooms

Unlike all other synthetic drugs like cocaine and MDMA, psilocybin mushrooms are naturally occurring substances that are visually similar to non-psychoactive species like the edible mushrooms and other plants of the like. In India, there are various types of mushrooms available that contain hallucinogenic effects. This makes it difficult for law enforcement agencies to identify them without expert assistance. Incorrect identification can lead to wrongful arrests or failed prosecutions.

b) Forensic Challenges

To establish an offence under the NDPS Act, it is necessary to prove the presence of a prohibited substance through **chemical analysis**, and the enforcement authorities must produce a Forensic Science Lab Report (FSL report) that indicates the presence of the prohibited substance to prosecute a person for possession of a prohibited substance under the Act. In the case of mushrooms, laboratory testing is required to confirm psilocybin content. There may be delays and inaccuracies that may occur in forensic analysis. This complicates the investigation

process.

c) Lack of Clear Guidelines

There are no specific guidelines for handling cases involving psychedelics, which are naturally occurring, and also determining the quantity of the substance under the Act is ambiguous and distinguishing between wild growth and intentional cultivation of the psilocybin mushrooms is almost impossible with the resources and clarity available in our hands. As a result, enforcement of the provisions of the Act and the prosecution thereof often depends on **discretion**, which can lead to inconsistency and potential misuse of the Act. The result of this may lead to conviction without a proper law for the time being in force that prohibits it.

d) Risk of Arbitrary Enforcement

Given the ambiguity in the provisions of the Act, individuals may be prosecuted even though the provisions are unclear, and they may be subjected to lengthy trials under stringent NDPS provisions. This raises concerns regarding **fairness and proportionality in criminal justice**.

e) Impact on Research

Strict enforcement of the Act and uncertainty in its provisions also discourage **scientific research** on psilocybin in India. Researchers in India may face regulatory hurdles in obtaining approvals, thereby limiting India's participation in global scientific developments.

CHAPTER 3 - INTERNATIONAL APPROACHES: LEGISLATIVE AND JUDICIAL ANALYSIS

The regulation of psilocybin mushrooms across jurisdictions reflects a dynamic and evolving area of drug policy. While most countries historically adopted a strict prohibitionist stance in line with international conventions, recent developments indicate a gradual shift towards medicalisation and decriminalisation.

The country-wise analysis is as follows:

1. United States

The primary legislation governing controlled substances in the United States is the Controlled

Substances Act, 1970 (CSA). Under Schedule I²⁰ of the Act, Psilocybin is classified as a Schedule I substance, meaning it has high potential for abuse and such substance is not accepted for medical use. The provision includes “*Any material, compound, mixture, or preparation which contains any quantity of (a controlled substance).*” In *State v. Atley*²¹, The Hon’ble Supreme Court of Iowa held that the statutory definition includes any material, compound, mixture, or preparation which contains any quantity of a controlled substance. Psilocybin mushrooms clearly fall within this definition. The fact that psilocybin occurs naturally within the mushroom does not exclude the mushroom itself from the statutory prohibition. Further in *United States v. Durham*²² the Hon’ble United States Court of Appeals for the Ninth Circuit held that the cultivation of mushrooms containing psilocybin constitutes manufacture of a controlled substance under federal law. It is immaterial whether the substance is produced synthetically or grown naturally. The U.S. adopts a substance-based approach, where natural origin is irrelevant, and mushrooms are treated as carriers of a controlled substance and are punishable under the applicable laws.

2. United Kingdom

The governing law in the United Kingdom is the Misuse of Drugs Act, 1971²³. The joint reading of Section 2 and Schedule 2 classifies psilocybin and psilocin as Class A drugs. Further, the law was amended to include “*Any fungus containing psilocin or psilocybin*”. In *R v. Goodchild*²⁴ The Hon’ble Court of Appeal (Criminal Division) in England and Wales held that, where a substance contains a controlled drug, it is sufficient to bring it within the ambit of the Act, regardless of its form or origin. The UK removes ambiguity by explicit statutory inclusion of mushrooms and other like substances, and adopting a broad interpretative approach

3. Canada

In Canada, CDSA²⁵ is the primary legislation governing aspects of drugs and psychotropic substances. Psilocybin is listed under Schedule III of the Act. In *R v. Dunn*²⁶ The Hon’ble Court of Appeal for Ontario held that the inclusion of a substance in the schedule extends to any

²⁰ 21 U.S. Code, Section 812 – Schedule I of controlled substances.

