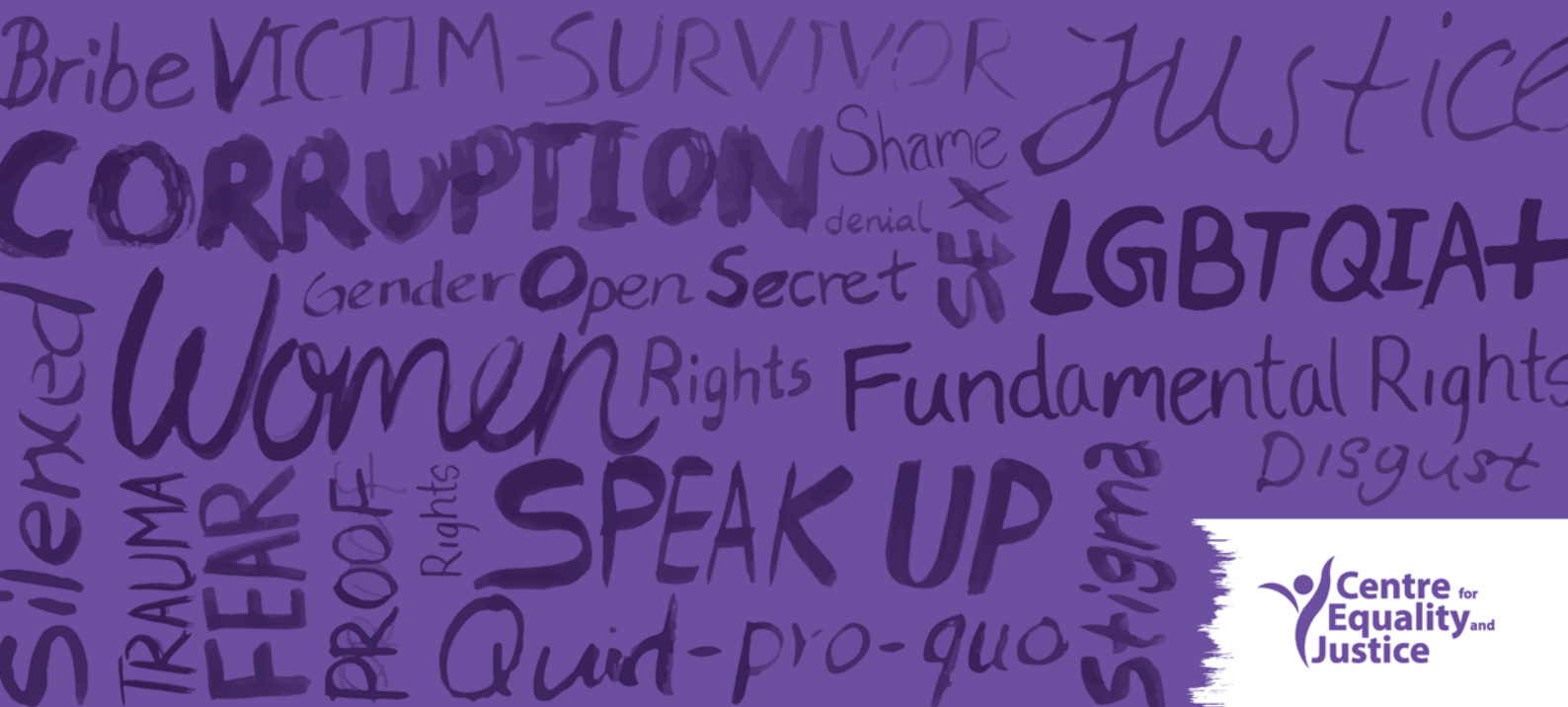


Ending Sexual Bribery in Sri Lanka

Legal and Procedural Reforms

Part II



A lobby group was formed by CEJ in 2018 to advocate for the amendment of laws and policies on sexual bribery in Sri Lanka, including amendments to the Bribery Act to expressly include sexual forms of gratification. The lobby group consists of like-minded organizations and individuals working on similar issues.

Persistent lobbying with the support of the lobby group resulted in CIABOC incorporating CEJ's working definition of sexual forms of gratification into its 2019 National Action Plan for Combatting Bribery and Corruption in Sri Lanka as a proposed amendment to the Bribery Act.

