

(De)Criminalising Sex Toys in Thailand: A Law and Economics Approach

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Abstract : Under the Thai Penal Code and Customs Act, sex toys are criminalized and completely prohibited through the legal interpretation as obscene objects by law enforcement, despite there is no explicit legal sanction against them. The purpose of preventing people from accessing sex toys is to preserve public morals. However, sex toys are still available, exposed, and sold publicly in main cities throughout Thailand. They are easily observed by people of any age. This paper argues that sexuality is human nature and human right. Human deserves sexual pleasure as long as getting sexual pleasure does not inflict any harm on others. Using sex toys in private (individually and/or as a couple with mutual consent) does not constitute any harm nor degrade public moral. Therefore, the complete ban of sex toys shall be lifted and decriminalized. Nevertheless, the economic analysis illustrates that criminalization and prohibition of sex toys would lead to its black market - higher price and lower quantity. Although it is socially desirable to have fewer sex toys in the market, there will usually be high demand for them because sexual pleasure is natural and, hence, people have a lower price elasticity of demand for such things, including pornography. Thus, its deterrent effect is not very effective. Moreover, sex toys vendors still always exist because higher price incentivizes them to act illegally and may gain benefits from selling low-quality sex toys. Consequently, consumers do not have a choice to select high-quality sex toys at a reasonable price. Then, they are forced to purchase low quality sex toys at a higher price. They also may suffer from health issues as well as other harms from its dangerous/toxic substances since lower quality products are manufactured poorly to save costs. A law and economics approach supports the decriminalization of sex toys in Thailand. Other measures to control its availability shall be adopted to protect the vulnerable, such as children. Options are i) zoning or regulation on-premises selling sex toys as in Singapore, Japan, and China, ii) regulations of sex toys as medical apparatus like in the state of Alabama, and iii) the prevention of sex toys exposure in the real (physical) appearance (i.e., allowing virtual exposure of sex toys) like in India.

Keywords : human nature, law and economics approach, sex toys, sexual pleasure

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