

CASE STUDY

INDIA

Investing in Justice for India's Sex Workers

Summary

In 2022, the Supreme Court of India expanded the rights of sex workers in a landmark case. The ruling emphasised that sex workers have the right to a life of dignity as guaranteed by the Indian Constitution. It also ensured better protections for sex workers and directed local/state governments to conduct workshops for sex workers about their rights. This transformative ruling was spearheaded by the persistent advocacy of sex worker organisations including the Durbar Mahila Samanwaya Committee (DMSC), a sex worker cooperative with over 65,000 members. In 2023, the budget for HIV programming increased by USD 7.5 million. By expanding the rights of sex workers (who are particularly impacted by HIV/AIDS) and subsequently investing in a health-based approach, India took important steps to move away from a punitive approach towards a response which prioritises community, health and justice.

Key Statistics

14,000

people were arrested yearly under the Immoral Traffic (Prevention) Act 1956, **90% of whom were women.**^[1]

\$111,229

In 2015, under the Immoral Traffic (Prevention) Act 1956, **241 women were imprisoned in India** at a total cost of USD 111,229.^[2,3]

>30%

More than 30% of all violence against sex workers was committed by **police officers.**^[4]

130%

The occupancy rate for men and women in Indian prisons was 130% in 2021.^[5] The criminalisation of sex workers contributed to the overcrowding of prisons.

The Punitive Approach

Sex workers are a key marginalised population that is particularly impacted by HIV/AIDS and punitive policies criminalising sex work and drugs. The Indian Immoral Traffic (Prevention) Act (ITPA) criminalised activities essential to engaging in sex work, including the operation of commercial sex work establishments, deriving income from sex work, and soliciting sex work. This punitive law resulted in the harassment of and violence against sex workers at the hands of the police. Over 30% of abusive and violent actions reported against sex workers were committed by police officers. Law enforcement often employed physical assault and public humiliation during raids, while also coercing sex workers to pay bribes or perform sexual acts to evade arrest. In a 2016 survey of 3,000 sex workers who had faced police violence, 35% reported physical violence by police, 37% had been verbally threatened, and 20% had been forced to pay bribes.^[4] Sex workers were also exposed to involuntary detention in “rehabilitation homes” and medical examinations.

In 2015, 241 women were imprisoned under the ITPA at a total cost of USD 111,229.^[2,3] The proportion of women in prison increased from 3.3% in 2000 to 4.3% in 2015.^[5] Women imprisoned under the ITPA were segregated under the presumption that they could be a “bad influence” on others.

The conditions within India’s prisons violate human rights.^[6] They are extremely overcrowded, with an occupancy rate of 130% in 2021. The vast majority (77%) of those in prison were people awaiting trial.^[5] Further, people in prison have limited access to health services, and mortality is high; more than 1,800 people died in prisons in India in 2018.^[7]

Challenging the Punitive Approach

In 2011, the Supreme Court of India heard the appeal of a man found guilty of the murder of a sex worker and convicted to life imprisonment. Besides upholding the verdict, the judges launched an inquiry aimed at improving the conditions of sex workers, combating human trafficking, and providing exit pathways for those desiring to leave the trade. The ensuing consultations spanned several years, culminating in a set of recommendations based on input from sex workers. The Durbar Mahila Samanwaya Committee (DMSC), a sex worker cooperative with over 65,000 members based in Sonagachi, India’s largest red-light district, played a crucial role in these consultations. Bharti Dey, Secretary of DMSC at the time, contributed to the Supreme Court-appointed panel focused on addressing legal challenges faced by sex workers.^[8]

DMSC consistently challenged the punitive approach through peer-led, grassroots organising. They engaged both low-level police officers and high-level commissioners about the unnecessary police raids, unwarranted harassment, extortion, and violence suffered by sex workers. Besides seeking decriminalisation and the recognition of sex work as a profession, DMSC passionately called for a shift in resource allocation – a redirection from punitive measures and an investment in health and community programmes. DMSC worked with the media and policymakers at the state and district level. They developed channels of communication with the National Legal Services Authority and the District Legal Services Authority. They also met with local councillors, Members of the Legislative Assembly, Members of Parliament, and Ministers.