In 2020 CEJ reconvened the lobby group as part of its ongoing work on sexual bribery by forming a Core Group to build on this success and formulate a strategy for future collective lobbying/advocacy initiatives for legal and policy reforms. The Core Group consists of representatives of civil society organisations, media, academia, legal and health sectors to galvanise collective action to prevent and address the incidence of sexual bribery in Sri Lanka.

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Design and layout by: Danushri Welikala

Printed and published in April 2022.

Supported by **The Asia Foundation.**

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ENDING SEXUAL BRIBERY IN SRI LANKA:

Legal and Procedural Reforms Part II

A word cloud of terms related to sexual exploitation and legal reforms. The words are arranged in a roughly rectangular shape, with varying font sizes and orientations. The most prominent words are 'Sexual exploitation', 'Rights', 'STOP', 'Bribery Act', 'ACCUSED', 'JUDGMENT', 'DISILLUSIONMENT', 'Criminalization', 'Support systems', 'zero-tolerance', 'WITNESSES', 'Power', 'Penalize', 'VICTIM BLAMING', 'AMENDMENT', 'Rectification', 'EMERGENT', 'COPIING', and 'BLAME'. The words are in shades of gray and black.

INTRODUCTION

Bribery or corruption of any kind is generally criminalised in any legal system. This is because it results in misuse of state resources, and adversely affects the supply and development of infrastructure and public services such as health and education, vital for a thriving society. Further, corruption erodes trust in public institutions and brings about the downfall of an accountable political leadership.

The primary focus of this document is on one particular form of bribery, namely, sexual bribery.

UNDERSTANDING SEXUAL BRIBERY

Sexual bribery is not to be confused or conflated with sexual harassment. Sexual harassment has been defined as;

“...any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.”¹

Sexual bribery, on the other hand, also referred to as ‘sextortion’ by certain groups and organizations, has both a sexual abuse and corruption component. Several organisations and institutions have put forward various of definitions of sexual bribery.² For the purposes of this document, the definition adopted by the International Association of Women Judges³ and recognized by the International Bar Association⁴ and Transparency International⁵, will be used. As per this definition, sexual bribery is;

¹ United Nations Secretariat, Secretary General’s Bulletin: Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority, (ST/SGB/2008/5) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/238/36/PDF/N0823836.pdf?OpenElement>

² The Commission to Investigate Allegations of Bribery or Corruption, Sri Lanka (CIABOC) when proposing legislative amendments suggested the following definition. “Sexual bribery’ is proposed to be defined as a form of ‘gratification’. Sexual bribery is defined as sexual favours solicited and received by persons in power or authority, in the exercise of that power or authority. Such favours are solicited as a condition for giving employment, a promotion, a right, a privilege or any other service, favour or advantage. A “sexual favour” could be sexual intercourse, or any act that would not amount to sexual intercourse, but will amount to or constitute physical, verbal, or non-verbal conduct of a sexual nature.”; Article 4 of the African Union Convention on Preventing and Combating Corruption defines corruption to include not only “goods of monetary value,” but also other types of “benefit,” “favour,” or “advantage” – terms that could be construed to cover the non-monetary, sexual benefit in a sextortion case.

³ IAWJ, Twenty Five Years of Judging for Equality (2016) 179.

⁴ Sara Carnegie, Sextortion: a crime of corruption and sexual exploitation (International Bar Association, 2019) <https://www.ibanet.org/MediaHandler?id=E5E451C2-A883-4518-BOED-5AAAEBCCDD5AA>

⁵ Hazel Feigenblatt, Breaking the silence around sextortion: The links between power, sex and corruption (Transparency International, 2020) https://images.transparencycdn.org/images/2020_Report_BreakingSilenceAroundSextortion_English.pdf

“[A] form of sexual exploitation and corruption that occurs when people in positions of authority whether government officials, judges, educators, law enforcement personnel, or employers seek to extort sexual favours in exchange for something within their power to grant or withhold. In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.”

Sexual bribery thus has both a sexual abuse and a corruption component, as the person demands a sexual bribe to carry out a duty or responsibility that he or she is bound to honour in terms of the law. The sexual abuse component comprises the demand for a personal benefit of a sexual nature for the perpetrator against the consent or free choice of the victim-survivor⁶. The corruption component in sexual bribery comprises the exploitation of a position of authority to demand a personal benefit in return for fulfilling a legally mandated duty.

