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## **Introduction: Making a Living on the Street**

### **Why Liberalisation Has Failed the Poor?**

After the 1991 liberalisation, the poor do not seem to have gained as much as the rich. How can you carry out liberalisation only for the rich and expect the poor to benefit? Trickle down can go only so far. The truth is there has been hardly any liberalisation for the working poor. For them it has been all LPQ (Licences, Permits and Quotas) and little LPG (Liberalisation, Privatisation and Globalisation). The poor still suffer under the weight of regulations, restrictions and harassment by government and lack basic economic freedom in the areas of their livelihood.

The *Law, Liberty and Livelihood: Making a Living on the Street* goes beyond mere macro-statistics and statistical controversies regarding the impact of liberalisation on the poor and endeavours to further the understanding of the processes and dynamics involved in various urban livelihoods. It documents through primary research the 'official' as well as the 'actual' regulatory and licensing processes by direct interactions with varied stakeholders. The case studies of railway porters, street vendors, small shop keepers, cycle and auto rickshaw drivers, household-based industries, as well as small school operators provide graphic details of what ails India's entry-level professionals—the bottom rung of the economic ladder through which the poor can hope to climb to economic prosperity while providing some of the most essential services to the people. These micro-studies also suggest a very direct and distinct set of reforms that would enable people to utilise their skills and realise their full potential.

The reasons for the plight of the poor are often depicted as exploitation by the rich or callous neglect by government authorities more interested in promoting pro-rich policies. But our path-breaking study that offers snapshots of the ground realities of urban livelihoods

shows that the first purported cause is more of a mythology or folklore. The second cause of government neglect is true only in the sense that government has given more freedom to the richer sections of the society to make themselves wealthier. The government machinery, created in the name of protecting the poor against exploitation by the rich, itself has become the exploiter. It is the regulatory burden of government that is the real cause of the general plight of the working poor.

Contrary to the general perception that the rich, empowered by exploitative pro-liberalisation policies, squeeze the poor, the findings in the book adduce the fact that the poor remain poor because there has been no LPG in the areas that affect their livelihood. Their world is still dominated by the forces of extortion, arbitrariness and uncertainty brought about by restrictions on their economic life—the ubiquitous licence-permit-quota *raj*. It is the abolition of LPQ that has opened up the world for the richer sections of the country. The poor deserve no less.

Economic freedom is more valuable for those at the bottom rung of the economic ladder. Nobody appreciates free enterprise—absence of government regulations and controls—more than the poor unlicensed hawker. The rich can always find a way around government controls, the poor have no way out. Empower the poor with economic freedom.

The World Bank study *Doing Business* documents the problems in opening a simple business in various countries. The challenges of launching a business in India are captured through three measures: the number of procedures required to establish a business, the associated time and cost that each procedure commands. Entrepreneurs can expect to go through 11 steps to launch a business over 89 days on average, at a cost equal to 49.5 per cent of gross national income (GNI) per capita.

The data on our immediate SAARC neighbours reveal instructive facts. The number of procedures is lower in Sri Lanka, Nepal and Bangladesh and it takes less than one third of the duration in India to start a business in Pakistan. Compare these parameters with the more prosperous Hong Kong, Singapore and Australia to get an idea of the contribution of economic freedom towards economic prosperity or economic unfreedom towards economic poverty.

### Starting a Business in India

<i>Nature of Procedure (2004)</i>	<i>Proc #</i>	<i>Duration (days)</i>	<i>US\$ Cost</i>
Obtain pre-approval of name, have documents vetted	1	7	10.41
Stamp the Memorandum and Articles of Association	2	2	25.4
File for registration	3	9	193.6
Make a seal	4	7	10.41
Obtain PAN	5	60	1.35
Obtain TAN	6	45*	0
File for sales tax	7	15*	2.6
Register for Profession Tax	8	2*	0
Register with Mumbai Shops and Establishment Act	9	2*	20.82
File for EPF	10	2*	0
File for ESIC	11	1*	0
<b>Totals</b>	<b>11</b>	<b>89</b>	<b>264.59</b>

\*: This procedure runs simultaneously with previous procedures.

Source: <http://rru.worldbank.org/DoingBusiness/ExploreEconomies/BusinessClimateSnapshot.aspx?economyid=89>

### Country Comparisons of Starting a Business

	<i>India</i>	<i>Sri Lanka</i>	<i>Pakistan</i>	<i>Nepal</i>	<i>Bangladesh</i>	<i>Hong Kong</i>	<i>Singapore</i>	<i>Australia</i>
Number of Procedures	11	8	11	7	8	5	7	2
Duration (days)	89	50	24	21	35	11	8	2
Cost (% GNI per capita)	49.5	10.7	36.0	74.1	91.0	3.4	1.2	2.1

Source: <http://rru.worldbank.org/DoingBusiness/ExploreEconomies/EconomyCharacteristics.aspx>

Surely many other problems afflict the self-employed: access to credit, security of property, status in the society, social norms and customs. These too need to be addressed in order to open up economic opportunities. However government regulations are an institutional hindrance; they are simply self-inflicted. We should rationalise them so that they do not become the first barrier to earning an honest living.

