

Property Rights of Street Vendors

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INTRODUCTION

Street vendors' rights to carry on their trade in public spaces, has been the subject matter of debate and discussion in India for a very long time. In fact it has taken numerous judgments of the Supreme Court and High Court to recognise their rights and shape up a statutory regime. Despite this, the sight of street vendors being harassed at the hands of municipal authorities or police officials remains a common occurrence. The street vendors are made to cough up considerable sums of money, monthly or even weekly, so that they may be allowed to use these public places for the purpose of earning a livelihood. However, it must be borne in mind that these bribes do not guarantee any protection from civic authorities taking action against them. The purported action may include eviction of the vendor, imposition of fines, confiscation of the saleable goods or confiscation of their equipment like weights and measures.

This scenario raises an important question, as to what kind of property rights are granted to these street vendors. In this context, we could define property rights broadly as either a right to vend from a particular spot or area (in the sense of possessing rights in the immovable property which may accrue in them due to considerable passage of time), or as their right to ownership of the movables that they use for conducting their trade.

So far as any property right in the area, zone or spot from where vending is conducted is concerned, the law is very clear that right to all public places vest in the municipal bodies. These bodies alone have the right to administer them, as the assumption is that this will be done in a manner which would promote enjoyment of these public places in a fair and free manner and prevent any unhygienic conditions etc.

The latter right, i.e. the right in the movables used for carrying on business/trade would be ensured only when there are measures to protect them against confiscation that has not been authorised under law, or is carried out in order to harass the vendors.

Confiscation of their wares should be preceded by notice and hearing and an opportunity for the vendor to engage in corrective measures. Any procedure which does not take into account this aspect would in effect annihilate any right whatsoever vested in the street vendors.

This position is emboldened by the fact that judiciary has recognised the rights of street vendors under Article 19 (1) (g) which guarantees the freedom to carry on trade and commerce to all citizens of India. However, this right cannot be enforced without upholding and valuing their right to property and need of protection against illegal confiscation.

This paper will analyse the protection afforded to street vendors which effectively defends their right to property, especially with regard to the recent piece of legislation i.e. the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

METHODOLOGY

The purpose of this paper is to analyse the law applicable to street vendors and trace the aspects of property rights given to them under the law, if any. Further, to also critically analyse Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 on account of the property rights it vests in the street vendors and thereafter make recommendations for improvement in the legal regime.

Looking at the specific objective of the paper, which is to analyse the effectiveness of the policy measures with respect to the property rights of street vendors in India, study of secondary sources of information has been adopted. There are a large number of studies focusing on working conditions and the state of property rights of street vendors which have been used herein to support the need for specific policy measures as suggested.

LITERATURE REVIEW

Literature on the issue of street vendors and their property rights is limited in scope and not many organizations or papers comment on the same.

For the purpose of this paper heavy reliance is placed on the ideas propagated by Hernando De Soto¹ in a bid to explain the development of the informal markets. In his book *The Other Path*, he has sought to explain the evolution of informal markets and the gradual changes that street vending activity undergoes. This sort of phenomenon can be observed and said to be true for any geographical area. Further, his explanation pertaining to acquisition of so called “special rights of ownership” by the vendors upon payment of various types of fees/taxes levied on them is especially relevant for the present discussion. The same goes a long way in putting in perspective the development of an extra legal system in which the street vendors operate. As explained by De Soto, the transient nature of the rights acquired by them rarely gives them any incentive to think about long-term investment in improvement of the location.

Literature published by various non-profit Indian and international organizations like NASVI, Manushi, SEWA and Weigo has also been relied on. These publications form an important source of factual information and data base on various aspects of the trade. Study of papers

¹ Refer to *The Other Path, The Invisible Revolution in the Third World* by Hernando De Soto

like “The Politics of Urban Space” by R N Sharma provide a background of the constant tussle between the street vendors and the system and the creation of a parallel system of bribery and harassment. It further also highlights the growing importance of the informal markets in metro cities like Mumbai and strengthens the argument with some data to underline the dependency of the public on these street vendors.

Another paper which goes a long way in bringing the social factors and economics of street vending to light is “Decent Work Deficit of Self-Employed Workers in the Urban Informal Sector: Evidence From Street Vending in Mumbai”. This paper has been especially useful to understand social profile and the various difficulties faced by them.

Further useful information from research papers published by TISS and government bodies like National Commission for Enterprises in Unorganised Sector has been utilized which give empirical data and seek to comment on larger scheme of things.

PROPERTY RIGHTS IN INDIA

At the very outset it is pertinent to state that Article 19(1)(f) dealt with the fundamental right to property and was subsequently deleted from the Constitution in the wake of the developments detailed in the following paragraphs. Article 19(1)(f) and Article 31 which afforded protection to private property stand deleted with effect from 20 June 1979 as a consequence of the 44th Amendment to the Constitution.

What constitutes property?

More often than not, the phrase “property rights” has been recognized in the sense of land or immovable property. However, a number of other type of assets too have been accepted to be property in the sense used in Article 19(1)(f) in the Constitution. For example, right to a sum of money has been held to be property² as also a right to get pension³.

In the case of *M M Pathak v. UOI* [1978(2)SCC50] it was held that ‘property’ within the meaning of Article 19(1)(f) r/w Article 31(2) comprised every form of property, tangible or intangible, including debts and choses in action. This highlights the wide interpretation given to the term ‘property’. Understanding of the same is important in view of the relevance of the concept and to understand that movable goods used by the street vendors, under consideration, would also enjoy the protection as originally rendered by the Constitution. Article 19(1)(f) guaranteed Indian citizens a right to acquire, hold and dispose of property.

What are the essential elements/ features of right to property?

Article 19(1)(f) uses the words—acquire, hold and dispose of. These three actions form the basis and essential elements of the right to property. ‘Acquire’ means to become owner of through legal means, ‘hold’ means to possess the property and enjoy the benefits which are ordinarily attached to its ownership (including its management), and ‘dispose of’ means to transfer, assign or sell the property. It is also pertinent to mention that power to dispose of property is a necessary concomitant of the power to hold property. The power to hold property is meaningless without the power to dispose of property.

² See *Bombay Dyeing & Mfg. Co. v. State of Bombay* [AIR 1958 SC 328]

³ See *Deokinandan Pd. V. State of Bihar* [AIR 1971 SC 1409]

Developments Leading to Repeal of Article 19(1)(F) and Article 31 (among other amendments)

After independence the government undertook various types of reforms to reconstruct the agrarian economy (by giving property rights to tillers, abolishing the zamindari system, giving security of tenure, fixing ceiling on personal holding etc.), to provide housing to people in urban areas (by enacting rent control legislations, town planning etc.) and also by way of regulation and nationalization of some commercial undertakings. In order to carry out these activities in its sovereign powers, the state sought to curtail and infringe on the fundamental right to property originally conferred on the people.

The Right to Property, originally was made subject to reasonable restrictions under Article 19(5) and restrictions like controlling of rent and restrictions on eviction of tenants, alienation of ancestral land, laws promoting consolidation of land holdings etc. were all held to be valid and not infringing the fundamental right to property. However, at the same time it was held that any law which gave unguided discretion to the executive to interfere with the right was invalid. Accordingly, a law which made right of disposal of property subject to the uncontrolled discretion of an administrative officer was regarded as bad, as in the case of *Mathew v. Collector, Phulbani* [AIR1975Ori4], considering the fact that the most fundamental element of ownership was the right to alienate. Therefore it is apparent that the courts showed much respect for the property rights of people and would not hesitate to strike down the constitutional validity of a law which fell foul on the yardstick laid down.

