



Review Article

No country for self-love: Tracing the confluence of sex toys, right to sexual health and obscenity standards in the modern Indian landscape

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Abstract

World Health Organization and the Declaration of Sexual Rights by the World Association for Sexual Health affirm that sexual gratification is a fundamental human right. Sex toys, both manual and electronic, enhance sexual pleasure. In India, the moral and legal implications of using sex devices are complex, as they are seen as obscene or morally corrupt. Currently, India lacks specific laws that explicitly restrict or permit the sale of sex toys, but IPC has commonly resorted to banning the “sale, exhibition, advertising, import, or export” of sex toys due to its perceived “obscenity”. These items have become so prevalent that they are now sold openly in our living rooms through e-commerce, disguised as a “neck massager” or “personal body massager.” Morality has deeply influenced society, preventing patents for sex-related technologies despite meeting eligibility criteria. When morality takes precedence over the law, it is crucial to consider how to judge and potentially limit it.

In light of the above, through this paper, the researchers will critically analyze the question of the legality of sex toys in India, the right to sexual health of an individual, and the aspect of ‘obscenity’ which has made sex toys a taboo, along with the importance of regulation of sex toys and how the absence of a regulatory framework can have a negative impact on the health of the consumer.

Keywords: Sexuality, Sexual toys, Sexual Wellness, Right to health, Obscenity

Introduction

Indian temperament towards a topic as sensitive

and “morally corrupting” as sex can best be understood by way of the history of the country. It would not be wrong to state that the country has impacted and contributed greatly to the history of sex in the form of the very first works of literature, which viewed sexual activities as scientific phenomena. India may have pioneered using art and literature for sexual education. In Indian society, there were varying sexual practices, with powerful rulers indulging in the same with commoners, which symbolizes their hedonistic lifestyles awry of any morality. India is known for its religious and ethnic diversity, leading to a wide range of customs, beliefs, and lifestyles that shape people’s sexuality.

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India was a trailblazer in sexual expression, curiosity, and education, and the Kamasutra is a living example of this.^[1,2] As one of the first literary works to do so, it delves into the joys of intimacy and affection. Gender equality and sexual liberalism have long been associated with Hinduism and Indian culture.^[3,4] Cultural philosophies, including those concerning sexuality, originate in the Indus Valley Civilization, which emerged around 2700 B.C.E. The earliest documentation of sexuality and viewpoints on sex exist in the ancient scriptures of Hindus and Buddhists, specifically the Vedic Script, which contains righteous wisdom regarding sex, matrimony, and productivity-enhancing rituals.^[5]

The tenure between the 1st century and the 6th century witnessed the coming of the Kama Sutra written by Vatsyayana, which served as dictums on love and lovemaking. India illustrated the history of sex, and it has been argued that the written word “Kama” as a science originated in prehistoric India.^[6] India led the way in expressing sexual understanding and philosophical thought through arts and crafts and penned classics. The Kama Sutra explores sexual desire beyond marriage and guides sexual satisfaction within matrimony.^[7]

The Kama Sutra is well-known today, yet it is not the only ancient Indian text of its kind. In contemporary times, writing archives spread across borders, including Buddhist manuscripts with Chinese adaptations. In Charvaks’ Charvak Darshan, the focus had been on the importance of reasoning in life, denying the existence of God and ideas related to Kama.^[8]

During the 10th to 12th centuries, India saw a surge in artistic expression, featuring open depictions of romantic themes. For instance, the depiction of Apsaras in ages-old Indian temples resembles the portrayal of nymphs and sirens in European and Arabic mythology.^[9] The Khajuraho temples in the Indian state of Madhya Pradesh, circa ninth to twelfth century, are considered extremely symbolical of this era. Also noteworthy are the “Kama Tantra”^[10] and “Smriti Ratnavali of Vacaspriti” from the fourteenth century.^[11]