### **Urbanisation and Development**

The process of economic development has historically involved reduction in the proportion of population earning a living in agriculture and thereby expansion in the areas of manufacturing and services. This transition from agriculture to industry has typically resulted in increased urbanisation—migration of people from villages to cities and towns. This phenomenon of urbanisation is so common that development is equated with the degree of urbanisation in the country. Majority of people in developed countries live in urban areas, at times as much as 80 per cent of the population. Less than 10, and often less than 2, per cent of population lives on agriculture in developed countries. Urbanisation has been an integral part of economic development.

Is it necessary to urbanise to develop? History suggests so. Prosperous areas have been urban areas. Mohenjodaro and Harrapa were urban areas of their time. The root of the word civilisation is city. There has never been a rural civilisation!

Urbanisation in the sense of higher concentration of people and larger common market is integral to economic and social development. Of course this process has its own problems. But it would be suicidal to stop or retard urbanisation, instead of addressing the problems.

### **Intentions and Outcomes: The Law of Unintended Consequences**

Many urban migrants find employment in factories, offices, and homes. But many do not. They need to create their own employment to join the urban economy through entry-level professions that require little capital and few skills. The government regulatory machinery, albeit well-meaning and well-intentioned, actually destroys livelihood opportunities for these poor entrepreneurs. Consider the regulations for cycle rickshaw pullers, street hawkers, and small shop keepers in the cities and towns of India.

#### *Cycle Rickshaw Licencing: Cycles of Poverty*

Delhi has more than half a million cycle rickshaws providing an affordable and accessible transportation service to the poor and the

*Delhi Municipal Corporation*  
**Cycle-Rickshaw Bye-Laws,  
 1960, Section 3**

(1) No person shall keep or ply for hire a cycle rickshaw in Delhi unless he himself is the owner thereof and holds a licence granted in that behalf by the Commissioner on payment of the fee that may, from time to time, be fixed under subsection (2) of Section 430. Provided that no person will be granted more than one such licence [Provided further that Commissioner may grant more than one licences to a widow or a handicapped subject to the maximum of five licences.]

lower middle class. The Municipal Corporation of Delhi has mandated that cycle rickshaws have to be licensed and fixed a limit of 99,000 licences. They claim to have fixed the number of 99,000 by taking into account the demand for rickshaw services, road space, and traffic congestion problems. Less than 75,000 licenses have actually been given out.<sup>1</sup> This makes more than 80 per cent of Delhi's cycle rickshaws illegal. This government created illegality

exposes the pullers to constant harassment and extortion. One study suggests that on an average a bribe of Rs. 200 per month is paid by each cycle rickshaw puller. That makes the total amount stolen by the municipal and police officers at Rs. 80 million a month! This is the burden of the license-permit *raj*—of economic unfreedom—on the poorest of the poor in Delhi.

Article 3(1) of the Cycle Rickshaw Bye-Laws of 1960 under Section 481 of the Delhi Municipal Corporation Act of 1957 requires that the owner and the driver of the cycle rickshaw must be the same person. The intention behind this rule is ostensibly noble—to reduce exploitation of rickshaw pullers by the middlemen, the contractors or *thekedaars*. However, the actual effect of the rule is rather perverse. The law basically says one person can own only one cycle rickshaw: there is no room for growth for individual owners in the cycle-rickshaw business. The only business that the poor rickshaw puller knows well cannot be expanded. He is condemned forever to live at the subsistence level on the revenue from one cycle rickshaw. As a business, you can own multiple taxies or buses but not so for cycle rickshaws of the poor. Is this the way to help the poor emerge from poverty?

1. Parashar, Vikas. 2004. "Spoke in the Wheel". *Down to Earth*, 15 April, Volume 12, Number 22: 16.

Moreover, if the owner is unable to ply the rickshaw, falls sick or goes to his native place for a visit, no one in his family can ply it. His rickshaw must lie unutilised. Does the law requiring the owner and the driver to be the same person really help the poor?

The licensing system has turned most rickshaw pullers illegal and they have to pay bribes to ply the rickshaws. But even that payment does not preclude impounding of rickshaws by the authorities at regular intervals. Once the rickshaw is seized, it takes 5-15 days and more bribes to get it released. During this period, the puller loses his only means of livelihood.

Because of all these problems and uncertainties created by the licensing system, the pullers prefer to rent than own the rickshaw. More than 90 per cent of rickshaws in Delhi are rented and not owned! The law was supposed to outlaw the middleman, but it is only the middleman who thrives in the rickshaw market. The actual outcome is contrary to what was intended by the law. This mismatch between intentions and outcomes is so common for regulations controlling normal economic activities that it has been given the status of a law: the law of unintended consequences.

#### *Delhi Municipal Corporation*

#### **Cycle-Rickshaw Bye-Laws, 1960, Section 17A**

Any cycle rickshaw found plying for hire without a licence or found driven by a person not having proper licence as provided under bye-law 3(1) and (2) shall be liable to be seized by the Commissioner or a person duly authorised by him in his behalf. The cycle rickshaw, so seized shall be disposed off by public auction after dismantling, deformation of such process including smashing it into a scrap after a reasonable time as may be decided by the Commissioner from time to time.



*Confiscated rickshaws at the MCD storage*

The license regime does not really control the number of rickshaws in the city; it does not serve any purpose in traffic or public space management. It does serve one purpose, probably the only purpose: it

*Delhi Municipal Corporation Act,  
1957, Section 420*

**Street Hawkers: Technical Conditions**

Sale of Ice-Cream by Hawking (Rule 6)

The icecream salesman will not shout to attract customers nor will he sit or lie on the trolley at any time.

makes most rickshaw business illegal and therefore open to extortion and harassment. Once a law is created, even a bad one, vested interests get formed who prevail despite attempts by higher authorities to revoke them.

