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## Sex Toys and their Legality in India

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*The state has no place in the bedrooms of the nation.”- Pierre Elliot Trudeau.*

*Sexual pleasure is a human right, according to the World Health Organization and the Declaration of Sexual Rights by the World Association for Sexual Health, which was ratified by international bodies including the United Nations. Sexually stimulating items, whether manual or electronic, are used to increase the enjoyment of the sexual activity. The use of sex toys in India is morally and legally debatable since they are used for sexual enjoyment. Nearly 70% of the sex toys produced worldwide are made in China. The sex toy industry in India has moved from underground operations in seedy alleys to our living rooms because of the boom in e-commerce. For so long, this sector was prevented from growing because sex toys were socially and morally taboo. The confusion surrounding the use and selling of sex toys was further exacerbated by the ambiguous interpretation of antiquated regulations. As of right now, India doesn't have any laws that either prohibit or allow the selling of sex toys. However, the sale, display, advertisement, import, or export of sex toys may be prohibited under Section 292 of the Indian Penal Code due to obscenity. The right to privacy includes the right to sexual privacy. Law has no business interfering with the private decisions made by adults. But if the activities are not consensual, legal regulation is crucial. In this paper, I have tried to throw light on the legality of the sex toy market in India. I have given a detailed explanation of the right to privacy and also various laws that back it. Further, I have also incorporated some famous cases to understand the law relating to obscenity. This paper concludes and recommends reforms to address this problem.*

**Keywords:** *market, sex toy, sexual disability, patentability, privacy, obscenity.*

## INTRODUCTION

In terms of sexual expression, curiosity, and education, India was a pioneer.<sup>1</sup> The world-renowned Kamasutra<sup>2</sup>, one of the earliest works that examine the delights of intimacy and love, was written by Indians. Indian culture, which has strong Hinduism-related origins, was historically associated with gender equality<sup>3</sup> and sexual liberalism<sup>4</sup>. In India at this period, marriage and spiritual development often included the usage of sex toys. Couples can strengthen their bond with one another and with the gods and goddesses by engaging in sexual activity. serving as a vehicle for individuals to connect with their bodies, achieve greater levels of self-actualization, and experience more passionate connections. According to Google Trends, "sex toy stores near me" has been a breakout growing search in the previous five years, and "how to create sex toys at home" has been a breakthrough rising search in the last twelve months as a result of the epidemic. The latter might potentially be the outcome of one of India's most popular misunderstandings regarding sex toys: "Sex toys are prohibited." Adult toys are a derogatory term for sex toys. They are things used by humans to increase their enjoyment during sexual intercourse or masturbation. A doctor may prescribe them to a patient who has sexual dysfunction or a medical issue. Overall, they assist a person in getting the most out of their sexual life. Female consumers account for 63.2% of the market share for these toys globally.<sup>5</sup>

The most popular toy is vibrators, often known as personal massagers, which vibrate around your genitals to stimulate sexual excitement. It can also be used to stimulate male genitals. Vibrators come in a variety of forms and sizes, and some of them may even be used inside the vagina. They are currently considered to be the most trusted companion of women. Dildos, penis rings, anal toys, and other adult toys are available. Indian marketplaces are gradually

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<sup>1</sup> Sujita Kar et al., 'Sex Education In India: Why, What, When, Where, Whom?' (*ResearchGate*, January 2017) <[https://www.researchgate.net/publication/318393228\\_Sex\\_Education\\_In\\_India\\_Why\\_What\\_When\\_Where\\_Who](https://www.researchgate.net/publication/318393228_Sex_Education_In_India_Why_What_When_Where_Who)> accessed 06 December 2022

<sup>2</sup> Sudhir Kakar et al., *Kamasutra* (1st Edition, Oxford University Press 2002)

<sup>3</sup> 'Gender equality' (*UNICEF*) <<https://www.unicef.org/gender-equality>> accessed 15 December 2022

<sup>4</sup> Banwari Mittal & Walfried M. Lassar, 'Sexual Liberalism as a Determinant of Consumer Response to Sex in Advertising' (2000) 15(1) *Journal of Business and Psychology*

<sup>5</sup> 'Sex Toys Market Expected To Garner \$45,767.2 Million By 2026, At A CAGR Of 7.9%' (*Research Dive*, March 2020) <<https://www.researchdive.com/158/sex-toys-market>> accessed 06 December 2022

adjusting to the varied toys based on demand. Given India's socioeconomic situation, adult toys are mostly acquired through e-commerce websites. Through their websites, e-commerce companies enable variety, quality, and the provision of essential information regarding sex toys in India. Websites like Snapdeal, thatspersonal.com, and besharamtoys. in, love treats. in, and others are instances of this type.

