



**Jindal Global Law School**  
*India's First Global Law School*

## **COURSE MANUAL**

### **LAW and PSYCHEDELICS**

**Course Instructor: Dr. Khagesh Gautam, Adv.  
(S.J.D., LL.M., LL.B.)  
(Punjab & Haryana Bar Council)**

**Spring 2022-23**

**(AY 2022-23)**

**Elective  
(L-EL-0591)**

This document is prepared by the course instructor and contains basic information relevant to the execution of the course. It is the official record for all intends and purposes as far the elective course, **LAW and PSYCHEDLICS**, is concerned.

This course manual can be used as a general guide to the subject. However, the instructor can modify, extend or supplement the course (without tampering its basic framework and objectives) for the effective and efficient delivery of the course. The instructor will provide students with reasons for such changes.

## **Part I**

Course Title: **LAW and PSYCHEDELICS**

Course Code:

Course Duration: **One Semester (15 Weeks)**

No. of Credit Units: **4 Credits**

Level:

Medium of Instruction: **English**

Pre-requisites: (1) Criminal Procedure; (2) Evidence; (3) Constitutional Law 1; (4) Constitutional Law 2; (5) Public International Law

Equivalent Courses: None

Cross-Listed Course: (Response to this question is mandatory): No

## **Part II**

### **1. Course Description**

### **2. Course Aims**

### **3. Teaching Philosophy and Methodology**

### **4. Intended Learning Outcomes**

### **5. Details of the Course**

### **6. Indicative Reading List**

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
1. Conceptual and Critical Engagement with Major Ideas and Debates Shaping Indian Elections	50 percent	Lectures/discussion shaped around analytical-contextual scholarship on elections in India.	Response Papers + Group Assignment + Class Participation
2. Engagement with statutory and constitutional provisions governing elections in India, with special focus on Representation of Peoples Act, 1951.	25 percent	Detailed discussion of statutory architecture affecting elections, through landmark cases and legislative provisions.	Case Discussions + Take Home
3. Ability to understand and interpret democratic and electoral politics in India, contextually, critically and comprehensively .	25 percent	Critical reflections on the state of Indian democracy in general.	Class Participation through the Semester + Class Discussion + Response Papers

## 5. Grading of Student Achievement

Grading will be based on the following format:

Mid Term Assessment	
Reflection Paper 1	20 Marks
Reflection Paper 2	20 Marks
Viva (based on Reflection Papers)	10 Marks
<b>TOTAL (M)</b>	<b>50 Marks</b>
End Term Assignment	
Format A (End Term Test, default option)	50 Marks
Format B (Research Paper)	(OR)
Research Paper (only by prior approval of the instructor)	40 Marks
Viva (based on Research Paper)	10 Marks
<b>TOTAL (E)</b>	<b>50 Marks</b>
<b>FULL ASSIGNMENT (M + E)</b>	<b>100 MARKS</b>

Percentage of Marks	Grade	Grade Value	Grade Description
80 and above	O	8	<b>Outstanding</b> – Exceptional knowledge of the subject matter, thorough understanding of issues; ability to read widely and deeply, synthesize ideas, rules and principles and extraordinary critical, analytical and expressive ability
75 – 79	A+	7.5	<b>Excellent</b> - Sound knowledge of the subject matter, thorough understanding of issues; ability to apply ideas, rules and principles and critical and analytical ability
70 – 74	A	7	<b>Very Good</b> - Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles
65 – 69	A-	6	<b>Good</b> - Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills
60 – 64	B+	5	<b>Fair</b> – Average understanding of the subject matter, limited ability to identify issues and provide solutions to problems and reasonable critical and analytical skills
55 – 59	B	4	<b>Acceptable</b> - Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
50 – 54	B-	3	<b>Marginal</b> - Limited knowledge of the subject matter and irrelevant use of materials and, poor critical and analytical skills
Below 50	F	0	<b>Fail</b> - Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course

## **6. Criteria for Student Assessments**

Students are expected to write two Reflection Papers based on any reading that they desire. These Reflection Papers will require the students to draw on their personal experiences (i.e. (i) any directly observed incident(s); or (ii) any personal experiences). They will then have to answer some questions based on these papers during a viva that will follow. More on how to navigate through this form of assessment will be explained during the course.

For the end term test, there are two formats. Students can chose to write a research paper but this option will be approved only for those students who can present a well laid out outline of their paper to the satisfaction of the instructor. Those who wish to take the research paper option will be advised to finalize their outlines and have them approved and settled by the instructor by Lecture 15. The word limit for the essay is 5000 words (including footnotes, Bluebook or OSCOLA style of footnoting). The research paper option is rigorous as the paper will have to be defended in a viva that will follow. The default option is an open book end term test that will have essay type questions.