²¹ *State v. Atley*, 564 N.W.2d 817 (Iowa 1997), ¶¶ 6, 8.

²² *United States v. Durham*, 941 F.2d 858 (9th Cir. 1991), ¶¶ 10, 12.

²³ Misuse of Drugs Act 1971 1971 Chapter 38

²⁴ *R v. Goodchild* [1978] 66 Cr App R 142, ¶ 5.

²⁵ Controlled Drugs and Substances Act (Canada).

²⁶ *R v. Dunn* (1976), 31 C.C.C. (2d) 199, ¶ 11.

material containing that substance, whether naturally occurring or otherwise. Section 56 CDSA allows exemptions for stern reasons such as medical access, which is only permitted through the Special Access Program (SAP). It is currently specifically for patients with serious or life-threatening conditions where conventional therapies are unavailable, unsuitable, or have failed. Canada adopts a balanced model that prohibits and controls medical access simultaneously.

4. Australia

The Therapeutic Goods (Poisons Standard—June 2025) Instrument 2025²⁷ is an instrument created by the Therapeutic Goods Administration (TGA) that classifies medicines and chemicals into schedules to control their access and safety. It dictates how substances are sold, such as pharmacy-only or prescription-only, to protect public health. Previously, psilocybin was prohibited under Schedule 9, but now, after the reformation made in 2023, psilocybin is allowed for medical use under strict regulations. In *R v. Carey*²⁸, The Hon'ble Supreme Court of New South Wales held that the presence of a prohibited drug within a substance is sufficient to attract liability under the Act. Australia reflects a modern regulatory approach by making strict control, unlike other countries, but effectively recognises therapeutic use. This kind of strict regulation does not ban the substance in whole, rather it is used for medical purposes.

5. Portugal

Magic mushrooms fall under the same rules as all other illicit psychoactive substances. Psilocybin and psilocin are controlled substances under Law 30/2000²⁹, so Small-quantity personal possession and use is decriminalised. It is an administrative offence only, handled by the dissuasion commission, and there is no criminal record or jail. But growing, selling, or possessing larger amounts remains a criminal offence, the same as other drugs. The Hon'ble the Supreme Court of Justice of Portugal³⁰ ruled that when the quantity **exceeds** the 10-day threshold, the conduct can be treated as the criminal offence of drug use (under the older Decree-Law 15/93, Article 40), punishable by up to 1 year in prison or a fine (instead of automatically being classified as trafficking). It essentially re-established the possibility of

²⁷ Poisons Standard, Therapeutic Goods Administration (Australia).

²⁸ *R v. Carey* [2010] NSWCCA 262

²⁹ Law no. 30/2000, of 29 November defines the legal framework applicable to the consumption of narcotics and psychotropic substances, together with the medical and social welfare of the consumers of such substances without medical prescription.

³⁰ Supreme Court of Justice Judgment No. 8/2008 (Acórdão n.º 8/2008 do Supremo Tribunal de Justiça), dated 25 June 2008, published in *Diário da República*, 1.ª Série, n.º 150, 5 August 2008, pp. 5235–5254.

criminal prosecution for **consumption** itself when larger (but not clearly trafficking-level) amounts are involved. Portugal relies more on administrative mechanisms than litigation. Portugal serves as a public health model, shifting focus from punishment to rehabilitation.

6. Netherlands

The Netherlands' statutory framework under the Opium Act³¹ follows a pragmatic approach of partial prohibition combined with tolerance. In 2008, mushrooms containing psilocybin were banned and added to List II, making their sale, possession (beyond very small tolerated amounts), and production illegal. However, truffles (sclerotia of the same psilocybin-producing fungi) were not included in the ban and remain legal, allowing open sale in smart shops. This reflects a tolerance for low-risk variants, distinguishing between the fruiting bodies, i.e., the mushrooms and the underground sclerotia, i.e., the truffles, while maintaining controls on higher-risk forms. In *VLOS v. Dutch State*³², the Hon'ble Court rejected the challenge and upheld the ban on mushrooms. It ruled that the government had the authority to add psilocybin mushrooms to List II of the Opium Act due to public health and safety concerns (sparked in part by incidents involving tourists). However, the court implicitly recognized the narrow scope of the ban. It applied specifically to the fruiting bodies (mushrooms), not to the underground sclerotia (truffles) of the same fungal species. This distinction allowed truffles to remain outside the prohibition and continue being sold legally in smart shops.