## **SALE OF SEX TOYS IN INDIA**

Adult lifestyle goods have long been offered on the black market, frequently by street sellers. Sex toys are so readily available and simple to locate that one might easily find them in the Palika Bazaar in Delhi or the Crawford Market in Mumbai. In the last few years, the e-commerce market for adult or sex toys has experienced a boom due to the wide variety of toys available. Global Sex Toys market to reach \$54.6 Billion by 2026.<sup>6</sup> The global market for Sex Toys was estimated at US\$35.1 Billion in the year 2020,<sup>7</sup> so this is not a new phenomenon. In the absence of their customary escapes through sexual releases, the epidemic may have also driven individuals to accept their sexual urges and embrace self-pleasure. Sales of sex toys increased by 65% during the pandemic-related countrywide lockdown.<sup>8</sup>

Numerous studies published in online peer-reviewed publications examined the relationship between the pandemic and sexual behaviour, demonstrating how people changed their sex practices in a society where physical contact with another person posed a health risk. Adult items are big business in India, whether it's because of rising knowledge of sexual wellness, pandemic-induced loneliness, or (and this is most likely) a combination of both. The first sex toy store in India opened in Goa's Calangute under the name Kama Gizmos, but it closed down two

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<sup>6</sup> 'Global Sex Toys Market Report 2022: Market to Reach \$54.6 Billion by 2026' (*Business Wire*, 17 January 2022) <<https://www.businesswire.com/news/home/20220117005401/en/Global-Sex-Toys-Market-Report-2022-Market-to-Reach-54.6-Billion-by-2026---ResearchAndMarkets.com>> accessed 06 December 2022

<sup>7</sup> *Ibid*

<sup>8</sup> Krupa Joseph, 'Bad time becomes bed time:adult toy sales rise by 65%' (*Deccan Herald*, 14 August 2020) <<https://www.deccanherald.com/metrolife/metrolife-cityscape/bad-time-becomes-bed-timeadult-toy-sales-rise-by-65-873184.html>> accessed 06 December 2022

months after opening due to a lack of a trade license<sup>9</sup>. This proves once more that e-commerce platforms have a monopoly on the sex toy market and are the only options for consumers to satisfy their needs.

## SALE OF SEX TOYS IN OTHER COUNTRIES OF THE WORLD

Comparing the sale of sex toys and its legality in the following countries belonging to the different continents of the world: The Red Light District in Amsterdam, Netherlands, where the sex business operates openly and without moral connotations, is well-known. The sole restriction on the selling of sex toys to minors applies to the nearby sex stores,<sup>10</sup> which are also lawful.<sup>11</sup> Despite having a robust sex business, Thailand continues to ban the selling of sex devices. This is so that they don't violate the nation's list of restricted things, which classifies them as obscene goods. Anyone found selling, purchasing, or in possession of sex toys faces a sentence of up to three years in prison, a fine of up to 60,000 Thai baht (\$2,000), or both.<sup>12</sup> Due to the perception that sex toys are "against the perspective of Thai society,"<sup>13</sup> the government has maintained the prohibition on them. In Australia, the sex toy business is legal there,<sup>14</sup> and in 2018 sexual wellness goods began to be subject to ISO (International Standardization Authority) safety regulations.

In the UK, the sale of sex toys is allowed. To operate a sex store, or any location where sex toys, books, or films are sold, one must obtain a license from the local government. In the case of the USA, various states and provinces have different laws governing sex toys. For instance, in

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<sup>9</sup> 'India's first offline sex toy store shuts within 2 months of launch' (*Business Today*, 18 March 2021) <<https://www.businesstoday.in/latest/trends/story/india-first-offline-sex-toy-store-shuts-within-2-months-of-launch-291090-2021-03-18>> accessed 06 December 2022

<sup>10</sup> 'Sex Shops in Amsterdam' (*Amsterdam*) <<https://www.amsterdam.info/shopping/sex-shops/>> accessed 06 December 2022

<sup>11</sup> *Ibid*

<sup>12</sup> Nikki Natividad, 'Thailand's Illegal Sex Toy Market Is Booming' (*Vice*, 16 April 2021) <<https://www.vice.com/en/article/5dbmx8/thailand-ban-sex-toys-illegal-market-booming>> accessed 06 December 2022

<sup>13</sup> *Ibid*

<sup>14</sup> Caitlin Fitzsimmons, 'Made cheaply in huge quantities: sex toys to get safety standards for the first time' (*The Sydney Morning Herald*, 8 December 2019) <<https://www.smh.com.au/business/consumer-affairs/made-cheaply-in-huge-quantities-sex-toys-to-get-safety-standards-for-the-first-time-20191205-p53h9a.html>> accessed 06 December 2022

Alabama, the sale and possession of sex toys are prohibited, except for purchases made for medical needs.<sup>15</sup> The Texas Obscene Device Law makes it against the law to own more than six dildos.<sup>16</sup> Similarly to this, the top court of New York state reversed the 2015 ruling and said in 2017 that it might limit the number of sex stores.<sup>17</sup> Therefore, it is clear from the regulations, that are now in place in nations like India, Thailand, and the USA, that the reason that sex toys are outlawed is due to their perceived obscenity. However, the sale of sex toys is not connected to public morals or obscenity in the UK, Australia, or the Netherlands.

