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## RIGHTS OF STREET VENDORS IN INDIA

\*Smt. Vani Maradi, Research Scholar, Gulbarga University, Kalaburagi

\*\*Dr. Devidas G. Maley, Research Guide, Gulbarga University, Kalaburagi

### Abstract

Street vending is a vital economic activity in urban India. It is the largest informal sector which caters to the livelihood of the urban poor. Since the era of economic reform in the country, the sector has faced many challenges, which have been sought to be addressed by numerous legislative attempts- the most recent one being the introduction of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill 2012. This legislative report seeks to review the 2012 Bill. However, the discussion of the Bill in the report is confined to addressing certain core issues that the Bill seems to address and critically appraising the regulatory and policy responses to those issues contained in the provisions of the Bill. Part I of the paper will present a brief overview of the legal discourse on the issue by mapping some legal responses in foreign jurisdictions and briefly discussing some Indian case laws to establish the Indian legal position. Part II will examine the rights and duties of street vendors as laid down in the Bill. Part III aims to analyse the registration and licensing mechanism under the Bill. Part IV evaluates dispute redressal and appeal mechanism provided under the Bill. Finally, the report concludes by calling for the suggested amendments to be incorporated to the Bill to ensure its efficacy in letter as well as spirit.

### Introduction.

Street vendors can be called ‘small capitalist of the poor’s’, ‘community of entrepreneurs’ or ‘God of small sellers’, etc. They are independent entrepreneurs who sustain on informal livelihoods. They come to cities like Delhi from the neighboring states of Bihar, Jharkhand and Uttar Pradesh in search of better livelihood options. Poverty and lack of gainful employment in the rural areas and in the smaller towns drive large number of people to the cities in search of work and livelihood. These people generally possess low skills and do not have the level of education required for the better paid jobs in the organized sector. Unemployment, contractualization of labour in the organized sector and other related factors are leading to less jobs in the formal market and hence an influx of labour force in the unorganized sector. This has led to a rapid growth of the informal sector in most of the large cities of India such as Delhi, Mumbai, Kolkata, Bangalore and Ahmadabad. For the urban poor, street vending provides for an easy and available opportunity of livelihood as it requires less skill and low financial investment.

A “street vendor” means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific (The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014). Street

vendors are estimated to be at around 2 % to 2.5 % of the population of major Indian cities. In terms of total numbers, there are an estimated 10 million or more street vendors in India.

When we go to any place around the world, we will predominantly find the street vendors selling their goods. The most important thing is to understand who can be considered as street vendors and what are his rights.

A street vendor is a person who sells his goods to the public without a permanent stall or structure in a temporary or mobile stall. These vendors can be stationary who possess temporary stalls or they can be mobile who travel from place to place to sell their products on cycles or their carts or even on their heads. Various terms are used to describe them, like hawker, pheriwala, rehri-patriwalla, footpath dukandars, sidewalk traders, and many more<sup>1</sup>

### **History and development of their rights in India**

As the street vendors mostly sell their goods on-road and due to this reason, they have suffered hardships from the law enforcement agencies like police officers. By the middle of 1990s, the street vendors faced several attacks from them. Many NGOs came forward against this and also realised that there is a need for organization and also ensuring protection to these vendors. As a result, in the year 1998 NASVI that is National Alliance of Street Vendors of India which was later known as National Association of Street Vendors of India was established for the rights of the street vendors in India. Several agencies helped in the establishment of NASVI like an NGO working for the empowerment of women in rural Bihar, SEWA that is the Self- Employed Women's Association which is a street vendor advocacy group which was established earlier for the protection of the street vendors.

Finally, in the year 2004, the cabinet of India adopted a National Policy on the Street Vendors. It was for the first time in the history of India that in 2009, the street vendors were recognised as the contributors to the Indian economy that is to the GDP of the country. The ideas were made in the form of the document by the NASVI and its allies so that a framework is made for the street vendors who are considered as a sizable portion of the total population of the poor. To build pressure on the Central Government millions of street vendors marched and also went on a strike and also hundreds and thousands of letters were sent to local lawmakers. It was in the year 2013 when the results of the efforts taken came when in September 2013, the Indian Parliament passed the Street Vendors Act.