The United Nations Office on Drugs and Crime (UNODC) has identified three distinct features of the corruption component of sexual bribery.⁷

i) Abuse of authority

This takes place when a repository of legitimate power (power can stem from codes of professional responsibility, social norms, community expectations or laws) exploits that power to secure personal benefits rather than using it for the intended purposes.

ii) Quid pro quo

Generally refers to sexual gratification sought by an employer, supervisor or any individual in a position of power or authority in ‘exchange’ of carrying out duties or providing services in the workplace.

iii) Coercive power

Physical violence or force is not an essential element of sexual bribery. Coercive power that comes with the authority or power held by the perpetrator is what is used most often to elicit sexual bribery from the victim-survivor.

⁶ Sara Carnegie, Sextortion: a crime of corruption and sexual exploitation (International Bar Association, 2019) <https://www.ibanet.org/MediaHandler?id=E5E451C2-A883-4518-BOED-5AAAEBCCDD5AA>

⁷ Stopping the abuse of power through sexual exploitation: naming, shaming and ending sextortion (International Association of Women Judges, 2012) https://www.unodc.org/res/ji/import/guide/naming_shaming_ending_sextortion/naming_shaming_ending_sextortion.pdf

CONSEQUENCES OF SEXUAL BRIBERY

As mentioned above, bribery of any sort including sexual bribery adversely affects trust in public authorities, access to public services and the overall development of a community or nation. Sexual bribery also severely impacts the short and long term wellbeing of the victim-survivors, grossly violating their fundamental human rights to be free from sexual violence of any kind, and belittles their human dignity. Earlier reports by the Centre for Equality and Justice (CEJ) have noted that “occurrences of sexual exploitation and sexual bribery have exacted a heavy psychological toll on the women. Interviewees noted that they experienced feelings of disgust, shame, sadness, anger and disillusionment during and after the incident.”⁸ One victim-survivor explained their experience as one which could never be undone, and as giving them a ‘wound that was even worse than cancer.’⁹

VICTIM-SURVIVORS OF SEXUAL BRIBERY

Certain groups in society that have been traditionally discriminated against, often bear the brunt of sexual bribery as well. For instance, previous research shows that women are impacted negatively by corruption, more so than men. One of the main reasons is that women constitute a higher percentage of the poorer population and hence are rendered dependent on the government for public services.¹⁰ Due to the imbalance of power in such circumstances, women are compelled to give in to the demands for bribery. The alternative might be delay, denial of services or poor quality services being provided. Further, a study by Transparency International found that “[v]ery often when women are compelled to bribe, it takes the form of sexual favours, as sexual extortion is a specific form of corruption that affects women disproportionately.”¹¹

However, it is of paramount importance to keep in mind when drafting laws, policies and formulating support mechanisms, that sexual bribery does not affect women alone. Men, women and members of the LGBTQI community can all be victim-survivors. In the case of the LGBTQI persons the prevalence of laws, practices and social stigma that discriminate against them based on their sexuality renders them further vulnerable to sexual bribery. In many instances, members of the LGBTQI community who are victim-survivors of sexual bribery are reluctant to report such issues as

⁸ Sexual Bribery of military widows in Sri Lanka: Anuradhapura, Kurunegala and Galle Districts (Centre for Equality and Justice, July 2018) <https://cejsrilanka.org/wp-content/uploads/Sexual-Bribery-Of-Military-Widows-English.pdf>

⁹ Shrouded in secrecy: sexual bribery of Muslim women in post war districts (Centre for Equality and Justice, July 2018) <https://cejsrilanka.org/wp-content/uploads/Shrouded-In-Secrecy.pdf>

¹⁰ Women’s experience of corruption in public service (Transparency International Sri Lanka, June 2014) <https://www.tisrilanka.org/pub/reports/WEC.pdf>

¹¹ See n(10)

they fear that their complaints will not be considered seriously or that their identity will be revealed and expose them to further discrimination and stigma.¹²

EXAMPLES OF SEXUAL BRIBERY

Sexual bribery can take many forms. CEJ has previously highlighted several examples of sexual bribery.¹³ Sexual bribes have been demanded in return for completing paperwork to obtain employment or livelihood support, to admit children to school, to receive approvals to conduct various events, to handle legal or administrative matters in the Courts or to receive sanctions for development projects. In such instances, sexual bribery has been demanded or elicited in the form of inter alia rape, demands for sexual intercourse or a one-off sexual encounter, demand for the victim-survivor to live with the perpetrator, being forced to submit to inappropriate touching or exposing private body parts, posing for sexual photographs, and verbal threats of harm being done to the victim-survivor if they made a complaint or informed anyone or did not accede to the demands.