### **Course/Class Policies:**

#### **Academic Integrity and Plagiarism**

Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All form of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.

#### **Disability Support and Accommodation Requirements**

JGU endeavors to make all its courses accessible to students. All students with any known disability needing academic accommodation are required to register with the Disability Support Committee [dsc@jgu.edu.in](mailto:dsc@jgu.edu.in). The Committee has so far identified the following conditions that could possibly hinder student's overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality on the matters under its purview. Students should preferably register with the Committee during the month of June/January as disability accommodation requires early planning. DSC will coordinate all disability related services such as appointment of academic mentors, arranging infrastructural facilities, and course related requirements such as special lectures, tutorials and examinations.

All faculty members are requested to refer students with any of the above-mentioned conditions to the Disability Support Committee for getting them disability-related accommodation. Faculty members are also requested to be sensitive to the needs of such students and cooperate with Disability Support Committee and the School,



extending students the necessary support by maintaining utmost confidentiality of the matter.

### **Safe Space Pledge**

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

P.S. The course instructor, as part of introducing the course manual, will discuss the scope of the Safe Space Pledge with the class.

- 
- [1] Under extraordinary circumstances, the JGU Academic Council or the JGU Deans' Council can suspend the grading criteria or make it optional. If the grading criteria are suspended, the policy which will be framed by the School based on the decision of the said bodies will prevail over the grading criteria. However, whether a situation is extraordinary or not will be decided by the said bodies only.

## **5. Details of the Course**

In this course, we will study the *historical relationship* between law and psychedelics. Unit 1 of the course will provide: (i) an introduction to this course, (ii) a brief story of how this course came to be, and (iii) what this course intends to do. Call it a story of this Course's genesis.

Having thus understood then order to be able to do that effectively, we will first have to acquire an understanding of three key terms: (i) law, (ii) psychedelics, and (iii) history. This is a course that is more about the *history* of law and psychedelics than about either 'laws' or 'psychedelics.' During Unit 2 of the Course, divided further into three sub-units, we will try to arrive at an understanding of the three key terms outlined above.

Having thus understood, we will then try to understand this historical relationship through five separate perspectives. The first and most important to this course is the *legal perspective*. Since our endeavor in this course is to understand the *history* of law and psychedelics itself we pay particular attention to *international law* and *psychedelics* in Unit 3. We try to get a basic understanding of the sources of international law, and focus our attention on customary international law, and international conventions as sources of international law. After this we delve into a deeper understanding of a *historical* pattern that seems to emerge from key events in international law. The First, and Second Opium Wars fought between the British East India Company, and later the British Empire, and the Chinese Empire that lead to the drafting of the Opium Convention of 1912 are some of the key events that would require our full attention. We will conclude with a summary of our observations.

We will then go into Unit 4 that explores the historical relationship between spirituality and psychedelics. We will examine this from three different angles: (i) Mind and Psychedelics; (ii) Consciousness and Psychedelics; and (iii) Divinity and Psychedelics.

First, we will explore the relationship between the 'Mind' and psychedelics. Humanity finally gets interested in understanding the 'mind,' and its functioning.

This eventually culminates into a quest to understand consciousness itself. This in turn results in the establishment of a contemplative tradition. There are many well established *contemplative traditions* throughout history where the use of psychedelics has been approved. We will pay special attention to a few of these traditions, and the particular psychedelics they used to attain deeper understanding of the ‘mind’ and how it functions. In order to do this fully, we will begin with understanding ‘mind’ which will take us into different ways in which it has been understood by different traditions. Adding to the complication is the phenomenon that while some have quite literally elevated the mind to the level of a deity, or even a god, as we study the development of their doctrine, these traditions they all eventually realized that the mind is neither a deity, much less a god. It was more like an organ that can be used. This was the time when humanity was learning how to fashion more and more complicated tools out of the materials that nature had provided. Their understanding of *mind as a tool* could have been the result of their general mentality to think in terms of how to fashion tools to make their lives easier and more secure. It was during this time that humanity learned that there seems to be a higher order of ‘reality’ itself that human beings in their ordinary states of consciousness can’t seem to apprehend. But those who have acquired a special sense of perception (that they called ‘discriminative knowledge’) can apprehend those higher states and special knowledge is possible in those states.

All those who attained those states reported that: (i) it is a state where the mind is very alert yet very quiet (i.e. the mind is in a very highly concentrated state focused on one thing or thought to the exclusion of everything else; (ii) from this a very highly concentrated state of mind emerges a ‘meditative state’ where the mind seems no longer to be aware of how alert and how quiet it is unless somehow that state is disturbed; (iii) that higher state of the third order brings an incredible peace (or calm, or serenity) that seems to take away all worldly cares but not the sense of responsibility about those cares. We will try to understand therefore: (A) what is MIND; (ii) what is this ‘very highly concentrated’ state that mind is capable of attaining; (iii) what is the state that ‘emerges’ of a highly concentrated state; and most importantly, (iv) what role do psychedelics play this process?