Further, as regards compensation, the field was set by the judgments of the Supreme Court. According to the interpretation given, if the right to enjoy property was impaired or if any incident of property was abridged or diluted or if the value of the property was affected by any law, then compensation became payable irrespective of whether the state was acquiring the property for public use or just seeking to regulate it⁴. The government was not happy with the judicial interpretation of the provisions of the Constitution and wanted that compensation be payable only when there was a transfer of ownership or requisitioning involving transfer of the right of possession to the state. Accordingly, the government wanted that mere deprivation of property rights should not give rise to payment of compensation. This objective was achieved through the Fourth Constitutional Amendment carried out in 1955 (discussed below).

Another major contentious issue relating to the property rights remained to be the amount of compensation payable. The word 'compensation' appeared in Article 31(2). The interpretation of the word and whether the same was qualified by adjectives like 'just' and 'adequate' fell for

⁴ Refer to case of *Saghir Ahmad vs. State of Uttar Pradesh* [AIR 1954 SC 728]

consideration of the Apex Court. In the case of *State of West Bengal vs. Bella Banerji*⁵, the Supreme Court for the first time held that 'compensation' meant 'just equivalent' of the property acquired and that it was a matter which the courts could adjudicate upon. This approach was followed in a number of cases.

It is to overcome the strict interpretation given and the respect for property rights shown by courts that the government brought about a number of amendments to the constitutional provisions themselves.

Major Constitutional Amendments and Their Effects

- a. Constitution (First Amendment) Act, 1951
 - i. The First Amendment to the Constitution itself attempted to curtail the fundamental Right to Property guaranteed by Article 31 by adding Article 31A and 31B and the Ninth Schedule so as to make the laws pertaining to zamindaris unchallengeable in the courts. Any legislation added to the Ninth Schedule became immune to challenge in the court of law under any fundamental right. Initially 13 State Acts abolishing zamindari were included in the Schedule.
- b. Constitution (Fourth Amendment) Act, 1955
 - i. Article 31(2) was modified. The words "acquisition and taking possession of" were replaced by the expression "compulsorily acquired or requisitioned" in Article 31(2). To explain this phrase Article 31(2A) was added. The effect of this amendment was that mere deprivation of property or extinction of ownership would not accrue a right to be compensated under the relevant articles. This change was made to overcome the fact that courts held that compensation was payable even where a mere 'regulatory' law curtailed the right to property, which restricted the capacity of the state to regulate economic affairs of the country.⁶
 - ii. In the same amendment changes were made to make the question of adequacy of compensation as non-justiciable.
 - iii. This amendment also added a few more acts to the Ninth Schedule, to make them immune to challenge in courts. These acts covered matters such as land acquisition for rehabilitation of refugees, insurance etc.
 - iv. It also added Article 31A and 31B. Article 31A provides for saving of various kinds of laws formed to carry out acquisition by State of any estate, taking over of management, amalgamation of two or more corporations and/or extinguishing or modifying any rights with respect to property. Further, Article 31B provides for

⁵ AIR 1954 SC 170

⁶ Refer to the case of *Dwarkadas v. Sholapur spinning and weaving Co. [AIR1954SC11]* and *Saghir Ahmad v. State of Uttar Pradesh [AIR1954SC728]*.

saving of statutes and regulations from being held null and void for falling foul of constitutional provision by virtue of their placement in Ninth Schedule.

- c. Constitution (Twenty-Fifth Amendment) Act, 1971
 - i. It replaced the word “compensation” in Article 31(2) with “amount”. This was in order to do away with the interpretation attached to the word compensation as being just equivalent of the value of property being acquired.
 - ii. Clause 31C was added declaring that a law giving effect to the state policy towards securing the Directive Principles contained in Article 39(b) and 39(c) would be held void because of its inconsistency with Articles 14, 19 and 31. Further, a declaration that the law was enacted to give effect to the policy towards securing these Directive Principles would render the law immune from being challenged in any court on the ground that it did not give effect to such policy.

- d. Constitution (Forty-Fourth Amendment) Act, 1978
 - i. Took property rights out of the category of Fundamental Rights by deleting Article 19(1)(f) and made it an ordinary legal right.
 - ii. Article 31 was omitted
 - iii. Article 31(1) became Article 300A to the effect that no person shall be deprived of his property save by authority of law.
 - iv. The safeguard contained in Article 31(2) relating to acquisition of property of an educational institution established and administered by a minority was sought to be incorporated in Article 30. Thus, a new Clause 1(A) has been added after Article 30(1).

A perusal of the above would show that the state, in an effort to protect its own powers to acquire private property, and also to save itself from being harassed on the question of compensation, made several changes in the constitution and eventually took out right to property from the umbrella of fundamental rights.

As the present position stands, property rights are incorporated within the definition of human rights⁷. Article 300A constitutes protection against the discretionary actions of the executive organ of the state. In the case of *Bishambar Dayal v. State of Uttar Pradesh*, the Supreme Court has held that the import of the said article is that a person can be deprived of his property only by taking recourse to a substantive provision contained in a statute and not merely by an executive act.

⁷ See article 17 of Universal Declaration of Human Rights

HISTORY OF STREET VENDING OCCUPATION AND GLOBAL TRENDS

Street Vending as an Occupation

According to the Government of India, around 10 million people in India as a whole are dependent for their livelihood on street vending. Mumbai, with approximately 250,000 vendors, has the largest number of street vendors among all major cities in India.

The government for the first time defined the term street vendor in the National Policy on Urban Street Vendors, as follows:

“A street vendor is a person who offers goods or services for sale to the public without having a permanently built structure but with a temporary static structure or mobile stall (or head-load).”

Even in the popular sense of the term, street vendors could be stationary and occupy space on the pavements or other public/private areas, or could be mobile, and move from place to place carrying their wares on push carts or on cycles, or in baskets on their heads; or could sell their wares in moving buses. Further the Government has used the term “urban vendor” as inclusive of both traders and service providers, stationary as well as mobile, and incorporates all other local/region specific terms used to describe them, such as, hawker, pheriwalla, rehri-patriwalla, footpath dukandars, sidewalk traders and more.

It is estimated that street vendors form two percent of the urban poor population or approximately 10 million vendors, thereby constituting a vital component of the urban economy.

These street vendors engage in selling a variety of perishable and non-perishable goods. The profit margins earned are variable depending on the nature of the goods sold. The goods sold range from fruits and vegetables, cooked meals, clothing items, electronics, plastic wares etc.

These street vendors in fact build an important component in the chain of goods supply. Further these street vendors are important marketers of goods produced by home-based, cottage and small industries; they form a reason for the success of these businesses. It cannot be denied that these small businesses may not be able to market and advertise their goods otherwise and therefore these street vendors are imperative for these businesses to survive.

Further it has to be remembered that these street vendors provide goods to the consumers at convenient locations or even at their doorstep. They provide affordable options to the buyers and therefore enable a number of low income and middle income households to sustain in the

urban areas/big cities. Therefore, street vendors perform a dual role in the urban economy. According to an estimate, around 30 percent of the Mumbai's workforce buys at least one meal a day from vendors⁸. This representative figure is sufficient for highlighting the importance associated with the activity of the street vendors. Just to further illustrate, it is a common observation how the street vending activities tend to crop up at locations where foot fall is high and the public can conveniently access their services/goods. Not all residential and/or commercial locations attract these vendors. Some locations/market places tend to naturally draw vendors selling various kinds of goods.

Factors for Choosing Street Vending as an Occupation

An increasing number of the world's poor are living and working in cities and towns. Various factors have driven larger number of people to urban areas.

Street vending has thrived as an important source of livelihood for a large section of urban population in the informal sector. This is due to widespread unemployment and the lack of skills and low levels of education prevalent among the urban masses. Street vending is a popular means of self-employment as it entails minimal expenditure on conducting the trade. It is also an important means due to the ease with which a transition can be made into and out of the trade chosen, in case the same is not rewarding. Large scale migration from rural areas, shift from agricultural activities and mechanization of industries are all factors which continue to contribute to the multifold increase in street vending activities across the country. According to reports⁹ in the metropolis of Kolkata, Mumbai and even in Ahmedabad, the closure of various industries led to the retrenchment of the workers, who had no option but to take up street vending.