Other examples from Sri Lanka include a Grama Niladari demanding a sexual bribe from a flood victim in the Wanathamulla area,¹⁴ the Traffic Manager of the Uva Provincial Council Passenger Transport Services Authority soliciting a monetary bribe where the police also made note that a sexual bribe was also solicited¹⁵ to issue a route license for a student transport bus.

SHORTCOMINGS WITH THE LAW AND NEED FOR REFORM

Several laws which address bribery and corruption in Sri Lanka are discussed below. However, previous research¹⁶ has repeatedly highlighted that these laws are insufficient to address the issue of sexual bribery.

The United Nations Convention against Corruption (UNCAC) requires states parties to criminalise bribery by national public officials. Sri Lanka ratified UNCAC in March 2004. In this context, Article 15 of UNCAC directs state parties to criminalise both:

¹² Ellie McDonald, Matthew Jenkins and Jim Fitzgerald, *Defying Exclusion: Stories and insights on the links between discrimination and corruption* (Transparency International and Equal Rights Trust, 2021) <https://images.transparencycdn.org/images/2021-Defying-exclusion-Report-v2-EN.pdf>

¹³ See (9) and (10); Sexual Exploitation of female headed households affected by war in the north of Sri Lanka (FOKUS women, March 2016)

¹⁴ <http://www.hirunews.lk/143465/grama-niladari-arrested-after-he-demanded-sexual-bribery-from-flood-victim>

¹⁵ <https://www.hirunews.lk/english/270317/traffic-manager-of-uva-provincial-council-arrested-for-soliciting-a-bribe-sexual-favours>

¹⁶ Research on international practices- tackling sexual bribery (Centre for Equality and Justice, 9 November 2018) ; Amending law and policy to address sexual bribery in Sri Lanka (Centre for Equality and Justice, March 2018) ; Khyati Wickramanayake, Amending the Bribery Act and other related Acts to expressly include sexual bribery as an offence (Centre for Equality and Justice, 2020);

- a the act of promising or giving a public official undue advantage so that the official acts or refrains from acting in the exercise of his or her duties and
- b the solicitation or acceptance of undue advantage by a public official to act or refrain from acting in the exercise of his or her duties.¹⁷

There are certain laws in place currently in Sri Lanka, which can be, and which have been in certain instances, used to address instances of sexual bribery. However, as these laws do not specifically address sexual bribery, these lacunae need to be filled.

i) The Bribery Act No. 11 of 1954 (Bribery Act)

The Bribery Act criminalises soliciting, accepting or offering any gratification by or to a public officer as an inducement for the performance (or non-performance) of a particular task. Gratification is defined to broadly include “any other service, favour or advantage of any description whatsoever.” This is echoed in the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994.

The following shortcomings however have been identified with regards to this law in the context of sexual bribery:¹⁸

- a Victim-survivors who acquiesced to the demand for sexual bribery are at risk of prosecution. Due to the manner in which the law has been worded, victim-survivors are viewed as a party to the offence by offering gratification.
- b The law is applicable only to public officials and not to private actors, such as corporations. This excludes instances of sexual bribery in the private sector from being brought under the law. Thus, victim-survivors of sexual bribery in the private sector are not afforded a recourse in law.
- c Sexual bribery is classified as any other ‘gratification’ and does not consider the physical, psychological and other impacts of sexual bribery.
- d The existing provisions of the Bribery Act are insufficient to protect the victim-survivors.¹⁹
Section 79(1) of the Bribery Act already provides that:

¹⁷ Amending law and policy to address sexual bribery in Sri Lanka (Centre for Equality and Justice, March 2018)

¹⁸ Quid pro quo: a study of sexual bribery in Sri Lanka (Daily Financial Times, 24 January 2020)
<https://www.ft.lk/opinion/Quid-pro-quo--A-study-of-sexual-bribery-in-Sri-Lanka/14-694260>

¹⁹ Khyati Wickramanayake, Amending the Bribery Act and other related Acts to expressly include sexual bribery as an offence (CEJ, 2020)

“in any proceedings for bribery before a court or commission of inquiry, the giver of a gratification shall be a competent witness against the person accused of taking the gratification and shall not be regarded as an accomplice, and the decision or finding of the court or commission shall not be illegal merely because it proceeds upon the uncorroborated testimony of such giver”.

