
DECRIMINALISATION OF SEX TOYS IN INDIA: A BID TO REDUCE SEXUAL OFFENCES?

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ABSTRACT

Sexual offences are a common occurrence in all societies and are a global phenomenon. Sexual offences often take the form of sexual assault, which can seriously and permanently harm the victims' physical and emotional well-being. An elevated risk of certain sexual and reproductive health issues is associated with physical damage. Its effects on mental health can be just as detrimental as those on physical health. When sexual offences take the form of sexual violence, victims may commit murder, commit suicide, suffer from severe despair, etc. Due to stigmatisation and the ensuing loss of status in their families and neighbourhoods, it severely impairs the social well-being of the affected.

With sexual crimes being ever on the rise in India, can the decriminalisation of sex toys and free sale of the same influence the behaviour pattern, resulting in the prevention of such crime? A sexual offence as contacting another person's sexual organs without that person's consent or engaging in sexual contact with them (including touching their sexual organs). Regardless of their relationship to the victim, anybody can interpret sexual violence as any coerced sexual behaviour in any context, including but not limited to the home and workplace. Coercion, which encompasses a wide range of degrees of force, is a key element in sexual violence. Numerous sex-related offences occur in a range of situations and societal contexts. The most notable ones include forced rape, statutory rape (sex with or without consent with minors), sexual abuse of mentally or physically disabled people, sexual assault (without sexual intercourse), adultery, sodomy, fornication, forced marriage and cohabitation, including the marriage of children, violent acts against the sexual integrity of women, including female genital mutilation, and mandatory virginity inspection.

The causes of crime, that is sexual in nature, the mental state of the offender committing such crimes can be narrowed down to etiological reasons including psychological, social and other factors and the legality of sex toys in India and their role, if decriminalised, in not just the regulation of such crimes, but the prevention thereof will be discussed through this article.

Introduction

A Sexual offence has been defined by the Law Reform Commission of Canada (1978) as sexual contact with another person (including touching of the sexual organs of another) or touching of another with one's sexual organs without that person's consent. Any person may understand sexual violence as any sexual act using coercion regardless of their relationship to the victim, in any setting, including but not limited to home and work. In sexual violence, coercion constitutes an important component, which covers a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats.

¹According to a survey by the Public Health Foundation of India, the rate of rape-related crimes in India increased 70.7 percent over the past 20 years, from 11.6 per 100,000 women and girls in 2001 to 19.8 in 2018. Though several statutory protections have been enacted to prevent sexual crimes and protect the victims of such crimes, including the Indian Penal Code and Protection of Children from Sexual Offences Act, 2012, none of the measures have been able to effectively curb them from increasing. Hence, there is a need to understand the circumstances, influences and the mental state of those who commit these crimes better and bring in alternative safeguards through which crimes that are sexual in nature can be regulated. Sex Toys which are sexually stimulating objects, whether manual or electrical, are used to increase the pleasure of sexual activity. Employed as means of sexual gratification, the sale and purchase of sex toys is morally as well as legally controversial in India. However, by the same virtue of them being a means of sexual gratification, they can play a role in controlling them.

Commission of Sexual Crimes and the Factors Behind Them

Sexual offences are a common occurrence in all societies and are a global phenomenon. Sexual offences often take the form of sexual assault, which can seriously and permanently harm the victims' physical and emotional well-being. An elevated risk of certain sexual and reproductive health issues is associated with physical damage. Its effects on mental health can be just as detrimental as those on physical health. When sexual offences take the form of sexual violence, victims may commit murder, commit suicide, suffer from severe despair, etc. Due to stigmatisation and the ensuing loss of status in their families and neighbourhoods, it severely impairs the social well-being of the victims.

¹ Bancroft, J. (1974)

A wide variety of sex related offences take place in different circumstances and social settings. Some of the most prominent ones are sexual assault (without intercourse), forcible rape, sexual abuse of mentally or physically disabled people, sexual abuse of children including statutory rape (sexual intercourse with or without consent with minors) adultery, sodomy, fornication, forced marriage and co-habitation including the marriage of children, violent acts against the sexual integrity of women including female genital mutilation and obligatory inspection for virginity and forced prostitution and trafficking of people for the purpose of sexual exploitation².