It is these factors which lure a number of people from small towns and villages to migrate to cities. It was in fact the phenomenon of low economic growth in the rural areas and the failure of trickledown effect that gave an impetus to migration. According to a report on Indian Urban Infrastructure and Services (2011) the net migration from rural areas contributed about 21 percent to the increase in urban population in the 1990s. Therefore, the number of street vendors found in the urban areas is substantially higher than those in rural areas. A review of the figures given in National Policy on Urban Street Vendors, Report and Recommendations (May 2006) is instructive of the aforesaid proposition¹⁰. Herein it is also relevant to mention that this large section of population form part of the informal sector and therefore do not enjoy

⁸ Debdul Saha, 'Decent Work Deficit' of self-employed workers in the urban informal sector: Evidence from street vending in Mumbai

⁹ Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector

¹⁰ See http://mhupa.gov.in/w_new/sug_npusv.pdf

any protection in terms of health benefits etc. Studies suggest that these street vendors tend to take up street vending as a last resort to obtain a living¹¹.

In Asia the share of informal employment rose from 53 percent in 1980-89 to 63 percent in the period 1990-99.

According to a 2006 estimate of the International Labour Organisation (ILO) over the next 10 years, 500 million people would join the world's job markets, most of them young people in developing countries with secondary level education and training. They will join 180 million unemployed and the 550 million working poor¹².

The Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector highlights that approximately 25-30 percent of the street vendors in the cities are illiterates and another 20-24 percent have only primary education.

The following table reflects the educational status on the basis of a study conducted in Mumbai with a sample of 200 by Debdulal Saha¹³ and is used here to underline the basic contention regarding the low literacy rate among street vendors. This data can be said to be representative of the trend across various states.

TABLE 1: EDUCATIONAL STATUS OF STREET VENDORS IN MUMBAI, 2011

Educational Status	Total No. Of Vendors (Percentage)
Illiterate	34 (17.0)
Can sign Only	17 (8.5)
Primary Education	17 (8.5)
Upper Primary Education	65 (32.5)
Secondary Education	48 (24.0)
Higher Secondary Education	16 (8.0)
Graduate	3 (1.5)

The NCEUS study goes a long way in understanding the factors which determine people choosing street vending occupation. The table below illustrates the findings of the study.

¹¹ Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector by NCEUS

¹² Marja Kuiper and Kees van der Ree, Growing Out of Power: Urban Job Creation and the Millenium Development Goals, Global Urban Development Magazine, March 2006

¹³ Financial Accessibility In The Informal Retail Sector: A Study Of Street Vendors In Mumbai, 2011

S. No.	State/city where survey carried out	Sample size	Factor for choosing street vending
1	Patna	80000	Only means of livelihood
2	Bhubhaneshwar	30000	Lack of skills for other employment/ no other option
3	Imphal	7000	Poverty
4	Bangalore	30000	
5	Mumbai	200000	Retrenchment (30%)
6	Ahmedabad	100000	Retrenchment (30%)
7	Kolkata	150000	Retrenchment (55%)

Street vendors can be broadly categorized on the basis of their operation methodology, that is to say, one category is of those who move around selling their wares and others who operate from a fixed spot. While the former are generally known as peddlers, the latter is known as stallholders. As Hernando de Soto explains, there occurs a shift or a transition for every vendor who gradually moves out of selling small mix of items by identifying more profitable and marketable items along with the commercial. Once this identification is complete, the vendor engages in entering the said location and trying to gain permanency. The selection of the site is dependent on a number of economic and social factors.

It is also observed that the 'invasion of streets' i.e. development of these markets occurs gradually and is usually a slow process which involves testing the potential risks and expected gains.

Economics of Street Vending Activities

The impact of street vending on the economy can't be overemphasized. Street vending has a tremendous role in supporting a large number of households and providing livelihood opportunities to people irrespective of gender and age. It also provides an outlet to people looking for seasonal employment.

It further sustains a large number of industries by marketing their goods, also provides an impetus to the business of small scale or home-based industries. By providing marketing opportunities to industries which cannot themselves engage in marketing, street vendors sustain the livelihood and employment in these industries.

Another important point that needs mention is the fact that the street vendors, by providing cheaper commodities, are in effect providing subsidy to the urban poor.

According to a study by Manushi, conducted in the year 2001, approximately a sum of INR 500 million per month was collected as bribes or protection money from the street vendors and rickshaw pullers operating in Delhi.

Another estimate relating to Mumbai, highlighted in the paper titled *The Politics of Urban Space* authored by R N Sharma, is that annually an approximate amount of INR 120 crore is collected as *hafta* while an annual amount of about INR 11 or 12 crore is collected by government authorities from these street vendors as redemption charges or license fees. These figures highlight the magnitude of the problem of harassment suffered by the street vendors and reflect how a significant portion of their incomes are wasted in claiming their position on the public thoroughfare. In line with the estimates for Mumbai, the figures for other cities can be arrived at and further the national impact can be derived.

Sharma also introduces an interesting concept of 'concealed' hawkers. He further explains that these are new entrants to the trade who were patronized by police and concerned municipal staff. Because of their linkages with the latter by way of *hafta* (bribe) they escape the imposition of fines or penalties and hence remain absent from municipal records and continue to remain soft targets for police and others for harassment.

So far as the earnings of the vendors and hawkers are concerned, it seems to be a skewed distribution with the majority of them falling in the lowest income category.

Prohibiting and curbing the street vendors can cause spillover effects like causing rise in crime¹⁴. As reported, in Kenya, local authorities reported significant crime increases following the destruction of kiosks throughout Mombasa.

In an interesting paper¹⁵ on condition of women vendors in Delhi, the authors have sought to argue that encouraging and organizing street vending activity can and will go a long way in reducing urban poverty.

According to the World Bank South Asia Malnutrition Report (2005), almost half (47 percent) of the Indian children are malnourished; illiteracy in India is one of the highest in the world. Therefore street vending is a way for poor people to earn livelihood and make their way out of

¹⁴ Marja Kuiper and Kees van der Ree, *Growing Out of Power: Urban Job Creation and the Millenium Development Goals*, *Global Urban Development Magazine*, March 2006

¹⁵ (Kanwar, 2014)

poverty. As already explained before, while doing this they will also sustain the urban middle income and low income groups by making available to them affordable goods and services at convenient locations.

Another important aspect related to financing the street vending activity is that since the vendors suffers from a number of hardships and their business is very uncertain, it is difficult for them to obtain loans and financial assistance from formal sources. In view of this they have to resort to sources like local money lenders who charge usurious rates of interest. This compounds the problems faced by them.

Hardships Faced by Street Vendors

Considering the nature of occupation these vendors are exposed to a number of health hazards due to the unhygienic surroundings, lack of sanitation facilities, exposure to pollution, excess contact with sun and rain etc.

As per a study published by SNDT Women's University and International Labour Organisation, nearly 85 percent of the street vendors surveyed in Mumbai suffered from ailments associated with stress like hyperacidity, migraine, digestive problems and lack of sleep.

It is further important to highlight that due to the nature of the trade and the risks involved, credit, storage facilities etc. are available to these vendors in short supply. This hampers the growth of the scale of their operations.

