

# Legality of Sex Toys in India

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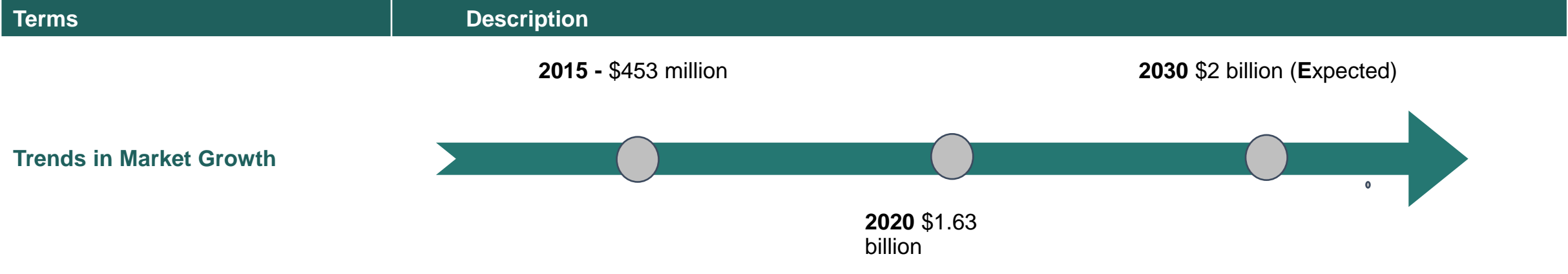
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# Market Trends for Adult Toys in India



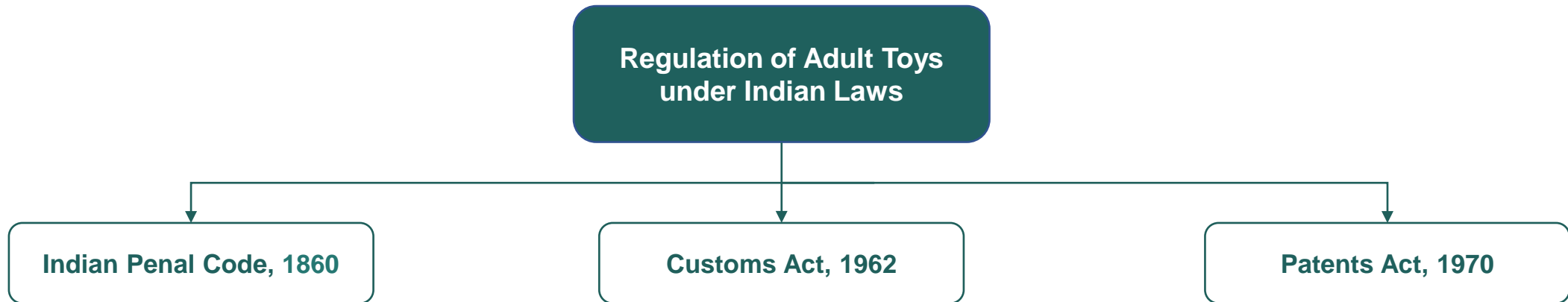
### What drove the surge?

In India, the COVID-19 pandemic has brought about a significant transformation in a specific manufacturing sector. Despite the conservative circles considering it a taboo topic, there has been a notable surge in the adult products industry.

### Key Leading Players in the Sex Toys Retail Industry

- Besharam
- Lovetreats
- Snapdeal
- ThatsPersonal

# Legality of Sale and Usage of Adult Toys



As per **Section 292 (1)**, any content that is lascivious, appeals to immoral desires or has the capacity to morally corrupt and degrade those who engage with it, is obscene.

Determination of what qualifies as lascivious or obscene is entirely subjective.

Courts rely on societal standards to assess whether a product's marketing caters to a deviant mindset.

Custom authorities having seized adult toys on multiple occasions, despite the absence of direct regulations granting them the authority to do so;

**S. 11(1)**- certain imported goods should not be used for maintaining moral and decency standards and public order

Grants wider discretion in determining what qualifies as an offense against morality and decency.

Indian authorities rejected a patent application for a "*sexually stimulating vibrator*" citing that it went against the principles of "*public order and morality*" as stated in **Section 3(b)**.

This indicates how adult toys have been consistently regarded as inappropriate and indecent by the authorities in India.

# Case Laws

Case Law	Facts & Observations
<b>Kavita Phumbhra vs Commissioner Of Customs (Port)</b>	<p>The appellant, a resident of Calcutta, found herself embroiled in a legal matter concerning her attempt to import sex toys from overseas. Indian customs authorities seized her items, prompting her to take legal action against the customs office by filing a case.</p> <p><b><u>Observation of the Hon'ble Calcutta High Court:</u></b></p> <ul style="list-style-type: none"><li>• Adult toys cater to a specific group of individuals who are deemed responsible and use such items in a mature manner.</li><li>• The classification of sex devices as "obscene" solely based on their ability to provide sexual pleasure is unwarranted.</li><li>• These devices are intended for private use and do not have the potential to corrupt others. In brief, the court's stance was that the mere fact that an object evokes sexual desires does not automatically qualify it as 'obscene'.</li></ul>
<b>Justice K S Puttaswamy (Retd) v Union of India</b>	<p>Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. "It is privacy which is a powerful guarantee if the state were to introduce compulsory drug trials of nonconsenting 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 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.</p>
<b>Navej Singh Johar &amp; Ors. v. Union of India</b>	<p>The Hon'ble Supreme Court has acknowledged that human sexuality cannot be limited to its role solely in procreation, and that the constitution safeguards the diverse and changing nature of sexual experiences.</p>

# Conclusion

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## Legal Acceptance

In India, sex toys that are not presented or advertised in an indecent manner are generally considered legally acceptable. However, if these products have packaging or marketing materials that are deemed obscene according to Indian obscenity laws, they may be in violation of those laws.

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## Ambiguity in Laws

In India, the use of sex toys is not explicitly banned, but there is ambiguity regarding their sale and usage which has resulted in the sex toys retail sector lagging behind.

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## Online Retail Boom

The e-commerce companies have tapped on the sexual wellness industry's potential, resulting in multiple platforms offering these items by resorting to deft marketing strategies to avoid being penalized by the much regressive obscenity regulations. From a legal perspective, adult products that have tasteful packaging and use restrained marketing messages should generally be acceptable. However, the interpretation of what is considered tasteful and restrained can vary, and this ambiguity can lead to different opinions among government officials.

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## Need for Specific Laws

India needs to enact specific regulations to legalize online sex toy stores while implementing necessary restrictions to protect children. Offline sales would attract more public attention from various age groups and sectors of society, making online sales economically viable for the country.

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## Adoption of Covert Marketing

In India, sex toys that are not presented or advertised in an indecent manner are generally considered legally acceptable. However, if these products have packaging or marketing materials that are deemed obscene according to Indian obscenity laws, they may be in violation of those laws.

# Disclaimer

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