Across jurisdictions, the USA and the UK have strictly prohibited psilocybin, their provisions of laws have broad statutory interpretation, and they have a clear inclusion. Canada and Australia have allowed the use of the substance, but have only allowed it for medical purposes, like controlled therapeutic use. The international legal landscape demonstrates a clear trend towards re-evaluating traditional drug policies. While prohibition remains the dominant framework, there is increasing acceptance of medical use and harm-reduction approaches. In contrast, India continues to operate within a rigid statutory framework that does not adequately address naturally occurring substances like psilocybin mushrooms. The comparative analysis highlights the urgent need for legislative clarity and policy reform.

³¹ The Dutch Opium Act (Opiumwet)

³² *VLOS v. Dutch State*, District Court of The Hague, Nov 28, 2008, Case number: 324464 - KG ZA 08-1486

CHAPTER 4 - MEDICAL, SOCIAL AND CONSTITUTIONAL DIMENSIONS OF PSILOCYBIN

The legal status of psilocybin mushrooms cannot be meaningfully analysed without discussing the broader framework of medical science, public health policy, and the relevant Articles under the Constitution. Historically, psychedelic substances such as psilocybin mushrooms were seen as substances that should be prohibited, and it is largely influenced by socio-political concerns rather than scientific evidence. However, the recent years have witnessed a significant growth in scientific research that has challenged earlier assumptions and highlighted the potential therapeutic benefits of such substances. This shift has created a tension between existing legal frameworks and emerging scientific knowledge, thereby necessitating a re-examination of the legal and constitutional validity of continued prohibition.

4.1 Medical and Scientific Developments

Modern neuroscientific research has established that psilocybin, once ingested, is metabolised into psilocin, which interacts primarily with serotonin receptors in the brain, particularly the 5-HT_{2A} receptor³³. This interaction alters neural connectivity and disrupts rigid patterns of thinking, which are often associated with psychiatric disorders such as depression and anxiety. Unlike the regular antidepressants that require prolonged administration, psilocybin has demonstrated the ability to produce rapid and sustained improvements after limited doses, especially when administered in a controlled therapeutic setting.

A landmark study published in the *New England Journal of Medicine* compared psilocybin with escitalopram, a widely used selective serotonin reuptake inhibitor. The study observed that psilocybin produced a significant reduction in depressive symptoms, with comparable results, and in some instances superior, to those achieved through conventional medication.³⁴ This finding is particularly important in the context of treatment-resistant depression, where traditional pharmacological interventions often fail to produce meaningful results.

Similarly, research published in *The Lancet Psychiatry* demonstrated that even a single

³³ Nichols D.E., Nichols C.D. Serotonin receptors. *Chem Rev.* 2008;108:1614–1641. doi: 10.1021/cr078224o. *Serotonin (5-hydroxytryptamine [5-HT]) is a small-molecule hormone and neurotransmitter essential for the regulation of nearly every biological process, including development, gastrointestinal function, cardiovascular function, mood, perception, and nociception*

³⁴ Carhart-Harris et al., “Trial of Psilocybin versus Escitalopram,” *New England Journal of Medicine* (2021).

controlled dose of psilocybin could lead to a measurable and sustained reduction in depressive symptoms among patients suffering from severe and treatment-resistant forms of depression.³⁵ These findings have been corroborated by multiple clinical trials conducted across leading research institutions, including Johns Hopkins University, which has documented substantial reductions in anxiety and psychological distress among patients with life-threatening illnesses.³⁶

The growing body of scientific literature also suggests that psilocybin may play a significant role in the treatment of addiction. Studies published in *JAMA Psychiatry* have indicated that psilocybin-assisted therapy has yielded promising results in smoking cessation and alcohol dependence, with participants demonstrating significantly higher rates of abstinence compared to traditional therapies.³⁷ This emerging consensus challenges the long-standing classification of psilocybin as a substance with no accepted medical use, thereby raising important questions regarding the rationality of its continued prohibition under existing legal frameworks.

