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ANALYSIS OF SEXTORTION IN THE JUSTICE SYSTEM OF INDIA

AUTHORED BY - ARAV AGARWAL

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ABSTRACT

Life with the absence of internet no longer appears like a potential prospect. This is particularly true in challenging situations like now, when most of us are restricted to our residences. None of our daily activities are feasible without the internet, whether it's checking our mails, sharing updates on social media, following the news, ordering goods or simply using WhatsApp. Hence, there is also a considerable chance of sensitive personal data being exposed. Sextortion is one such crime that includes private information falling into the wrong hands. Sextortion is a type of sexual abuse that uses a non-physical form of force to extract sexual favours or money, such as threatening to reveal sexual pictures or other related content. These sorts of scams can target both male and female individuals (though the majority of victims are females) and the culprit can be an anonymous or well-known individual. Sextortion is a crime that is yet to have its day. It is an imbalance in our social setting whose presence is yet to be evaluated legally. Despite being a frequent crime, it is rarely mentioned and thus gets usually overlooked. The main objective of this paper is to offer readers a detailed knowledge on online sextortion and the preventative actions that may be adopted to combat this crime. Through the present piece of writing, the author delves into a topic that has otherwise been neglected, thus encouraging lawmakers to take necessary action. In doing so, the paper examines the lacunae in the existing Indian legal framework. The ultimate purpose of this paper is to highlight and condemn the issue in order to initiate a dialogue and healthy discussion in a field of law that is otherwise neglected.

Keywords: Cybercrime, Online Blackmail, Sexual Abuse, Sex Extortion, Sextortion.

INTRODUCTION

Sextortion is a mixture of the term's "sex" and "extortion." Sextortion is a serious offence where someone threatens to expose your personal and sensitive information until you provide them with nude content, sexual favours, or even cash. Sexual extortion is a nasty and dehumanising act that thrives on victims' misery. Sextortion is similar to web blackmail, wherein the blackmailer either pressurises the victim to engage in sexual acts, such as posing for intimate pictures or engaging in sexual acts in front of the camera, or he/she demands that the victim to pay a hefty sum.

Sextortion via social media is the most popular pattern. Sextortionists build intimate ties with their potential future victims through internet conversation and/or messaging services. They persuade their targets to share nude images or recordings once they have gained their trust. They then exploit the photographs and footages as a form of blackmail, pushing their victims to produce more material that meets their sick expectations¹. The worst aspect of sextortion is that the sufferer, who is usually a woman, is burdened with feelings of shame and guilt and is afraid of being judged and humiliated if help is sought. The victim's passivity hence considerably aids the perpetrator's capacity to dominate the victim.

Sextortion has both, an element of sexual favour and a part of corruption in its characterization. The former involves a demand, whether implied or expressed, to participate in any sort of unwanted sexual activity. But the latter happens when the person seeking the sexual favour is in a position of power that is misused. The core premise here is *quid pro quo*, in which a sexual benefit is sought or acknowledged in return for a benefit that the offender can withhold something sensitive with him/her. What are the psychological effects of sextortion on victims, and how can they be best supported and treated?

RESEARCH QUESTIONS

1. What are the motivations of sextortion offenders, and what factors contribute to their behaviour?

¹ Sneha Mahawar, Vanya Verma, *How to take legal action against sextortion*, iPleaders (June 5, 2021) at https://blog.iplayers.in/take-legal-action-sextortion/#Section_1081ia.

2. What are the legal and ethical implications of sextortion, and how can legal frameworks be strengthened to better protect victims and hold perpetrators accountable?
3. What are the gendered dynamics of sextortion?
4. What are the societal attitudes and norms that contribute to the prevalence of sextortion, and how can they be challenged and changed?

STATEMENT OF PROBLEM

The present study is an attempt to examine the lacunae in the existing Indian legal framework on Sextortion. It also analyses the gender biased dynamics of this issue, thus encouraging lawmakers to take necessary action to resolve the same. The study is entitled as “Analysis of Sextortion in the Justice System of India”.

SCOPE OF THE STUDY

This research paper is centered around the causes behind this offence and proposes recommendations for how it can be reduced. Drawing on secondary sources such as online journals, websites and blogs, the paper takes a qualitative approach to its analysis.

