

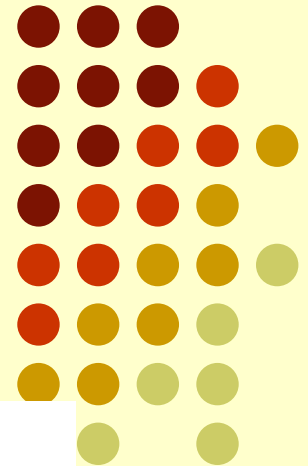
Enabling Environment for Most At Risk Populations: the Indian experience

Interventions with Most-at-Risk Populations in PEPFAR
Countries: Lessons Learned & Challenges Ahead

Chennai, India

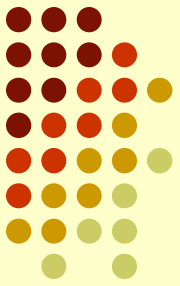
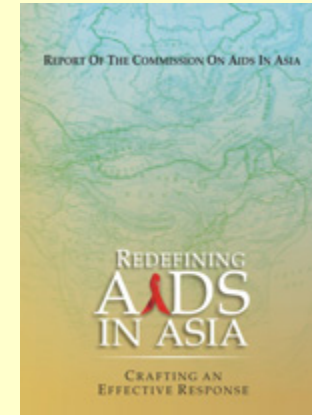
February 18-20, 2009

Tripti Tandon



Lawyers Collective HIV / AIDS Unit

Most at risk Populations



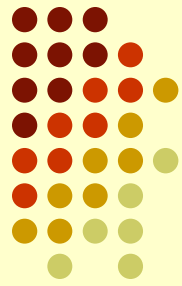
Acc to the Commission on AIDS in Asia, HIV fuelled by:

- Unprotected paid sex (*sex workers*)
- Sharing of contaminated needles & syringes among injecting drug users (*idus*)
- Unprotected sex between men (*msm*)

And,

- Men who buy sex are the single most powerful driving force in Asia's HIV epidemic

HIV Prevention

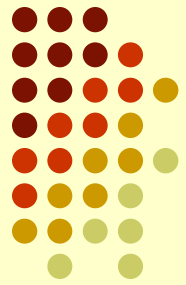


- Consistent condom use in commercial sex thru structural methods or mobilisation of sex workers
- Full range of harm reduction services for IDUs
- Condoms, lubricants, STI treatment along with self organising for MSM

And,

- Increasing use of condoms by clients of sex workers will do *more* than *any* other intervention to control HIV

Barriers to interventions



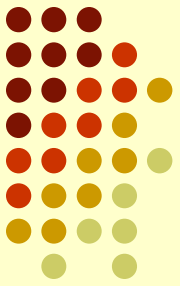
Prevention is weakened by:

- **Marginalisation & prejudice** against most at risk groups
- **Police harassment & crackdowns** on sex workers/drug users/MSM

which stem from:

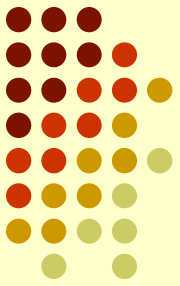
- **Criminal law(s)** against sex work, drug use & sex between men

Legal Environment



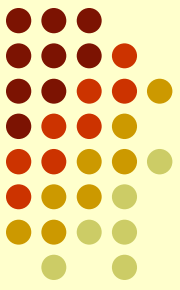
- Sex work
- Drug use
- Sex between men
- Immoral Traffic (Prevention) Act, 1956 (“ITPA”)
- Narcotic Drugs & Psychotropic Substances Act, 1985 (“NDPS”)
- Section 377, Indian Penal Code, 1860

Legal environment: Sex Work



- **Offence:**
 - Brothel work
 - Street work
 - Soliciting
- **Enforcement:**
 - Disproportionate arrests & conviction of sex workers
 - Raids & “crack downs” on brothels
 - Removal & placement in “homes; regardless of age & consent
- **Consequence:**
 - *“Packets of nirodh under beds & pillows ...shows room used as brothel for immoral activity”*

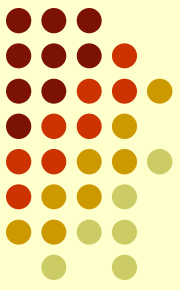
FIR, accusing outreach workers of running a brothel, June 2007