During the era of discovery, which lasted from the fifteenth to the seventeenth century, the English, the Dutch, and the Portuguese reestablished trade routes to India via round Africa. Following the 1857 Indian Rebellion and the widespread criticism

of the John Company (East India Company), the British crown asserted absolute authority and control of the Indian subcontinent with the passage of the 1858 Government of India Act, which abolished the East India group’s emissary role. Sexual liberalism in India was severely impacted by Victorian values. The dismissal of the pluralistic and liberal tenets of Hinduism was justified because they were “primitive and barbaric”, serving as evidence of the East’s inferiority. Although the reformative movements in India sought to improve civic life, they also introduced a strict approach to sexuality, even within the institution of marriage.^[12]

Sex toys: Then and Now, Why and How

Sexual devices, whether manual or electrical, are devices that stimulate the sexual system in order to increase pleasure. Sex devices may also be utilized to alleviate symptomatic conditions such as erectile dysfunction, genital arousal syndrome, hyperactive sexual disorder, and orgasm disorder. Vibrators (commonly sold in India as personal massagers), dildos, anal toys, sleeves (also called masturbation sleeves), penis rings, pumps for penis erection, Ben Wa balls/Kegel balls that improve pelvic muscles, packers (also called prosthetics), and harnesses or garments that hold a sex toy in place against the body are some of the various types of sex toys currently available for sale in markets.^[13]

Exploring the history and development of sex toys is an intriguing voyage across different cultures, periods, and societal norms. Throughout history, various objects have been crucial in human expression of sexuality, satisfaction, and exploration. One of the earliest known sex toys dates back nearly 28000 years.^[14] Ancient civilizations of Egypt, Greece and Rome utilized different objects for sexual pleasure. Objects resembling phalluses, crafted from stone, wood, or leather, have been discovered in archaeological excavations, suggesting an early form of sexual device.^[15] These items were frequently linked to fertility ceremonies, spiritual activities, or individual enjoyment.

In the year 1300 AD, China experimented with innovation in the realm of sexual devices, leading to the creation of cock rings and double-sided dildos.^[16] A cock ring is placed at the base of the penis to prevent blood from flowing out. This would enable the individual to maintain an erection

for an extended duration. The double-sided dildo was a lengthy, slender object made of metal or wood that had two pointed tips. Some toys were

also made from jade, which was believed to bring good luck.



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Approximately in the year 1400 AD, the term “dildo” was initially used. It originates from the Latin term “dilatare”, meaning “open wide”, and the Italian word “diletto”, meaning “delight”.

In Europe during the Renaissance era, the utilization of sex toys ended up being more common, though discreetly. Works like “The Perfumed Garden” from 15th-century Arabia and “I Modi” from 16th-century Italy gave the audience a glimpse of a heaven on earth where pleasure and fantasies are unrestricted, as described by the Arabic term *al-khatir*.^[17] The Industrial Revolution led to improvements in manufacturing methods, resulting in the widespread manufacturing of sex toys.

During the Victorian era in England, specific adult toys were more prevalent than expected. Although the Victorians were recognized for their conservative nature, they were also highly repressed in terms of sexuality. This resulted in the creation of vibrators and other tools to alleviate sexual tension.

The common belief is that vibrators were first developed to alleviate women’s hysteria. It was an umbrella term for a variety of symptoms that were supposed to originate from a woman’s uterus. Anxiety, impatience, a lack of sexual desire, and seizures are all possible symptoms. As a treatment for hysteria, doctors would stimulate a patient’s

clitoris. The vibrator was a godsend because the process of relieving the woman manually was time-consuming.

More liberal and free attitudes towards sexuality occurred during the sexual revolution of the 1960s and 1970s, which paved the way for the commodification and widespread acceptance of sex toys. The swift change in public language and standards around sex throughout the long 1960s is apparent, even if historians are still uncertain about many elements of people’s genuine sexual behaviors during that time.

There is a complicated web of relationships between India’s colonialism, its religious and cultural legacy, and the evolution of sex toys in the nation. Objects found in the Indus Valley Civilization and other ancient Indian cultures point to the use of sexual aids in fertility rites and for sexual pleasure. Open dialogue about sexuality and sexual activities was already severely limited in India before the colonial period, when the British imposed Victorian prudishness and morality. However, sexual literature and sex toys from the West were also imported at this time, though in modest quantities and mostly linked to the aristocrats and colonial officials.