### **INDIA'S OBSCENITY LAW AND ITS IMPACT ON THE SEX TOY MARKET**

Not all sex toys may be purchased in India. One of the reasons why some items, like lifelike sex dolls, might be viewed as obscene is India's obscenity legislation. Whenever the question arises in our mind whether sex toys are legal or illegal in India and when we try to figure it out, unfortunately, we came across two answers to this question: yes and no. In India, explicit sex toys are not outright prohibited. However, uncertainty arises when their usage is interpreted differently. According to Section 11(1) of the Customs Act<sup>18</sup>, certain imported goods may not be used for the purposes specified in Section 2<sup>19</sup> of the Act, this involves upholding moral or decency standards as well as public order. As a result, the Customs Act gives authorities broad discretion in interpreting what constitutes an offence against morality and decency, allowing them to decide what may and cannot be imported into India.

Additionally, the market for adult toys in India is constrained by several Indian regulations against obscenity. Any product that is sold in violation of obscenity laws may be subject to punishment under Section 292 of the Indian Penal Code. If anything is deemed to be lascivious

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<sup>15</sup> 'Alabama Sex Toy Drive-Thru Business on the Rise' (*CBS News*, 30 December 2010) <<https://www.cbsnews.com/news/alabama-sex-toy-drive-thru-business-on-the-rise/>> accessed 06 December 2022

<sup>16</sup> Tony Dunnell, '10 Strange Sex Laws in the United States' (*Mental Floss*, 8 February 2021) <<https://www.mentalfloss.com/article/641817/strange-sex-laws-united-states>> accessed 06 December 2022

<sup>17</sup> Jonathan Stempel, 'New York City curb on sex shops is constitutional: NY top court' (*Reuters*, 6 June 2017) <<https://www.reuters.com/article/us-new-york-adultentertainment-idUSKBN18X2A1>> accessed 06 December 2022

<sup>18</sup> Customs Act 1962, s 11(1)

<sup>19</sup> Customs Act 1962, s 2

and falls inside this grey area of Indian law, it might be a sex toy, a decorative item, or even a work of art. According to a decision by the Calcutta High Court, sex toys are not to be regarded as offensive if they are used privately at home. Therefore, sex toys that are not advertised or shown offensively are technically lawful in India. They may be considered to have violated Indian obscenity laws if they contain obscene packaging or promotion.<sup>20</sup> But because the term "obscene" is subjective and susceptible to interpretation, there is uncertainty. According to Section 292,<sup>21</sup> a piece of content is considered obscene if it is lascivious, appeals to immoral desires, or has the potential to deprave and corrupt the reader, viewer, or listener. However, the definition of what is lascivious, prurient, or obscene is wholly arbitrary. Based on societal norms, courts attempt to evaluate if the product's marketing appeals to a perverted mindset. Legally speaking, items with attractive packaging and controlled marketing messages should be acceptable; nonetheless, ambiguity gives room for interpretation by government agents like customs inspectors. Additionally, they have a structural incentive to take extra precautions. So there is a chance that Customs will seize sex toys if imported from outside.

Until the Supreme Court rules on the legality of sex toys or until the more precise language is added to Section 292<sup>22</sup> by legislators, this ambiguity will continue to exist. The selling of any goods or materials that are deemed to be "obscene" in nature is forbidden by Section 292 of the Indian Penal Code. Obscenity is defined under the section as "lascivious or appeals to the prurient desire," which merely implies that it contains a lustful aspect or has the potential to "deprave or corrupt" a person. The fundamental purpose of sex toys is to excite and improve a person's sexual experience. They in no manner promote desire or otherwise corrupt a person, as stated in the section. In the 2011 case of *Kavita Phumbhra v Commissioner of Customs(Ports)*, it was observed that adult toys target a certain section of the population, that is seen to be responsible and use items in an adult way. The court emphasized that sex devices cannot be classified as "obscene" just because they give sexual pleasure. Additionally, they are meant to be

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<sup>20</sup> Vageshwari Deswal, 'Sex Toys: An Ethico-legal conundrum' (*The Times of India*, 16 March 2021) <<https://timesofindia.indiatimes.com/blogs/legally-speaking/sex-toys-an-ethico-legal-conundrum/>> accessed 06 December 2022

<sup>21</sup> Indian Penal Code 1860, s 292

<sup>22</sup> *Ibid*

consumed in secret and cannot corrupt others. Unofficial estimates place the Indian market for adult toys at Rs. 10,000 crores.<sup>23</sup>

The e-commerce players have recognized this potential, leading to several sites offering these items but utilizing deft marketing techniques to avoid being penalized by obscenity laws. One of the common strategies is to market items that don't exactly resemble male genitalia but have comparable forms and do the same purpose. For instance, dildos are produced to resemble bananas rather than real penises, and vibrators are referred to as massagers. The website cautions purchasers that the product is only for those above the age of 18 and obscures a portion of the image with the phrase "discreet." Additionally, they let buyers know that the packaging would be understated and discrete to avoid drawing notice from the general public. These precautions are also taken to ensure that businesses are exempt from liability under Section 67 of the Information Technology Act of 2000, which forbids the publication or transmission of sexually explicit information online. To put India's anti-homosexuality legislation to the test, counsel Mr. Sushaas Joshi brought the e-commerce companies "Snapdeal.com" and "Ohmysecret.com" into the case in 2015<sup>24</sup>. He said that despite Section 377's<sup>25</sup> criminalization of the same behaviour, these materials encourage homosexual sex and are available for purchase.