Legal environment: Drug Use

- **Offence:**
 - Consumption
 - Possession
- **Enforcement:**
 - Non application of treatment provisions
 - Revolving door b/w prison & street
- **Consequence:**
 - *“At any given point, 10% of our clients (IDUs) are in jail. With high rates of HIV, HBV, HCV & TB, we’re filling up prisons with the sick & exposing prisoners to sickness.....”*

Luke Samson, SHARAN, Asian Consultation on Drug Use, Poverty & HIV, 2008



Legal environment: Sex b/w men

- Offence:

- Non penile-vaginal intercourse
- B/w males as well as heterosexuals
- Irrespective of age & consent

- Enforcement

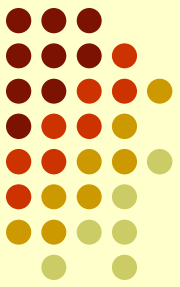
- Prosecution against consenting adults *rare*
- Harassment & extortion *common*

- Consequence:

- *“There is no justification & legality for supply of condoms in prison.”*

Affidavit, IGP, Tihar Jail, Delhi, 1994

Criminal law: undermines *trust* & pushes activity *underground*



- “The government's effort to eradicate prostitution has made it nearly impossible to provide HIV prevention services to sex workers.”

The Lancet 2004; 364:1297-1299 on demolition of Goa's red light district

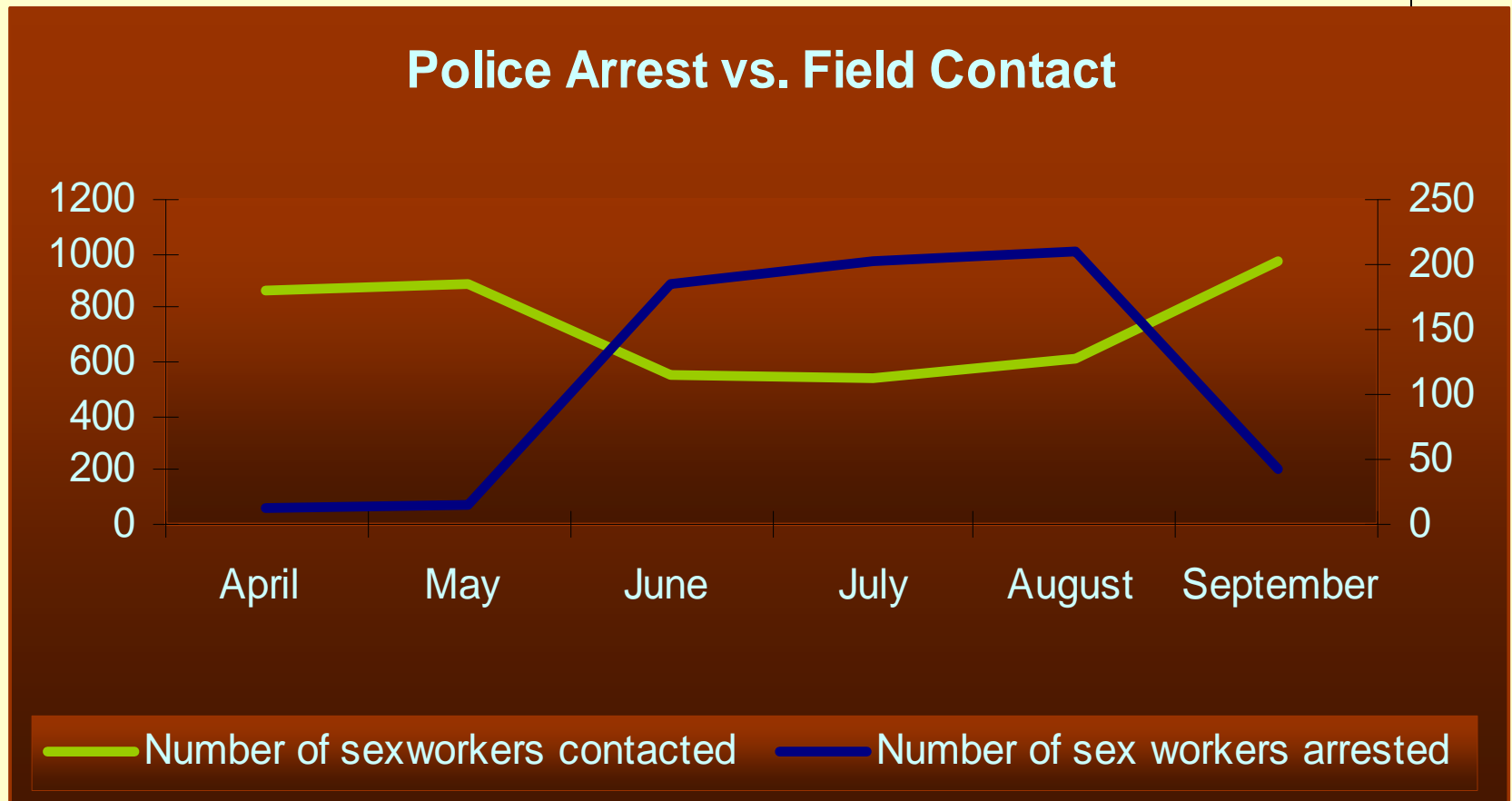
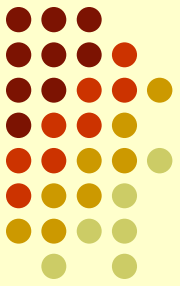
- “With the police around, it is much harder to get people into the Drop in Centre... They feel if they come here they will be arrested..”