Patterns Relevant to Street Vendors

A pattern can be observed for developed and developing countries. There is a substantial increase in the number of street vendors in the major cities around the world, especially in the developing countries of Asia, Latin America and Africa. The explanation can be found in the following factors:

- i. Firstly, lack of gainful employment coupled with poverty in rural areas has pushed people out of their villages in search of a better existence in the cities. These migrants do not possess the skills or the education to enable them to find better paid, secure employment in the formal sector and they have to settle for work in the informal sector.
- ii. Secondly, there is another section of the population in these countries who are forced to join the informal sector. These are workers who were employed in the formal sector. They lost their jobs because of closures, down-sizing or mergers in the industries they

worked in and they or their family members had to seek low paid work in the informal sector in order to survive. Both causes are directly related to globalisation.¹⁶

Besides the above described larger patterns what also matters is the natural propensity of markets to crop up in certain specific areas. This is to mean that stall or vendors of certain goods may thrive in a specific area depending on consumer preferences. In such a scenario it is important that perforce these street vendors are not displaced or relocated without keeping in mind these factors. However, it is appreciable that the National Policy on Urban Street Vendors and the Act has recognized the concept of natural markets and mandates that the same be taken into account while identifying vending zones.

It is also important to observe that these migrants are usually seen as outsiders encroaching on the comforts of the city dwellers, yielding to an "us versus them" situation. On a reading of literature published by various street vendors' organisations which recount the tales of interface of vendors with the legal system, it is conceivable that cleanliness drives which are supposedly for the benefit of the larger public are entirely used to harass and extract money. In this process it is almost absolutely forgotten that these street vendors add considerable comfort to the lives of thousands by selling essential items at convenient locations. The fact that these street vendors aren't taxpaying contributors to the economy adds ire of the authorities against them and they end up giving illegal payments to municipal and police officers.

Despite the fact that these vendors act as an important catalyst in the economy, there has been either a lack of or no planning in this regard. Even the states which are known to have formulated certain planning processes, have failed to effectively implement the same¹⁷. This is in addition to the powers given to municipal officers and police authorities to remove obstructions on the footpaths under the municipal acts and police acts (which are state legislations). These unguided powers are exercised to harass the vendors and to evict them.

Legitimacy of Street Vendors

Another important phenomenon worth mentioning is that of the street vendors gaining legitimacy in the system. These street vendors who begin and carry out their operations outside the legal system slowly begin to assert their rights in a particular site either because of the passage of time or because of their making payments to the municipal authorities, either legally or illegally. The police official and/or municipal authorities collect payments from these vendors on various counts and these payments gradually form the basis of the vendors asserting rights to vending from a particular place.

¹⁶ See <http://nasvinet.org/newsite/overview-of-street-vendors-a-little-history/>

¹⁷ http://ccs.in/internship_papers/2010/abhigna-as-different-ideas-for-licensing-street-vendors.pdf and http://www.inclusivecities.org/wp-content/uploads/2012/07/Sinha_Roever_WIEGO_PB2.pdf

The payments made to municipal bodies which have no legal backing may create some kind of illusory rights vested in the street vendors but their activities remain illegal in the eyes of law. However, this transient right which the street vendors perceive to be vested or earned by them, further emboldens their struggle to demand property rights. Operating through various street vendors' organizations they engage in organized efforts which are also political in nature. It may further be highlighted that under the new legal regime the street vendors' occupation will gain legitimacy as well as recognition in the economic system.

Street Vending and Urban Planning

An oft quoted example to highlight the importance of inclusion of street vendors in urban planning is that of highways and service centres. Just like service centres at appropriate distance/intervals at a highway are imperative, street vendors are also important to provide necessary services and goods to the passerby. In line with, this National Policy on Urban Street Vendors sought to suggest the inclusion of or earmarking of the vending zones in the Master Plans prepared by the development authorities. However, implementation and effectiveness of the same is doubtful.

Building Partnerships

Rampant harassment of street vendors gave impetus to development of a number of organisations espousing their cause and advocating their rights at various levels. Some of the leading organisations working in this field like NASVI and SEWA have led to a number of positive changes in the treatment of the issue. These organisations have played an important role in coordinating and convincing the government to take many positive policy measures for the welfare of the street vendors. It is in fact the strength of these collective efforts that has led to development of judicial and legislative discourse.

POLICY MEASURES TO REGULATE STREET VENDING IN INDIA AND THEIR PROPERTY RIGHTS

Bellagio International Declaration of Street Vendors, 1995, to which India is a signatory envisaged the formulation of a National Policy for hawkers and vendors to improve their standard of living by giving them a legal status through licensing, promotion of self-regulation, access to legal system and credit facilities etc. among other things¹⁸.

¹⁸ See Annexure 1 for complete text of Bellagio Declaration of Street Vendors, 1995

However, it was only in or about 2001, with considerable pressure from civil society groups, that the Government took the initiative of forming a Task Force to look into the issues and come up with a suitable policy. The Drafting Committee included members of street vendor groups like NASVI and SEWA along with senior officials of the Ministry of Urban Development. This effort culminated in a National Policy that was introduced in 2004. The policy largely conformed to the Bellagio Declaration and also the various Supreme Court orders in this regard.

This policy not only recognized that the eviction process needs to be streamlined and that street vendors need to be rehabilitated, but also recognized that in the process of eviction they tend to suffer loss of goods etc. It thus introduced the concept of special insurance scheme to cover their goods. The policy doesn't go into the feasibility of such an insurance scheme or discusses the modalities. Though this sounds like a good first step towards recognizing the property rights of the vendors in their goods, it is a hollow one. There appears to be no follow up on the suggested measures, as at the time of writing this paper no literature was found on the issue of insurance scheme.

National Policy on Urban Street Vendors, 2009 is a revised version of the 2004 policy framework. This recognized the rights and obligations of street vendors in greater detail. It also dedicated a section on introducing procedural controls on eviction process. It provided for serving notice, thereafter imposition of fine and resorting to eviction only upon failure of the earlier two measures. It also provided that wherever goods are confiscated (only as a measure of last resort) they should be returned within a reasonable period of time and upon payment of a prescribed fee. Even though these are important measures for protection of property rights, the vagueness regarding what "reasonable time" and what should be "fee" etc. makes them largely ineffective.

Therefore, it can be clearly seen that even though India formulated a National Policy in compliance with the Bellagio Declaration, it remained ineffective due to its vagueness and the lack of implementation. The courts were still dragged to adjudicate matters relating to rights of street vendors.

JUDICIAL DISCOURSE

The controversy whether any right per se vests in street vendors to carry out their vocation in order to earn a livelihood has been adjudicated upon a number of times by the Apex Court in the country. The judicial discourse forms an important part of the present discussion. In the case of *Bombay Hawkers' Union vs. Bombay Municipal Corporation and Ors.*¹⁹, the Supreme

¹⁹[1985(3)SCC528]

Court, for the first time, upheld the right to livelihood of the street vendors and went on to observe that unreasonable restrictions and conditions cannot be imposed on street vendors.

Adjudicating on the similar lines in the case of MCD vs. Gurnam Kaur²⁰ and Sodan Singh vs. NDMC²¹ the Supreme Court again held that street vendors had a right to carry on their business and the same can't be compromised on the altar of the peoples' superficial right to use streets and that such right of livelihood should be upheld with reasonable restrictions. Another reason, for which these cases are important, is the recognition of the factors which force people to resort to street vending and the lack of proper employment opportunities. In the Sodan Singh Case (supra) the court also passed an observation to the effect that inaction on the part of the government authorities with regard to proper management and planning with respect to street vendors would, in effect, amount to negating the fundamental rights of the citizens.

Thereafter in a number of cases like Sodan Singh vs. UOI²², the SC indulged in the tedious exercise of giving models guidelines to be followed by civic authorities till proper legislation could be brought into force. However, the implementation of these guidelines became a subject of much litigation before various high courts and thereafter, the Supreme Court itself. Once again, in Maharashtra Ekta Hawkers Union vs. Municipal Corporation Greater Mumbai²³, the Supreme Court was forced to revisit and revise the guidelines issued earlier.