The etiological reasoning behind sexual crimes can be narrowed down to the following factors:

A. Psychological Factors:

The significance of cognitive elements among the range of conditions that might result in rape has been the subject of extensive investigation in recent years. It has been shown that sexually aggressive males are less aware of the effects of rape on victims and are more prone to hold the victims accountable for the rape. In comparison to males who are not sexually violent, they have coercive sexual fantasies, are often encouraged by access to pornography, and are generally more antagonistic toward women. In addition to these aspects, impulsivity and antisocial tendencies are thought to set sexually violent guys apart from other males. Additionally, they frequently exaggerate their feeling of masculinity.³

B. Early Childhood Environment:

There is evidence to show that, in some men, sexual violence—particularly child sexual abuse—is a learned behaviour. One in five sexually assaulted guys, according to studies, go on to molestation of youngsters in later life. These experiences may result in a pattern of behaviour in which the male frequently defends his use of violence, denies wrongdoing, and harbours erroneous and harmful sexual ideals. An early instance of poor socialisation continues to have an impact on future sexual behaviour decisions.⁴

C. Physical and Social Environment:

² H. J., Vetter (1978)

³ Drieschner, K., Lange, A. (1999), Koss M Dinero T. E., 1989, Crowell, N. A., Burgess, A. W, (1989)

⁴ Watkins, B., Bentovim, A., (1992)

While being outside one's house is generally connected with rape terror, the vast majority of sexual assaults actually take place at the home of the victim or the abuser. However, a stranger's kidnapping is frequently followed by a rape, and prospects for such kidnapping are impacted by the physical surroundings. However, the social environment within a society is typically more significant than the external environment. For instance, in some locations, rape may even take place in broad daylight with bystanders unwilling to assist. The police may also be tolerant with rape allegations, especially if the assault took place on a date or was carried out by the victim's spouse or other close family members. The methods may vary depending on how police investigations and court cases are handled.

D. Societal Factors:

Laws and national policies pertaining to gender equality in general and sexual violence in particular, as well as conventions relating to the use of violence, are examples of sociocultural factors that have an impact on sexual violence. While most of the impacts come from local elements such as families, schools, workplaces, and communities, there are also national and even worldwide laws and conventions that have an impact. In some small groups in India, it is common practise for men to sexually attack their wives. Women who have been assaulted are also not very dissatisfied since they view the attack as a sign of their husbands' affection.

Male sexual entitlement ideals are mostly to blame for the majority of sexual violence committed by males.

Women in these worldview systems have incredibly little alternatives to politely decline approaches toward sex. Thus, a lot of guys just don't consider the notion that a woman would reject their approaches or that she has the right to decide for herself whether or not to engage in sex. Although sex may be culturally taboo at specific periods, such as after delivery or during menstruation, many women and men view marriage as putting the duty on women to be nearly always accessible for sexual relations. The occurrence of rape has been closely linked to societal norms that encourage the use of violence to further goals. In societies where the ideology of male superiority is strong – emphasizing dominance, physical strength and male honour – rape is more common.⁵

⁵ Sanday, P., (1981)

E. Global Trends and Economic Factors:

Numerous national-level factors also have an international component. The mobility of women and girls throughout the world for labour, including sex work, has increased in response to global trends, such as those promoting free trade. International organisations' economic structural adjustment programmes have exacerbated poverty and unemployment in a number of nations, raising the risk of sexual trafficking and sexual assault in Central America, the Caribbean regions of Africa, and South East Asia.⁶

The ability to tell what is right from wrong may be taught via education, which is a crucial tool. A person's thoughts and personality are shaped by their education. The character of a person is permanently shaped by their early experiences. Sex education is a programme that imparts age-appropriate knowledge about sex, sexual health, sexuality, and sexual rights to young people.

In India, young males are raised in a predominantly masculine atmosphere with little to no sex education. After puberty, there is hardly any interaction with female peers in rural places. Schools work to keep boys and girls apart as much as possible and promote isolation between the sexes, even in metropolitan areas. Together, they enable views that are biased towards women to be prevalent and to continue into the next generation. As a result, respect for women and their right to equality in society must be instilled in children from an early age.

As men attempt to develop power relationships at the cost of women, unemployment and poverty may be factors in the rise in violence against women. Owing to their socioeconomic standing or position within the caste system, women who are already disadvantaged due to their gender identity are made even more vulnerable.

India therefore needs comprehensive sex education with an emphasis on raising awareness of sexual abuse and exploitation. Sex Education must be included in the curriculum in schools. These lectures, which emphasise how women's roles are evolving in society, can aid in empowering young people. In addition, they may raise awareness of violence against women and offer a secure environment in which to discuss misguided ideas about gender and masculinity.

⁶ Watts, C., Zimmerman, C., (2002)

The Role of Sex Toys in Reducing Sexual Crimes

Men outnumber women in the population of several Asian nations, with more men living there than women. India and China have some of the most unequal sex ratios in Asia, which have grown from parity in the 1980s to above 120 men for every 100 girls in several nations by the 2000s. This is believed to be based on the long history of son preference in many Asian cultures, which, along with improved availability to sex-selective technologies and abortion, has resulted in birth sex ratios that are increasingly unbalanced.

It has been hypothesized that uneven sex ratios in the population might be associated with social instability and violence. There are many potential mechanisms through which this could operate.