4.2 Risks and Public Health Considerations

Despite its therapeutic potential, psilocybin is not without risks, and any legal or policy framework must take into account the possible adverse effects associated with its use. Psychological risks such as acute anxiety, panic reactions, and temporary hallucinations have been documented, particularly in uncontrolled environments. These effects, often referred to as “bad trips,” may lead to distressing experiences, especially among individuals who are not adequately prepared or supervised by experts or therapists.

Furthermore, some people, including individuals with a history of psychotic disorders such as schizophrenia, may be at an increased risk of adverse outcomes. In such cases, psilocybin may exacerbate underlying conditions, thereby necessitating strict screening and clinical oversight. It is also important to recognise that the risks associated with psilocybin are significantly mitigated when it is administered in a controlled, therapeutic setting under professional supervision. Consequently, the issue is not merely one of prohibition versus legality, but rather one of regulated and responsible use.

³⁵ Goodwin et al., “Psilocybin for Treatment-Resistant Depression,” *The Lancet Psychiatry* (2022).

³⁶ Griffiths et al., “Psilocybin decreases depression and anxiety,” *Journal of Psychopharmacology* (2016).

³⁷ Johnson et al., “Psilocybin-assisted therapy for addiction,” *JAMA Psychiatry*.

4.3 Social Perception and Policy Implications

In the Indian context, the perception of the consumption of psychedelic substances is subject to stigma and moral judgment. Psilocybin is often associated with illicit drug culture and recreational abuse, which has greatly affected the objective discussion and scientific inquiry on this subject. This societal perception has contributed to a policy environment that prioritises criminalisation over harm reduction and public health.

In contrast, several countries have begun to adopt a more nuanced approach, as seen in the previous chapter, recognising the distinction between harmful drug use and controlled therapeutic application. The shift towards decriminalisation and medical regulation in jurisdictions such as Canada and Australia reflects an evolving understanding of drug policy, where emphasis is placed on evidence-based decision-making rather than blanket prohibition. This divergence highlights the need for India to reassess its existing approach towards mushrooms in light of contemporary scientific developments.

4.4 Constitutional Dimensions

The criminalisation of psilocybin raises significant constitutional questions, particularly in relation to Art. 21³⁸, which guarantees the right to life and personal liberty. The scope of Article 21 has been expansively interpreted by the Supreme Court to include a wide range of derivative rights, including the right to health, dignity, and personal autonomy. In *Consumer Education and Research Centre v. Union of India*³⁹, the Hon'ble Supreme Court held that the right to health and medical care is a fundamental right under Article 21. It includes the right to live with human dignity and all that goes along with it. This recognition has direct implications for the regulation of psilocybin. If scientific evidence establishes that psilocybin has legitimate therapeutic value, then denying access to such treatment may amount to a violation of the right to health.

The constitutional dimension becomes even more visible when the right to privacy and personal autonomy is considered. In the landmark judgment of *Justice K.S. Puttaswamy v. Union of India*⁴⁰, the Hon'ble Supreme Court held that Privacy includes at its core the preservation of

³⁸Constitution of India, Article 21.

³⁹ *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42.

⁴⁰ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1

personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. It also includes decisional autonomy. The recognition of decisional autonomy implies that individuals have the right to make informed choices regarding their own bodies and medical treatment. The use of psilocybin in a therapeutic context can therefore be viewed as falling within the ambit of protected personal choice, subject to reasonable restrictions imposed by the State.

However, any restriction on fundamental rights must satisfy the test of proportionality, which has been firmly established in Indian constitutional jurisprudence. In *Modern Dental College v. State of Madhya Pradesh*⁴¹, the Hon'ble Supreme Court held that a law imposing restrictions on fundamental rights must be proportionate, i.e., it must not be excessive and must have a rational nexus with the objective sought to be achieved. Applying this doctrine to mushrooms, it may be argued that a blanket prohibition on psilocybin, without consideration of its medical benefits and relatively low risk profile, could be viewed as disproportionate to the object the law sought to achieve. The State's interest in preventing drug abuse must be balanced against the individual's right to access potentially life-saving treatment and to exercise personal autonomy.