*Street Hawking: Spend to Vend*

The heavy hand of government regulation is also present in other very common entry-level profession of street hawking. Delhi has more than 600,000 street hawkers, of whom only about five per cent have the *tehbazari* permit to hawk their goods on public space. The rest are subjected to continuous harassment through extortion and/or eviction. As documented in the chapter on

street hawking, it is not true that hawkers free ride on public space. There are substantial payments to the authorities involved and losses due to frequent evictions despite street hawking being one of the easiest entry level professions for the poor.



*MCD truck with hawkers' confiscated wares after a raid at the Lajpat Nagar Market in Delhi*

*Mumbai Municipal Corporation  
Act, 1888*

**Prohibition of deposit, etc., of things in streets**

**Section 313, Technical condition (iii)**

They [hawkers] should not hawk within 100 metres from any place of worship, holy shrine, educational institution and general hospital and within the periphery of 150 metres from any Municipal or other market.

In a survey carried out on the hawkers at the Safdarjung Hospital, Delhi, payments to the authorities were in the range of Rs 800-1000 per month for a 6ft× 4ft *patri*. Despite the payments, the raids were frequent to the extent of once a

day, unless there was local election. Not surprisingly, the survey showed that street hawkers are ready to pay sizable rent for the security that legality would bring them.

*Opening a School in Delhi:  
A Learning Experience*

India has a unique problem of 'educated unemployed.' Since they are educated, that is, have a college degree, they shun typical entry-level professions involving physical labour. On the other hand, there is severe paucity of primary schools, which limit access of the urban poor to basic education. What could be better and nobler than teaching other children or opening a school? It would solve both problems simultaneously. Not surprisingly, even education has its licence-permit *raj* in the form of Essentiality Certificate, which limits the number of schools that can be opened in a particular zone. The West A zone in Delhi has a pre-fixed maximum cap of six schools that can be opened in a year from 2004 to 2008. These controls are generally gotten around by the well-connected, but the poor 'educated unemployed' has little chance.

*Auto Rickshaw Drivers and Railway Porters: Limited Permits*

The same cap on permits for enterprise finds an echo in the running of auto rickshaws where the permits are limited and give rise to illegality for most and limit livelihood opportunities for others. In the case of railway porters in Delhi, the limit on the number of licenced porters takes a dramatic turn with a porter's badge commanding a price upto Rs. 3,00,000.

*Delhi Municipal Corporation  
Act, 1957*

**Guidelines for grant of Tehbazari  
Rule (iv)**

No tehbazari will be allowed on road which are visited by VIPs., like Bahadur Shah Zafar Marg, Subhash Marg, Indraprastha Marg, etc.

*Delhi School Education Act, 1973*

The school must obtain "Essential Certificate" by establishing that its existence serves the public interest. The Administrator decides by taking into account "the number and categories of recognised schools already functioning in that locality, and general desirability of the school with reference to the suitability and sufficiency of the existing schools in the locality and the probable effect on them."



*Delhi Municipal Corporation Act,  
1957, Section 420*

**Street Hawkers: Technical Conditions  
Refrigerated Water Trolleys (Rule 5)**

It has been decided by the Commissioner that distance of 50 metres between 2 water trolleys in congested areas of City, Sadr Pahar Ganj, Civil Line and K.B. Zones and 100 metres in less congested areas of Shahdra, New Delhi, South, West and Rural Zones be observed. However, this shall not hold good in case of parking of water trolleys near cinemas, markets and other places of recreation etc. Even at such places a distance of about 10 metres shall have to be maintained.

*Delhi Municipal Corporation Act,  
1957, Section 417 and 421*

**Shops: Technical Instructions  
Barber's Shop/Hair Dressing Saloon  
(Rules 3 & 17)**

- All implements in the barber's shop shall be kept clean and sharp. Razors, scissors and clippers shall be kept in 22% Cresol, Dettol, or Chlorosol lotion when not in use during working hours. Shaving brushes, after each shave, shall be washed in 1% soda solution and then washed in water.
- The floor area of a barber's shop shall be a minimum of six square meters for one chair, and two square metres for every additional chair. Sufficient number of fans shall be provided to keep the premises cool and comfortable.

*Setting up Shop: Shopping for  
Legality*

The opening and running of a small shop is also not without its share of woes. Government regulatory controls either make the shop illegal by virtue of its location (due to land use/zoning regulations)<sup>2</sup> or give ample leeway to the authorities for harassment and extortion by putting on the book detailed rules that are open to arbitrary interpretation. Several examples are given the accompanying boxes. These regulations neither help wealth creation nor address consumer concerns for quality and safety.<sup>3</sup>

*The Meat Market: Meeting  
Market Demand*

The Municipal Corporation of Delhi runs a monopoly slaughterhouse with a ban on private entry in that business. The capacity of the municipal slaughterhouse is limited to about 2000 goats & sheeps and 500 buffaloes a day. The quantity of meat demanded is far higher than the capacity of

2. Zoning regulates the location and uses of land. For example, industrial uses and activities might be barred in residential areas. Local governments usually pass planning and zoning ordinances to restrict land uses.