### **Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014**

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014<sup>2</sup> is the act which governs Street Vendors in India. the important features of this act are:

A Town Vending Committee will be established which will be responsible for conducting surveys of all the street vendors which are located under its jurisdiction. The survey must be conducted every five years. No street vendor will be evicted until this survey has taken place and also till a certificate of vending has been issued.

All the street vendors should be placed in a designated and specified vending zone. When all the vendors cannot be accommodated or placed in the same vending zone then the places will be based on the result of the drawing of lots. And the vendors who failed to get spaces in that vending zone should be compulsorily accommodated in the adjoining vending zones.

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<sup>1</sup>Street Vendors in Asia: A Review, Economic and Political Weekly.

<sup>2</sup>Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014.

The act specifies the age limit of the street vendors and thus states that the street vendors should be above fourteen years of age and only they will be granted a certificate of vending. The certificate can be granted on the condition that the vendor gives an undertaking that he will carry on with the business by himself or through his family members. He also has to declare that he, however, such certificates will be granted only if the person gives an undertaking that he has no other means of livelihood and also he will not transfer his certificate to any other. But the certificate can be transferred to the other family members if the vendor dies or suffers from permanent disability.

The certificate will be immediately cancelled if the vendor breaches the conditions which were mentioned before the issuance of the certificate.

It has also been mentioned that no vendor can be permitted to carry out vending activities in the no-vending zones.

If an area is a specified area as a no-vending zone, then vendors will be relocated or transferred to another area. The street vendor must be given a notice before 30 days for the purpose of relocation. If the vendor fails to vacate such no-vending space after a notice has been given, then he will be liable for a punishment which is to pay a penalty which may extend up to two hundred fifty rupees per day.

It is compulsory for the local authority that it must physically remove the vendor and also make seizure of the goods of such vendors who are in the no-vending zones.

Under this act there will be an establishment of a dispute resolution body which consists of a Chairperson who has been a civil judge or a judicial magistrate and also two other professionals who are prescribed and appointed by the appropriate government.

There will be the establishment of a Town Vending Committee in each zone or ward of the local authority.

A street vendor who professes the profession of vending without a certificate of vending or a vendor who breaches the conditions laid down in the certificate of vending will be punished with a penalty of an amount which may extend up to two thousand rupees.

### **Legal Provisions under Constitution related to the Street Vendors**

The Constitution of India also contains provisions for the protection of street vendors in India. Article 14 of the Constitution deals with equality before the law and thus even the vendors possess the right just like any other persons and they will be protected by the law of the country without any discrimination. Article 19(1)(g) of the Indian Constitution gives to every country to practice any profession or trade or business. So even the street vendors have this fundamental right to carry on trade or business of their own choice. Under Article 21 of the constitution. The right to life which has been mentioned under Article 21 also includes the right and protection of means of livelihood. When there is a forcible eviction of hawkers without prior notice then is a breach of the right to livelihood and thus an infringement of Article 21 of the Constitution<sup>3</sup>

### **Hawking Zone and Street Vendors**

For understanding the rights of the street vendors, we need to understand and mark the hawking zone. Hawking Zones causes serious obstruction to the public and it also is the reason for various traffic problems. It is the state and municipality which has the right to designate and allocate the places from where street trading can be done. The street vendor doesn't have the right to decide if the place is a place of trade or not<sup>4</sup>. In the

<sup>3</sup>Legal Protection for Street Vendors. Economic and Political Weekly.

