

Legal Protection for Street Vendors

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The Supreme Court has directed the government to pass the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 by 30 June 2011.

However, the bill does not include significant clauses of the National Policy for Urban Street Vendors as recommended by the National Commission on Enterprises in the Unorganised Sector. If passed in its present form, it will constitute a mockery of street vendors' rights. If the government is serious about protecting the livelihoods of the urban working poor, it must incorporate not only the clauses of the national policy but also the progressive steps taken in this area by the governments of Andhra Pradesh, Orissa and Chhattisgarh.

Street vending has been prevalent in our country since ancient times. Though most of these small traders were local people there were also those who came from far off places like Afghanistan, Tibet and even China. Today, this section of the urban employed is perhaps the most visible in the urban informal economy. In fact, some may feel that they are too visible and that their overbearing presence on the streets (and pavements) is a menace for commuters. The civic authorities in most cities treat these "intruders" in public spaces as a nuisance. The urban elites view them as eye sores. On the other hand the urban poor, especially the working poor, view street vendors as a boon. These street traders provide cheap food, clothes and other items of daily use. They are also easy to access as they conduct their business in convenient places in the city used by a large number of commuters. In other words, street vendors in effect subsidise the goods that the urban working poor need for their daily existence. This is a classic case of how one section of the urban poor (street vendors) subsidises the necessities of other sections of the urban poor – a task that should be performed by the government. Who are street vendors?

In most cities in the world the urban poor survive by working in the informal economy. This trend is prominent in developing countries. Poverty and the lack of gainful employment in the rural areas and in the smaller towns drive large numbers of people to the cities for work and livelihood. These people generally possess low skills and too low a level of education for the better paid jobs in the organised sector. Besides, permanent protected jobs in the organised sector are shrinking and even those with requisite skills are unable to find employment. For these people then, work in the informal sector is the only means of survival. This

has led to rapid growth of the informal sector in most large cities. For the urban poor, hawking is one of the means of earning a livelihood, as it requires minor financial input and the skills involved are low.

There is another section of the urban population that has taken to street vending. These people, or their spouses, were once engaged in better paid jobs in formal employment. Deindustrialisation in cities in many of the developing countries has created job losses in formal employment. Many of the displaced, or their spouses, have become street vendors in order to eke out a living. A study by Self-Employed Women's Association (SEWA), Ahmedabad, shows that 70% of the retrenched textile mill workers in the city have taken to street vending. The author had conducted a study on street vending in seven cities in India in 1999 and found that 30% of street vendors in Mumbai and 50% in Kolkata were earlier employed in permanent jobs in the organised/formal sector. They took to street vending after they lost their jobs.

Hence, street vendors try to overcome their problems by pooling their meagre resources and starting their own enterprises. They do not take to stealing or crime nor do they beg for a living. All they want is to live a life of dignity. However, the authorities in most cases hound them out of the streets or force them to pay bribes in order to remain.

Quest for Legalisation

The issues regarding the legality of street vending and the right to carry on their business have plagued vendors for long. A significant breakthrough came with the Supreme Court judgment on *Sodhan Singh vs New Delhi Municipal Corporation*. Singh, a vendor in New Delhi's Janpat area was frequently evicted and his goods confiscated. He appealed to the Supreme Court through a public interest litigation claiming that the action violated his fundamental rights, more specifically his right to carry on business or trade (Article 19(1)(g) of the Constitution of India). In a significant judgment, the sc ruled that,

If properly regulated according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to

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the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after a day's work can pick up these articles without going out of his way to find a regular market. The right to carry on trade or business mentioned in Article 19(i) (g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and no other use (*Sodhan Singh vs NDMC*, 1989).

The judgment is significant because it emphasises several important aspects of street vending and use of public space. It notes the positive role of street vendors in providing essential commodities to common people at affordable prices and at convenient places. Moreover, street vending, if regulated, cannot be denied merely on the ground that pavements are meant exclusively for pedestrians. The most important aspect is that street vendors are exercising their constitutional right to carry out trade or business hence it should be regulated properly and not abolished.