3. A sweetmeat shop in Delhi would have inspections from the municipal body, MCD trade license, health department, the Prevention of Food Adulteration Department, the Labour and Labour Welfare Department, the Department of Weights and Measures and others.

the slaughterhouse. Since private killing of animals is illegal, the goat and cattle owners have to go to the municipal house if they want to sell the meat legally.<sup>4</sup> The smaller capacity of the slaughterhouse meant that the owners had to stand in queue for long hours

to be ahead in line. The long queue led to the practice of slaughterhouse workers taking animals through a back door for a fee and presence of widespread illegal and unhygienic slaughter in the Idgah area.



*The Idgah buffalo slaughter house*

To stop this corrupt practice, the government decided to allocate coupons to animal owners. Each coupon signifying the right to get one animal slaughtered on a given day. One owner can get a maximum of two coupons per day. We hope that you will agree that it doesn't require a degree in economics to figure out what happened in giving out the coupons. We should be grateful for the well thought out and minutely planned efforts of the government to serve the meat needs of the citizens of Delhi. As you would have easily guessed, despite all these, there is no word on private slaughterhouses, a reform that should have been rather obvious. Or may be management of a large capacity, clean, hygienic slaughterhouse is too complex a task for the Indian private sector.

In each case of licensing and regulation, the reality is vastly different from the objectives. Despite allegedly good intentions, the results are:

- Restrict the number of poor who can earn an honest living with their limited capital and skills in these entry-level professions.

*Delhi Municipal Corporation  
Act, 1957*

**Private Markets and slaughterhouses Section 407**

Where a municipal slaughterhouse exists, it is illegal for animals to be killed anywhere else.

<sup>4</sup> The licensed meat is stamped with a blue ink sign for clear identification by the municipal authorities.

- Those who enter undeterred by these controls are rendered informal or 'outside the law' and hence subject to harassment and extortion by the regulatory officials. The informal status imposes severe costs on these entrepreneurs.
- A sizable part of the income is lost in the form of extortion/ corruption, thus leading to even lower quality of life and economic security for the poor entrepreneurs.
- Hernando de Soto has coined the phrase 'dead capital' to capture the capital locked in slum dwellings which have no legal title. The slum dwellings in any large city represent several billion dollar worth of capital but that capital cannot be leveraged (used as collateral to borrow against the dwelling) since no legal property titles exist for those dwellings. A similar situation for informal enterprises can be described as 'diverted capital.' It is the capital that is spent simply to maintain the existence of the enterprise, instead of being used to expand the business.
- The informality itself limits the expansion of business: a hawker on a side walk can spread his wares only upto the reach of his hands, as he has to be able to gather them and run as soon as the siren of the police vehicle is heard, else the wares would be confiscated. His business is limited by the extent of his hands! This cost of informality condemns the hawker to a lifetime of subsistence living. Even if he has savings or has the capacity to borrow to expand his business, he is unable to take advantage. The uncertainty created by informality takes away any capacity to plan the future of his enterprise. This impact can be termed as 'unrealised capital.'

### **Proposed Regulatory Solutions**

Myriad approaches have been tried to solve or at least minimise the problems attendant to the modes of livelihood of the poor through various entry-level professions.

- An upper cap on numbers fearing their proliferation.
- Severe penalties for violations of the law, including complete eviction/ confiscation.
- Removal and rehabilitation of the affected at alternate locations, at times, in a multi-story shopping complex.

- Separation of zones for cycle rickshaw plying or street hawking. In case of shop licensing, it is more implicit and takes the form of zoning of urban land on the basis of usage.
- Attempts to 'regularise' the present offenders and then seek to stop any further encroachments.

These attempts have not really solved the problems. The particular chapters dealing with the various modes of livelihood go into details of why these attempts have failed. As a summary however consider these points: Market ultimately decides the number of cycle rickshaws or street hawkers. No matter what the number government decides, the consumer demand rules. Delhi fixed the number of cycle rickshaws at 99,000, but there more than five times as many on the roads. The consumer is sovereign, not the *sarkar* (government). Increased penalties simply mean more harassment and extortion because where there is a demand, there will be a supplier. Resettlement of street vendors in more 'appropriate' areas overlooks the fact that vendors chose the other areas because they are 'natural markets.' Bus stops, hospitals, formal markets and shopping malls – any place with large pedestrian traffic—are all 'natural markets' for hawkers. Urban planners cannot arbitrarily decide where the hawkers should be allowed to operate.

Moreover it would be wrong to presume that this book deals only with the pursuit of livelihood opportunities of the poor. We indeed address concerns of the other stakeholders in the use and management of urban public space. Pursuit of urban livelihoods by the poor need not be viewed as a trade-off *vis-à-vis* the quality of life of urban residents. It is not a zero-sum game. In fact, the same policy measures that have generated misery for the poor have unequivocally lowered the quality of life for all residents. With more informed and unbiased policies, a win-win situation can be created. Our objective is to provide a contextual space for discussions regarding costs and benefits of alternative institutional structures and policy frameworks.

### **Assumptions of Centralised Urban Planning**

Urban planning is at the centre of the issues of urban space management. A critical component of urban space management is urban land use planning. As the Chapter 4 shows, livelihoods are invariably shaped by the urban land management plans which provide

the framework for the economic development of the city. The ideas for most of these policy measures follow certain general assumptions which usually do not stand up on closer examination.