Societal views on sexuality started to change subtly in India after independence, especially with the rise of globalization and the internet. Numerous

vibrators, dildos, lubricants, and bondage, discipline (or domination), sadism, and masochism 'BDSM' devices are available in adult shops as well as online platforms to satisfy a variety of tastes and needs. Today, courtesy of online platforms, customers may shop online in complete secrecy and a plethora of selections to suit every desire and whim. As time goes on and new materials, techniques, and technologies are developed, sex toys also undergo continuous evolution.

Sale and market trends in India

As traditional taboos began to break down, the use of sex toys became more widespread and socially acceptable. From vibrators and dildos to bondage gear and erotic literature, the market expanded to meet the demand for sexual aids that reflected the newfound ethos of sexual freedom. The sexual revolution not only democratized access to sex toys but also fostered a deeper understanding and appreciation of sexual pleasure as a fundamental aspect of the human experience.

In addition, sex toys have become more acceptable in society as a whole due to the decreasing stigma of sexuality and the increasing portrayal of varied sexualities in popular culture.^[18] This has led to a rise in the popularity and accessibility of sex toys, which many now use for intimacy, pleasure, and sexual exploration.

Sex toys are freely accessible and may be found in shady places in Delhi, such as the Palika or Mumbai's Crawford market. Online business of sexual wellness adult products has of late boomed due to the extensive range of products offered. The Global Sex Toys industry is projected to reach \$54.6 Billion by 2026.^[19] The valuation of the Indian sex toys market stands at around USD 112.45 million, and a compound annual growth rate (CAGR) of 15.24% will be seen throughout the projected period.^[20] Kama Gizmos, India's first sexually explicit toy store, debuted in Goa's Calangute.^[21] However, it had to lock its doors within two months because it lacked a commercial license.^[22] Selling and displaying adult items is typically restricted by law and social taboos, which has been a problem for traditional sex toy retailers. People who want a variety of sexual health goods but do not want to deal with the shame of going to a store to get them have turned to internet platforms.

Regarding the covert sale of adult items online, IMbesharam was an early pioneer in India, having launched in 2011.^[23] The extensive variety of sex toys, lingerie, and sexual health goods offered by IMbesharam, together with their dedication to consumer privacy, have contributed to its success. Indulging one's sexual fantasies has never been easier than with this platform, thanks to its user-friendly design, safe payment choices, and discreet packaging. The 2013 debut of "ThatsPersonal," which addresses the sexual wellness requirements of Indian customers,^[24] is another relevant example. Intimate lubricants, sexual accessories, and sex toys are all available at Thats Personal, where clients may buy in peace and privacy. By prioritizing affordability, quality, and client satisfaction, ThatsPersonal has established itself as a reliable online destination for those in search of intimate and erotic enhancements. In addition to the aforementioned platforms, numerous other e-commerce behemoths, including Amazon, Flipkart, and others, have commenced offering sexual wellness products, specifically vibrators, but labeling them as "personal massagers".

No 'play time' for adults: Analyzing the legal position of sex toys in India

The legal status of sex devices in the nation is ambiguous due to the absence of explicit prohibitions or regulations governing their production, distribution, or acquisition. Nevertheless, Section 292 of the Indian Penal Code may be applied to "...ban the sale, display, advertising, import, or export of sex toys. According to the law, a book, pamphlet, paper, writing, drawing, painting, representation, figure, or any other object is deemed to be obscene if it is lascivious, appeals to the prurient interest, or if its effect, or (where it comprises two or more distinct items), the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, taking into account all relevant circumstances." A person under the age of 20 who purchases, leases, or circulates an offensive object is subject to harsher legal penalties. However, ambiguity exists due to the subjective nature of the term "obscene" and being susceptible to interpretation. As per the provisions outlined in Section 292, content is deemed obscene when it "exhibits lascivious behaviour gratifies illicit desires, or possesses the capacity to deprave

and corrupt the audience member, viewer, or listener”.^[25] Nevertheless, delineating what qualifies as lascivious, prurient, or vulgar is completely subjective. The judiciary determines whether a product’s marketing targets a perverted mindset in light of societal norms.