Finally, Art. 47 emphasises the government's responsibility to improve public health and enhance the living standards of its people. It highlights that the State should prioritise raising the level of nutrition and the overall well-being of its citizens⁴². Integrating psychedelic therapy into public health initiatives could be viewed as part of fulfilling this responsibility. As research suggests that psychedelics may offer significant benefits in treating mental health conditions that are otherwise difficult to address with traditional treatments, including these therapies in the healthcare system would align with the State's duty to promote and protect public health. Expanding access to such treatments reflects a commitment to improving the overall health and well-being of the population⁴³.

4.5 Critical Analysis and Medical Science

The intersection of medical science and constitutional law reveals a fundamental inconsistency in the current legal approach towards psilocybin. On the one hand, scientific research

⁴¹ *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353

⁴² *Kesavananda Bharati Sripadagalvaru v State Of Kerala And Anr* on 24 April, 1973 AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225

⁴³ The Constitution of India, art 47

increasingly supports its therapeutic potential and relative safety under controlled conditions. On the other hand, the legal framework continues to classify it alongside some of the most harmful substances, without any distinction. This disconnect suggests that the existing legal regime is not adequately aligned with contemporary scientific understanding. It also raises concerns regarding the rationality and fairness of criminal prosecutions imposed under such a regime. From a constitutional perspective, the continued prohibition of psilocybin must be evaluated not only in terms of legislative competence but also in light of fundamental rights and evolving standards of reasonableness by scientific research.

The medical and constitutional dimensions of psilocybin regulation underscore the need for a more balanced and evidence-based approach. While the potential risks associated with its use cannot be ignored, they must be weighed against its demonstrated therapeutic benefits and the constitutional imperative to protect individual liberty and access to healthcare. The evolving global approach to psychedelics further reinforces the argument that a rigid prohibitionist stance may no longer be defended. In this context, it becomes very important for Indian policymakers and courts to re-examine the legal status of psilocybin, taking into account both scientific advancements and constitutional principles. Such a re-evaluation would not only enhance the quality and soundness of the legal framework but also ensure that it remains responsive to the needs of a modern and progressive society.

CHAPTER 5 - POLICY GAPS, ETHICAL CONCERNS AND CRITIQUE OF THE NDPS FRAMEWORK

The regulation of psilocybin mushrooms in India exposes a deeper structural issue within the existing narcotics framework, particularly under the NDPS Act. While the Act was enacted with the legitimate objective of combating drug abuse and illicit trafficking, its rigid and prohibition-oriented design has resulted in significant policy gaps when applied to substances such as psilocybin, which is at the intersection of natural occurrence, medical potential, and evolving scientific understanding.

5.1 Statutory Ambiguity and Legislative Gaps

One of the most fundamental issues with the NDPS Act is its failure to clearly address the naturally occurring substances, such as psilocybin mushrooms. While psilocybin and psilocin are listed as psychotropic substances under the Act, there is no explicit reference to the

mushrooms themselves. This creates a situation of legal ambiguity, where enforcement authorities and courts are burdened to interpret the provisions of the Act as to whether naturally occurring fungi fall within the scope of the Act.

The NDPS Act defines “psychotropic substance” under Section 2(xxiii)⁴⁴ as any substance included in the Schedule. However, the absence of explicit mention of mushrooms contrasts sharply with foreign jurisdictions such as the United Kingdom, where legislation specifically includes “*fungi containing psilocybin.*” This omission of mushrooms under the Indian law leads to inconsistent application and raises concerns about the implementation of the principle of legal certainty, which is a cornerstone of the Indian criminal law. The Supreme Court has repeatedly emphasised that penal statutes must be strictly construed, as seen in *State of Uttaranchal v. Rajesh Kumar Gupta*⁴⁵. In the absence of clear language in the provisions, extending criminal liability to naturally occurring substances risks violating this principle, leading to the violation of fundamental rights and may result in arbitrary enforcement.

5.2 Over-Criminalisation and Disproportionate Punishment

Another significant flaw in the NDPS framework is its tendency toward over-criminalisation, particularly in light of the “entire mixture rule” established in *Hira Singh v. Union of India*.⁴⁶ Under this rule, the total weight of a substance containing a psychotropic compound is considered for determining punishment, rather than the actual content of the active substance. When applied to psilocybin mushrooms, this approach can lead to disproportionate outcomes.