*Government plans for resource allocations and regulations are good but it is in execution and implementation that they fail.* Would we be better off if the upper cap on the number of cycle rickshaws in the city or the rule that the owner and the driver of the cycle rickshaw must be the same person were effectively implemented without any violations? If the law of unintended consequences is fully understood, then it is very evident that these regulations themselves are wrong. The regulators mean well, but they fail in analysing and understanding the actual impact of the rules on real people. The weak enforcement of these erroneous regulations actually provides a little relief—it is like a safety valve that has kept the poor entrepreneurs from full explosion. Think of the poor who would lose their livelihoods if these rules very honestly enforced, and how much more the government would have to spend to compensate for the loss of jobs in terms of welfare measures or employment programmes.

*A group of intelligent men sitting in a chamber can take perfect and equitable decisions based on information collected through government channels and can frame general rules that can deal with all the different categories of problems and with the trade-offs necessary to address concerns of multiple stakeholders.* The experience of socialist countries has demonstrated that central economic planning for the country as a whole is suicidal. A large urban economy and ecology is as complex and its centralised planning is equally suicidal. As Nobel Laureate F A Hayek has argued there are definite epistemological limitations to individual human mind or minds of a group of individuals and therefore to how effectively they can utilise the knowledge of the circumstances. For this reason, complex systems rely on spontaneous order—the type of order that is the result of human action but not of human design. The knowledge about resources and solutions is scattered among millions of residents of the city and the most effective way to utilise that dispersed knowledge is to let each resident participate in the decision making. Dispersed knowledge is efficiently gathered and utilised through decentralised decision making.

The choice is not between government master plan or no plan at all, but of whose plans and for what. It is not the case that if

government does not design a master plan, no one would do any planning at all. Individuals, businesses, and communities would do the planning. Communities, businesses, and individuals through the competitive processes of exchange will discover knowledge that will help them to better utilise their resources. The best way to make the plans work is to allow them to rest in the hands of those for whom they are meant. The focus of urban management should not be on creating one right grand plan. It will never be. The focus should be on institutions and processes through which the plans of individuals and communities would emerge and get implemented.

People fear that without a master plan and zoning regulations, the city would become a disastrous mixture of houses, offices, factories and farms. Some of the most beautiful cities of the world were developed long before we knew of urban planning and zoning laws. In modern times, cities like Houston in Texas, USA have grown without any land use regulations. A network of private land use covenants assures residents of Houston that the neighbouring house would not turn into a primary school or a dry cleaner or a slaughterhouse. Restrictive covenants and the common law of trespass, nuisance, and torts perform the task far more efficiently than any master plan ever would.

*The government's spending of tax payers' money or utilisation of resources truly reflects the best interests of the citizens.* Consider the following matrix of spending decisions:

- If you spend your own money on yourself, you are very concerned about how much is spent and how it is spent.
- If you spend your own money on someone else, you are still concerned about how much is spent, but somewhat less concerned about how it is spent.
- If you spend someone else's money on yourself, you are not too concerned about how much is spent, but you are very concerned about how it is spent.
- If you spend someone else's money on someone else, you are not very concerned about how much is spent, or how it is spent.

Most government spending falls into the fourth category; politicians and bureaucrats are spending someone else's money on

somebody else. Hence, there is no or little incentive for effective planning and implementation. We call this Friedman's Law of Spending, after the Nobel Laureate Milton Friedman.

*Officials working in the government machinery always act in the public interest and put their self-interest on the back-burner.* As any experience in dealing with the government and the Public Choice theory informs us, this is not the reality. The Public Choice theory challenges the dichotomy of human motivation in economics and in political science. Economics assumes that all humans are self-interested. Political science on the other hand assumes that they are all public-spirited, altruistic. The Public Choice theory points out the same self-interested human beings act in the economy as in the government. The self-interest of a businessman is singular profit maximisation but that of a politician may include maximisation of wealth, power, prestige, fame, and of course public good. The critical insight of Public Choice theory is that under the apparent multiple goals of a politician lay a single objective—that of re-election. The politician cannot maximise wealth, power or the public good without getting re-elected. With the maximand of re-election, it is easy to understand the real life political behaviour. Similarly the maximand of a bureaucrat is the size of his bureau's budget.

The Public Choice theory throws searing light on the how, what, and why of government spending and regulations. Many of the rules that seem to be passed for the benefit of the public may really have the intention of giving more power and money to *netas* and *babus*. This also explains why they generally oppose removal of certain rules and regulations. Despite a directive, for example, from the Prime Minister's Office to the Delhi government to abolish the licensing system for cycle rickshaws and street hawkers, no change really occurred. To view politicians and bureaucrats as self-interested is not being cynical but realistic. And realism should inform and drive the discussion and formulation of policy alternatives.

*We should not leave the poor to market forces, but opt for a middle of the road approach.* This is mostly a debating tactic to corner the opponent since no one would argue against helping the poor and the needy. The issue is not of intention but of outcome. All intend to help the poor; the question is which approach or policy actually helps the poor. All subsidies are given in the name of the poor but hardly any really reach

the poor. The primary beneficiaries of most subsidies are the middle and upper class people. In most cities, people with municipal piped water connection pay pittance for the water they use. Under the argument that water is a necessity and everyone should have access to affordable water, municipalities give heavy subsidies. However the houses with piped water supply are not of the poor. The poor purchase their water from government intermediaries at market prices. They pay far more for a litre of water, as much as hundred times more, than what the other classes fortunate enough to have official water connection pay. The water subsidy nonetheless continues—in the name of the poor. The Indian Left—the alleged saviour of the poor—argues not just for continuation but expansion of these subsidies. With friends like these, the poor surely don't need enemies! There are more direct and well-targeted methods of providing help—food stamps, education vouchers, health insurance vouchers.

