

# SEXTORTION: REVISITING LAWS ON CORRUPTION IN INDIA

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## Abstract

Sextortion, an offense whose time is yet to come. An aberration in our social ecosystem whose existence is yet to be legally acknowledged. A recurring occurrence but one which is seldom discussed. This paper delves into a problem otherwise brushed aside as a norm and in doing so reflects on an institutionalized system of blatant abuse of power. It situates ‘sextortion’ as a crime which lies at the intersection of sexual and corruption related offences and urges law makers to address this issue. In doing so, the paper examines the current loopholes of legal frameworks, social sanctions and reflects upon international best practices which could be adopted in the Indian context. The paper also discusses the role of different stakeholders in furthering the cause of access to justice for all. The aim of this paper is thus to name and shame the problem in an attempt to start a conversation and encourage a healthy dialogue in an otherwise inadequately addressed area of law.

## I Introduction: Unearthing the Blind Spot

THE USE of sexual favours to rise up the career ladder or to get routine work done from persons in authority (sometime called as sextortion<sup>1</sup>) is not unheard of. There are records of an Australian professor demanding sexual favours from foreign female students in exchange for passing marks, an Argentine police officer soliciting sexual favours to release a couple arrested for speeding, a Mexican politician requesting the same in exchange for party positions and a Taiwanese public prosecutor coercing a witness into sex.<sup>2</sup> India is not bereft of such incidents either. For instance, we come across ample examples of the ‘casting couch’ phenomenon be it in the film industry,<sup>3</sup> the corporate world,<sup>4</sup> banking,<sup>5</sup> politics<sup>6</sup> or the educational sector.<sup>7</sup> However, majority of them get subsumed in the underlying discourse of normative acceptance and lost pride.

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1. International Association of Women Judges, *Toolkit: Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion* (IAWJ, Washington DC, 2012).

2. Combating Sextortion: A Comparative study of Laws to Prosecute Corruption Involving Sexual Exploitation, available at: <http://www.trust.org/contentAsset/raw-data/588013e6-2f99-4d54-8dd8-9a65ae2e0802/file> (Visited on May 31, 2018)

3. #MeToo: Why sexual harassment is a reality in Bollywood, available at: <https://www.bbc.com/news/world-asia-india-43881129>(Visited on June 1, 2018)

4. Combating Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation, available at: <http://www.trust.org/contentAsset/raw-data/588013e6-2f99-4d54-8dd8-9a65ae2e0802/file>(Visited on June 1, 2018)

5. “Bank manager demands sexual favours from farm loan applicant; booked”, *The Indian Express*, June 23, 2018.

6 “Sexual favours happen in entertainment, political world”, says Shatrughan Sinha’, *The Indian Express*, Apr. 26, 2018

7. “Teacher held for seeking sexual favours from student”, *Times of India*, May 3, 2018

Since time immemorial, people who occupy positions of authority have often abused these positions.<sup>8</sup> Their power to grant or withhold something of importance makes others vulnerable to their corrupt attempts to extort things of value. When that abuse of power takes the form of a demand for sexual favours, the International Association of Women's Judges (IAWJ) names it 'sextortion'.<sup>9</sup> The word is popularly used in the context of cyber-crime.<sup>10</sup> However, the IAWJ goes a step further and places 'sextortion' at the intersection of sex and extortion under the overarching ambit of corruption. A form of corruption in which sex, rather than money, is the currency of the bribe.<sup>11</sup>

It is indeed unfortunate, that such unethical practices and patriarchal ideologies exist in the 21<sup>st</sup> century, that too in utter disregard of merit and individual rights. The surprising part is that this anomaly is placed in the illusory realm of 'consent'. In common parlance, 'to consent' is to voluntarily agree to the proposal of another. The word 'voluntary' implies 'doing, giving, or acting of one's own free will'.<sup>12</sup> However, when the entire socio-cultural set up and individual attitudes validate such distasteful behaviour, there is very less space left for an alternative narrative. Let alone free will.<sup>13</sup> Such an approach not only trivializes the issue, it also disregards the subjective experiences, trauma and loss of self-esteem of numerous individuals.<sup>14</sup>