<sup>4</sup>National Policy for Urban Street Vendors and Its Impact. Economic and Political Weekly.

case of *Bombay Hawker Union vs. Bombay Municipal Corporation*<sup>5</sup>, the Court held that The Non-Hawking Zones is fixed by the Municipal Commissioner and he can consult the other members of the Municipal Corporation. He should exercise his discretion reasonably and also in the interest of the public. If there are areas in which the vendor sells its goods and it is other than the Non-Hawking Zones, then licenses should be granted to the hawkers to do their business on payment of the prescribed fee. It is the right of the Commissioner to extend the limits of the Non-Hawking Zones when doing so is in the interests of public health, sanitation, safety, public convenience. Hawking licenses cannot be refused to the street vendors in Hawking Zones only with the exception that appropriate reasons are given for the same. Hawking is prohibited in Hospitals or other places where the security measures demand so and the places where the roads are not wide enough to manage the traffic then it cannot be considered as a Hawking Zone.

In the case of *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater*<sup>6</sup> the Court held that the places which are within 100 meters from any place of worship, a holy shrine, educational institution and general hospital should be considered as a non-hawking zone.

### **Licensing of Street Vendors**

The need for licencing of the street vendors was felt when the illegitimate business started to grow all over the country at the time. This licensing will also protect the hawkers from harassment of law enforcement agencies especially police and other influential persons. With the help of this licence, the business of the street vendor is made legal and it also helps the authorities regulating the street vendors to keep a record of the street vendors. It also helps in the allocation of space in the pavement to do business. It will also help in tax collection every month. The licence can only be issued if survey and registration fees have been notified<sup>7</sup>.

### **Judicial Pronouncements on the Rights of the Street Vendors**

In the case of *South Calcutta Hawkers, Association vs. Govt. of West Bengal*<sup>8</sup>, the court held that Street Trading is a fundamental right which is available to the street vendors under Article 19 (g) of the Constitution of India but this right is subjected to Art. 19(6) of the Constitution. So, it is within the powers of the state to make any law which imposes reasonable restrictions on the interest of the general public on this fundamental right. The court also observed in this case that proper regulation of the vending rights is necessary otherwise the purpose which roads which are for the proper movement of the traffic would be defeated.

In the case of *Olga Tellis & Ors vs. Bombay Municipal Council*<sup>9</sup>, the court held that a person cannot survive without any means of livelihood. If this right of livelihood is not treated as a fundamental right then it would lead to deprivation of the right to life. But the performance of this right should be done in a way which is fair and reasonable. So, before the eviction of the hawkers if a notice is served then it would not lead to infringement of the rights of the street vendors.

The Hon'ble Supreme Court of India in *Maharashtra Ekta Hawkers Union and another vs. Municipal Corporation, Greater Mumbai*<sup>10</sup> also talked about the rights of the street vendors in India. The court stated that the street vendors should be given the right to operate across the country till the registration and also the creation of both vending zones and also hawking zones following the 2009 policy. Once that is completed then the street vendors should act under the directions and orders of the town vending committee. This judgment is considered as a ray of hope for the street vendors who have realized that they are important and also their rights are important.

<sup>5</sup>Bombay Hawker Union vs. Bombay Municipal Corporation

<sup>6</sup>Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater

<sup>7</sup>A Law for Street Vendors: Street vendors are jubilant about the new law; now for its implementation. Economic and Political Weekly

<sup>8</sup>South Calcutta Hawkers, Association vs. Govt. of West Bengal

<sup>9</sup>Olga Tellis & Ors vs. Bombay Municipal Council

<sup>10</sup>Maharashtra Ekta Hawkers Union and another vs. Municipal Corporation, Greater Mumbai



The Supreme Court in the case of *Sodan Singh vs. NDMC*<sup>11</sup> has significantly contributed to the aspect of the jurisprudence of street vendors' rights in India. This case again interpreted the rights of the street vendor which has been mentioned under article 19 (1)(g) but in this case, the court took a broad view of the same. It was stated by the court that there is a right which has been given to the hawkers and the street vendors to carry the business on the streets but the same should be subjected to limitations by the municipal authorities. The exercise of the rights should not create nuisance or inconvenience to the public. The court also stressed the identification of the hawking zone. The other related issues were related to the number of days and also the time of operation of the street vendors.