Outreach worker, SASO, Imphal, 2008

- “Interventions aimed at delivering services to MSM cannot succeed if the intended beneficiaries are fugitives from the law”

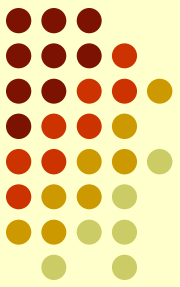
UNAIDS, Men who have sex with men, the missing piece in national responses to AIDS in Asia & the Pacific, 2007

Law enforcement & HIV prevention



Source: Ashodaya Samithi, a sex workers' organisation in Mysore, India

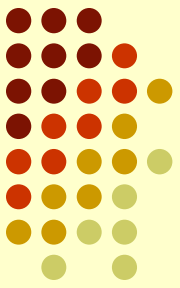
Law Reform: Sex work



Legislative Changes to ITPA, 2006

- Proposal to **criminalise clients “visiting brothels”**
- Supported by anti-trafficking lobby & Women’s Ministry
- Resisted by sex workers & Health Ministry
- Status: *Official Amendment to ITPA Bill awaiting Cabinet approval*

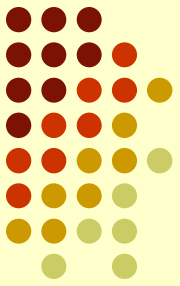
Law Reform: Sex between men



Constitutional Challenge to Section 377, 2001

- Petition seeking **decriminalisation of adult, consensual sex** in private
- Supported by lgbt community & Health Ministry
- Resisted by religious moralists & Home Ministry
- Status: *Delhi High Court decision awaited*

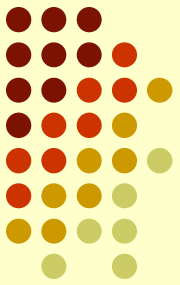
Law Reform: Drug Use



No current attempt to review NDPS Act

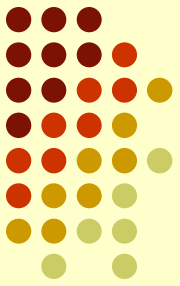
- Last amended in 2001 to rationalise sentencing; minimal relief to people who use drugs
- 10 yr UNGASS Review; *Political Declaration* heralding shift towards balance, harm reduction & human rights ??
- India withholding support ??

Impediments to reform



- *“..punishing clients will reduce demand for prostitution. Once the demand goes, supply (of trafficked women) will take care of itself,”*
Womens’ Minister supporting criminalisation of sex work, 2006
- *“Public money cannot be spent on maintaining someone’s drug habit”*
Govt official questioning OST for people using drugs, 2008
- *“..deletion of Section 377 can well open flood gates of delinquent behaviour & be misconstrued as providing unbridled licence for the same (homosexuality)”.*
Ministry of Home opposing a petition to decriminalise adult, consensual same sex acts, 2003

Adverse Laws: Catalyst for Empowerment



Provide an **opportunity** for communities, otherwise excluded, to **challenge** *disentitlement* & **claim** legal rights:

Sec 377:

- Community Consultations on case
- Affidavits in Court
- Intervention Application

ITPA:

- Community Review of Bill
- Political Advocacy
- Formal' involvement - written & oral submissions

NDPS

- Legal literacy: rights of people who use drugs
- Organising: user groups, harm reduction networks

Irrespective of final outcome, **community participation** in politics & policy is itself **empowering**