## II Deconstructing the Definition

The definition thus includes a sexual and a corruption component. The former involves a request – whether implicit or explicit – to engage in any kind of unwanted sexual activity and in the latter, the person who demands the sexual favour occupies a position of authority, which is abused. The underlying idea is *quid pro quo* where the perpetrator demands or accepts a sexual favour in exchange for a benefit that he is empowered to withhold or confer. The imbalance of power between the perpetrator and the victim allows the perpetrator to exert a kind of psychological pressure, not very different from that of monetary corruption.<sup>15</sup> Thus, 'sextortion' as an idea aims to create a novel worldview of corruption by examining it from a different perspective. In doing so, it challenges traditional notions of financial harm in anti-corruption laws and places itself on the continuum of sexual harassment and corruption.

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8. Chandrashekhar Krishnan, "Abusing power for private gain", *The Guardian*, available at:<https://www.theguardian.com/commentisfree/2010/feb/05/mps-expenses-corruption-transparency>(Visited on June 1, 2018 )

9. *Supra* note 1.

10. Tom Jackman, "Sextortion, growing online problem worldwide, victimizes two George Mason students", The Washington Post, available at: <https://wapo.st/2BAqnGV>(Visited on June 1, 2018)

11. *Supra* note 1

12. Voluntary, available at:<https://en.oxforddictionaries.com/definition/voluntary>(Visited on June 1, 2018)

13. Yale Law School, *Indoctrination, Coercion and Freedom of Will*" *Philosophy and Phenomenological Research* (YLS, New Haven, Connecticut, 2003)

14. Penelope K. Trickett, Jennie G. Noll and Frank W. Putnam, "The impact of sexual abuse on female development: Lessons from a multigenerational, longitudinal research study." 23(2) *PMC 453* (2011)

15. D. Treisman, "The Causes of Corruption: A Cross-National Study." 76 *JPE 399* (2000)

### III Laws in India: Lacunae in Legal Framework

India is yet to adopt laws that target and percolate into the full range of settings in which sexual exploitation through abuse of power occurs. However, it has various laws to deal with sexual exploitation and corruption as distinct crimes. The following text examines whether the existing statutes or legislation provide for effective engagement with ‘sextortion’.

In the area of laws governing sexual abuse, the Protection of Women from Domestic Violence Act, 2005<sup>16</sup> aims at protecting women from abuse in the ‘domestic’ sphere. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>17</sup> strives to provide protection against sexual harassment of women at the ‘workplace’. Section 354 (A to D)<sup>18</sup> of the Indian Penal Code 1860, stipulates punishments for different types of sexual offenses. Section 376(2) talks about rape due to abuse of authority in specific situations<sup>19</sup> and there also exist separate laws on extortion.<sup>20</sup> The Criminal Law (Amendment) Act, 2013, brings changes to laws dealing with sexual offences.<sup>21</sup> The Protection of Children from Sexual Offences Act, 2012 works towards addressing issues of sexual exploitation of children.<sup>22</sup> Various provisions of the Information Technology Act, 2000 also cover certain sexual offences dealing with cyber-crime.<sup>23</sup>

On reflection on the above mentioned legal provisions, one may note that most either deal with sexual violence and harassment *per se* and that too in distinctly defined spaces and contexts. Even laws traversing the area of sexual offences due to abuse of authority fall short of addressing all the actors involved and thus the magnitude of the issue. For instance, the Justice Verma Commission went to the extent of elaborate discussions on amendments to rape laws and related offenses but fell short of developing a separate offence aiming directly at sextortion.<sup>24</sup> Moreover, the additions to gender-based violence laws are yet to contemplate situations in which the victim yields, albeit not voluntarily, to the coercive power of a corrupt authority.

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16. The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

17. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013).