Moreover state interventions in the market system (such as regulatory controls) will unintentionally create distortions in other parts of the system (such as shortages or surpluses) which, in turn, will create more demands for intervention in order to solve those problems. Partial interventions into the economy beget more controls, which further choke the system, generating further lack of coordination and inefficiencies which only promote louder cries for systemic and all-encompassing intervention. This morass of controls is what the 'potato chip theory of regulation' predicts. Once a bag of potato chips is opened, it is hard to stop at one or a few chips. With the benefit of hindsight, we know that neither have those interventions worked (if they have not exacerbated the problem), nor do the underlying assumptions hold true. The poor without an effective voice to protest have slowly but surely been burdened by regulatory controls that hinder their economic freedom to earn a living in the vocation of their choice.

**A Civil Society Approach:  
Delicence, Deregulate, Decentralise**

So what could be the solution? In a nation preoccupied with arguing about the ideal decision to be made for a sweeping range of problems, this book argues that the most fundamental question is not



*what* decision to make but *who* is to make it—through what processes and under what incentives and constraints, and most importantly, with what feedback measures to correct the decision. The incentives in a government structure typically insulate it from effective feedback and start off a vicious cycle of negative impact.

In a world of scattered knowledge, with different problems and differing priorities, systems which capture the essence of these complexities bode well for the individual and society as they give them the freedom to put scarce resources to their most appropriate economic use and to swiftly correct errors in decisions. The market-based mechanisms seem best suited: they offer maximum opportunities for wealth creation and simultaneously provide incentives to look for solutions in case of conflicts.

Ironically, the dismal conditions of the present reality are often viewed as an outcome of a market at work. Many people see the exchange of money between officers and hawkers as simply a form of market transaction. They claim that this awful situation is just as much the result of demand for hawking space by the hawker met by the supply of public space from the regulatory authority. They overlook a critical difference. A legal enterprise entitles the owner to the protection of the law and gives confidence in planning long term investments and expansions. The 'rent' paid by the hawker buys him at best a moment's reprieve, for the very next moment of paying the 'rent' his goods can be confiscated. Not even the Supreme Court would come to his rescue or entertain any Public Interest Litigation. Not to forget that market transactions are characterised by voluntary exchanges between private property right holders.

Reforms engendering economic freedom within the urban space would entail the following measures. These measures hold for all urban areas across India, even though they are discussed and outlined in the context of Delhi, the city of our primary focus of research.

#### *Exit LPQ; Enter LPG*

Remove all licences, permits and quotas across the board for entry-level professions. City managers would do well to stick to the main rule of doctors: First, do no harm. To open a school in a slum or a barber shop or a *dhaba*, to sell ice cream, or water, or fruits and vegetables, licences are made necessary, which limit livelihood

opportunities immensely. Since the licenses are not easily obtained or in some cases are limited in number, people trade without them. This puts them beyond the purview of law and results in regular harassment and extortions at the hands of officials. On the one hand the government pours money into *rozgar yojnas* and subsidy schemes for the urban poor, and on the other hand, it prevents people from earning an honest living. The money for such schemes ironically comes also from the poor since indirect taxes contribute more to the exchequer than the direct taxes. Instead of taking money from a section of the poor in the name of helping the other section of the poor for their employment and welfare, the government should first let the poor earn their living themselves.

Should we do away with the license *raj* for rickshaws as we did for the industry in 1991? Despite the severe harm to the rickshaw pullers, many won't allow its removal for fear that the poor from the neighbouring states would clog the roads of the city with their cycle rickshaws. But, why are there 5,00,000 (five lakh) rickshaws in Delhi? And not four or six lakh? Because the market demand is for five lakh rickshaws. It is simple demand and supply. The licensed capacity is 99,000, but what impact did it have on the actual number of rickshaws? If the capacity was 50,000 or 1.5 lakh, how many rickshaws would actually be on the road? About five lakh! Irrespective of whatever the *sarkar* decides, the people get what they demand—five lakh rickshaws. If we abolish the license system, there will be about 5 lakh rickshaws in Delhi. Any additional rickshaw puller would not make enough to stay in that vocation. The licensing system does not control the number of rickshaws; it only empowers government officials against the poor—to harass and to extort.

If the government desires to know how many people are employed in a profession, it can put in place a registration system. Everyone practising a trade in the city will fill up a registration form. It should be obvious that the registration system is very different from the licensing system – registration system does not require any prior permission, it simply provides information to government.

#### *Apply the Livelihood Freedom Test*

Test all existing and new rules and regulations for their impact on the freedom to earn an honest living. Does any law of the city restrict

opportunities of any person to earn an honest living, particularly the one that requires little capital or skills? If so, then Review, Revise, or Remove. Occupational delicensing and deregulation should take priority in the agenda of the government, before embarking on massive employment generation schemes.

#### *Decentralise Governance to Ward Committees*

The conditions are never uniform in any city, and more so for mega cities of India. Centralised decision-making can never accommodate the priorities of all the residents. So change the locus of decision-making from the single municipal body to multiple wards.<sup>5</sup> Any decentralisation in this direction would not only benefit the poor, but also enhance public governance.