In what marks a shameful reminder of government's inability to actively engage in resolution of problems faced by the street vendors, in Gainda Ram vs. MCD²⁴, the court went on to observe that, *"the fundamental right of the hawkers, just because they are poor and unorganized, cannot be left in a state of limbo nor can it left to be decided by the varying standards of a scheme which changes from time to time under the orders of the Court."*²⁵

Upon a perusal of the above decisions it is amply clear that, for the past few decades, the Supreme Court has played an active role in recognizing the rights of street vendors and also

²⁰[1989(1)SCC101]

²¹[1989(4)SCC 155]

²²[1998(2)SCC727]

²³[2004(1)SCC 625]

²⁴[2010(10)SCC715]

²⁵ **The court passed this observation in the background of its various previous decisions and the fact that a law by the name of National Capital Territory of Delhi Laws(Special Provisions) Second Act 2009 had been enacted as a temporary legislation and the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 was pending approval at the relevant time.**

enforcing the same by issuing guidelines and directions. It is however, disheartening to note that time and again various street vendor organizations have been forced to knock on the doors of the highest court of the country to seek enforcement of their basic fundamental right to earn livelihood. It is also pertinent to reiterate that any rights of the street vendors have been recognized only in the context of Article 19(1)(g) and no recognition is given to any property right, howsoever remote.

It also deserves a mention that the court read the right of street vendor's strictly subject to reasonable restrictions. To balance the right of persons to free movement and environment free of nuisance, the Court itself has looked into aspect of timings during which vending may be allowed. However, it is felt that this aspect is not practically implementable. Also a free hand needs to be given to these vendors in terms of time during which they can operate, in order to optimize utilization of resources.

Another important feature of these judgments which merit mentioning is the effort of the Court to take into consideration reservation of and allotment of vending space on caste basis or miscellaneous factors like being a war widow, or being physically disabled etc. It is felt that the implementation of such directives or provisions may in fact lead to an increase in instances of bribery etc. A side effect of the various guidelines is that it introduces a system of issuing licensing, which will confer right on persons to carry their trade, this will reintroduce much criticized "license raj".²⁶

Finally, it can be safely concluded that the recognition of vendor's rights is only qua their goods and not the sites of operation. Further, it is conferred on them only in so far as the municipal authorities are required to follow the requirement of natural justice i.e. right to notice and hearing before confiscating the goods.

ANALYSIS OF STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) ACT, 2014

Various Supreme Court and high court judgments and the National Policy on Urban Street Vendors seem to have shaped up the basic framework of the present legislation. Though this section may overlap the points discussed in the preceding one, it is pertinent to independently lay out the features of the 2014 Act, which are as follows:-

- a. Concept of "natural markets" – It is a well-recognized concept that markets tend to grow around certain areas depending on factors like customer preferences, economic

²⁶ For a more detailed discussion of various Supreme Court decisions see Annexure 2

status of the inhabitants etc. It is pertinent that regard be given to these natural markets and that in order to regularize the street vending activities these vendors are not randomly relocated.

- b. Validity of property rights under the Act – a perusal of the Act shows that the focus on property rights aspect is only minimal and the provisions in the Act qua protection of such rights are few. The concept can be traced to some extent in section 5(2), 10, 13, 18, 19 and 29(1).
- i. Section 3(2) – keeping in mind the need to maintain a rational nexus between the number of street vendors and total area of the city/state and/or total population, this section provides as follows:

“(2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.”

This creates a minimum base for the number of street vendors that need to be accommodated in the area. This may form an important tool for the vendors or civil society organisations to assert street vendors’ right to vend.

- ii. Proviso to Section 4(1) provides that:

“Provided that a person, whether or not included under the survey under sub-section (1) of section 3, who has been issued a certificate of vending before the commencement of this Act, whether known as licence or any other form of permission (whether as a stationary vendor or a mobile vendor or under any other category) shall be deemed to be a street vendor for that category for the period for which he has been issued such certificate of vending.”

This provision puts unnecessary fetters on the right of street vendors. The vendors should have the liberty to vend as stationary or mobile vendors according to their convenience and as per the requirements of their trade.

Further, Section 4(3) provides that :

“Where the number of street vendors identified under sub-section (1) or the number of persons seeking to vend under sub-section (2) are more than the holding capacity of the

vending zone and exceeds the number of persons to be accommodated in that vending zone, the Town Vending Committee shall carry out a draw of lots for issuing the certificate of vending for that vending zone and the remaining persons shall be accommodated in any adjoining vending zone to avoid relocation.”

On a simple interpretation of this section it would emerge that all street vendors who are issued a certificate of vending become entitled to a vending spot if not within the same zone than in an adjoining one. This appears to be a positive provision.

- iii. Section 5(2) creates a right in the certificate issued which can be enjoyed through the certificate holder’s spouse or dependent child. An important aspect of property rights is the ability to enjoy the said property through one’s next of kin or the ability to share it even within a limited scope.
- iv. Section 7 provides that the vendors are liable to pay vending fee while Section 17 also puts the burden of paying charges towards maintenance costs and other facilities provided in the vending zone. There are no ceilings on these charges provided for under the Act.
- v. Section 10 provides for a situation where in the vendor commits breach of conditions under which the certificate has been given to him/her. The section contemplates cancelation or suspension of the certificate. However, it safeguards the right of hearing before such person is deprived of his right created by the certificate.
- vi. Section 13 states:

“Every street vendor, who possesses a certificate of vending, shall, in case of his relocation under section 18, be entitled for new site or area, as the case may be, for carrying out his vending activities as may be determined by the local authority, in consultation with the Town Vending Committee.”

Therefore, it can be seen that vendors who manage to obtain a vending certificate and are operating from a location but are being relocated under the Act can assert a temporary right which is vested in them through the certificate to vend from any site whatsoever. Therefore, this right to relocation is very important and adds some strength to the concept of property rights of street vendors.

- vii. Section 18 bars eviction and relocation of vendors without giving a notice.

- viii. Section 19 authorizes the local authority, after lapse of notice period, to seize goods. But due process of recording the list of goods seized has to precede seizure of goods. Also provides for release of goods on payment of fine prescribed.

The said section does not specify the scope of the word “good” as used in the section. Upon a reading of the main section with the proviso, it may however, be assumed that the word ‘good’ is used in the sense of items that are being sold by the vendors and as such only those saleable items can be confiscated. Specifications as to which items can be or cannot be confiscated are important to provide real protection to their rights in property.

- ix. Section 28(a) makes any vending activity without a certificate of vending effectively illegal without attracting penalty.
- x. Section 29 (1) of the Act appears to have been added out of abundant caution and rules out the possibility of the street vendors claiming any right in vending spot under the license/ certificate issued to them.

Therefore, the above analysis would show that the scope of property rights incorporated in the Act is very limited and is conferred only to the extent that it protects any irrational removal of the right to vend or confiscation of street vendors’ wares. This right of notice and hearing created is an important one in contradistinction to the earlier situation where uncannalised powers were exercised by the police and local authorities. However, it leaves a lot of scope for tyrannical rule-making power of the executive.

CONCLUSIONS

The property right of street vendors can be categorized in the following various phases:

	Pre 1985 period	1985 onwards: Period of judicial discourse	2004-2014: Period of temporary regulation through National Policy on Urban Street Vendors	2014 onwards: Period of statutory regime
Recognition of vendors’ property	There was little regard for any of the	The decisions of the Supreme Court shaped up the new	This period saw the formulation of various kinds of	Recognition of property rights of street vendors only

<p>and other rights</p>	<p>vendors' rights leave alone any respect or consideration of their property rights</p>	<p>outlook to the street vendors' trade. Though no recognition was given to their property rights, it was held that they had the right to carry on trade. It was also accepted that they perform an important function in the society. The Court emphasized the importance of giving notice and hearing to the vendors before eviction.</p>	<p>policies by various municipal authorities like MCD, NDMC, especially under the orders of the Court in different cases. These policies again gave limited recognition to the importance of street vending as a livelihood opportunity but lacked any discussion on their property rights over their goods or vending area. However, the concept of giving notice and hearing before evicting street vendors was retained. There appears to be no discussion pertaining to their right over their goods.</p>	<p>in so far as the concept of notice and hearing has been introduced in the Act before their goods can be confiscated.</p>
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FINDINGS

- i. Upon a perusal of various judgments, the National Policy and the recent Act, it can be safely said that little regard is given to street vendors' property rights in their goods (both saleable items and items which are their tools to carry out the trade). This is in view of the fact that there has been little discussion on the said issue, and protection, if any, has been provided only in the form of providing notice to the vendor and the imposition of fine and resorting to confiscation as a last resort. There are no provisions

which make non-observance of the notice and imposition of fine as a pre-condition of confiscation of goods as punishable under law. Therefore, enforcement will be a problem in the longer run.