Due to the Supreme Court's decision in the case of *Navtej Singh Johar v Union of India*, "carnal intercourse against the order of nature" is now deemed to be unconstitutional. In this case, the right to privacy was upheld, and it was determined that discrimination based on sexual orientation violated the right to equality. It's safe to state that adult toys are available for purchase in light of this decision. If any limits are put in place, they are usually done so based on morality and decency, which isn't a very good reason to prevent someone from having sex.

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<sup>23</sup> Ancy K Sunny, 'Why it is a good time for sex and adult toys in India' (*The Week*, 28 March 2019) <<https://www.theweek.in/leisure/lifestyle/2019/03/28/why-it-is-a-good-time-for-sex-adult-toys-india.html>> accessed 06 December 2022

<sup>24</sup> Apoorva Mandhani, 'Snapdeal and Ohmysecret.com taken to Court alleging sale of sex toys and accessories as being violative of Section 377' (*Live Law*, 26 February 2015) <<https://www.livelaw.in/snapdeal-ohmysecret-com-taken-court-alleging-sale-sex-toys-accessories-violative-section-377/>> accessed 06 December 2022

<sup>25</sup> Indian Penal Code 1860, s 377



## RESTRICTION ON PATENTABILITY OF SEX TOYS IN INDIA

The sale of sex toys is surrounded by legal uncertainty. And because of this uncertainty, different government departments, such as the patent office and customs, have different policies on sex devices. Sadly, many Indian customs officers have this widespread misunderstanding. To stop generic local counterfeit vibrators from being marketed in the market, an Ontario-based firm named Standard Innovation Corporation filed a patent application in India for a novel vibrator. According to the patent office, sex toys "lead to immorality and moral deprivation of humans" and hence were not acceptable. "These are considered useless or unproductive toys. Most of these are viewed as morally abhorrent by the law" said the officer. The idea of sexual pleasure has never been favourably embraced by the law, which has a negative attitude toward sex devices. When rejecting the application, the agency also cited Section 377 of the Indian Penal Code, 1860, a 155-year-old colonial-era provision that criminalizes homosexual acts and unnatural sexual relations. The Supreme Court is presently considering an appeal that would have some parts of the statute overturned.<sup>26</sup>

## RESTRICTION ON THE PURCHASE OF SEX TOYS IN INDIA

It is forbidden to import sex toys into India, according to Section 292<sup>27</sup>. The Indian Penal Code's obscenity provision, Section 292, is frequently used by the Customs Office to prevent the sale of sex toys. To put it another way, when sex toys are wrapped and sent to the customer, the box may occasionally be stopped by the Customs Office at the port of delivery and held there for examination. Following the inspection, the Customs Office may, at its discretion, issue a court summons to the seller and the purchaser. This is done to determine the product's purpose and whether it violates Section 292<sup>28</sup> definition of what is obscene or against public decency.

In the case of *Kavita Phumbhra v Commissioner of Customs* from 2011, certain items (sex toys/adult games) that the appellant imported to sell them to adults only were seized by the

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<sup>26</sup> 'India rejects patent plea for 'immoral' sex toy' (BBC, 14 August 2018) <<https://www.bbc.com/news/world-asia-india-45179057>> accessed 05 December 2022

<sup>27</sup> Indian Penal Code 1860, s 292

<sup>28</sup> *Ibid*



Additional Commissioner of Customs based on charges of obscenity under Section 292(1)<sup>29</sup>. The Calcutta High Court ruled, however, that the order of confiscation by Customs was not unlawful since, given the morality of the time, the in question products may be classified as indecent and so be considered forbidden articles. In addition, Section 377<sup>30</sup> may have been a basis for banning sex toys since they may be used to assist "carnal intercourse against the order of nature," or sexual activity other than that necessary for reproduction. But Section 377<sup>31</sup> is no longer a hindrance to the marketing of sex toys because of its reading down in *Navtej Singh Johar v UoI*<sup>32</sup> in 2018.

Despite the Calcutta High Court ruling and the reading down of Section 377<sup>33</sup>, there is still a lot of uncertainty around the legality of sex toys because there are no clear regulations or laws in place. Despite certain court rulings allowing it, there are still significant legal barriers to the selling of sex toys. The obscenity under Section 292<sup>34</sup> is extended to the internet by Section 67<sup>35</sup> of the IT Act. The indirect marketing of sex toys has experienced a surge due to the negative social stigma and regulatory implications associated with their selling. On Amazon and Nykaa, vibrators that are marketed as massagers are widely available. These items might remain unnoticed thanks to sterile marketing. To put it another way, it appears that there is a legal exception that permits the sale of sex toys as long as they do not go against a predetermined definition of obscenity.