## **Working conditions of street vendors**

### **Accessibility to basic amenities:**

Street vendors operate in very dismal working conditions and in a state of uncertainty. They have to fight on daily basis for their survival in urban cities. They do not have proper work place and access to facilities such as drinking water, proper food during work hours, toilets, electricity, etc. They use any public toilet which is in the locality. They buy drinking water for which they have to pay daily. Those who have their place of accommodation nearby go to their homes for lunch, drinking water and using toilets. For electricity facility, they either use lights operated through batteries or depend on street lights. Quite a few of them had taken rented electricity connection depending on their locations. The Street Vendors Act gives them the right to livelihood, but they are still deprived of facilities like health, housing and education. In addition to this, they have to face seasonal hardships. For example, their business suffers a lot during rainy season because they do not have a permanent structure which can save them and their goods from rains.

### **Long hours of work:**

Street vendors work for long hours which go to 8-12 hours per day on an average. Still they earn much lesser than their counterparts in the organized sector. Their work starts from bringing the goods from the wholesale market, to making arrangements for selling them and then preparing for next day after the day's work. They cannot employ someone for help because of their low earnings; they are helped by their family members.

### **Safety at workplace:**

Article 39(a) of the Indian Constitution directs the state to secure for men and women equally an adequate means of livelihood. Article 42 states that the state shall make provision for securing just and humane conditions of work and maternity relief. On the basis of these articles it is the duty of the State to protect the right of this segment of the population to earn their livelihood. As a welfare state also the state should promote their livelihood. But instead of providing security, the state machineries work against the street vendors.

### **Competitive market:**

The workforce in the unorganized sector is increasing day by day. As more and more people enter into the vending business, the market gets tougher and competitive to operate in. The vendors will have to evolve new and better methods to operate in the market to maximize profits. For example now they have started to use technology such as mobile phones for their transactions. They put order for their stock on phone and sometimes even customers contact them on phone.

### **Social security:**

There is no formal social security from the state for unorganized sector as those which are given to workers in the formal sector. But certain schemes such as RSBY are available for them. Also the vendors are associated with different schemes if they are members of any co-operative, SHG, etc. This helps them to take credit on low interest.

### **Social Networking:**

Vendors have their own social groups and connection which lead to informal relationships among them. They provide mutual support to each other in establishing business and in running it. In spite of the competition among them, they help each other whenever police comes for eviction raids

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<sup>11</sup>Sodan Singh vs. NDMC.

## Constitutional Provisions:

### Right to Trade:

**Article 19 (1) (g)** gives the Indian citizen a **fundamental right to practice any profession, or to carry on any occupation, trade or business.**

### Equality Before Law:

**Article 14** of the Constitution states that the **state shall not deny to any person equality before the law or equal protection of the laws** within the territory of India.

### Social Justice:

**The preamble of the Indian Constitution** states that India is a **sovereign, socialist, secular democratic republic** and shall secure to its citizens **justice, social, economic and political and equality of status and of opportunity.**

### Directive Principles:

**Article 38(1)** directs the state to **promote the welfare of the people** by securing a social order in which justice – social, economic and political, shall inform all institutions of national life.

**Article 38(2)** directs to **‘minimize the inequalities in income status, facilities and opportunities.’**

**Article 39(a)** directs the state to formulate policy to ensure that citizens, men and women equally, have the **right to an adequate means of livelihood.**

**Article 41** specifically provides for **‘right to work’** within the limits of the economic capacity of the state.

## Conclusion

Street vendors assemble at a place where they can get customers for their goods. Hence they succeed in making a natural market for their goods. But their market is often considered as illegal and encroaching upon public place of the city. The vendors are not aware of their rights at all and they are so afraid of the police and administration that they are not ready to talk about them. They are very reluctant to share their problems and especially talk about bribes which they give to police. They also hide their real income and expense as they feel that the government will take some harsh decision if they come to know their real income. The working condition of street vendors is really pitiable. They work without any civic amenities. The state as a welfare state should provide them with proper working condition and amiable environment for their growth.

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