- ii. Street vending has not been included in urban planning, which seems to be a huge drawback for the street vending activity. Though National Policies envisaged the inclusion of street vending in the master plan; the same is yet to be incorporated by the authorities responsible.
- iii. The Act makes the vendors liable to make payments to local bodies in the form of maintenance charges for the facilities provided and vending charges. However, there is no provision as to the maximum chargeable amount from the vendors. The discretion to decide the quantum etc. is solely left to the Town Vending Committee.
- iv. Further, though the Act places liability on the vendors to pay charges towards maintenance of various facilities provided, it does not even specify what kind of facilities the local bodies are to provide.
- v. Though the Act, various judgments of Supreme Court and High Courts and the National Policies formulated sought to provide protection to vendors from harassment, the same have not been implemented due to lack of sensitivity in the officials.
- vi. The Act in particular and the overall legal position in general does not provide for the vendors to transfer their right to vend either permanently or temporarily. An essential element of the right to property is the ability to transfer or dispose property in a manner the owner/holder would like. Therefore, this restriction on the ability to transfer their vending right greatly hampers their property right.
- vii. The Act in particular and the overall law in general does not provide for what articles which can or cannot be confiscated by the local authorities. This is a major drawback of the Act.
- viii. It has also been observed that the court judgments and the national policies sought to promote the idea of giving preference to certain class of individuals on caste basis or gender considerations. It is felt that these kinds of reservations are not required and also do not serve any useful purpose.
- ix. The Act provides that the certificate of vending which will be issued to the vendors will specify the type of vending adopted by the vendor and thereafter the vendor can carry

out vending only in that form. However, the author feels that the vendor should be allowed to choose at least two types. This is in view of the fact that the vendor may want to adopt mobile vending when the stationary vending is not giving good returns. If he is not provided more than one option, every time he wishes to change, he will have to apply to the Town Vending Committee to modify the certificate of vending, without which his operations will be in violation of the terms and conditions imposed on him.

- x. The Act further provides that the town vending committee shall also specify details like the hours of operation for the vendors. Similar limitations had also been set by the courts. However, setting hours of operation will be putting unreasonable fetters on the vendors right to operate and earn livelihood.
- xi. It is further observed that there are little or no safeguards within the Act itself to protect the vendors from harassment by penalizing officials who indulge in activities prohibited in the Act.
- xii. The scheme of the Act provides for a very complex setup of scheme and constitution of the Town Vending Committee. The effectiveness of the same remains questionable. Further, it is not clear how far the executive will be able to promptly implement the same and there is no provision for a mechanism in the interim,. It is likely that till the provisions are implemented the vendors will continue to be harassed.
- xiii. There also appears to be little awareness among street vendors about the provisions of law pertaining to their trade.

Based on the data discussed, observations made and literature review on the issue, an attempt has been made to devise a mechanism to highlight the perception of property rights of street vendors in the eyes of law (on a scale of 0 to 3).

Each of the items with which property rights can be associated with are given ratings. These ratings reflect total score where 1 mark is assigned to each of the following factors, namely,

- a. Recognition of vendor's right under statute/ judicial orders
- b. Right to notice before confiscation
- c. Right to hearing before confiscation

Pre 1985 period	1985 onwards: Period of judicial discourse	2004-2014: Period of temporary regulation through National Policy on Urban Street Vendors	2014 onwards: Period of statutory regime
Spot of vending/land: 0 Push cart/containers: 0 Weight and measures and other tools: 0 Goods and items for sale: 0	Spot of vending/land: 0 Push cart/containers: 2 (0+1+1) Weight and measures and other tools:2 (0+1+1) Goods and items for sale: 2 (0+1+1)	Spot of vending/land : 0 Push cart/containers: 2 (0+1+1) Weight and measures and other tools:2 (0+1+1) Goods and items for sale:2 (0+1+1)	Spot of vending/land: 0 Push cart/containers: 2 (0+1+1) Weight and measures and other tools:2 (0+1+1) Goods and items for sale:2 (0+1+1)

The above table reflects that in the period before 1985, there was absolutely no restriction placed on the local authorities' powers to seize and confiscate the goods of the vendors and therefore their property rights had little relevance. There was also no specific mention of any of these items in any statute. However, once the courts started looking into the matter, they dealt with this aspect of rampant harassment and loss being caused to the vendors. Though the courts issued directions that confiscation must be preceded by due process of notice, it didn't put any fetters on the powers of the local authorities to not confiscate certain items like their saleable goods etc. in view of the fact that neither the statute nor the judicial decisions specifically identify the items of property zero marks have been assigned with respect to "Recognition of vendor's right under statute/ judicial orders". Therefore, though the situation improved with respect to the recognition of their rights, a lot remains to be done.

Further, under the Act, specific provisions deal with the procedure to be followed. However, once again it fails to restrict the powers.

RECOMMENDATIONS

In view of the findings, the following recommendations are proposed:

- a. Till the provisions of the Act are implemented in *toto*, all eviction drives should be put on hold.
- b. That the rule or scheme to be framed under the Act should have provision for special insurance scheme for loss of goods (both the saleable items and goods used to carry on trade) of vendors through natural or man-made causes.
- c. The scheme should also have mechanism for compensating the vendors where loss of goods is caused due to the action of the civic authorities or upon confiscation etc.
- d. The scheme should also clearly set out the guidelines for confiscation of goods, thereby specifying and limiting the powers of the local authorities to confiscate on such specific items.
- e. That the rule or scheme to be framed under the Act should have specific provision for punishing non-observance of pro-vendor guidelines.
- f. The street vending activities should be incorporated in the city planning exercise conducted by the urban planning bodies and accommodated in the master plans. This would strengthen the right of vendors in claiming spots from the Town Vending Committee and also provide a guiding structure to the committee. This would also remove arbitrariness in the action of the local bodies.
- g. The scheme should provide specifics of the various facilities which are to be provided to the street vendors along with a cap on the charges which can be imposed on them towards maintenance charges of these facilities.
- h. Further, the scheme also needs to provide a broad framework for aspects like revision of these charges and criteria for the same. This will curtail arbitrary actions on the part of the committee and the local authorities.
- i. There is an urgent need for creating awareness among vendors regarding their rights and liabilities under the Act. The government should provide for conducting such awareness campaigns, which can be facilitated by various NGOs.

- j.** Also, a reason for the failure of various judgments and policies to reduce and curb the harassment of street vendors is the lack of sensitivity of the implementing officials. Therefore, these officials need to be sensitized about the various legal provisions pertaining to street vendors' fundamental right to carry on trade and business and their right to livelihood.
- k.** And most importantly, there needs to be policy design giving clear enforceable right to property of street vendor over the cart and goods and user right over the space.

ANNEXURE I

Bellagio Declaration of Street Vendors, 1995

Having regard to the fact

1. In the fast growing urban sector there is a proliferation of poor hawkers and vendors, including those who are children;
2. That because of poverty, unemployment and forced migration and immigration, despite the useful service they render to society, they are looked upon as an hindrance to the planned development of cities both by the elite urbanities and the town planners alike;
3. That hawkers and vendors are subjected to constant mental and physical torture by the local officials and are harassed in many other ways which at times leads to riotous situations, loss of property rights, or monetary loss;
4. That there is hardly any public policy consistent with the needs of street vendors throughout the world.