18. S. 354 (a), 354 (b), 354 (c), 354 (d), The Indian Penal Code, 1860 (Act 45 of 1860)

19. S. 376 (2), The Indian Penal Code, 1860 (Act 45 of 1860).

20. S. 383, The Indian Penal Code, 1860 (Act 45 of 1860).

21. The Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).

22. The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)

23. S. 66, 66e, 67A, 67B, The Information Technology Act, 2000 (Act 21 of 2000)

24. The Criminal Law (Amendment) Act, 2013 (Act 13 of 2013); “Lok Sabha Passes Anti Rape Bill” *Hindustan Times*.

19 Mar. 2013; “Anti Rape Bill Passed” *The Hindu*, 24 Mar. 2013.

In the arena of corruption, the Act, 1988<sup>25</sup> is the principal anti-corruption law. It penalizes offences committed by public servants<sup>26</sup> in relation to the acceptance or attempted acceptance of various forms of illegal gratification.<sup>27</sup> The CVC Act, 2003<sup>28</sup> establishes the Central Vigilance Commission, which is the primary agency to inquire into corruption related offences. There exists a Whistle Blowers law<sup>29</sup> which primarily intends to protect whistle-blowers with respect to disclosure of acts of corruption by a public servant. The Lokpal Act, 2013<sup>30</sup> establishes the offices of the nodal ombudsman for the central and state governments and attempts to unearth and investigate cases of corruption in the public sector. The Indian Penal Code, 1860 also sets out provisions which are interpreted to cover bribery<sup>31</sup> and fraud<sup>32</sup> matters, including those committed in the private sector. The Companies Act, 2013<sup>33</sup> contains certain provisions to prevent corruption and fraud in the corporate sector. Lastly, The PMLA, 2002<sup>34</sup> aims to prevent instances of money laundering and prohibit use of the proceeds of crime in India.

A *prima facie* review of the above laws would bring to light that none of them directly deal with acts particularly pertaining to ‘sextortion’, i.e. looking at corruption through the lens of sexual exploitation. The laws primarily deal with only monetary dimensions of corruption and there is a stark public-private sector divide making the laws applicable only to a certain section of the society. Even the PCA (Amendment) Act, 2018<sup>35</sup> doesn’t dwell on cases which lack ‘public interest’ and deal with private actors.

#### **IV Challenges to Prosecution: Revisiting the Existing Discourse**

Lack of a legal framework pertaining to a particular issue is the first and foremost barrier to effective prosecution in that field. However, the greatest challenge lies in the inadequacies of existing general institutional frameworks. This includes existence of law enforcement systems that lack adequate resources.<sup>36</sup> Transcending the structural challenges are issues of attitude and approach, seeds of which lie in our system of socialization and education.

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25. The Prevention of Corruption Act, 1988 (Act 49 of 1988)

26. Section 2, The Prevention of Corruption Act, 1988 (Act 49 of 1988)

27. Section 7, The Prevention of Corruption Act, 1988 (Act 49 of 1988)

28. The Central Vigilance Commission Act, 2003 (Act 45 of 2003)

29. The Whistle Blowers Protection Act, 2014 (Act 17 of 2014)

30. The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014)

31. S. 171, The Indian Penal Code, 1860 (Act 45 of 1860).

32. S. 421, 422, 423, 424, The Indian Penal Code, 1860 (Act 45 of 1860)

33. The Companies Act, 2013 (Act 18 of 2013)

34. The Prevention of Money Laundering Act 2002 (Act 15 of 2003)

35. Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018)

36. K. Sreedhar Rao, “Criminal Justice System- Required Reforms” 43(2) *JILI* (2001)

Members from either gender are vulnerable to the clutches of sextortion. However, women in India have to face additional challenges, being embedded in a patriarchal environment. This contributes to a culture of silence that forbids them from taking a stand and exposing problems in the public sphere. As a consequence, women are left significantly disadvantaged and unable to access services including those from the legal system.<sup>37</sup> One also has to consider other barriers including the shame and fear of social stigma and sanction.<sup>38</sup> This, coupled with ignorance regarding laws and avenues of seeking justice; inability to pay expenses for prosecution; lack of empathy and support from police and other stakeholders, all result in under reporting of cases incorporating elements of sextortion.<sup>39</sup> The absence of corroborating witnesses or physical evidence, and the fear of retaliation are also concerns of significance.<sup>40</sup> Complicating the issue further is the victim's perceived role— did the victim resist, yield to, or even initiate the sextortion?<sup>41</sup>

One must further note that this phenomenon is not limited to the employment or familial context but pervades multiple avenues of everyday life such as claiming what one is entitled to or getting routine work done. Yet why is it that sextortion hasn't been accepted as problematic? One reason may be that the sexual favours are often dismissed as "consensual."<sup>42</sup> This belief also creates the illusion of 'non-violence', notwithstanding the psychological trauma and vulnerability of the victim. Many statutes dealing with sexual violence reflect this bias and require evidence of physical injury or force. ....However, the existence of psychological coercion in sextortion, backed by fear of loss, injury and deprivation cannot be hidden behind a veil of 'consent'.