Despite this judgment, municipal authorities continued to harass street vendors. In 1998, the National Alliance of Street Vendors of India (NASVI) was formed in Ahmedabad. It was initiated by the SEWA but soon emerged as an independent federation of street vendors' organisations. In 1999, NASVI initiated a survey on street vending in seven cities. Based on the findings NASVI and SEWA advocated a national workshop on problems faced by street vendors. This was held on 29-30 May 2001 at Vigyan Bhavan, New Delhi and was jointly organised by SEWA and the Ministry of Urban Development. The findings of the above mentioned survey was a central theme of this workshop. The minister for urban affairs announced on the second day that a National Task Force on Street Vendors with the objective of drafting a National Policy on Street Vending would be set up. This policy was drafted by September 2002 and in January 2004 the union cabinet accepted it. The government changed subsequently but the new government (with Manmohan Singh as PM) accepted the need for a national policy for street vendors. The task of finalising this and also drafting a model law was given to the National Commission on Enterprises

in the Unorganised Sector. A new version of the policy was framed which was almost similar to the earlier one. A model act was also framed in 2009 by the Ministry of Housing and Urban Poverty Alleviation.

Though it has taken a fairly long time to settle this issue, there seems to be flicker of hope for the harassed street vendor. The model act is supposed to serve as guidelines for the states for framing and enforcing laws on street vending. Of late some of the state governments have framed laws for street vending but there are many more that have not done so. It is interesting to see that two of the states which have a large number of street vendors have not taken any initiative so far. These are Maharashtra and Delhi. The latter has over 3,00,000 street vendors whereas Mumbai has over 2,50,000. In both cities rent seeking is high. An earlier study found that street vendors pay as much as Rs 400 crore as bribes to police and municipal authorities. In Delhi this was even higher at Rs 50 lakh a month (Rs 600 crore annually). Any form of legalising would amount to a loss of these huge sums to corrupt officials. The two cities also have powerful residents' associations which represent the upper middle class and the rich and influence public policies in their favour.

States with Legal Provisions

Orissa should be mentioned as being the most progressive among states that have introduced policies for street vendors. At present the act is restricted to the capital city of Bhubaneswar and one can see the marked change among the street vendors. This city was one of the seven cities covered by NASVI's survey. At that time it was found that the street vendors earned little and were constantly chased away from their places of work. NASVI also conducted another survey of 10 cities in 2009. Bhubaneswar in 2009 was a marked contrast to what it was in 1999. Street vendors are now provided space on the pavements as one-third of the pavement is reserved for them and two-thirds for pedestrians. They face little or no harassment from the authorities. One the SNDT Women's University, Mumbai and the International Labour Organisation (ILO) had jointly conducted a study on street vendors in Mumbai. It found that 85% of the street

vendors suffered from diseases related to stress such as hypertension, hyperacidity, migraine, etc, mainly because of the uncertainty at their workplace. Besides Orissa, Madhya Pradesh too has enacted a law for street vendors. However this law exists without any enforcement. Street vendors in cities like Indore and Bhopal face evictions as none of the municipal bodies have made any provisions for vending zones or registration of street vendors. These are two important prerequisites for protecting street vendors.

Model Law

As mentioned earlier, a model law was framed by the Ministry of Housing and Urban Poverty Alleviation in 2009 known as, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009. This bill has not been introduced in Parliament so far. The law is supposed to be based on the National Policy for Urban Street Vendors laid down by National Commission on Enterprises in the Unorganised Sector. However, while going through the bill one finds some major discrepancies in its contents and the national policy.