Second, and leading from the first, we will explore the relationship between Consciousness and Psychedelics. Some humans reported that from the ‘meditative

state' emerges another still higher state of consciousness where one can directly apprehend the first cause of existence itself. One can, it is claimed, essentially know everything there is to be known. The limitations that mind imposes on knowledge are no longer there. This is a state, those who experienced it report, that is utterly beyond description giving rise to *the problem of the limitation of language*. Here we see simultaneously the seeds of humanity's first conception of atheism, as well as the divine taking roots as some humans realize that the ultimate cause of existence is one, and even though it may be known directly it is utterly beyond ordinary human understanding. This calling the pursuance of which has only ever interested a selected few throughout history led to the establishment of *mystical traditions*. They were not so concerned with form as with substance. However, it will be clear that the methods developed earlier could be used to attain the 'meditative state' at least. From *contemplation* we move to *mysticism*. This is where an attempt was made by the first contemplators to understand consciousness itself since they had already understood the mind. What role, if any, did psychedelics play at this stage?

Third, and building on the second, we explore the relationship between divinity and psychedelics. Those who understood the first cause and found it identical to the divine they understood this was direct evidence of their god. Having thus met their maker directly, they decided to dedicate their lives to their gods and preaching their message. Out of this was born the Prophetic movements the most notable of which are the Abrahminical ones (Jewish, Christian, and Islamic) though this phenomenon is not unique to them. The prophetic movements that eventually came to be based on a book seem to have lasted longer compared to many that might fairly be considered to be lost to history, of which we can only get glimpses now. But some realized that they might be projecting their limited understanding of the divine on to this first cause. This led to skepticism, leading on to nihilism, and the idea that the ultimate cause is a big void. When skepticism was remove, it dawned upon them that first cause may itself be called divine but it would not be consistent with any description of the divine that may be provided in human language confirming *the limitation of language* as a real. As to what it is, only those who have experienced fully understand it, and others only know it by approximations. Did psychedelics play any role in this ultimate realization?

After this we will explore the historical relationship between society and psychedelics in Unit 5. Here we will divide our inquiry into two parts: (i) society as a whole, and (ii) individual. Society as a whole can be understood by its customs and traditions. Sometimes the word ‘culture’ is also used to denote this. ‘Laws’ as described in article 13 of our Constitution are also a part of what we mean by ‘society’ in this unit. Customs are indeed a recognized part of both international law (as we have seen in Unit 2) and domestic law (as we will see here). The relationship between society as a whole and psychedelics, we will see, largely centers around two questions: (i) the ethical question, and (ii) the medicinal question. We will study both very carefully paying equal attention to both. In the process we will see that human societies have not always considered psychedelic consumption to be unethical or undesirable human behavior. The ethical position depends on many factors and different times have different factors in play. On the medical question, we stand on a much firmer ground where we see a remarkable consistency of opinion. Here we will see that a long series of official investigations into the *question of cannabis* (which is a mild psychedelic that has been consumed by humans with a remarkable historical consistency, and is one of the psychedelic plant with which humans have had a very long relationship). Depending on the age that humanity was passing through at the time, those reports were either implemented, suppressed, or dismissed. Generally, when humanity is passing through from an age of unregulated consumption to prohibited one, such evidence tends to get suppressed only to emerge later.

We will conclude our course in Unit 6 where we talk about the general relationship between *human history and psychedelics*. The relationship between human history and psychedelics, we will see, traverses through three ages. We will have to first spend some time understanding the concept of ‘freedom’ or ‘liberty’ (here these words are used synonymously). After this we will study to *progression of ages* through which history passed as it is related to psychedelics.

The progression of the ages is explained as follows. What the independent observer will see will depend on the age the society is going through. The observer would witness (i) an age of regulated consumption (where there is no general criminal prohibition on psychedelic use except certain psychedelics are tightly regulated on account of their toxicity that can cause death; in such an age the ethical question is left of individual discretion); (ii) an age of unregulated consumption (where