We urge upon Governments

To form a National Policy for hawkers and vendors by making them a part of the broader structural policies aimed at improving their standards of living, by having regard to the following:

1. give vendors legal status by issuing licenses, enacting laws and providing appropriate hawking zones in urban plans,
2. provide legal access to the use of appropriate and available space in urban areas protect and expand vendors' existing livelihood
3. make street vendors a special component of the plans for urban development by treating them as an integral part of the urban distribution system
4. issue guidelines for supportive services at local levels
5. enforce regulations and promote self-governance
6. Set up appropriate, participative, non -formal mechanisms with representation by street vendors and hawkers, NGOs, local authorities, the police and others.
7. Provide street vendors with meaningful access to credit and financial services
8. Provide street vendors with relief measures in situations of disasters and natural calamities,
9. Take measures for promoting a better future for child vendors and persons with disabilities.

Adopted on November 23 , 1995

ANNEXURE II

Supreme Court Decisions

- a. **PyareLal vs. NDMC [AIR 1968 SC133]**

In one of the earliest cases which concerned the rights of street vendors a three judge bench of the Supreme Court held that no person carrying on the business of cooked food on public streets has any fundamental right to carry on street vending, particularly, in a manner which creates unsanitary and unhygienic conditions in the neighbourhood. The condition that the vendors' activities should not cause unsanitary conditions is acceptable but the decision of the Court failed to recognize any right, whatsoever, of the street vendors. This reflects that the judicial opinion leaned in favour of the municipal bodies exercising their coercive powers to evict and control the vendors, while giving more weight to the people's right to free movement on streets. This approach failed to recognize the pressing needs of thousands of small vendors who depend solely on these public places to earn a living

b. Bombay Hawkers' Union vs. Bombay Municipal Corporation and Ors. [1985(3)SCC 528]

In this case the matter pertained to hawkers and vendors carrying on their occupation in various parts of Bombay. The municipal authority sought to evict them on the basis that they caused nuisance and inconvenience to passers-by. The Supreme Court while taking a stand different from the one in *Pyarelal*, recognized the right of vendors under article 19(1) (g) of the Constitution and applied the accompanying concept of reasonable restrictions under article 19(6). In what seems to be a shift of trend in the court's opinion, the court undertook a detailed enquiry into the actions of the authority and tested them on the yardstick of being reasonable or not. The following extract from the judgment is relevant for the purpose of highlighting the court's concern and shift of trend.

"We have considered carefully the eight conditions mentioned above, subject to which the Commissioner proposes to grant licences to the hawkers. No exception can be taken to conditions (i), (ii), (iii), (iv), (vii) and (viii) except that conditions (ii) and (viii) require a little clarification. The first part of condition (ii) beginning with the words "They should not put up any stall" and ending with the words "nor should they hawk on handcarts" may stand. But, the second part of that condition should not be construed to mean that the hawkers will not be entitled even to protect their wares against the sun, rain, wind and so on, by spreading a cloth, plastic sheet, chaddar, tarpaulin etc. The object of that condition is to ensure that no construction is put up and no handcarts are used. In so far as condition No. (viii) is concerned, all that it should be understood to mean is that the fact that a daily fee is charged will not confer upon the Hawker the right to do his business at any particular place. That is because, the daily fee is a kind of license fee to do business; it is not a fee charged for doing business at any particular place. The Commissioner will, therefore, free to impose conditions (i), (ii), (iii), (iv), (vii) and (viii) while granting licenses to the hawkers in the Hawking Zones, after making the necessary clarifications in conditions (ii) and (viii). Condition (v) is an unreasonable restriction on the hawkers' right to carry on their trade or business and must be dropped. There are several working families in Bombay, belonging to different strata of society, which depend upon the food supplied by hawkers. We do not see any valid reason

why hawkers should not be allowed to sell cooked food, cut fruits and the like. That will, of course, not confer upon them the licence to sell adulterated or unhygienic food They shall have to comply, like any other vendor of food, with the Municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act, 1954. Lastly the hours of business mentioned in Condition (vi) should be from 7 A.M. to 10 PM. instead of 7 A.M. to 9 P.M, In cities like Bombay, nights are quite young at 10 p.m."

c. MCD vs. Gurnam Kaur [1989(1)SCC101]

In the said case, question revolved around eviction of a temporary stall built near the gate of a hospital. The same was alleged to be causing inconvenience and therefore sought to be removed. Among the several issues that came up, the court also looked into whether there was any statutory duty cast upon the municipal body to provide an alternative to a street vendor who is being evicted. Answering this question in the negative, the court observed as follows:

"We find it rather difficult to sustain the judgment of the High Court. The learned Judges failed to appreciate that this Court in JamnaDas' case made a direction with the consent of parties and with the reservation that it should not be treated as a precedent. It expressed no opinion on the question whether there was any statutory obligation cast on the Municipal Corporation to provide alternative site to a person making illegal encroachment on a public place like any public street etc. contrary to Section 320 of the Act, as a condition precedent to the exercise of its powers under Section 322 of the Act for the removal of such encroachment on any public street, footpath or pavement. That apart, the High Court could not have made the impugned direction contrary to the provisions contained in Sections 320 and 322 of the Act. Section 320(1) in terms creates a statutory bar against illegal encroachment on any portion of a public street. It provides that "No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street etc". Having regard to this express provision, the High Court failed to see that the respondent Gurnam Kaur had no legally enforceable right to the grant of a writ or direction in the nature of mandamus. The High Court could not obviously issue any such direction which would be tantamount to a breach of the law. Furthermore, the High Court could not also make the impugned direction in view of the provision contained in Section 322(a) of the Act, which expressly confers power on the Commissioner to cause the removal of any structure which constitutes an encroachment on a public place like a street which is meant for the use of the pedestrians."

It was further observed that,

"No one has a right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. All public streets are meant for the use of the general public and cannot be used to facilitate the carrying on of private trade or business.

We feel that the Municipal Corporation authorities in consultation with the Delhi Development Authority should endeavor to find a solution on the lines as suggested in Bombay Hawkers' Union [AIR1985SC1206] i.e. by creating Hawking and Non-Hawking Zones and shifting the pavement squatters to areas the that Non-hawking Zones. The authorities in devising a scheme must endeavor to achieve a twin object viz., to preserve and maintain the beauty and the grandeur of this great historic city of Delhi from an aesthetic point of view, by reducing congestion on the public streets and removing all encroachments which cause obstruction to the free flow of traffic, and rehabilitate those unfortunate persons who by force of circumstances, are made to ply their trade or business on pavements or public streets."

Though the court recognized the plight of the street vendors it still followed a strict approach towards carrying out a cleanliness drive on the streets and evicting encroachers. The welfare or the rights of the street vendors seemed to be of lesser importance to the court.

d. Sodan Singh vs. NDMC [1989(4)SCC 155]

This case which was adjudicated upon by a constitution bench of the Supreme Court has significantly contributed to jurisprudence of street vendors' rights.

The case once again interpreted the rights of the hawkers or squatters under article 19 (1)(g) and took a broad view of the same. It was decided that there is a right in hawkers and squatters to carry on their trade on public streets but the same should be subject to regulations by the municipal authorities. This was in order that the exercise of the right by the vendors should not become a nuisance or cause inconvenience to the public. The decision also gave a wide interpretation to the kinds of trade which can be legally carried out. The court once again highlighted the concept of identifying areas into zones i.e. where hawking can be carried out and where not. Similarly, other guidelines as to the number of days and time period during which the vendors will be allowed to operate were also brought up as relevant issues. However, the court in no uncertain terms held that the right does not include any preference by the vendor for any particular place or spot. This was in order to de-link the right of vendors to carry trade and earn livelihood from any right in the premises/place in question which can broadly be termed as 'property rights'.