Other organisations involved in advocacy for sex workers’ rights were the National Network for Sex Workers (NNSW), Sampada Grameen Mahila Sanstha (SANGRAM), the All-Indian Network of Sex Workers (AINSW) and Veshya Anyay Mukti Parishad (VAMP).

Instigating Change

In May 2022, the Supreme Court of India ruled that sex workers are entitled to protection under the law, marking a significant turning point for the rights of sex workers in India.^[9] The verdict emphasised that sex workers have the right to a life of dignity as guaranteed by Article 21 of the Indian Constitution. Expressing concern over the harsh and violent treatment of sex workers by police officers, the Supreme Court urged law enforcement agencies to educate themselves about the human and constitutional rights of sex workers, demanding that sex workers be treated with respect and equality.

The Supreme Court also directed local and state governments to conduct workshops focused on educating sex workers about their rights and conduct surveys to gather insights from the sex worker community. In addition, sex workers were to be actively engaged in shaping policies that affect them. The court affirmed the principle of equal rights, stressing that authorities were prohibited from separating a child from their mother solely based on the mother’s involvement in sex work. The court also barred the practice of arresting and forcibly confining sex workers within involuntary “rehabilitation homes”.

Investing in Community, Health and Justice

In 2023, the Indian government increased its domestic funding for their HIV programme by USD 7.5 million.^[10]

The programme includes HIV testing and treatment, opioid agonist therapy, and targeted interventions for high-risk groups, including female sex workers, people who inject drugs, trans and gender diverse people, and men who have sex with men. National AIDS Control Organisation (NACO), a division of the Ministry of Health and Family Welfare, leads the HIV programme and works in partnership with civil society organisations and community-led groups.

Impact

The advocacy efforts of DMSC and other sex worker organisations resulted in a historic ruling, affirming the rights of sex workers and challenging police brutality and harassment. The ruling recognises that sex workers have the right to a life of dignity. Newly funded initiatives aim to empower sex workers and provide health and social support. While it is too early to assess the full impact of this ruling, it is an important step in moving away from the criminalisation of sex work. By doing this, the ruling paves the way for reducing burdensome expenses related to the criminal legal system, while also fostering improved HIV prevention and management strategies.

Sources

1. Banerji, V., 2018. Status and remedies of female sex workers: an Indian perspective. Available at: <https://repository.ucatolica.edu.co/server/api/core/bitstreams/7b8b62ef-813e-4921-8920-14701aa6adfd/content>
2. News Laundry. How much is spent on a prisoner in India? Available at: <https://www.newslaundry.com/2016/06/22/how-much-is-spent-on-a-prisoner-in-india>
3. Ministry of Women and Child Development, Government of India. Women in Prison. Available at: <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>
4. OHCHR. Violence Faced by Sex Workers in India. Joint Stakeholder Submission. Available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=3721&file=EnglishTranslation>
5. World Prison Brief Data: India. Available at: <https://www.prisonstudies.org/country/india>
6. The Wire. 'Buzz of a Mosquito... But With the Sound of Grief': The Lives of India's Women Prisoners. Available at: <https://thewire.in/women/india-women-prisoners-rights>
7. The Wire. Poor Medical Care for Prisoners Explains Why Number of Custodial Deaths Is Only Rising. Available at: <https://thewire.in/rights/prison-custodial-death-medical-care>
8. Durbar. Available at: <https://durbar.org/>
9. Patnaik, S., 2023. Sex-workers defying patriarchy and challenging state reform and rehabilitation projects in India: voices from the margins. Available at: <https://repository.graduateinstitute.ch/record/301083/files/sex-workers-defying-patriarchy-and-challenging-state-reform-and-rehabilitation-projects-in-india-12883.pdf>
10. Ministry of Health and Family Welfare Budget 2023. Available at: <https://www.indiabudget.gov.in/doc/eb/sbe46.xls>

This is one in a series of case studies which captures the experiences of governments and donors around the world divesting from punitive approaches to drugs, and investing in programmes which prioritise community, health and justice. These case studies are not meant to be comprehensive but provide examples of effective divestment and investment, and related advocacy strategies.

**DIVEST FROM
THE UNJUST
DRUG WAR.**



**INVEST IN
JUSTICE.**