BREAKING DOWN THE DEFINITION

Judges, government officials, educators, elders, physicians, and employers² are examples of those accused who have been vested with power. Government officials demanding sexual benefits in return for permits or licences, interviewers seeking sexual services in exchange for a job placement and teachers soliciting sexual favours in exchange for academic results are examples of people who attempt to entrap sexual favours in exchange for something inside of their authority to grant or withhold. Hence, it can be said that sextortion is basically a form of blackmail wherein the target is threatened with publishing his/her sexual images or details in order to obtain money or sexual satisfaction. Texts, videos, and images can all be utilised to illustrate a point. And social networking networks are perhaps the most likely platform of blackmail.

² Sneha Mahawar, Vanya Verma, *How to take legal action against sextortion*, iPleaders (June 5, 2021) at https://blog.iplayers.in/take-legal-action-sextortion/#Section_1081ia.

The *State of West Bengal v. Animesh Boxi's case in 2018* was widely considered as India's first "revenge porn" judgment. In the present case, a girl recorded nude footages of herself on her phone and sent it across to multiple number of individuals. The accused, one among these many people, had access to it and in a fit of anger chose to publish it. Hence, as a result of the trail, the offender was sentenced to five years in jail and a fine of Rs. 9000³. The Hon'ble Judges arrived on this conclusion based on equity, fairness, and good conscience.

IMPACT ON VICTIMS

The victims become trapped in a never-ending demanding loop of the offenders, practically becoming their hostages, due to their despair of sexual content being broadcasted. Depression and constant embarrassment arise as an outcome of this mental attack. The anguish these victims experience is immeasurable, and their sorrow manifests itself in their actions, thoughts, and conduct.

It may have a catastrophic effect not just on the victim, but also on the victim's whole family. Even after meeting the demands of the offender, the potential danger of publishing and exposing sexual content is always present. As a result, the victims are forever at the mercy of the criminal⁴. They feel frequently unhappy and alone, leading to self-harming habits. Experimenting with a harmful drug is an example for instance.

LAWS GOVERNING SEXTORTION

India is a nation with the world's largest and bulkiest written constitution serving several domains. Following are certain laws that regulate and ensure the keeping out, of sextortion:

1. **The Protection of Women from Domestic Violence Act, 2005** - This Act was created to provide women who have been victims of domestic abuse a platform to seek help from. It is a law that ensures that the constitutionally guaranteed rights of women who are victims of

³ Sneha Mahawar, Vanya Verma, *How to take legal action against sextortion*, iPleaders (June 5, 2021) at https://blog.iplayers.in/take-legal-action-sextortion/#Section_1081ia.

⁴ Jyoty Thakur, *Sextortion: An Emerging Crime Into The Gray Area Of Law*, Legal Services India at <https://www.legalserviceindia.com/legal/article-6707-sextortion-an-emerging-crime-into-the-gray-area-of-law.html>.

domestic violence of any kind, as well as things linked to or incidental to such abuse, are more effectively protected.

2. **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** – It is a legislation to protect women at work against sexual harassment, as well as the prevention and redressal of sexual harassment complaints.
3. **The Protection of Children from Sexual Offences Act, 2012** - This bill aims to protect children from sexual exploitation. Being a gender-neutral law, its objective is to bring attention to the problem of child sex abuse.
4. **Section 108(1)(i)(a) of Code of Criminal Procedure, 1973** - Under this section, the victim might contact the local magistrate and inform him of the person she believes is responsible for distributing any such obscene content. The magistrate thereon has the power to detain such people and ask them to sign a bail agreement barring them from spreading such content⁵. The accused may be deterred as a result of this.
5. **Section 292 of the Indian Penal Code, 1860** - This particular section prohibits the transmission or distribution of indecent images. This legislation forbids the sale, letting to rent, distribution and public exhibition of obscene literature, among other things as well.
6. **Section 354 of the Indian Penal Code, 1860** - Section 354 of the Indian Penal Code, 1860, defines illegal force or violence on a woman which is done with the aim to humiliate her and violate her modesty. If convicted with such crime, an accused risks up to two years in prison, a penalty, or both.
7. **Section 406 of the Indian Penal Code, 1860** - This section describes criminal breach of trust as a crime prison sentence for up to three years, and even a compensation or both.
8. **Section 499 of the Indian Penal Code, 1860** - Anybody who undertakes an operation with the intent to harm or has reasonable grounds to assume that doing so would harm someone's image or character, is punishable under the law.
9. **Section 500 of the Indian Penal Code, 1860** - Anyone who demeans or belittles another individual faces up to two years in detention, a fine, or even both⁶.