The UN definitions of "sexual exploitation" and "sexual abuse" strive to fill this gap by recognizing the coercive force of an unequal power relationship.<sup>43</sup> The definition of "violence against women" in the Declaration on the Elimination of Violence against Women, (DEVAW) also encompasses the kind of psychological harm and coercive pressure that characterize sextortion.<sup>44</sup> Therefore, the recognition of the myriad forms of sexual coercion and the psychological, economic, or socio-cultural harm is critical to the successful understanding of the issue at hand.

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37. Women and Children Legal Research Foundation, *Women's Access to Justice: Problems and Challenges* (WCLRF, Afghanistan, 2008)

38. Heather R. Hlavka, "Speaking of Stigma and the Silence of Shame: Young Men and Sexual Victimization" 20(4) *JMM* 482 (2017)

39. M.R. Sable, F. Danis & Ors., "Barriers to Reporting Sexual Assault for Women and Men: Perspectives of College Students" 3(55) *JACH* (2006)

40. Adegoke O. Adefolalu, "Fear of the Perpetrator: A Major Reason Why Sexual Assault Victims Delayed Presenting at Hospital" 19(3) *TMIH* 342 (2014)

41. Laura Niemi & Liane Young, "Blaming the Victim in the Case of Rape" 25(2) *IJAPT* 230 (2014)

42. H. Otanga, J. Ogembo, John & J. Mwangi, "Non-consensual Sexual Experiences and Attitudes Towards Transactional and Inter-Generational Sex Among Female Adolescents in Secondary Schools in kwale County, Kenya" 7 *IJCR* 23861 (2015)

43. *United Nation's Secretariat, UN Secretary-General's Bulletin on Protection from Sexual Exploitation* (UN, New York ,2003)

44. Declaration on the Elimination of Violence Against Women, available at:  
<http://www.un.org/documents/ga/res/48/a48r104.html> (Visited on June 2, 2018)

In some countries, the courts and legislators have recognized that there are situations in which the disparity in power is so great that the “consent” is, in fact, coerced. For instance, in Australia, the amended section 65A of the Crimes Act .....[im not able to locate this provision of the Act] acknowledges ‘coercive conduct’ that does not involve a threat of force.<sup>44</sup> Even in cases of sexual violence, there are circumstances in which the absence of resistance has not been treated as evidence of consent.<sup>45</sup>

One cannot deny that anti-corruption efforts have traditionally targeted financial impropriety rather than sexual impropriety. When the currency of the bribe is sex, the laws are unsettled, evidence elusive, and victims reluctant to come forth. The diverse circumstances in which sextortion occurs also works to obscure similarities, masking the nature and extent of the problem and isolating the victims. Furthermore, lack of awareness about the problem emboldens perpetrators and fosters a culture of silence among the victims. The only antidote is to change the perception(s) of the community, first step of which is through dialogue. Dialogue which is open and extends to spaces otherwise dominated by painful secrets.<sup>46</sup>

## V International Law and Best Practices

When ‘sextortion’ is viewed through the lens of ‘corruption’- consent, physical coercion, and physical injury cease to be relevant. There are some jurisdictions working in this direction. For instance, the Criminal Codes of the Federation of Bosnia and Herzegovina include the offense of ‘Sexual Intercourse by Abuse of Position.’<sup>47</sup> The Philippine Anti-Rape Law of 1997 covers rape by means of ‘grave abuse of authority’<sup>48</sup> and the Tanzania Sexual Offences Special Provisions Act of 1998 applies to a person ‘who takes advantage of his official position’ to commit rape.<sup>49</sup> But, one must note that despite best efforts, statutes may be unable to encompass all types of sextortion. For instance, none of the above statutes apply to cases where the victim refuses to comply with demands. Venturing further into the realm of international law, one realizes the existence of provisions that are directed at the type of abuse of authority, characteristic of sextortion. Two notable examples are DEVAW<sup>50</sup> and the African Union Convention.<sup>51</sup>

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44. Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994 (Act 65 of1994), not able to find section 65A.