## **RIGHT TO PRIVACY AND THE LIMITATIONS OF THE STATE**

In India, any hint of sexual activity causes everyone to squirm out of revulsion, terror, or because it is considered to be against our "culture." There is a very lengthy list of topics that make Indians uncomfortable to discuss, and the most recent incident involving Swara Bhaskar's character

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<sup>29</sup> Indian Penal Code 1860, s 292(1)

<sup>30</sup> Indian Penal Code 1860, s 377

<sup>31</sup> *Ibid*

<sup>32</sup> *Navtej Singh Johar v Union of India* Writ Petition (Criminal) No. 76/2016

<sup>33</sup> Indian Penal Code 1860, s 377

<sup>34</sup> Indian Penal Code 1860, s 292

<sup>35</sup> Information Technology Act 2000, s 67

masturbating in the movie "Veere Di Wedding" is just one more.<sup>36</sup> The fact that a woman was seen engaging in self-indulgence didn't sit well with the trolls on Twitter, who kept berating her for something as normal and healthy as self-pleasure. The "advisory direction"<sup>37</sup> prohibiting television networks from running condom commercials between 6 am and 10 pm, which was issued by the Ministry of Information and Broadcasting in December 2017, provides evidence of the issue. The issue we have when discussing anything having to do with sex, sexual health, or our genitalia. The Ministry's justification was that these commercials were "indecent, especially for youngsters" and would pique their "interest in harmful activities."<sup>38</sup>

This appears to be nothing more than the government's extremely handy justification for wanting to "preserve" our culture. However, this doesn't alter the fact that many young people in India engage in sexual activity.<sup>39</sup> If this is the case, then these condom advertisements will be very beneficial in reducing unintended pregnancies and the spread of STDs. Our culture continues to foster ignorance and amnesia rather than encouraging healthy conversations about sex, sexual health, and sexuality. In 2015, "Snapdeal," one of the biggest online retailers in India, was sued for selling various "Sex toys and accessories." Suhas Joshi, a Supreme Court attorney based in Delhi, said that online retailers were selling items that "aided or promoted homosexual intercourse."<sup>40</sup> Joshi continued by stating that he intended to "test the limits of Section 377<sup>41</sup> and India's attitude on homosexuality and its laws" and that it was unclear if the sale of such things

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<sup>36</sup> Ankur Pathak, 'Swara Bhasker Expertly Shut A Troll Who Shamed Her For The Masturbation Scene In 'Veere Di Wedding' (HUFFPOST, 8 June 2018) <[https://www.huffpost.com/archive/in/entry/swara-bhasker-expertly-shut-a-troll-who-shamed-her-for-the-masturbation-scene-in-veere-di-wedding\\_in\\_5c10ae1fe4b06e80c3f90558](https://www.huffpost.com/archive/in/entry/swara-bhasker-expertly-shut-a-troll-who-shamed-her-for-the-masturbation-scene-in-veere-di-wedding_in_5c10ae1fe4b06e80c3f90558)> accessed 05 December 2022

<sup>37</sup> SWATI MATHUR, 'No condom ad on TV from 6am-10pm: Govt' (*The Times of India*, 12 December 2017) <<https://timesofindia.indiatimes.com/india/no-condom-ad-on-tv-from-6am-10pm-govt/articleshow/62029990.cms>> accessed 05 December 2022

<sup>38</sup> Sandip Roy, 'No condom ads between 6 am and 10 pm: I&B ministry's problem is not with sex but with sex as pleasure' (*Firstpost*, 12 December 2017) <<https://www.firstpost.com/india/no-condom-ads-between-6-am-and-10-pm-govt-should-give-up-regulating-sex-instead-focus-on-sex-education-4254669.html>> accessed 05 December 2022

<sup>39</sup> 'Sexually active teenagers on the rise, finds study' (*The Times of India*, 9 July 2015) <<https://timesofindia.indiatimes.com/city/goa/Sexually-active-teenagers-on-the-rise-finds-study/articleshow/47994712.cms>> accessed 05 December 2022

<sup>40</sup> Apoorva Mandhani, 'Snapdeal and Ohmysecret.com taken to Court alleging sale of sex toys and accessories as being violative of Section 377' (*Live Law*, 26 February 2015) <<https://www.livelaw.in/snapdeal-ohmysecret-com-taken-court-alleging-sale-sex-toys-accessories-violative-section-377/>> accessed 05 December 2022

<sup>41</sup> Indian Penal Code 1860, s 377

was lawful or not. He objected to items like anal lubricants and massagers with the shape of the male phallus in his complaint because they broke the Indian Penal Code's Sections 377<sup>42</sup> (which punishes any form of carnal intercourse against the order of nature) and Sections 292<sup>43</sup>, 292 A<sup>44</sup>, 293<sup>45</sup> and 294<sup>46</sup> (all of which forbid the sale or distribution of obscene books, paintings, products, etc.). Section 292<sup>47</sup> states:

*"292. Sale, etc., of obscene books, etc. – 2 [(1) For sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or 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 persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."*

The question of what is lewd now emerges. To address this, the courts established several standards to determine what constitutes mischief or obscenity, beginning with the "Hicklin test" in the United Kingdom. In *Regina v Hicklin*, decided in 1868, the Court established the Hicklin test and made the following ruling:

*"The test of obscenity is whether the matter charged as obscenity tends to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."*

The Hicklin Test had the drawback that it determined whether a publication was obscene based on its impact on the most impressionable readers, such as youngsters or those with weak minds. However, in *Roth v United States* and *Regina v Butler*, the Supreme Courts of the United States and Canada respectively decided that the "Community Standard test" was a better alternative. The following was said in the Indian case of *Aveek Sarkar and Anr. v State of West Bengal and Ors-*

*"We are also of the view that the Hicklin test is not the correct test to be applied to determine 'what is obscenity'. Section 292 of the Indian Penal Code, of course, uses the expression 'lascivious and prurient interests' or its effect. Later, it has also been indicated in the said Section of the applicability of the effect and the necessity of taking the items as a whole and on that foundation where such items would tend to*

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<sup>42</sup> *Ibid*

<sup>43</sup> Indian Penal Code 1860, s 292

<sup>44</sup> Indian Penal Code 1860, s 292A

<sup>45</sup> Indian Penal Code 1860, s 293

<sup>46</sup> Indian Penal Code 1860, s 294

<sup>47</sup> Indian Penal Code 1860, s 292

*deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it. We have, therefore, to apply the 'community standard test' rather than the 'Hicklin test' to determine what is 'obscenity'.*

*A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it tends to arouse feeling or reveal an overt sexual desire. The picture should be suggestive of a depraved mind 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 tend '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."*

Thus, the Community Standard exam was favoured over the Hicklin test even in India. Even this test, however, does not fully address all the issues. This raises the question of whether it is permissible or unlawful to sell sex toys and other items related to sexual health in India. The best response would be that packaging and design are everything. Everything is permissible as long as it is not packaged or constructed in a way that "depraves or corrupts" the persons who have it or is "lascivious or appeals to the prurient curiosity." This brings up Martin O'Malley's remark that the government cannot enact laws in the homes of the people. The government shouldn't be able to intervene whether the toys, lubricants, etc. are being used for "sex," "gay sex," or "masturbation."

Government shouldn't have a say in what happens in the bedroom as long as it's fully healthy and voluntary. The following was stated<sup>48</sup> in the case of Justice K S Puttaswamy (Retd) v Union of India, even if it may sound quite idealistic given section 377 and the overall intrusiveness that is present in our nation:

*"Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation.*

*"[I]t is privacy which is a powerful guarantee if the state were to introduce compulsory drug trials of non-consenting men or women. The sanctity of marriage, the liberty of procreation, the choice of family life, and the dignity of being are matters which concern every individual irrespective of social strata or*

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<sup>48</sup> Anurag Bhaskar, 'Key Highlights of Justice Chandrachud's Judgment in the Right to Privacy Case' (*The Wire*, 27 August 2017) <<https://thewire.in/law/justice-chandrachud-judgment-right-to-privacy>> accessed 05 December 2022

*economic well-being. The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which makes no distinction between the birth marks of individuals."*

Additionally, Justice Puttaswamy's decision supported LGBTQI rights by stating that:

*"The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the constitution... [LGBT] rights are not so-called but are real rights founded on sound constitutional doctrine. They inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom. Sexual orientation is an essential component of identity. Equal protection demands protection of the identity of every individual without discrimination."*

Considering the ruling in this case, it is evident that our right to privacy is unalienable, regardless of our gender orientation, and that what we do with sex toys in the privacy of our bedrooms shouldn't be anyone's business, even if that person was merely trying to "test the limits of our anti-homosexuality law." When determining the validity of particular articles in *Kavita Phumbhra v Commissioner of Customs (Port)*, the High Court of Calcutta made the following findings:

*"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."*

## **AID TO PEOPLE WITH SEXUAL INCAPACITY AND SUPPORT LONG-DISTANCE RELATIONSHIPS**

The word "sex aids" refers to an item or equipment that is primarily meant to enhance human sexual enjoyment. Sex toys are frequently, but not always, used to describe such objects or devices. More than 30,000 years ago, archaeologists found a piece of a stone instrument that some authors believe may have been a sex aid because of its phallic shape, size, and smooth surface. This discovery marks the beginning of attempts to improve sexual activities through

the use of an item. According to some estimates, people have been using olive oil as a sexual lubricant since about 350 BC.<sup>49</sup> Males frequently experience sexual dysfunctions, which hurt their quality of life and enjoyment of their sexual experiences.<sup>50</sup> These dysfunctions frequently include various male sexual characteristics including reduced sex drive, ED, and ejaculation/orgasm disorders. The Kama Sutra, which was written in India circa 300 AD, described dildos and penile extensions made of wood or reeds attached to the waist as one of the earliest treatments for erectile dysfunction (ED).