⁵ Sneha Mahawar, Vanya Verma, *How to take legal action against sextortion*, iPleaders (June 5, 2021) at https://blog.iplayers.in/take-legal-action-sextortion/#Section_1081ia.

⁶ Sneha Mahawar, Vanya Verma, *How to take legal action against sextortion*, iPleaders (June 5, 2021) at https://blog.iplayers.in/take-legal-action-sextortion/#Section_1081ia.

10. **Section 506 of the Indian Penal Code, 1860** - Criminal intimidation is punishable under the ambit of this section with a term of up to two years in detention, a fine, or sometimes both. The accused suffers a penalty of up to 7 years in prison, a penalty, or both if he threatens the victim with murder, significant physical harm, or property damage.
11. **Section 66E of the Information Technology Act, 2000** - If someone wilfully photographs, broadcasts, or transmits a visual of a person's private area without their permission, he may be fined up to Rs.2,00,000/- or imprisoned for up to 3 years, or even both.
12. **Section 67 of the Information Technology Act, 2000** - It is illegal to post or send obscene or sexual content through an electronic medium. If convicted, the accused person might receive a term of up to 3 years of imprisonment or a fine of up to 5 lakhs. And if he/she is found guilty of a second offence, then a sentence of up to 5 years of jail time or a penalty of up to 10 lakhs is imposable.
13. **Section 67A of the Information Technology Act, 2000** - Any individual who publishes or sends in digital form any content comprising of sexually explicit acts or behaviour, he shall then be punishable with a fine of up to Rs.10,000/- or a sentence of up to 5 years in jail, or perhaps both. In the case of a second or subsequent arrest, he might face a fine of up to Rs.10,000/- or a sentence of up to seven years in jail, or sometimes both.
14. **Section 67B of the Information Technology Act, 2000** - This section of the Act outlaws the publication of sexual and obscene information involving a child. A person who commits such a crime might stand a term of up to half a decade in jail and a fine of up to 10 lakhs.
15. **Section 4 of Indecent Representation of Women (Prohibition) Act, 1986, (IRWA)** – This section forbids the publication and distribution of books, pamphlets, and other items with derogatory depictions of women. On a first guilty verdict, any person liable within this section shall be punishable with imprisonment of any description for a term up to 2 years along with a fine up to 2,000 rupees, and on a second or subsequent finding of guilt, by imprisonment for a term between 6 months and 5 years and a fine between 10,000 rupees and 1,00,000 rupees⁷.

LACUNAE IN THE EXISTING LEGAL PROVISIONS

Although most of the above listed laws and legal frameworks recognise one or more elements of sextortion, there is no formal legislation in India that specifically addresses the crime and this

⁷ Sneha Mahawar, Vanya Verma, *How to take legal action against sextortion*, iPleaders (June 5, 2021) at https://blog.iplayers.in/take-legal-action-sextortion/#Section_1081ia.

conclusion can be arrived upon making the following observations:

- A) **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** – This statute attempts to safeguard women at work, with protection confined to female employees only, although sextortion is not a gender-specific crime⁸.
- B) **Section 375 and 376 of the Indian Penal Code, 1860** are laws on the offence of rape and punishments prescribed for it. However, it fails to cover the dynamics of marital rape, recently a hot and controversial topic in our country.
- C) Similarly, **Section 384 of the Indian Penal Code, 1860** is a law against extortion, however unfortunately it fails or rather say, ignores to cover the sexual element involved within it.
- D) And finally, the **Information Technology Act of 2000** stipulates certain sexual offenses dealing with cyber-crime, though it also does not cover the changing aspects of cyber sexual crime.