The protection afforded to victim-survivors of sexual bribery is limited in the above section as:

- a The section only relates to Court proceedings and leading evidence.
- b While the section does not regard the giver of gratification as an accomplice, it does not however completely absolve such a person of guilt.

ii) Commission to Investigate Allegations of Bribery or Corruption Act No. 19, of 1994

This law is to be read closely with the Bribery Act. Further, several of the limitations and gaps highlighted above in relation to the Bribery Act, are applicable to the CIABOC Act as well. Section 28 of this Act defines bribery as;

“the offer, solicitation or acceptance of any gratification in contravention of any provision of Part II of the Bribery Act, or any other act in contravention of any such provision.”

iii) Penal Code Ordinance No. 2 of 1883

Sections 158 to 161 of the Penal Code criminalise accepting or obtaining gratification by a public official. Gratification is defined as;

“...not restricted to pecuniary gratifications or to gratification estimable in money.”

Sections 345 (sexual harassment), 372 (extortion) and 483 (criminal intimidation) may also be used to prosecute sexual bribery.²⁰

The following shortcomings however have been identified with regards to the penal code in the context of sexual bribery:

- a The law is applicable only to public officials and not to private actors, such as corporations.
- b The law does not recognise sexual bribery as an offence by itself. This results in uncertainty and lack of clarity in the law. This can lead to improper charges and prosecutions that may have a higher chance of being dismissed on technical grounds. There is no consistency and no steady jurisprudence on this matter due to the lack of a clear legal definition.²¹
- c The lack of a specific definition and/or offence of sexual bribery also signifies the lack of emphasis or gravity placed on this particular issue, as it lacks legal recognition.
- d Sexual bribery is not addressed specifically and therefore the law does not consider the physical, psychological and other impacts of sexual bribery.

iv) Article 11 and 12 of the Constitution

Sexual bribery can be construed to be a form of 'torture, cruel, inhuman or degrading treatment or punishment' or 'discrimination on the ground of sex', under Articles 11 and 12 of the Constitution of Sri Lanka.

The following limitations however have been identified with regards to using these constitutional provisions to address sexual bribery:

- a Fundamental Rights can only be vindicated against public officials (administrative/ executive action) and not to private actors, such as corporations.
- b There is a time bar of one month – not conducive in instances where the experience is traumatic to the victim survivor who may require adequate time to recover and prepare documentation to file a fundamental rights application.

²⁰ Justice Shiranee Tilakawardane, Sextortion: A new name, an age-old crime (CeylonToday, 22 December 2019) <https://www.sundaytimes.lk/191222/sunday-times-2/sexortion-a-new-name-an-age-old-crime-383934.html>

²¹ Justice Shiranee Tilakawardane, Sextortion: A new name, an age-old crime (CeylonToday, 22 December 2019) <https://www.sundaytimes.lk/191222/sunday-times-2/sexortion-a-new-name-an-age-old-crime-383934.html>

- c Relative inaccessibility – fundamental rights can only be canvassed in the Supreme Court which entails several logistical and financial hurdles.

v) Establishments Code

The Establishment Code which governs and regulates the public sector and provides *inter alia* for disciplinary procedures does not address the issue of sexual bribery. Currently, the following references to the offence of bribery and corruption are present in the Code:

- a Rule 28 of chapter XLVII of Volume II of the Code deals with 'Disciplinary action against a Public Officer in view of orders issued against him by a Court of Law or Statutory Authority'.
- b According to Rule 28:3, a disciplinary order can be made against a Public Officer who has been found guilty of an offence by a court or statutory authority, even without a formal disciplinary inquiry. However, according to Rule 28:6, being acquitted, discharged or found not guilty for an offence does not mean disciplinary action cannot still be taken against a Public Officer in terms of the Code.

vi) Judicial Precedent

In terms of legal precedent in the case of ***Kathubdeen v. Republic of Sri Lanka***, the Court recognized sexual bribery as an offence punishable under the law. In this instance the offence of 'gratification' under the Bribery Act was used to hold the accused guilty.²²

However, this is one of the rare instances of a judicial pronouncement in a matter of sexual bribery. It is recommended that lawyers strategically litigate to build a strong body of jurisprudence that can strengthen the call for a specific law on sexual bribery.