There are four basic issues which the bill ignores starting with the issue of preserving *natural markets*. These markets spring up in places where the consumers find them useful. Hence there will be street vendors outside railway stations and bus depots. People returning from a tiring day at work would rather purchase their necessities from these vendors rather than make a detour and go to the market situated a few kilometres away. Similarly,

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there will be fruit sellers, food vendors, etc, outside public hospitals and and fruit sellers and flower sellers outside temples. Hence natural markets serve the interests of the people and they are convenient. The national policy suggests that instead of forcibly removing such markets the municipalities should try to regularise them by allotting space. Unfortunately the model law on the other hand completely ignores the issue of natural markets.

The national policy stresses that while issuing licences the existing street vendors should be registered first and new vendors should be accommodated depending on availability of space. The model bill overlooks this aspect. It does not mention the vending rights of those who are already selling on the streets. The results can easily be foreseen if such a law is enforced. The bureaucrats and elected politicians will decide on who will get the pitch licences and, given the record of municipalities in bribe taking, these will be decided on the basis of the vendor's paying capacity. The elected members may also use this to

provide favours. It is therefore absolutely necessary to protect the interests of the existing vendors. In the past too whenever street vending was regularised preference was given to existing ones. In some cases the receipts of fines or eviction notices were used as proof. In the Chandni Chowk area of Delhi, the Tehbazari tax was taken as a basis for allowing street vending. The bill if made a law will be reversing this important precedent.

The national policy has laid down that eviction is the last resort. Moreover, if vendors are evicted the concerned authorities should ensure that they are provided alternative sites and their earnings are not reduced. Many feel that this is the most important provision for protection of the vendors. The bill does not mention anything on eviction. If there is no regulation, the municipal authority can evict street vendors indiscriminately.

The fourth point of departure from the national policy is in the numerical aspect of street vending. It is agreed by all that around 2% of the urban population is

engaged in street vending. The national policy has also mentioned this in its preamble. The Supreme Court judgment on street vendors in Delhi also makes this point clear. If so the bill should specify the extent of space allotted for street vending. It is normally accepted that one-third of the pavement be reserved for vendors and two-thirds for pedestrians or the bill can specify that since 2% of the urban population is engaged in street vending, at least 2% of urban space be reserved for vending.

Recent Supreme Court Judgment

The passing of this bill becomes more urgent with the recent Supreme Court judgment (*Genda Ram vs Municipal Corporation of Delhi*). This is one of the best judgments delivered by the highest court in favour of the urban poor. It was delivered on 8 October 2010. The judgment states that town vending committees should be appointed to regulate street vending and ensure that they are allotted proper public space. The court has directed

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the government to pass the bill by 30 June 2011. The judgment (para 77) states:

This Court is giving this direction (viz, passing of the bill) in exercise of its jurisdiction to protect the fundamental right of the citizens. The hawkers' and squatters' or vendors' right to carry on hawking has been recognised as a fundamental right under Article 19(1)(g). At the same time the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19(1)(d). These two apparently conflicting rights must be harmonised and regulated by subjecting them to reasonable restrictions only under the law...

The judgment concludes thus (para 79):

The fundamental right of the hawkers, just because they are poor and unorganised, cannot be left in a state of limbo nor can it be left to be decided by varying standards of a scheme which changes from time to time under orders from this Court.

Given the Supreme Court ruling and the deadline it has given for enacting the law, it becomes all the more important to ensure that the model bill should include the provisions that protect the fundamental right of the street vendors. In fact if the present bill becomes an act, it will turn the Supreme Court observations and the vendors' rights into a farce.

Policies/Bills in Other States

The most significant of these is the draft policy on the West Bengal Urban Street Vendor Policy framed by the Department of Municipal Affairs, Government of West Bengal. This state is notorious for two major actions against street vendors. First, on the night of 16-17 November 1996 the government ordered the infamous Operation Sunshine where around 1,00,000 street vendors were forcibly evicted and goods worth crores of rupees were confiscated or destroyed. This was the worst action taken by any government against the urban poor. To rub salt into their wounds, in 1997 the state government proposed an amendment to the Kolkata Municipal Corporation Act. This was bill no 33 of 1997 and was known as the Kolkata Municipal Corporation (Second Amendment) Bill, 1997. This later became an act. Section 371 of the Act was amended as this section contains regulations on street vending. The original section prevented the use of any pavement for hawking goods. The amendment expanded this to include,

“any basket, receptacle or goods on pavement, street, park or garden for display or sale” (Section 371, subsection 1). This section further states (subsection 1A) that contravention or abetting in contravening subsection 1, by a hawkers is a cognisable and non-bailable offence that shall be punished with rigorous imprisonment for a term extending up to three months or fined Rs 250. It is ironic that even rapists and murders in some cases get bail, but a street vendor is viewed as a bigger criminal!