Section 292 will remain ambiguous until the Supreme Court renders a decision regarding its legality or legislators amend the provision with greater clarity. An English legal decision defines obscenity,^[26] and the Supreme Court further confirmed this ruling in *Ranjit D. Udeshi v. State of Maharashtra*.^[27] So, everything that may corrupt and deprave people whose brains are vulnerable to such immoral influences is considered obscene. Without infringing on anyone’s constitutional rights, this must be considered in the context of the information’s potential impact on contemporary social morality.

India lacks clear laws regarding sex toys due to a combination of cultural, societal, and legal reasons. Indian society often has a conservative perspective on matters of sexuality, generally seeing conversations on topics such as sex toys as taboo. This societal mentality hinders the creation of dynamic laws regarding the sale, ownership, or use of such items. India’s legal system prioritizes urgent matters like poverty, crime, and social welfare, which limits the legislative focus on specialized topics such as sex toys. In India, the legislative procedure is typically sluggish and intricate, generally involving thorough discussions and agreement among parliamentarians before any new legislation can be implemented. Furthermore, legislators may lack insight or comprehension of the necessity of regulating the sex toy sector to guarantee safety for consumers and enhance sexual health. The subject lacks prominence on the legislative agenda due to insufficient campaigning or persuasion from civil society groups.

Sex toys and the right to health

When it comes to people’s overall health, sexual wellness is often skipped over. Various international legal instruments assure the right to optimal mental and physical well-being. A person’s freedoms include the following: the ability to decide on one’s own bodily choices (including sexual and reproductive rights) and the absence of coercion in making those decisions (including the

prohibition of torture and other cruel, inhumane medical practices, especially those involving people with disabilities).^[19,20]

As enshrined under Article 21, the Constitution of India guarantees the Right to Life and Personal Liberty to all its citizens. One of the numerous unenumerated rights, which are those not explicitly mentioned under this provision but have been impliedly enforced through subsequent judicial decisions, is the right to privacy and safety. This unenumerated right was established in the landmark case of *Justice K S Puttaswamy (Retd.) v Union of India*,^[21] which stated that the “Fundamental Right to Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation.”

It has been vehemently argued by the flag bearers of individual liberty and fundamental rights that this judgment establishes the right to privacy as an inalienable right regardless of one’s sexual orientation.^[22] Thus, what happens in one’s bedroom is one’s own private affair and not of anyone’s concern.^[23]

The High Court of Calcutta rendered a seminal decision regarding the ethical and legal implications of selling and using sexual toys in India. In its ruling of *Kavita Phumbra v Commissioner of Customs (Port)*,^[24] the Honorable Court affirmed the provision set out in Part III of the Constitution and declared,

“Regard being had to the prevailing social mores and standards of morals in our country the goods and items do not reflect anything obscene. Merely because the rules of some of the games may have an erotic and aphrodisiac content or may have a titillating effect for arousing sexual desires these items, without anything more, cannot be labelled as obscene. The rules of the game have not employed any offensive language. In our opinion, an article or instruction suggesting various modes for stimulating the enjoyment of sex, if not expressed in any lurid or filthy language, cannot be branded as obscene. If that not be so, books like *Kama Sutra* should also be banned on the charge of obscenity as this ancient Sanskrit treatise on the art of love and sexual techniques also candidly contains various instructions for heightening the pleasures of sexual enjoyment.”

Understanding obscenity and its contours

The term “obscenity” originates from the Latin phrase “obscena”, which means “offstage”. The term may denote a profound moral abhorrence or conveys something contrary to proper behavior, chastity, or decency. Obscene language evolves in tandem with society, values, and popular culture. Numerous factors directly influence the standards and degree of indecency, which is difficult to condense into a few words.