45. Sexual assault laws in Australia, *available at:*<https://bit.ly/2rrti06>(Visited on June 2, 2018)....citation not good.

46.W.N. Isaacs,“The Process and Potential of Dialogue in Social Change.” 36(1) ET 20 (1996)

47. Art. 205(1), The Criminal Code of the Federation of Bosnia and Herzegovina, 2003; Art. 196(1), The Criminal Code of Republika Srpska, 2003. 48. Article 266-A(1)(c) Republic Act No. 8353, The Anti Rape Law of 1997

49. Article 131(a) The Sexual Offences Special Provisions Act, 1998

50. Declaration on the Elimination of Violence against Women, *available at:*<https://bit.ly/1iBwJDg> (Visited on June 1, 2018)

51. African Union Convention on Preventing and Combating Corruption, *available at:*<https://bit.ly/2mjxcqw>(Visited on June 1, 2018)

Thus, reviewing best practices of the international community may help fill the gaps in our national statutes.

Many international ‘anti-corruption’ provisions use broad language to encompass non-financial inducements. In Canada, for example, it is an offense for an employee of the federal government, to accept or demand a bribe or ‘other benefit.’<sup>52</sup> Taiwan’s anti-corruption law requires a bribe or ‘unjust enrichment’<sup>53</sup>, with the latter interpreted by the Supreme Court to mean “any tangible and intangible interests that can meet one’s needs or satisfy one’s desire.”<sup>54</sup> Further, the term ‘benefit’ in Kenya’s anti-corruption law includes in its meaning ‘any form of gratification for himself.’<sup>55</sup> Some Criminal Codes also contain broader offenses to prosecute misconduct by persons in power.<sup>56</sup> The law in Australia applies general prohibitions on corrupt conduct by public officials in cases similar to sextortion.<sup>57</sup> In the United Kingdom, if existing anti-corruption legislation<sup>58</sup> prove insufficient, the courts may charge under the common law offense of ‘misconduct’ in public office.<sup>59</sup> Similarly, in Brazil, many laws on abuse of authority cover offenses that fall outside the narrower confines of anti-corruption laws.<sup>60</sup>

Many ‘sexual harassment’ laws target precisely the kind of abuse that is under discussion. In Kenya, sextortion cases that occur within employment are prosecuted as sexual harassment under Kenya’s Employment Act<sup>61</sup> and those dealing with abuse of authority otherwise in the Sexual Offences Act.<sup>62</sup> Under Mexico’s Federal Criminal Code, sexual harassment occurs when a person, repeatedly harasses another person ‘based on his hierarchical position’.<sup>63</sup>

52. Immigration and Refugee Protection Act, 2001 (S.C. 2001, c.27)

53. Art. 4, Anti-Corruption Act, 1963 (Taiwan)

54. Anti-Corruption Regulation Survey of Selected Countries 2016-2017, available at:[http://www.jonesday.com/files/Publication/01ed831b-ad32-45e3-b6df-a558f982a847/Presentation/PublicationAttachment/2b604bc3-35f8-4252-8aef-b3132a06367a/JD\\_Anti-Corruption%20Regulation%20Survey%202016-17.pdf](http://www.jonesday.com/files/Publication/01ed831b-ad32-45e3-b6df-a558f982a847/Presentation/PublicationAttachment/2b604bc3-35f8-4252-8aef-b3132a06367a/JD_Anti-Corruption%20Regulation%20Survey%202016-17.pdf) (Visited on June 1, 2018)

55. Sec. 2, Anti-Corruption and Economic Crimes Act, 2003 (Act 3 of 2003)

56. Example: Sect. 92(a) Criminal Code, 1899 (Queensland) Criminal Code 1899

57. Division 70 of The Criminal Code Act, 1996 (Act 12 of 1995)

58. The United Kingdom Bribery Act, 2010 (c. 23)

59. Misuse of Public Office, available at:

<http://www.archive.official-documents.co.uk/document/parlment/nolan3/misuse-1.html>(Visited on June 1, 2018)

60. The Brazilian Penal Code, 1942; Law on Administrative Impropriety (No. 8,429/1992); Bid Law (No.8,666/1993); Code of Ethics for Public Officials of the Brazilian Federal Administration (Decree No. 1,171/1994)

