

BREAKING THE SILENCE ON SEXTORTION IN MAURITIUS

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Transparency International has defined sextortion as a form of sexual exploitation which occurs when a person, in a position of authority, takes advantage of that position to obtain a sexual gratification to do or not to do an action for which he/she is officially mandated. As such, sextortion may be captured as a corruption offence.

According to the International Association of Women Judges (IAWJ), sextortion is a form of sexual exploitation and corruption that occurs when people in position of authority, seek to extort sexual favours in exchange for something within their power. In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.

The global legal context to criminalise sextortion:

Over the last few years there have been growing awareness on sextortion across the world. Countries have realised the necessity to ratify sextortion legally, thereby paving a way to curb this crime.

The Federation of Bosnia and Herzegovina in its Criminal Code has penalised the crime of “Sexual Intercourse by Abuse of Position”.

Philippines has made further advances and covered sextortion in its Anti-Rape Laws as rape by means of “grave abuse of authority”. Tanzania also has identified sextortion as rape by a person who takes advantage of his official position, under its Tanzania Sexual Offences Special Provisions Act of 1998.

The United States of America has criminalised sextortion in certain states only.

France has also limited the criminalisation of sextortion to the situation where a minor, by electronic means of communication, is incited to commit any act of a sexual nature, either on

himself or herself or on or with a third party, even if this incitement is not followed by action (Article 227-22-2 of the Penal Code).

Many countries like the United Kingdom and India are yet to have specific statutory provisions dealing with the crime of sextortion. However, in their existing statutes, 'extortion' has been legally defined.

It is complex to legally penalise 'sextortion' for it is not only penal in nature but can also be widely understood as a corruption crime.

The International Association of Women Judges (IAWJ) has identified three types of legislation that are capable of punishing acts of sextortion in most jurisdictions:

1. anti-corruption and abuse of power legislation;
2. anti-gender-based violence legislation; and
3. anti-discrimination/anti-harassment legislation.

Prevalence of Sextortion in Mauritius:

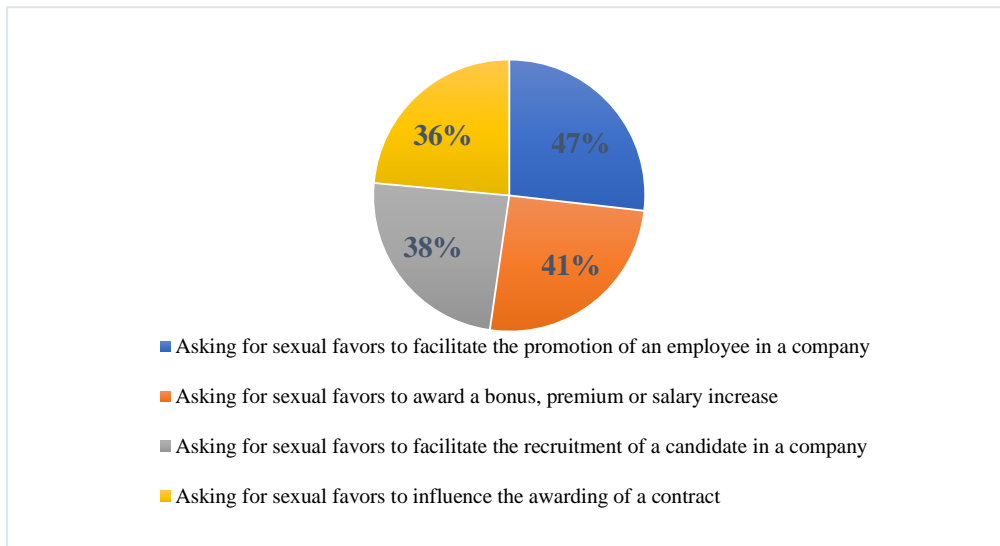
Mauritius is not spared by this scourge but rather sextortion is perceived to be common among the population.

Transparency Mauritius with the funding support from Canada Fund for Local Initiatives (CFLI) has commissioned Analysis Co. Ltd (Kantar) in 2022 to identify and assess the prevalence of sextortion in Mauritius, while at the same time to collect data to enable us to develop a strategy to fight this issue.

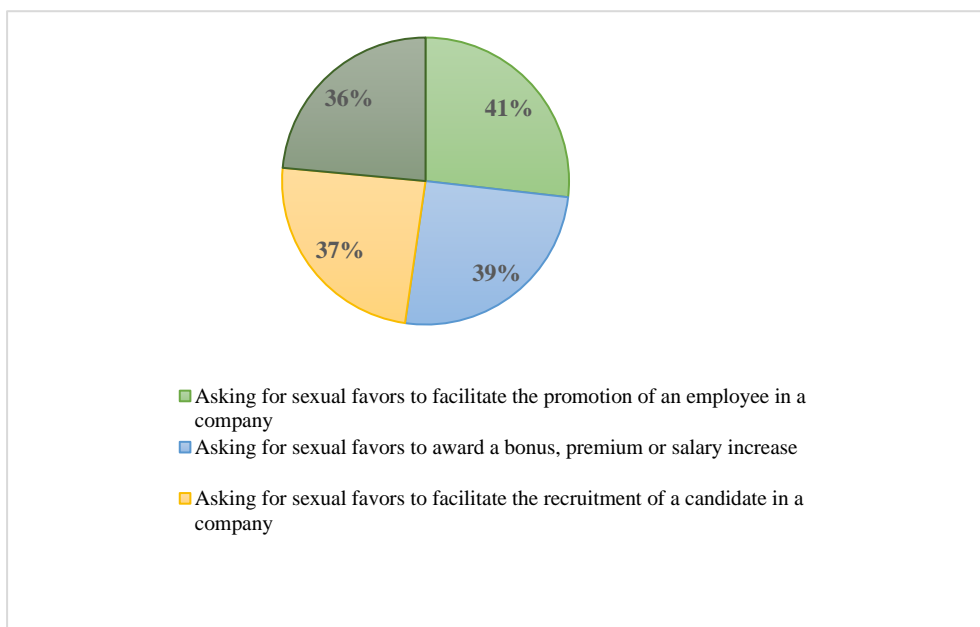
550 online interviews were carried out among the Mauritian population ageing from 15-64 years old. In order to ensure representativeness of the Mauritian demographics, the sample was carefully designed based on gender and district. The interviews were carried out from 15th February to 3rd March 2022.