notwithstanding a general criminal prohibition on psychedelics, a critical section of society comes into contact with either a heretofore unknown psychedelic, or a now forgotten to whom a critical section is reintroduced. On account of inexperience with the psychedelic being used the physical and/or mental health of some of the members of this critical section is bound to be negatively affected. As these numbers will rise there will be widespread concern that grows into fear resulting in a popular demand to prohibit all psychedelics ushering in the next stage:); (iii) an age of prohibited consumption (where, again, notwithstanding the general criminal prohibition on psychedelics, a section of society will continue their consumption of psychedelics but without the societal support the behavior once enjoyed. In this age, some who will get introduced to the use of psychedelics will eventually discover the remnants of a now largely forgotten age of regulated consumption that once existed, and will make efforts to bring that age back. Eventually an age of regulated consumption will remerge until some or any particular psychedelic falls out of use and eventually are forgotten by society and rediscovered later, or a new psychedelic is either discovered for the first time or artificially invented. In either case the effect is the same: an age of unregulated consumption that then generally (though it does not have to) lead to an age of prohibited consumption that then eventually leads to an age of regulated consumption. The cycle goes on and this cycle represents the historical relationship. In an age of regulated consumption, the question is left to individual discretion therefore representing a very high state of individual freedom that that society has attained. The individual struggles against the collective (society) by first losing this individual freedom to the collective by being irresponsible with this freedom during the age of unregulated consumption. The freedom is lost to the collective in the age of prohibited consumption. As the individual starts to be responsible again, it wins its freedom back from the collective.

## **6. List of Readings**

(The list of readings is only indicative)

### **Conventions & Statutes:**

- (1) 1912 First Opium Convention
- (2) 1925 Second Opium Convention
- (3) 1930 Dangerous Drugs Act (India)
- (4) 1930 to 1950: Some Other Indian federal legislation
- (5) 1935 Government of India Act
- (6) 1950 Constitution of India
- (7) 1961 United Nations Single Convention on Narcotic Drugs
- (8) 1971 Controlled Substances Act (U.S.)
- (9) 1985 Narcotic Drugs and Psychotropic Substances Act

### **Pending Legislations:**

- (1) HR 5657, 117 US Congress, 2021 (Marijuana Data Collection Bill)
- (2) HR 1617, 117 US Congress, 2021 (Destigmatizing Marijuana)
- (3) HR 5657, 117 US Congress, 2021 (Medical Marijuana)

### **Books:**

- (1) Huston Smith, The World's Religions (HarperOne 1991)
- (2) Francis Fukuyama, The End of History and the Last Man (Penguin 1992)
- (3) Terrance McKenna, Food of the Gods (Penguin 1994)
- (4) Robert Stern, Hegel's Phenomenology of Spirit (Routledge 2001)
- (5) Yuval Noah Harari, Sapiens: A Brief History of Mankind (Vintage, 2011)
- (6) Yuval Noah Harari, Homo Deus: A Brief History of Tomorrow (Vintage, 2015)
- (7) Thomas Manuel, Opium Inc. (Harper Collins 2021)
- (8) Khagesh Gautam, Cannabis Indica: Perception v. Potential (OakBridge 2022)

### **Reports and Studies:**

- (1) 1894 Indian Hemp and Drugs Commission Report (India; British Empire)
- (2) 1925 Panama Canal Zone Report (U.S., Panama Canal)
- (3) 1941 La Guardia Report (U.S., New York City)
- (4) 1968 Wooton Report (U.K., House of Lords)
- (5) 1972 Shafer Commission Report (Marihuana: A Signal of Misunderstanding, March 1972)

### **Case Law:**

- (1) Leary v. United States, 395 US 6 (1969)
- (2) Leary v. United States, 383 F.2d 851 (1967, 5<sup>th</sup> Circuit)
- (3) People v. Woods, 61 Cal.2d 716 (1964, California Supreme Court)
- (4) Gonzales v. Raich, 545 US 1 (2005)
- (5) United States v. Oakland Cannabis Buyer's Association, 532 US 483 (2001)

### **Law Review Commentary & other literature:**

- (1) Jocelyn Bosse, *Before the High Court: The Legal Systemics of Cannabis*, 29 GRIFFITH LAW REVIEW 302-29 (2020)
- (2) Khagesh Gautam, *The Use of International Law in Constitutional Interpretation in the Supreme Court of India*, 55 STANFORD JOURNAL OF INT'L LAW 27 (2019).
- (3) Brian M. Blumenfeld, *Pacta Sunt Servanda - State Legalization of Marijuana and Subnational Violations of International Treaties: A Historical Perspective*, 46 PEPP. L. REV. 69 (2018).
- (4) Elana Rodman, *From Criminalization to Regulation: New Classifications of Cannabis Necessitate Reform of United Nations Drug Treaties*, 40 BROOK. J. INT'L L. 647 (2015).
- (5) Chris Wilkins & Sally Casswell, *Organized Crime in Cannabis Cultivation in New Zealand: An Economic Analysis*, 30 CONTEMP. DRUG PROBS. 757 (2003).