61. The Employment Act, 2007 (Act 11 of 2007)

62. The Sexual Offences Act, 2006 (Act 3 of 2006)

63. Under Mexico’s Federal Criminal Code, sexual harassment occurs when a person, repeatedly harasses another person “based on his hierarchical position obtained through a working, academic, domestic or any other type of relationship that implies subordination.” The Federal Criminal Code, 1931,available at:<http://www.wipo.int/wipolex/en/details.jsp?id=3091> (Visited on June 1, 2018)

The sexual conduct involved in sextortion also brings it within the potential reach of various gender-based violence statutes. Under Argentina's Criminal Code, sexual abuse expressly includes non-physical forms of coercion and extends to various contexts.<sup>64</sup> Administrating professional codes of ethical conduct have also provided alternative paths for addressing sextortion. For example, the ethical codes of conduct for public officers and teachers in Uganda have been vital in combating sextortion.<sup>65</sup>

## **VI Access to Justice: International Human Rights and the Current Law**

A common thread connecting all the above mentioned initiatives is a conviction to eliminate practices which negatively affect rights of individuals. These being fundamental to life, health, dignity, and physical integrity. Access to justice is critical to building communal solidarity and securing greater social transformation and social justice.<sup>66</sup> Justice dispensation includes the ability of persons to access legal recourse to protect their rights and control the abuse of power. This also encompasses the recognition that everyone is entitled to the protection of the law and that human rights are meaningless unless enforced.<sup>67</sup> What happens if the need to acknowledge a pertinent principle as a human right is not recognized? What if a phenomenon affecting thousands of people negatively is not seen as problematic?

The current situation provides the answer. There is no separate domestic law pertaining to the crime of sextortion and the current laws prove inadequate to address this specific problem. Furthermore, there is rampant victim-blaming and stigmatization, characteristic of an ill-informed society. All this leads to most cases going unreported and breeds an environment conducive to the acceptance and growth of this crime.

In general, the principle of equality before the law and its concomitant value of non-discrimination are fundamental to international human rights law. Together, they form the cornerstone of human rights and democracy, and are clearly articulated in the three main documents that constitute the International Bill of Human Rights. This includes (a) the UDHR<sup>68</sup>; (b) ICCPR<sup>69</sup>; and (c) ICESCR.<sup>70</sup>

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64. Art. 118-133, The Criminal Code of the Argentine Nation Law, 1984

65. The Code of Conduct and Ethics for Uganda Public Service, *available at:*

<http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan038460~1.pdf> (Visited on June 2, 2018)

66. Understanding Effective Access to Justice, *available at:*

<http://www.oecd.org/gov/Understanding-effective-access-justice-workshop-paper-final.pdf> (Visited on June 1, 2018)

67. P P Rao, "Access to Justice and Delay in Disposal of Cases" 30 *IBR* 208 (2003)

68. The Universal Declaration of Human Rights, 1948

69. The International Covenant on Civil and Political Rights, 1966

70. The International Covenant on Economic, Social and Cultural Rights , 1966

Other notable conventions provide overarching support in the realm of gender based offences. These include the UN Resolution<sup>71</sup>; the Convention<sup>72</sup>; the Beijing Declaration-<sup>73</sup>; the Inter-American Convention<sup>74</sup>; the International Labour Organization Convention<sup>75</sup>; the Protocol<sup>76</sup>; Development Goals among others.<sup>77</sup>

In the realm of corruption, the Conventions Against Corruption<sup>78</sup> and against Transnational Crime<sup>79</sup> contain parallel provisions making it a crime for public officials to solicit or accept an ‘undue advantage’ (including a sexual favour) in the exercise of their official duties.<sup>80</sup> SADC<sup>81</sup>, Criminal Law<sup>82</sup> and Civil Law Convention on Corruption<sup>83</sup> and the Inter-American Convention<sup>84</sup> also vouch against the solicitation of ‘benefit’ in exchange of performance of public functions.