The key findings of the study:

- All forms of corruption be it in terms of money, gifts or sexual favors are perceived as not acceptable by the majority. Asking for sexual favors is perceived as strongly inappropriate and unacceptable.
- **Perceived sextortion practices in the public sector**



- **Perceived sextortion practices in the private sector**



- On average 51% of the people interviewed are of the opinion that sextortion is common within the political field.

- Sextortion is perceived to be less present in the educational sector as compared to public/private sectors. On average, 23% believe that it is a common practice that both teachers and students propose sexual favors in exchange for benefits. Similarly, 26% think that sextortion is also practiced by police officers (either asking or being offered sexual favors to avoid fine, prison or to protect someone or oneself).
- The practice of sextortion is perceived to be rather common among Mauritians. Nearly half of the interviewees believed that some Mauritians propose sexual favors to get a job in public service, to get a salary increase and to ease administrative procedures. The perception of proposing money, gifts, or sexual favors in exchange for benefits by Mauritian population are noted to be more pronounced among private employees.
- 5% of the interviewees responded that they have asked for sexual favors in exchange for benefits. Nearly all of them declared that they have refused. 1 % declared that they offered sexual favors in exchange of benefits.

Where do we stand with our legal framework?

Sextortion is not expressly recognised in the existing legal framework of Mauritius. However, certain statutory provisions could be read to include “sextortion”.

To begin with, Section 2 of the Cybersecurity and the Cybercrime Act, 2021 defines ‘cyber extortion’ and further Section 18 of the Act criminalises it. The main problem with such a definition is that the use of the terms “uses the internet” nullifies the possibility of other mediums or physical modes being used for the same purpose. However, usage of the phrase “...demand money... or behaviour” can be interpreted to include “sexual behaviour/benefit” under its ambit.

Additionally, Section 124 of the Criminal Code Act 1838 also lays down the penal provision for “Extortion by Public Officer”. As such, it appears to be challenging to penalise other “persons in power” who may be involved in the crime of extortion under this provision.

Under the Equal Opportunities Act, sexual harassment is prohibited. According to Section 25 of the act, a person sexually harasses another person where, he makes an unwelcome sexual advance, or an unwelcome request for a sexual favour to another person or he engages in any other unwelcome conduct of a sexual nature towards another person. It is thus understood as a gender-based crime but the law still fails to address the key elements of sextortion.

Turning to gender-based violence, the definition of “domestic violence” could be read to include an act of “sextortion” under Section 2 of the Protection Against Domestic Violence Act 1997, showing that the scope of the issue extends far beyond corruption offences only.

Although the definition of “violence at work” is extensive under Section 114 of the Workers’ Rights Act 2019, it does not cover “sextortion” and could be amended accordingly.

It is pertinent to mention here that not all improper – or even criminal – sexual conduct involves sextortion.

To constitute sextortion, the perpetrator must occupy a position of authority and must abuse that authority by endeavouring to extract, or by accepting, a sexual favour in exchange for exercise of the power entrusted to them.

Way forward:

The starting point in the fight against the crime of sextortion would be to define it as a form of criminal offence in the Criminal Code.

The crime of sextortion takes place behind closed doors. It is not just sexual harassment or gender-based violence, it also includes the element of abuse of power for personal gain. Currently, most of the anti-corruption, sexual harassment laws and regulatory frameworks do not expressly include the offence of sextortion, although some could be read to apply to it.

Our main proposal is simply to define sextortion as an offence. This would thus affirm zero tolerance regarding these cases, which are often dismissed, as we have managed to do about financial corruption and gender-based violence. The victims should be empowered to say No.

Proposed definitions of Sextortion

- (1) Any person who, by abuse of the authority conferred upon him by his functions, solicits, accepts or obtains, by any means, from another person, adult or minor, for himself or for any other person, sexual advances in exchange for work, employment, contract or other benefit shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.
- (2) Any person who, by abuse of the authority conferred upon him by his functions, attempts to solicit, accept or obtain, by any means, from another person, adult or minor, for himself or for any other person, sexual advances in exchange for work, employment, contract or other benefit shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 7 years with a fine not exceeding 100,000 rupees.
- (3) Any person who, by abuse of the authority conferred upon him by his functions, solicits, accepts or obtains, by any means, from a minor under the age of 16 or a mentally handicapped person, even with consent, for himself or for any other person, sexual advances in exchange for work, employment, contract or other benefit shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

A second important step is to set up safe and gender-sensitive spaces for people to speak up and report sextortion offences. Victims should be able to report these crimes without fear of social reprisal, losing their jobs or failing an exam. It is essential to end the culture of silence surrounding this crime.

Legal frameworks and processes should be able to adequately address sextortion offences so that victims can have greater confidence in justice and speak out.

As such, it is recommended that the existing laws be amended by addressing the above discussed loopholes.

Acknowledgements

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