As defined in *State of U. P. v. Thakur Prasad*,^[25] “the word obscene though not clearly defined in the Indian Penal Code, 1860 must be taken as meaning offensive to chastity or modesty, expressing or personating to the mind or view something that delicacy, purity or decency forbid to be expressed; anything expressing or suggesting unchaste and lustful ideas; impure; indecent and lewd.” In *Chandrakanth Kalyandas Kokodhar case*,^[26] The Apex Court observed that “the tendency of the matter is to deprave and corrupt those whose minds are open to immoral influence and into whose hands the book may fall, but if the propagation of idea, opinion or information be for public interest, it would not fall within the mischief of obscenity”.

The word “obscene” was defined by the Supreme Court in the very first instance of the case of *Ranjit D. Udeshi v. State of Maharashtra*.^[27] The decision was based on the standard used in the renowned *Hicklin case*.^[28]

One important aspect of *Hicklin’s* test is that it takes the presented content out of context. Another important aspect is that it assesses the material based on its apparent impact on the most sensitive readers. However, it is impossible to apply the test established in the *Hicklin case* to all cases involving obscenity due to variations in cultural values and moral standards across nations.

At present, Indian courts employ the community standards test, established in *Aveek Sarkar v. State of West Bengal*,^[29] and is supported by Canadian and American legal precedents to determine whether a specific piece of content is obscene.^[30] In this case, the Supreme Court ruled that the photograph featuring the couple in a nude state does not qualify as “obscene” as defined in Section 292 of the Indian Penal Code.

The *Hicklin* test, which focused on individual aspects of the work and not the entire work to determine obscenity, was rejected in this case, and the court adopted the community standards test; “A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The picture should be suggestive of deprave mind (sic) and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of “exciting lustful thoughts” can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards.”

The Judiciary has made its best efforts to mitigate the situation. However, the imbalance between rights and reasonable restriction persists, causing legal perplexities. The underlying problem herein is the inefficiency of the judiciary and lack of jurisprudential consistency in deciding such questions, as is evident from the above-discussed case laws. The fundamental and unresolved issue here is that the community standard test does not include any community input. Inconsistent enforcement of obscenity laws might result from these standards’ substantial variance among communities. Legal ambiguity and possible discrimination might result from what some communities find repugnant may be perfectly acceptable in others. Further regulating obscenity in the digital era can be challenging since community standards do not always keep up with changing social norms and technological advances.

Conclusion : Choosing to preserve community standards or prioritise trade and competition

Prohibiting sex toys in India has far-reaching consequences for commerce, healthy competition in the market, and cultural perspectives on sexuality. At first, it hampers innovation in the adult product arena. Businesses in India are losing out on chances for expansion and prosperity because they can’t meet the worldwide demand for sex toys. This constraint hampers both local trade and India’s ability to compete internationally. Banning sexual wellness devices also limits consumer

freedom and freedom of choice. Many items that may improve people's sexual health and enjoyment are not available to them. Not only does this limitation violate people's right to choose, but it also reinforces antiquated views about sexuality and pleasure. It adds to the taboo and shame that surrounds conversations about sexual health and intimacy in our culture.

Moreover, the ban encourages the growth of an uncontrolled underground market for such devices. If legitimate purchasing options are unavailable, buyers can buy dangerous or counterfeit items from untrustworthy sources. This presents substantial health hazards and weakens initiatives to encourage sexual health and education. Moreover, the prohibition on sex toys impedes India's involvement in the global market and limits prospects for foreign commerce. India's ban on sex toys puts it at a competitive disadvantage compared to countries where these products are legal and easily accessible. This hinders economic progress and strengthens obstacles to communicating and educating about sexual health and wellness. A recent example of the same has been the "We Vibe" vibrator, which was refused patent in India on the grounds of it being contrary to "morality".^[31]

Thus, it is in the best interests of consumers, international trade, and healthy market competition that regulations governing sexual wellness devices are not overly subjective or susceptible to arbitrary interpretation without community input. Community participation ensures that laws are in accordance with societal standards, so improving legitimacy and accountability. Decentralizing the decision-making process would foster a sense of ownership and accountability among Indian citizens, ensuring that rules adhere to democratic principles. By including communities, individual rights and communal interests are safeguarded, resulting in a more comprehensive and adaptable strategy for addressing complex moral issues in society.

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