In the light of the above mentioned international authorities, and due to inadequacy of domestic legislation and safeguards to victims of sextortion, it is the duty of the legislature, judiciary and executive to come together and build an inclusive approach towards this issue in India. As the judgment of Claire L’Heureux-Dubé, J. in the Canadian case of *Egan v. Canada*<sup>85</sup> holds, “Together, our overarching goal must be to ensure that substantive equality and impartiality are the predominant reality in our courts and in our communities, rather than a mythical ideal. With every success, we will be one step closer to attaining our goal of doing justice for all.”

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71. The UN General Assembly Resolution, available at: <http://www.un.org/documents/ga/res/48/a48r104.html> (Visited on June 1, 2018)

72. The Convention on the Elimination of All Forms of Discrimination against Women, 1979

73. The Beijing Declaration-Fourth World Conference on Women Beijing Platform for Action, 1995

74. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994

75. The International Labour Organization Convention Concerning Discrimination in Respect of Employment and Occupation, 1958

76. The Maputo Protocol, 2003

77. The Sustainable Development Goals, available at: <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html> (Visited on June 2, 2018)

78. The United Nations Convention Against Corruption, 2003

79. The United Nations Convention Against Transnational Crime, 2004

80. Article 15(b), The United Nations Convention Against Corruption, 2004

81. The Southern African Development Community Protocol Against Corruption, 2001

82. Council of Europe Criminal Law Convention on Corruption, 1999

83. Council of Europe Civil Law Convention on Corruption, 1999

84. The Inter-American Convention Against Corruption, 1996

85. [1995] 2 S.C.R. 513

At the heart of any successful social transformation lies the power of united will and collective action. Thus, the consolidated and sustained effort by all stakeholders is the key to realizing a social order conducive to tackle sextortion.

*The Government:* At the outset, in order to understand obstacles and opportunities, the government must assess the existing legal and institutional framework in the case of sextortion related crimes. An adequate legal framework is the first requirement for successful prosecution.<sup>86</sup> This entails making gender neutral laws which account for liabilities of both the ‘bribe’ giver and the receiver. However, even the perfect legislation has no value if the existing institutional and budgetary skeleton lacks the capacity to support those prosecutions. In the context of tackling crimes of sextortion, the Government should fund and run specialized gender sensitive training courses for all actors on their duties under the law. The government should also incorporate international human rights law and best practices in national law making. Victims of sextortion should be enabled to articulate their interests to the law making machinery. In addition, there should be an increase in public awareness campaigns on the specifics of gender and corruption related laws and judicial processes.

*The Legal System:* In order to bring a change in the legal culture and judicial approach, efforts are needed to name, shame and end sextortion.<sup>87</sup> Towards that end, it is imperative that members of the public be informed that sextortion is unlawful and encouraged to report abuses of power. And, when victims do come forward, it is important that they receive appropriate support at each step of the legal process. To make this a reality, the Indian legal system needs immediate judicial and police reforms. This includes investment in infrastructural development, simplification of complaint procedures and spreading awareness through decentralized interventions at the community level. Actors in the system must also undertake training on gender sensitization, human rights and the law to ensure empathetic administration of justice.<sup>88</sup> The judiciary also has to play a more active role in addressing cases of sextortion. Borrowing the words of Lord Denning in *Parker v. Parker*<sup>89</sup>, Justice Batema N.D.A, justifies the crafting of a new legal remedy: “What is the argument on the other side? Only this, that no other case has been found in which it has been done before. The winds of change are upon us. We have a duty to give the law a purposive and liberal legal interpretation.”

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86. Legal Infrastructure, Judicial Independence, and Economic Development, available at:[http://www.mcgeorge.edu/Documents/Conferences/JUDIND\\_KLERMAN\\_MASTER.pdf](http://www.mcgeorge.edu/Documents/Conferences/JUDIND_KLERMAN_MASTER.pdf) (Visited on June 1, 2018)

87. *Supra* note 1.

88. UNDP, *Gender Equality and Justice Programming: Equitable Access to Justice for Women* (UNDP, US, 2007)

89. 519 So. 2d 1232, 1988 Miss. LEXIS 157

*The Civil Society:* NGO's, public thinkers, professionals, academicians and social activists, all must come together to eradicate this form of corruption that undermines social institutions around the world. This would help facilitate discussion, data collection, coalition building, and action that may eventually lead to behavioural changes among law makers and common citizens.<sup>90</sup> Till date victims of sexual violence who speak up have to confront prejudicial biases based on stereotypes. Stereotyping becomes particularly problematic when it ignores characteristics of individuals and denies them their fundamental freedoms. Changing social attitudes is challenging and requires that people recognize that a problem exists, that a conduct is wrong and that there is a remedy available. Spreading awareness is the key to a better informed society.<sup>91</sup> This includes empowering people through public education programs, organized workshops, round tables and training seminars.