This entails transfer of powers, ownership, and management to wards. The Ward Committee would manage all the public space of the ward except for major thoroughfares. Only the decentralised Ward Committees have access to the local knowledge, have the incentive to seek solutions for the problems that affect them more directly, and have the kind of accountability necessary to correct errors in decisions.

Upcoming urban areas/townships may choose to have their governance entirely privatised,<sup>6</sup> a process that we examine in the chapter on urban land management. Allow private entrepreneurs to purchase and develop any size of land plots that they and their customers deem economically viable. The resultant choice to citizens and competition between governance providers will have a dramatic impact on the quality of life for all. A hundred privately planned communities in a city competing to provide good governance for customers along with livelihood opportunities would be a welcome change from monopolistic mega municipalities. They would have the

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5. The Virendra Prakash Committee has recommended breaking up the Municipal Corporation of Delhi, incidentally one of the world's largest civic bodies, into five separate bodies in order to ensure better accountability and availability of services to the citizens of the Capital. Our suggestion of ward-based urban management goes several steps further.

6. The idea is not so radical considering 30 million Americans already live in private cities and they are not necessarily the affluent ones. See 'America's new Utopias: The growth of private communities,' 30 August 2001. Accessed at [http://www.economist.com/world/na/displayStory.cfm?Story\\_ID=760545](http://www.economist.com/world/na/displayStory.cfm?Story_ID=760545) on 18 February 2004.

incentives to provide space for hawkers and cycle rickshaws if there is demand for them. They would do this not as charity but simply as profit maximisation. In the Sector 18, *Atta* market in Noida, the land adjacent to a major road is privately owned. The owner has divided the land into small plots, as small as four by four square feet, and given them on rent to hawkers. Some hawkers do sit on the public road, but as the police encroachment clearance van is heard, they jump over to the private land. And pay one time rescue charge to the owner!<sup>7</sup>

### *Reliance on Market Institutions*

Property rights and the rule of law provide opportunities for the pursuit of economic prosperity. The incorporation of the right to property as a Fundamental Right in the Constitution will be a right step in this direction. Right to Property is a Right to Prosperity! Look no further than the recent events in China where a minor shift from collective property to *de facto* private holdings of land engendered huge advances in agricultural production.<sup>8</sup> And contrary to widespread belief, the economic importance of property rights is not that they provide assets which benefit their holders, but that they give their owners sufficient incentive to add value to their resources by investing, innovating, or pooling them productively for the prosperity and progress of the entire community.

A government works best when it concentrates on its core competencies—the indispensable functions like the judiciary, police and defence—and performs them well. Hence resources should be devoted to building an effective and efficient judiciary and police for contract enforcement, dispute resolutions and protection of property rights. The government then becomes a facilitator for wealth creation and not a central planner for wealth destruction.

The Master Plan of every city of India should be rolled up into a glass bottle, corked, and thrown into the Indian Ocean. Corked, so that years later when the bottle is found, the absurdities of the Master Plan will become glaringly obvious when compared to the actual

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7. Saha, Pravesh and Purnima Gandhi. 2005. "Street Hawking in Noida", *Researching Reality*. Delhi: Centre for Civil Society, forthcoming.

8. Douglas Wu. "China's quiet property rights revolution". *Cato Policy Report*. November/December 2000. Accessed at [http://www.cato.org/pubs/policy\\_report/v22n6/china.pdf](http://www.cato.org/pubs/policy_report/v22n6/china.pdf) on 18 February 2004.

development of the city. It will be recognised that only after government mandated centralised plans for urban development were abandoned and decentralised ward level management was adopted that urban governance improved radically in the country.

The next steps entail a curb on all land acquisition by government; return of all undeveloped land to the original owners; permission to develop land by the private sector and adjudication of disputes related to property rights through the common law approach. This also implies adoption of legal instruments like restrictive covenants and deed restrictions.<sup>9</sup>

Land-use/zoning regulations encumber economic development. What the proponents of zoning do not seem to recognise is that separation of land use would occur without zoning. Houston, USA has no zoning laws, yet it has hardly turned into a massive municipal slum. In fact, it has developed upper-income, low-income and mixed income neighbourhoods which have created one of the most vibrant cities.

In conclusion, it must be said that civilisation and progress have been engendered by the economic prosperity of cities. Urbanisation is an inescapable trend and holds huge promise to generate economic growth and employment. No wonder the city attracts migrants for its sheer opportunities for wealth creation. It is economic freedom in urban areas that offers upward mobility for the poor. Until and unless the steps are taken to enhance livelihood freedom, the 1991 liberalisation will continue to be myopically blamed for short changing the working poor, making the rich richer on the backs of the poor and leading to greater income inequality. Champion livelihood freedom—for the sake of the poor.

— **PARTH J. SHAH**  
**NAVEEN MANDAVA**

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9. A restrictive covenant is a traditional provision in a deed limiting the use of property and prohibiting certain uses. For example, a landowner may promise or “covenant” not to develop residential housing on their piece of property and to use it only for industrial purposes. Restrictive covenants are a form of private controls.

Deed restrictions are written agreements that restrict, or limit, the use or activities that may take place on property in a sub-division. These restrictions appear in the real property records of the county in which the property is located. They are private agreements and are binding upon every owner in a sub-division. All future owners become a party to these agreements when they purchase property in deed restricted areas.