FORMULATING NEW LAWS TO CRIMINALISE SEXUAL BRIBERY

Recognizing sexual bribery as a stand-alone offence is important due to its widespread nature and the need to afford it legitimacy in law. This has also been underscored with regards to Sri Lanka, by the Committee on the Elimination of Discrimination against Women (CEDAW).²³ Further, a specific offence of sexual bribery is essential to ensure that perpetrators do not escape punishment due to non-recognition of the offence, lack of awareness, or being punished for only a part of their actions.²⁴

²² *Kathubdeen v. Republic of Sri Lanka* [1998] 3 Sri LR 107

²³ CEDAW/C/LKA/CO/8, Concluding observations on the eighth periodic report of Sri Lanka (3 March 2017)

²⁴ See n(6)

The Jammu and Kashmir Criminal Laws (Amendment) Act 2018 which particularly refers to sexual bribery,²⁵ the Prevention of Corruption (Amendment) Act, 2018 in India which addresses non-monetary undue advantage²⁶ and the Criminal Codes of the Federation of Bosnia and Herzegovina and the Republika Srpska which include the offence of “Sexual Intercourse by Abuse of Position”²⁷ are relevant examples that can be considered when drafting new laws.

The following elements can be considered when drafting a new law or introducing a specific offence of sexual bribery:

- ▶ There was a good or service due to the victim-survivor that was withheld and/or threatened to be withheld (eg: the victim-survivor was denied a permit until and unless a sexual act is performed).
- ▶ There was solicitation and/or acceptance of a sexual act/gratification (Carrying out of the act in itself is immaterial (eg: the perpetrator asking for, or accepting a sexual bribe should be sufficient to be found guilty of sexual bribery). Whether such sexual bribery or gratification was actually realized in practice should not be a factor in determining guilt).
- ▶ Use of coercion (physical, verbal or psychological) – this can constitute a threat, intimidation or promise and is not limited to physical force. Section 119 of the Argentine Criminal Code for instance does not require active or physical resistance as a manifestation of the victim’s non-consent.²⁸ Similarly, as per the New South Wales’ Crimes Act 1900, lack of consent to sexual intercourse is determined *inter alia* by the “the abuse of a position of authority or trust.”²⁹
- ▶ The intention of soliciting and/or accepting sexual gratification in exchange for fulfilling his/her duty – knowledge that the sexual act is solicited and/or accepted in exchange for a (public) service.

²⁵ A shortcoming in this law however is that only women are referred to as potential victim-survivors

²⁶ ‘Seeking sexual favours punishable under new anti corruption law’ The Hindu (September 2018) accessed 22 October; also see ‘Asking for sexual favours is a crime under anti-graft law: What does it mean for victims?’ The News Minute (September 2018) < <https://www.thenewsminute.com/article/asking-sexual-favours-crime-under-anti-graft-law-what-does-it-mean-victims-88125> > accessed 22 October 2018

²⁷ Research on international practices- tackling sexual bribery (CEJ 9 November 2018)

²⁸ Combatting Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation (Thomson Reuters Foundation) <https://www.trust.org/contentAsset/raw-data/588013e6-2f99-4d54-8dd8-9a65ae2e0802/file>

²⁹ Combatting Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation (Thomson Reuters Foundation) <https://www.trust.org/contentAsset/raw-data/588013e6-2f99-4d54-8dd8-9a65ae2e0802/file>

In most instances, victim-survivors of sexual bribery are reluctant to report or complain about their experiences.³⁰ From 2010–2019 only 13 cases have been reported to CIABOC, with only six being prosecuted.³¹ This can be for several reasons:

- › The power imbalance between the perpetrator and victim-survivor. The perpetrator is often of a higher economic or social class than the victim. The perpetrator holds the power to give or withdraw a public service.
- › Those who are coerced into giving the sexual bribe due to their dire circumstances feel guilty and regard themselves as having done something wrong.
- › Victim-survivors are afraid of not being believed or being dismissed and of the social stigma that they would be subjected to if it is known that they have been victims of sexual bribery, irrespective of whether they succumbed to the pressure or not;
- › Fear of reprisal from the perpetrator if the perpetrator is exposed, or of not receiving the service sought from the perpetrator in future.
- › Concerns regarding the complainants' safety before and after making the complaint and while pursuing remedies.
- › The fact that sexual bribery is not formally identified as a specific offence, lack of information and awareness on how or where to report, and lack of trust in the system that the complaint will be addressed.
- › Language barrier – most complaint and redress mechanisms are in Sinhala thus rendering them inaccessible to Tamil speaking victim-survivors. **The centralised nature of CIABOC renders it inaccessible to victim-survivors outside the city of Colombo, compelling them to make a choice between using up resources to access CIABOC and not pursuing justice.**

³⁰ Minoli De Soysa, Sexual Bribery, The open secret (Groundviews, 14th October 2020)
<https://groundviews.org/2020/10/14/sexual-bribery-the-open-secret/>

³¹ Sexual bribery: The silenced side of corruption (Daily Financial Times, 3 September 2020)
<https://www.ft.lk/Opinion-and-Issues/Sexual-bribery-The-silenced-side-of-corruption/14-705482>

There might also be evidentiary hurdles in prosecuting the offence of sexual bribery:

- › Institutional frameworks lack the capacity, including gender sensitivity and/or resources to effectively investigate or prosecute the conduct.
- › Inadequate or non-existent reporting or documentation of cases of sexual bribery.
- › Lack of corroborating witnesses and adequate circumstantial evidence, especially where the coercion is of non-physical nature.
- › The burden is on the victim/prosecution to prove lack of consent.

RECOMMENDATIONS

LEGISLATIVE AMENDMENTS

Suggested amendments to the Bribery Act³²

- › Addition of the term ‘sexual bribery’ and/or ‘sextortion’ to Section 90 of the Act, and defining the said terms to include sexual intercourse or any act that would constitute physical, verbal or nonverbal conduct of a sexual nature, including such through the use of digital technologies.
- › Similarly retroactive application of any new law on sexual bribery has also been discussed previously.³³ For the purposes of this document, it would suffice to mention that the introduction of an offence of sexual bribery does not preclude past violations being prosecuted under ‘gratification’. Further, a provision should be specifically included to state that the victim-survivors of sexual bribery, (where sexual bribery was solicited and/or demanded and/or accepted without the full and free consent and/or offer of the victim), are not to be considered guilty even in respect of past violations.
- › In order to safeguard the privacy and safety of the victim-survivors:
 - a In-camera proceedings should be allowed in furtherance of Section 78(3) of the Act.
 - b The identity of the victim or any other details that may reasonably disclose the identity of the victim should not be disclosed to and/or by the media.
 - c The Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 should be specifically referred to in the Bribery Act as a mechanism to provide security to victims and/or witnesses of sexual bribery.³⁴

³² Detailed guidelines on sentencing have been addressed in a previous publication of the CEJ and will not be discussed in detail here.

³³ See n(21)

³⁴ See n(21)

Suggested amendments to the CIABOC Act

- › This law should be amended to include the solicitation or acceptance of sexual bribery under the Bribery Act as well.
- › Mandatory inclusion of at least one gender sensitive female member in the Commission.
- › The Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 should be specifically referred to in the CIABOC Act as a mechanism to provide security to victim-survivors and/or witnesses of sexual bribery.³⁵
- › Make provisions to ensure confidentiality in handling cases of sexual bribery, including severe penalties for breach of such confidentiality.

Suggested amendments to the Penal Code

- › Introducing a separate offence of sexual bribery (refer below for proposed elements of the offence).
- › As recommended earlier by CEJ, the Penal Code section should be wide enough to encompass situations in which persons holding authority over, holding out to have authority over, or in a fiduciary relationship with another demands or accepts any sexual gratification as a condition for doing or forbearing from doing any act.³⁶

REFORMING THE ESTABLISHMENT CODE

- › An amendment should be brought to Volume II of the Establishments Code (1999)³⁷ to impose disciplinary action on public officers who are found guilty of sexual bribery.
- › The Schedules of the Establishment Code should be suitably amended to ensure that the offence of sexual bribery is included; such as, in the 'First Schedule of offences committed by Public Officers' and Appendix 1, 'Definition of offences caused or committed by Public Officers'.