*Development Partners:* Design effective, context-specific strategies require resource investment, engagement with informal systems and collaborations with the civil society. This helps ensure legitimacy and sustainability of measures. In this context, the role of development partners including corporate and international agencies can be crucial in assisting the government to improve access to justice.<sup>92</sup> Ethical rules of conduct governing various organizations and industries can also be moulded to effectively proscribe sextortion. Such professional codes of conduct could be drafted, interpreted and applied to address the abuse of power involved in sextortion.<sup>93</sup>

*An Integrated Approach:* Apart from individual initiatives, it is essential to enhance coordination among core institutions. The assessment of institutional frameworks is best undertaken as a multi sectoral and collaborative process. For instance, the International Association of Women's Judges collaborated with judges in the Philippines, Tanzania, and Bosnia and Herzegovina, and piloted different approaches to conduct institutional audits. This included developing case studies and training materials to guide seminar discussions with judges in different regions of the country.<sup>94</sup> In addition, an overarching advisory board can also be created to devise novel solutions in the affected areas. This could include membership from the government, judiciary, police and the civil society. Similar supervisory boards may be instituted at the district level to encourage decentralized, community based planning, monitoring and evaluation of projects.<sup>95</sup>

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90. The World Economic Forum, *The Future Role of Civil Society* (WEF, Switzerland, 2013)

91. UNESCO, *Principles of awareness-raising: Information Literacy, a case study* (UNESCO, Bangkok, 2006)

92. Maria Bakolias, "Legal and Judicial Development: The Role of Civil Society in the Reform Process" 24(6) *FILJ* (2000).

93. Margaret C. Hardy, "Drafting an Effective Ethical Code of Conduct for Professional Societies: A Practical Guide" 6(16) *ADMSCI* (2016)

94. *Supra* note 1.

95. United Nations Human Rights Council, *Role of local government in the promotion and protection of human rights* (UNHRC, Geneva, 2015)

It is hard to conceive of matters which have no vocabulary. Therefore, the first step towards eradication of sextortion is naming the phenomenon. This step must be followed with efforts to shame and put an end to the same. One must note, that the perpetrator in our cause is someone in a position of authority. What comprises ‘position of authority’ has been left to legislation.

Whatever the method and agency, some pivotal questions must always be kept in mind. Do we have adequate policies and laws pertaining to sextortion? How effectively is our justice dispensation system dealing with sextortion cases? Are prosecutors bringing these cases? If not, what is preventing them from doing so? Are the laws inadequate? If the legal framework is adequate, but cases are not being brought, what are the reasons? Are prosecutors failing to take the cases seriously? Is the police failing to investigate charges? Are victims afraid to come forward? Are there any social or procedural barriers? For it is only when we introspect on these questions that there may arise further possibilities and solutions.

## **VII Conclusion**

This paper attempted to excavate an otherwise neglected issue, situate it as being ‘problematic’ and lay the foundation on which possible courses of action towards its resolution can be deliberated upon. In doing so, it filtered the loopholes in the current legal discourse on sextortion in India, and strived to contextualize international best practices in the Indian scenario. Lastly, it also discussed the role of different stakeholders in moulding the narrative on sextortion in India and the main questions to be answered while deriving solutions to this problem. Corruption in any form undermines a society based on merit and the rule of law. It is important to assure that those who converse with the same do not escape with impunity. People offer bribes because they believe they will be accepted or perhaps even expected. A culture of corruption encourages this behaviour. Therefore, targeting such a cultural ethos should be the central focus of all interventions. At the root of all the legislation must lie the cardinal principles of the Indian Constitution, well inscribed in the preamble and certain fundamental rights to which every citizen is entitled. So, let us all come together and create a better society. A society, where principles of justice, equity and good conscience override primitive and archaic ideologies of naive men. The journey of a thousand miles begins with a single step. A single step today may thus go a long way in creating a brighter world of tomorrow.