ADDITIONAL MEASURES TO BE ADOPTED

After reviewing the above listed statutes, the flaws of our legal system are quite obvious and evident. All of these laws and provisions address sexual abuse, but none of them directly address sextortion. So that next question that arises is ‘What can be done?’.

First and foremost, because no legislation explicitly acknowledges sextortion, such instances are handled with under a variety of different legislations, yet the peculiar characteristic of this crime makes the existing laws insufficient and ineffective. Even after a fair conviction, the sentence meted out is minimal in comparison to the wrong done. Hence, this has no effect on the rate of crime. And the criminal continues to be motivated to do further crimes. As this serious issue cannot be resolved, specific legislations covering the wider scope of sextortion, or at the very least a revision to the current law including sextortion, is required. Hence the state should either formulate a new act or amend current legislations to address these lacunae⁹.

⁸ Jyoty Thakur, *Sextortion: An Emerging Crime Into The Gray Area Of Law*, Legal Services India at <https://www.legalserviceindia.com/legal/article-6707-sex-tortion-an-emerging-crime-into-the-gray-area-of-law.html>.

⁹ Jyoty Thakur, *Sextortion: An Emerging Crime Into The Gray Area Of Law*, Legal Services India at <https://www.legalserviceindia.com/legal/article-6707-sex-tortion-an-emerging-crime-into-the-gray-area-of-law.html>.

In the second place, the nature of crime is such that it is likely to stigmatise victims for exchanging such revealing photographs and sexual content with offenders or creating an atmosphere that allows them to film it. The fact that victims are frequently accused of engaging in such an activity discourages victims from filing complaints or disclosing concerns to others. If someone is the sufferer of sextortion, he should not be left unattended because it is not the victim's mistake. One of the justifications for not filing complaints are episodes of victim-blaming. This mindset has the potential to harm victims.

Thirdly, to make sure that people may report this offense in a comfortable and dignified manner, a formal and confidential procedure for receiving and registering accusations must be established, ensuring that the incident is investigated in secrecy. More importantly, legal, institutional (sexual harassment committees at universities and schools), and community protection mechanisms (such as NGOs) for these sufferers must be formed besides legal and mental assistance to motivate victims to come out and hold abusers liable¹⁰.

Ultimately, awareness is the key. Awareness will have a substantial part in lowering crime rates and linking individuals to combat sextortion collectively will have a positive domino effect. By shedding light on the matter and its complexities, this may undoubtedly be a useful instrument in changing society's attitude toward victims. Society must be aware and tolerant of the victims, rather than marginalising them. They must not allow the exploiter to profit from the victim's silence.

LIMITATIONS TO THE STUDY

Like any study, there are limitations to this research that can significantly impact its scope. Firstly, while the quality of secondary data used in this study is good, it is less reliable and cannot be re-verified. Secondly, due to time constraints, it was not possible to cover all aspects of the study. Finally, a major limitation of this work is the plurality of views on the subject, making it difficult to choose between various perspectives.

¹⁰ Jyoty Thakur, *Sextortion: An Emerging Crime Into The Gray Area Of Law*, Legal Services India at <https://www.legalserviceindia.com/legal/article-6707-sextortion-an-emerging-crime-into-the-gray-area-of-law.html>.

CONCLUSION

Although anybody may access the internet, it is only few people who are aware of cybercrimes such as online sextortion. Sextortion instances on the internet are on the rise. Because of people's attitudes, many instances go unreported. It is time for instructors, legislators, and professionals to raise public awareness about the rise in such a cybercrime and the solutions offered to them. Researchers, psychologists and psychiatrists¹¹ should investigate the causes behind an offender committing online sextortion. The state should also set specific laws surrounding the issue of online sextortion in the nation. Eventually, everyone must realise that their safety is in their hands and that it is critical to take responsibility for one's own actions in this technologically advanced society.



¹¹ Saloni Agrawal, *Online sextortion*, Indian Journal of Health, Sexuality & Culture at <https://iisb.org/pdf/june2020/6.%20Online%20sextortion.pdf>.