³⁵ See n(21)

³⁶ See n(21)

³⁷ Establishment Code of the Government of the Democratic Socialist Republic of Sri Lanka, Volume 2, 1999, [http://www.pubad.gov.lk/web/images/contents/e_code/establishments-code-volume-ii-1999\(e\).pdf](http://www.pubad.gov.lk/web/images/contents/e_code/establishments-code-volume-ii-1999(e).pdf)

HOLDING NON-STATE ACTORS ACCOUNTABLE

It is also recommended that sexual bribery should not be viewed as an issue to be dealt with only in the public sector. It is a problem that has to be addressed in both the public and private sectors, such as in industries employing large numbers of young women or private companies providing public services such as transport or education.³⁸ The Sri Lankan Supreme Court previously recognized that private companies carrying out a function of great public importance, with substantial financing from the government, and managed and controlled by the government is an agency or instrumentality of the government.³⁹ Section 295 (a) of the Norwegian Penal Code is a relevant example as it penalises *any person* who obtains sexual activity for himself/herself or another person, or makes a person perform acts corresponding to sexual activity on himself/herself by abusing a position, dependent relationship or relationship of trust. Thus, this section is not limited to instances where public officials are the perpetrators.

Further, Section 256 *bis* of the Argentine Criminal Code goes a step further, by envisaging an instance where the public official is the victim-survivor. The Argentine law penalises anyone who requests, receives or accepts a promise of money or any other gift to unduly exert his or her influence on a Public Official to do, delay or omit to do anything related to the Public Official's duties.

ENCOURAGING VICTIM-SURVIVOR COMPLAINTS

- ▶ The reluctant or coerced participation of the victim-survivor, cannot be interpreted as consent, and the victim-survivor cannot be held liable.
- ▶ The victim should not be named as a suspect or accused in a case of sexual bribery under any circumstances.
- ▶ The law should be framed in a manner where a direct complaint from the victim-survivor should not be mandatory for investigations or prosecution to begin.
- ▶ There should not be any prescription or statutory time limit for this offence; complaint, investigations and prosecution of sexual bribery should not be time-barred.

³⁸ *Rajaratne v. Air Lanka Ltd. And Others* [1987] 2 Sri L.R 128

³⁹ *Rajaratne v. Air Lanka Ltd. And Others* [1987] 2 Sri L.R 128

POLICY CHANGES

- › Add a sexual bribery inquiry mandate into existing independent commissions, such as the Police Commission, Election Commission, Bribery Commission, and Public Service Commission. Each of these Commissions should have a gender-sensitive and trusted procedure to investigate and handle cases of sexual bribery.
- › Provide paralegal services to the field officers and development officers attached to the State Ministry of Women and Child Development, Pre-Schools and Primary Education, School Infrastructure and Education Services to consider the design of a new project to continue this initiative on training to the national and local government officers.
- › Introduce specific provisions in the Witness and Victim Protection Act to cover victims and witnesses of sexual bribery – this will require amending current portions in the Act with regards to the composition of the Authority and the Division named under the Act, which comprises police and other public officials.
- › Establish institutional codes of conduct and internal complaint mechanisms within state institutions, and appoint trained, sensitised and rights aware officers to handle complaints and conduct investigations.
- › Introduce a ‘Whistle-blower Protection Act’ to safeguard those who report incidents of sexual bribery.⁴⁰
- › Set up a system to extend psycho-social and/or medical support for victim-survivors, to ensure that the issue of sexual bribery is addressed holistically.
- › Set up mechanisms to document incidents of sexual bribery, any recordings or other evidence to strengthen advocacy measures on this issue and to inform various policy and law reforms.
- › Create widespread awareness and a national conversation from the school level upwards on this issue to address the stigma surrounding sexual bribery, to educate the public on the gravity of sexual bribery and to make the public aware of available redress mechanisms.
- › Decentralise CIABOC to ensure its presence across the country, thus making it more accessible.
- › Ensure CIABOC’s services are provided in the Sinhala, Tamil and English languages to make it accessible to all communities.

⁴⁰ Women’s Experience of Corruption In Public Service (Transparency International Sri Lanka, June 2014)

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Silenxed Women Rights Fundamental Rights
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