Many academic fields, including sociology, anthropology, and psychology, have put forth hypotheses to explain violence, particularly violence against women or violence in intimate relationships. Adopting a feminist perspective, contend that violence against women may be employed as a way of men retaining power and domination over women in patriarchal systems, which are centred on men having authority over them. Son preference, which results in unbalanced sex ratios, is a typical trait of patriarchal civilizations. Thus, this offers yet another theoretical foundation for the hypothesis that patriarchy causes uneven sex ratios to exacerbate violence against women. Other theories of violence emphasise how a lack of resources can contribute to more widespread violence since it can be utilised to get additional resources.

Discussing about sexual closeness is only one aspect of sex education. Consent, gender identity, gender equality, contraception, sexually transmitted illnesses, reproductive health, and self-worth are all covered. These are all significant issues to discuss when talking about sexual assault.

A new curriculum policy statement for sexuality education in all schools was produced by the New Zealand Ministry of Education in 2015. It is crucial to urge schools to consider sexuality as being intrinsically motivated by social and political causes. This policy is a rare worldwide example of a curriculum guideline that clearly embraces diversity and fosters inclusive educational settings. Additionally, it's important to teach them how to think critically and to educate them on all aspects of sexuality. In particular, research demonstrates how schools serve as important sites for the exclusion and marginalisation of young people who identify as non-

heterosexual all over the world. Additionally, rather than viewing sexuality education as a health intervention, the new policy views it as a field of study.

Sex Toys, form a crucial link in the chain of Sex Education, with being a means of instant gratification, they can be used as effective tools in mitigating several causes of commission of sexual crimes and in turn, prevent the same. To draw a comparison, in countries where Pornography was previously banned, results from several countries including Czech Republic, Canada, Croatia, Denmark, Germany, Finland, Hong Kong, Shanghai, Sweden, USA, showed that rape and other sex crimes have not increased following the legalization and wide availability of pornography. In addition, the study found that the incidence of child sex abuse has fallen since 1989, when child pornography became readily accessible – as seen in Denmark and Japan.⁷

Sex Toys and India

The sale of sex toys in the country is a legal grey area because there are no express prohibitions against or guidelines for their manufacture, sale or purchase.

On the grounds of obscenity, Section 292 of the Indian Penal Code ⁸ may be used 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. The law provides higher punishment if such obscene object is sold, let, or circulated to a person below 20 years of age.

The standard for defining obscenity is an English Law Judgment⁹, which the Supreme Court further upheld in *Ranjit D. Udeshi v. State of Maharashtra*¹⁰. Accordingly, any publication or object is deemed obscene if it has the potential to deprave and corrupt those whose minds are susceptible to such immoral influences. This must be viewed in light of the overall effect that

⁷ Legalizing pornography: Lower sex crime rates, Archives of Sexual Behavior (2010)

⁸ Section 292, The Indian Penal Code (1860)

⁹ *Regina v Hicklin*, LR 3 QB 360, (1868)

¹⁰ *Ranjit D. Udeshi v. State of Maharashtra*, AIR 881, (1965)

the information could have on social morals in modern society without compromising a person's constitutional rights. A violation of the law is considered "obscene behaviour."

But defining what is obscene is a subjective task that depends on the ambiguous notion of morality. In the 2011 Calcutta High Court decision *Kavita Khumbhra v. Commissioner of Customs*¹¹, certain goods (sex toys/adult games) that the appellant imported with the intention of selling them to adults only were seized by the Additional Commissioner of Customs on the basis of charges of obscenity under Section 292(1) of the Indian Penal Code, 1860. The Court held that the order of confiscation was not sustainable in law. The products in question cannot be considered so obscene in light of modern society's moral standards as to qualify as restricted commodities.

In the absence of clear cut laws, there is no uniformity in our approach. In order to deny a Canadian company's request to patent a vibrator in 2018, the Indian Patent Office cited regulations pertaining to "Obscenity" and Section 3(B) of the Patents Act (contrary to morals). Prior to Section 377 of the IPC, which completely forbade sodomy, sex toys were sought to be outlawed on the basis that they were being utilised for criminal activities. In September 2018, a five-judge Constitution Bench of the Supreme Court decriminalised consensual homosexual sexual activity among adults¹².

Conclusion

The right to privacy includes the right to sexual privacy. Law has no business interfering with what adults decide to do privately. However, if there is no consent, legislative control is crucial. To protect their health, it may be against the law for children to use sex toys. For adults, the non-consensual usage of such toys is punishable under Section 376 (digital rape) and Section 377 of the IPC. With the advent of technology and evolution of society, nothing is really beyond the knowledge of man, so the purpose of preventing the free manufacture and sale of sex toys in the name of obscenity especially when they can be used as effective tools in the regulation of sex crimes is counterproductive. Thus, measures to facilitate their legal integration into the society must be adopted without delay.

¹¹ *Kavita Khumbhra v. Commissioner of Customs*, GA No. 2284, (2009)

¹² *Navtej Singh Johar v. UOI*, Writ Petition (Criminal) NO. 76, (2016)