Indeed, sex toys that are used for medical therapies have been approved by the Food and Drug Administration (FDA). Different sex aids exist, such as "Constriction Bands," which try to improve erections by increasing penile stiffness<sup>51</sup>, and "Dildos," which is a penetration-based gadgets for stimulating the vagina and/or the anus. Some medical professionals distinguish between dildos made for anal use and those made for vaginal use. Patients can use it to resume sexual activity after suffering catastrophic genitourinary injuries or to cure penile cancer. The possible advantages of engaging in this sex may help patients and their partners feel satisfied while reducing their anxiety about erectile failure. Although "vibrators" come into several broad categories, they have historically been associated with female sexual dysfunctions. Additionally, since the 1970s, penile vibrators have been used by individuals with spinal cord injuries (SCI) for anejaculation and ED.

In 2011, the FDA approved the use of penile vibrators to help men with SCI get erections and perform ejaculations. The pudendal nerve branches in the penis are hypothesized to be stimulated by the vibrations. Penile vibrator stimulation therapy may also be advantageous for people with poorly managed diabetes, congenital spinal cord abnormalities, and multiple

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<sup>49</sup> David Rivera, 'Sex Toys Through The Ages' (*Daily Ojo*) <<http://dailyojo.com/articles/sex-toys-through-the-ages.html>> accessed 05 December 2022

<sup>50</sup> Marita P. McCabe et al., 'Incidence and Prevalence of Sexual Dysfunction in Women and Men: A Consensus Statement from the Fourth International Consultation on Sexual Medicine 2015' (2016) 13(2) *The Journal of Sexual Medicine* <<https://www.sciencedirect.com/science/article/abs/pii/S1743609516000795>> accessed 05 December 2022

<sup>51</sup> Jonathan Silberstein & et al., 'CASE REPORTS: Penile Constriction Devices: Case Report, Review of the Literature, and Recommendations for Extrication' (2008) 5(7) *The Journal of Sexual Medicine* <<https://www.sciencedirect.com/science/article/abs/pii/S174360951532107X>> accessed 05 December 2022

sclerosis (MS). Vibrators that produce at least 2.5 mm of amplitude are preferred for usage in neurogenic patients seeking fertility for penile vibratory stimulation (PV) in obtaining semen. Examples of FDA-approved devices for males with SCI include the Ferti Care vibrator (Multicept, Albertslund, Denmark) and the Viberec-X3 (Reflexonic, Frederick, MD, USA). The dorsum and frenulum of the glans penis may be stimulated concurrently by the Viberec-X3 device's two built-in vibrating pads. The Ferti Care vibrator can also be used with two other devices in a "sandwich" configuration for increased effectiveness<sup>52</sup>. Men who use vibrators are more likely to report engaging in practices that promote sexual health, such as testicular self-examinations, and had better IEF scores (IIEF).<sup>53</sup>

Since the turn of the 20th century, "Vacuum Devices," or DVDs, have been used to increase erectile stiffness.<sup>54</sup> But more crucially, DVDs are now an FDA-approved non-surgical therapy option for ED. They did not, however, become extensively utilized until the 1970s. For men with ED who are reluctant or unable to have penile implant surgery, "External Penile Devices" focuses on external penile support devices that can facilitate sexual activity. "Neurodildo" is a pressure-sensitive, electrical stimulation (e-stim) feedback-equipped sex toy that can be operated wirelessly by brain waves. At the third International Congress on Love and Sex with Robots, the Neurodildo was first introduced as a conference paper (2017). For those with movement impairments, such as those with spinal cord injuries (SCI), who have trouble managing commercial toys and may have trouble having a sexual encounter, we devised and investigated the use of a mind-controlled sex toy. The potential for romantic connection in long-distance relationships is one of the many advantages that technological advancements may provide to people (LDR).

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<sup>52</sup> W Chong et al., 'Comparison of three methods of penile vibratory stimulation for semen retrieval in men with spinal cord injury' (2017) 55(10) Spinal Cord <<https://pubmed.ncbi.nlm.nih.gov/28555663/>> accessed 05 December 2022

<sup>53</sup> Michael Reece PhD et al., 'Prevalence and Characteristics of Vibrator Use by Men in the United States' (2009) 6(7) The Journal of Sexual Medicine <<https://www.sciencedirect.com/science/article/abs/pii/S1743609515325753>> accessed 05 December 2022

<sup>54</sup> H W Gilbert & J C Gingell, 'Vacuum constriction devices: second-line conservative treatment for impotence' (1992) 70(1) British Journal of Urology <<https://pubmed.ncbi.nlm.nih.gov/1638379/>> accessed 05 December 2022



In the past, the sole means of communication for a pair was through letters, followed by phone conversations. Live video chats via the internet became practical and common, and more recently, mobile devices emerged as crucial communication tools. LDR can happen for a variety of reasons, including but not limited to job responsibilities, professional choices, college courses, study abroad opportunities, or an individual's autonomy. While LDR may be advantageous, couples still encounter several difficulties, from time zone variations and technological issues while video chatting to a lack of the genuine physicality that most people require to enable intimate sexual actions.<sup>55</sup> Recently, businesses created items targeted toward couples in LDR, but not just for them. The items are sex toys with internet connectivity that can typically vibrate and are managed remotely by a computer program or mobile app. These gadgets fall under the category of "teledildonics" in the internet of things (IoT). The Lovense Lush, the We-Vibe Sync, and the Ohmibod Panty Vibe are the three most popular IoT sex toys.