The policy fortunately does not suggest such drastic steps but some of its sections raise serious concern. For example, Section 5, paragraph 5.1.6 deals with Compulsory No-Vending Zones. It states that

Entry/Exit gates and immediate vicinities of the gates of hospitals, nursing homes, educational institutions, offices, heritage buildings, etc, will not be allowed under any circumstance. Maidans and parks will normally be no-vending zones.

In other words most of the areas demarcated as natural markets will be no-vending zones. The Supreme Court judgment mentioned above has recognised these places as hawking areas and has even set guidelines. Paragraph 72, A, “Sites and Spaces” states that,

...While considering the spaces near schools, the representative of the Director (Education) shall be co-opted. While determining spaces near parks, representative of Director (Horticulture) shall be co-opted. Where spaces are to be selected near hospitals, representative of the hospital to be included.

This clearly means that the sc too agrees that these places can be hawking zones.

In fact, the Urban Street Vendors and Hawkers (Registration and Regulation) Bye Laws, 2010 of Chhattisgarh are far more progressive. Section 4 relates to exemptions and subsection states

Natural Markets are exempted from the ambit of these bye-laws. *Provided*, however that the Corporation shall endeavour at all times to improve the infrastructure in the Natural Markets and to strengthen the health, hygiene, sanitary conditions therein.

The state has followed the provisions of the national policy and its by-laws are most liberal for street vendors.

The most liberal and certainly the most radical of the attempts to protect the livelihoods of street vendors is that of Andhra

Pradesh. The state has a draft ordinance for the Andhra Pradesh Street Vendors' (Protection of Livelihood and Regulation of Street Vending) Bill, 2010. Chapter VII (Breaches of Conditions and Penalty) deals with penalising vendors who contravene the law. In most states, especially in the large metros like Mumbai, Kolkata and Delhi, the only penalty for illegal vending is forcible eviction and confiscation of goods. These cause unbearable losses to the vendors. Fruit and vegetable vendors lose everything because these commodities are perishable. Other vendors selling non-perishable goods are levied heavy fines and when claiming their goods find that half are missing. The authorities show scant respect for the legal framework while evicting. If the police raid the house of an alleged criminal or even a terrorist a *panchanama* is taken of the goods that are taken away. However a street vendor does not have these rights as the police or municipal authorities simply confiscate their goods without issuing any receipt or list of confiscated items. Vendors hence rarely get back their confiscated goods as there is no proper record of these.

The Andhra Pradesh bill notes that in cases of illegality the procedure will be “Notice as a first step, followed by imposition of fine, followed by physical eviction” (Para 13 5(i)). Para 13 5(iv) notes that “Confiscation of goods will be done as the last resort and will follow the Panchanama procedure (preparation of a list of the details of the type and amount of goods seized from the vendor in the presence of the required number of witnesses)”. This is a very important step towards granting some dignity to the street vendor.

Since the issue of legalising street vending has been lingering for a long time street vendors in most cities face a great deal of harassment from corrupt municipal and police personnel. They are also susceptible to protection rackets by the underworld. Therefore if the government is serious about protecting the urban poor it must protect the livelihoods of the street vendors. However, the draft model bill is least likely to do so. The Ministry of Housing and Urban Poverty Alleviation must draw from progressive steps taken by governments like Orissa, Chhattisgarh and Andhra Pradesh and the national policy if it is serious about protecting the livelihoods of the urban working poor.