In the most commonly cultivated and studied species, *Psilocybe cubensis* (often called “golden teacher,” “B+,” or similar strains), the content of psilocybin in the mushroom typically averages approximately 1% by dry weight. This means 1 gram of dried mushroom contains roughly 10 mg of psilocybin.⁴⁷ Psilocin (the active metabolite already present in the mushroom) is usually much lower, ranging from 0% to 0.6% approximately, so total tryptamine alkaloids (psilocybin + psilocin + minor analogues like baeocystin) are often 0.85–1.45% in modern analyses of *P. cubensis* strains.⁴⁸ Since mushrooms contain only small quantities of psilocybin,

⁴⁴ Section 2(Xxiii) of The Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985

⁴⁵ *State of Uttaranchal v. Rajesh Kumar Gupta*, (2007) 1 SCC 355

⁴⁶ *Hira Singh v. Union of India*, (2020) 20 SCC 272

⁴⁷ MacCallum CA, Lo LA, Pistawka CA, Deol JK. Therapeutic use of psilocybin: Practical considerations for dosing and administration. *Front Psychiatry*. 2022 Dec 1;13:1040217. doi: 10.3389/fpsy.2022.1040217. PMID: 36532184; PMCID: PMC9751063.

⁴⁸ Roman Goff, Morgan Smith, Sabrina Islam, Sue Sisley, Jonathan Ferguson, Scott Kuzdzal, Sunil Badal, Arun

treating the entire weight as a psychotropic substance may result in severe penalties that are not consistent with the actual harm caused. This raises serious concerns under the doctrine of proportionality, which requires that punishment must be proportionate to the offence. The rigid sentencing structure under the NDPS Act further aggravates this issue, as it leaves little room for judicial discretion. This is particularly problematic in cases involving first-time offenders or individuals possessing substances for personal or therapeutic use.

5.3 Procedural Hurdles vs Practical Challenges

While the NDPS Act incorporates stringent procedural safeguards, as emphasised in *Noor Aga v. State of Punjab*⁴⁹ The practical application of these safeguards becomes complex in cases involving psilocybin mushrooms. The identification of such mushrooms requires specialised scientific analysis, and errors in testing or handling may significantly affect the outcome of a case. The requirement of strict compliance, though intended to protect the rights of the accused, often leads to procedural inconsistencies. In many cases, enforcement authorities lack the necessary expertise or resources to accurately identify psilocybin-containing mushrooms, thereby increasing the likelihood of wrongful prosecution. This highlights a broader systemic issue where the legal framework imposes strict punishment without ensuring adequate institutional capacity to enforce it fairly and effectively.

5.4 Ethical Concerns in Criminalisation

Beyond legal and procedural issues, the prohibition of psilocybin raises important ethical questions. The core object of the Indian criminal law is justified on the basis of preventing harm. However, the scientific evidence suggests that psilocybin, when used responsibly, may not only be relatively safe but also therapeutically beneficial to many persons in need.

The ethical confusion arises when individuals suffering from severe mental health conditions are denied access to potentially effective treatment due to legal restrictions. This is particularly troubling in cases of treatment-resistant depression, where conventional therapies have failed, as discussed in the previous chapter. In such circumstances, the criminalisation of psilocybin may be seen as conflicting with the ethical principle of beneficence, i.e., not to harm, which

Babu Kumar, Uma Sreenivasan, Kevin A. Schug, Determination of psilocybin and psilocin content in multiple *Psilocybe cubensis* mushroom strains using liquid chromatography – tandem mass spectrometry, *Analytica Chimica Acta*, Volume 1288, 2024, 342161, ISSN 0003-2670, <https://doi.org/10.1016/j.aca.2023.342161>.

⁴⁹ *Noor Aga v. State of Punjab*, (2008) 16 SCC 417

requires that actions should promote well-being.

Furthermore, the principle of autonomy under Art. 21 demands that individuals should have the freedom to make informed decisions about their own health and body. The blanket prohibition undermines this autonomy, especially when the risk associated with the substance is comparatively low and manageable under proper regulation and expert assistance.

5.5 Policy Inertia and Resistance to Reform

A significant barrier to reform in India is the persistence of policy inertia, where existing laws continue to operate despite substantial changes in scientific understanding. The NDPS Act, enacted in 1985, reflects the global prohibitionist approach of that era, which was heavily influenced by international conventions and geopolitical considerations. However, the global landscape has evolved considerably since then, with several countries adopting more nuanced approaches that incorporate medical use and harm reduction strategies like those in Portugal. India's continued reliance on an outdated framework shows a reluctance to engage with emerging evidence and international best practices.