The majority of these toys include a Bluetooth connection, can couple with a smartphone, and can be operated online via an app. Even though these sex toys are intended for couples, they only allow the user of the app, who is typically a man, to control the stimuli that are delivered to the person wearing the sex toy, who does not receive any other sexual stimuli other than the visual feedback of the woman experiencing sexual pleasure. Using services and goods made for LDR may be advantageous for people with SCI and other limitations. Both those with and without impairments may find a use for a teledildonic device. Given that a person, even with restricted arm mobility, has access to and can use a smartphone for controlling the sex toy after situating it, self-stimulation with teledildonic devices is also feasible.

One definition of a "Sex Robot" is: an artificial being utilized for sexual activities (i.e., for sexual stimulation and release). The following prerequisites must also be met by the sex robot: a) Humanoid form: Its appearance is meant to resemble that of a person or a person who looks like a person; b) Human-like movement and behaviour: Its movements and behaviours are meant to resemble those of a person or a person who looks like a person; c) Some level of artificial

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<sup>55</sup> Leonardo Mariano Gomes & Rita Wu, 'User Evaluation of the Neurodildo: A Mind-Controlled Sex Toy for People with Disabilities and an Exploration of Its Applications to Sex Robots' (2018) 7(3) Robotics & Autonomous Systems & Applications <<https://www.mdpi.com/2218-6581/7/3/46#B16-robotics-07-00046>> accessed 05 December 2022

intelligence (AI): It can comprehend and react to information in its environment. A sex robot can set itself apart from other robots, including industrial robots, by fulfilling certain requirements.<sup>56</sup> Sex robots can be explored from the perspective of the sexuality of individuals with disabilities as a viable human interaction technology. Many people, such as the severely physically and intellectually handicapped, as well as many older people who suffer from neurodegenerative illnesses, require help to satisfy their sexual requirements. Ezio Di Nucci, the author of the book “Robot Sex: Social and Ethical Implications”<sup>57</sup>, discusses the sexual rights of persons with disabilities and how sex robots could help them. In certain circumstances, when handicapped persons are unable to locate another person, such as a spouse or a sexual caretaker, who is prepared to assist them, sophisticated sex robots may be able to assist disabled people and help them attain sexual fulfilment. Although an uncontrolled market may indeed have a bad effect on health, particularly for children.

## CONCLUSION

One of the largest English-speaking populations in the world is found in India. India is positioned to have one of the most significant economies in the world in the years to come because of its ongoing adoption of contemporary business techniques and e-commerce. Indians are being exposed to western cultures and ideals more often as India keeps up with other westernized nations. Westernized nations influence individuals from all around the country with their free viewpoints through literature, movies, and television. The adoption of contemporary technology and internet services benefits India's corporate possibilities as well as how the world perceives India's lasting culture. Allowing for cultural acceptance and the interchange of ideas. Gender equality, sexual expression, and contemporary behaviours have all been influenced by this interchange, which has also allowed Indian culture, art, and design to impact westernized nations. enhancing the acceptability, accessibility, and fun of these products. establishing a movement that values the power of love and self-expression, highlighted by the buzzing thrill of sex toys for both men and women.

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<sup>56</sup> John Danaher & Neil McArthur, *Robot Sex: Social and Ethical Implications* (1st edn, MIT Press 2017)

<sup>57</sup> *Ibid*

The conclusion that can be drawn from the aforementioned article is that while selling and purchasing sex toys in person from street vendors is illegal and punishable, doing so online is not, as long as the retailer is mindful of his or her marketing plan and the laws and regulations established by the government, which state that "obscenity" of any kind or manner should be illegal whether it be in graphic form or physical representation. There are no concrete laws governing the sale of sex toys online in India. India is a rising nation on the social and economic fronts, and it is quickly adopting western culture and its adherents. At the risk of sounding cliché, it is time to emphasize that Indians have long practised sexual liberation and that their country is the land of "Kamasutra". The new morality of the twenty-first century is more personalized and subjective. It upholds the idea of consent, is not necessarily constrained by marital connections, and is intrinsically pleasurable. We are no different from the others who have accepted this new morality throughout the world. Although the sale of sex toys online is not prohibited in India, a specific regulation has to be implemented to legalize sex toy stores while imposing the required restrictions in light of our responsibility to protect children. Because of the nature of the goods to be sold, offline selling would attract more public attention from all age groups and sections of society, making it economically viable for our nation. It would also provide a source of ongoing employment, helping to lower the unemployment rate while also boosting the economy and being beneficial for those with sexual disabilities.