### Bibliography

- Anderson, Robert E. 2004. *Just Get Out of The Way: How Government Can Help Business in Poor Countries*. Washington, DC: Cato Institute.
- Bastiat, Frederic. 1964. "What is Seen and What is Not Seen," *Selected Essays on Political Economy*, Irvington-on-Hudson, New York: Foundation for Economic Education.
- Buchanan, James M. and Gordon Tullock. 1962. *The Calculus of Consent; Logical Foundations of Constitutional Democracy*. Ann Arbor: University of Michigan Press.
- Block, Walter. "A Primer on Jobs and the Jobless." Accessed online on 18 February 2004 at <http://www.mises.org/fullstory.asp?control=1466>
- Bharat, A., and C. Chawla. *Urban Governance for Sustainable Development*. Accessed online on 18 February 2004 at <http://www.commonwealth-planners.org/papers/governance.pdf>
- Centre for Civil Society. 2003. *State of Governance: Delhi Citizen Handbook 2003*. Delhi.
- Beito, David T., Deborah Gordon, and Alexander Tabarok, eds. 2002. *The Voluntary City: Choice, Community and Civil Society*. Oakland, CA: Independent Institute.
- De Soto, Hernando and John Searle. April 12 to 15, 2003. "The Mystery of Capital and the Construction of Social Reality" multi-disciplinary workshop hosted by the University at Buffalo, Buffalo New York.
- De Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.
- . 1989. *The Other Path: The Invisible Revolution in the Third World*. Translated by June Abott. New York: Harper & Row.
- Debroy, B., S. Gangopadhyay, and L. Bhandari. 2004. "An Economic Freedom Index for India's States" In *Agenda for Improving Governance*, edited by Bibek Debroy. New Delhi: Academic Foundation.
- Djankov, S., R. La Porta, F. Lopez de Silanes, and A. Shleifer. September 2000. "The Regulation of Entry," National Bureau of Economic Research Working Paper No. w7892. Accessed online on 18 February 2004 at <http://www.nber.org/papers/w7892>
- Dossier of Background Documents on the 74th Constitution Amendment Act*. 2002. Bangalore: CIVIC Bangalore.
- Dollar, David and Aart Kraay. April 2001. *Growth Is Good for the Poor*. Washington, DC: Development Research Group, World Bank.
- Gwartney, J., and Robert Lawson. 2004. *Economic Freedom of the World*. Delhi: Centre for Civil Society and Academic Foundation.
- Frank, Andrew U. *A Case for Simple Laws*. Paper read at the multi-disciplinary workshop "The Mystery of Capital and the Construction of Social Reality," April 12 to 15, 2003, hosted by the University at Buffalo, Buffalo New York.
- Foldvary, Fred. 1995. *Public Goods and Private Communities: The Market Provision of Social Services*. Aldershot: Edward Elgar, 1994. Reprint, Aldershot: Edward Elgar.
- Government of NCT of Delhi. 2002. *Informal Sector in Delhi (Non-Agriculture)*. Department of Economics and Statistics.
- Gangopadhyay, S. and W. Wadhwa, eds. 2000. *Economic Reforms for the Poor*. Delhi: Konark Publishers Private Limited.
- Hayek, Friedrich A. 1945. "The Use of Knowledge in Society," *American Economic Review*, 35: 519-30.
- Holcombe, Randall G. 1995. *Public Policy and the Quality of Life: Market Incentives versus Government Planning*. Westport, Connecticut: Greenwood Press.
- India's Invisible & Footloose Labour: An Analysis of the Situation of Children and Woman in the Informal Sector*. 2003. New Delhi: Butterflies.
- Kuchta-Helbling, C. "Barriers to Participation: The Informal Sector in Emerging Democracies." Accessed online on 18 February 2004 at <http://www.cipe.org/pdf/informalsector/informalEnglish.pdf>.

- . "Tapping Hidden Fortunes." Accessed online on 13 February 2004 at <http://www.cipe.org/programs/informalsector/tapping.htm>.
- Milbert, I. "Decentralisation in India: Bringing Democracy Back to the Cities." Accessed online on 18 February 2004 at <http://www.gruppo-cerfe.org/pdf/milbert.pdf>
- Schneider, Friedrich. 2002. "Size and measurement of the informal economy in 110 countries around the world." Accessed online on 12 February 2004 at [http://rru.worldbank.org/documents/informal\\_economy.pdf](http://rru.worldbank.org/documents/informal_economy.pdf)
- Shearmur, J. 2003. *The Construction of Social Reality: The Case of Land*. Paper read at the multi-disciplinary workshop "The Mystery of Capital and the Construction of Social Reality," April 12 to 15, 2003, hosted by the University at Buffalo, Buffalo New York.
- Unruh, Jon D. *Poverty and Property Rights in the Developing World: Not as Simple as We Would Like*. Paper read at the multi-disciplinary workshop "The Mystery of Capital and the Construction of Social Reality," April 12 to 15, 2003, hosted by the University at Buffalo, Buffalo New York.
- Asiaweek*. "What Makes Good Governance?" Accessed online on 12 February 2004 at <http://www.asiaweek.com/asiaweek/asiacities/governance.html>
- World Bank. 2004. *Doing Business in 2004: Understanding Regulation*. Washington DC: World Bank and Oxford University Press.