The analysis of policy gaps and ethical concerns reveals that the current legal framework governing psilocybin in India is filled with ambiguity, rigidity, and misalignment with contemporary scientific knowledge. The NDPS Act, while effective in addressing certain forms of drug abuse, is ill-equipped to deal with substances that require a more nuanced and evidence-based approach. This underscores the urgent need for reform, which is addressed in the following chapter.

CHAPTER 6 - REFORM PROPOSALS AND SUGGESTIONS

The preceding chapters have demonstrated that the legal status of psilocybin in India is characterised by ambiguity, inconsistency, and a lack of alignment with scientific and constitutional developments. This chapter proposes a set of reforms to create a more consistent and balanced regulatory framework.

6.1 Legislative Clarification

The first and most immediate reform required is statutory clarity. The NDPS Act must be amended to include psilocybin mushrooms under the Act. This can be achieved in one of two

ways, namely, explicitly including mushrooms within the definition of psychotropic substances or distinguishing between natural substances and isolated chemical compounds. Clarity in legislation would eliminate uncertainty in courts' interpretation and ensure consistent enforcement across India.

6.2 Introduction of a Medical Use Framework

Given the growing body of scientific evidence supporting the therapeutic potential of psilocybin, it is important to introduce a regulated medical framework. This may involve allowing psilocybin-assisted therapy under strict supervision, licensing medical professionals and research institutions and establishing guidelines for dosage and administration. To achieve this, the inclusion of psychedelics in the scope of the Drugs and Cosmetics Act, 1940 Act⁵⁰ (hereinafter the 1940 Act), an amendment to Section 3(b) of the 1940 Act would be necessary. An amendment could involve a specific clause that recognises psychedelics as drugs when used for approved therapeutic purposes. This would mean defining the conditions under which psychedelics can be prescribed and administered, as well as establishing protocols for their clinical use. The amendment would need to detail the therapeutic indications, dosages, and methods of administration to ensure that these substances are used safely and effectively.

Incorporating psychedelics into the 1940 Act would also require changes in associated regulations and guidelines, including those governing clinical trials, manufacturing practices, and distribution channels. Regulatory bodies such as the Central Drugs Standard Control Organisation (CDSCO) would play a key role in overseeing these changes and ensuring that psychedelics are integrated into the medical framework in a manner that upholds public safety and health standards.⁵¹ Such a framework would align India with countries such as Canada and Australia, where controlled medical use has been permitted.

6.3 Adoption of a Harm Reduction Approach

Instead of relying solely on criminalisation, our policymakers should consider adopting a harm reduction model, similar to that implemented in Portugal. This approach focuses on reducing the adverse consequences of drug use, promoting treatment and rehabilitation and minimising

⁵⁰ The Drugs and Cosmetics Act, 1940 (23 of 1940)

⁵¹ Singh, R. (2023). "The Role of CDSCO in Regulating Emerging Therapeutic Drugs." *Pharmaceutical Regulatory Review*, 30(1), 45-60

the burden on the Courts. This shift would reflect a more humane and practical approach to drug laws.

6.4 Strengthening Scientific and Research Infrastructure

Effective regulation of psilocybin requires a strong scientific infrastructure, including advanced forensic laboratories, trained personnel for substance identification and support for clinical research. Investment in research would not only improve enforcement but also contribute to the development of evidence-based policy. The government could also raise funds for this research from corporate companies through CSR funds to reduce the financial burden of the government.

CHAPTER 7 - CONCLUSION

The legal status of psilocybin mushrooms in India represents a complex intersection of law, science, and ethics. While the NDPS Act provides a robust framework for combating drug abuse, its application to substances such as psilocybin reveals significant limitations. The absence of legislative clarity, judicial interpretations coupled with evolving scientific evidence and constitutional considerations, necessitates a rethinking of existing policies. A reformed approach that balances public health concerns with individual rights and scientific progress would not only enhance the effectiveness of the legal framework but also ensure that it remains just, rational, and responsive to contemporary realities. While reforming, the government shall consider the appropriate laws of other countries that have adequate provisions for psilocybin and address this issue effectively. The suggestions mentioned above may be right for a proper reformation in this regard.

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