The court also passed an observation regarding the lack of appropriate action on the issue in the past and held that “inaction” would amount to negating the fundamental rights of the citizens. It may be relevant to cite the following extract from the decision:-

“StreetTrading being a fundamental right has to be made available to the citizens subject to Article 19(6) of the Constitution. It is within the domain of the State to make any law imposing reasonable restrictions in the interest of general public. This can be done by an enactment on the same lines as in England or by any other law permissible under Article 19(6)of the Constitution. In spite of repeated suggestions by this Court nothing has been done in this respect. Since a citizen has no right to choose a particular place in any street for trading, it is for the State to designate the streets and earmark the places from where street trading can be done. In action on the part of the State would result in negating the fundamental right of the citizens. It is expected that the State will do the needful in this respect within a reasonable time failing which it would be left to the courts to protect the rights of the citizens.”

The court further dealt with the issue of the nature of trade that could be undertaken by vendors and held that grant of hawking/squatting right is not meant for luxurious items or smuggled goods.

e. Saudan Singh vs. NDMC and ors. [1992(2)SCC458]

In this case, questions were raised regarding the functioning of the MCD scheme which was to look into the issue of identifying hawking zones, identify vendors entitled to relocation and space in vending zones etc. It was alleged that the manner in which the scheme was being implemented was fraught with arbitrariness. However, the court did not entertain such apprehensions and held that the MCD scheme should be popularized in order that more and more people can be benefitted by it and can submit their objections, if any. The court also took note of the Thareja Committee as well as salient features of NDMC scheme. The court further recognized the scheme formulated by MCD to determine which squatters/hawkers should be given permissions to carry on their trade in public areas and laid out four categories of hawkers, as follows:

“(1) Persons who have been found squatting between 1970 and 1982 and whose names are contained in the survey report prepared after the survey conducted in 1982 will receive first priority for grant of tehbazari permission subject to the scrutiny of their claims;

(2) Insofar as casual tehbazari on weekly holidays, festivals/melas, etc. is concerned, as well as at the 67 weekly bazars held, persons availing of the said benefit will continue to be granted the casual or weekly tehbazari;

(3) Squatters who have started squatting/hawking in 1983 onwards and who are found on the date of survey would also be considered for grant of

open tehbazari of 6' x 4' subject to the production of proof of continuous squatting and proof of residence and nationality. Such squatters/hawkers would be granted open tehbazari subject to availability of space provided they have cleared the dues of the MCD; and

(4) Persons who do not fall within the aforesaid three categories would be permitted to apply for hawking licences under Section 420 of the Delhi Municipal Corporation Act, 1957 and their applications would be considered on merit for permission to hawk not squat - by moving in specified areas with their goods on their heads or on cycles. They will be entitled to hawk with their goods anywhere in the zone in respect of which they have been granted a licence. However, such permission will be subject to any restrictions that may be imposed by the residential associations of different colonies."

The court, initially rejected the complaint that the Thareja Committee was applying very strict standards of proof for eligibility and that this was affecting interests of bonafide claimants. But in order to protect genuine claimants, the Court gave a set of nine directions. Most important directions remain direction 8-that the Thareja Committee was to draw up a list of squatters/hawkers identified by it and direction 9, whereby the Committee was to draw up a seniority list of squatters/hawkers and the Committee was to "suggest sites within the zone, over and above those already identified". The court further that all pending cases were to be treated as disposed of, except one case. It was further directed that no Court was to entertain any fresh case.

It is also pertinent to mention that a peculiar feature of the directions passed remains the direction with regard to the reservation on caste basis i.e. schedule caste/schedule tribe as well on physical disability and miscellaneous criteria like freedom fighter, war widow and humanitarian grounds.

f. Gaiinda Ram vs. MCD [1993(3)SCC178]

This case essentially raised the question of compliance of the directions issued in Saudan Singh vs. NDMC and ors. [1992(2) SCC458] and dealt with the question of protection to be afforded to various categories of vendors, as recognized in the aforesaid case.

g. Sodan Singh vs. NDMC [1998(2)SCC727]

This case was a continuation of the public interest litigations brought before the court in 1989 and 1992.

The court looked into the various recommendations of the Thareja Committee and especially considered the proposition relating to consideration of seniority of vendors while allotting spaces for hawking. This case is especially relevant for the reason that it

recognized that the vendors have right to change of trade and can apply for the same with the municipal authority, which shall decide the same without imposing arbitrary or unreasonable restrictions or conditions contrary to provisions of law.

The court thereafter laid out specific procedure to be followed by Chaturvedi Committee (a new committee constituted by the court, which replaced Thareja Committee) and the NDMC, which was as follows:

"1. Sri Chaturvedi Committee (sole member) shall issue public notice in an English and a Hindi Newspaper (expenses to be borne by the NDMC) within 15 days from today permitting the eligible claimants so found eligible by the Thareja Committee to submit their application in Part I. containing options in regard to the identified places and sizes (whether 6' x 4' or 4' x 3') in the particular zone to which these claims belong. The public notice in the newspaper will state that the details regarding the available sites and their locations and size is put up on the Notice Boards of the NDMC at various place, whose addresses are given. The notice will also require the claimants to state in Part II of their applications the details as to payment of Tehbazari charges due after 1.1.1990 and if there are or not any arrears as on date. The notice will also be put up in the various offices of the NDMC within the above said period. The notice in NDMC office will also give a detailed list of the places available for squatting/hawking and stating whether it is a kiosk/stall or a place for mere vending on Tehbazari basis as decided by the Thareja Committee and indicating their sizes (6' x 4' or 4' x 3').

2. The eligible claimants will be given 3 weeks time to file in Part I of their application then three options, indicating the zone concerned, their seniority as decided by Thareja Committee, stating whether they come under any reservation category, the type of trade they have been trading in or the new trade for which they have applied to the NDMC and such other particulars as may be called for or relevant. In Part II the eligible claimants shall specify if they have made payments of Tehbazari arrears due for the period after 1.1.1990 and if there are any arrears as on date.

3. After receipt of the claims, Committee shall issue notice to the concerned parties and the NDMC in regard to each of the places at which squatting/hawking is permitted as per the Thareja Committee Report and decide on the basis of seniority and reservation, size of place and such other relevant material as may be placed before the Committee, as to who should be allotted at what place. The Committee shall fix up dates of hearing by issuing Registered A.D. notices to the parties concerned. (The expenditure in this behalf shall be borne by the NDMC.) The Committee shall give an opportunity of being heard and pass reasoned orders and its

decisions shall be final and shall not be questioned before any other authority, tribunal, Court, nor the High Court nor in this Court.

4. It shall however be open to Sri Chaturvedi to obtain, if necessary, such directions or clarifications from this Court by way of filing IAs in this SLP, even though it is now disposed of.

5. The claimants will be permitted to appeal' before the Chaturvedi Committee either in person or through their counsel.

6. In case it is decided by the Chaturvedi Committee after the hearing of the case in Part II that any eligible claimant is in arrears of tehbazari dues for any period after 1.1.1990 then the said Committee shall fix a date before which the arrears have to be paid and informing that if the amount is not paid by that date, the claimant will lose his claim for the kiosk/stall or for the place. In case the claimant default in payment by such date fixed and the claimants rights cease as stated above, the Chaturvedi Committee will consider if the vacancy can be allotted to any other claimant already declared eligible by the Thareja Committee.

7. In case any of the place found eligible for kiosks/stalls by the Thareja Committee are not accepted by the Urban Arts Commission or the Archaeological Survey of India and the Department of Archaeology of the Govt. of NCT, the said places meant for kiosks/stall shall be available for tehbazari and the Chaturvedi Committee shall pass appropriate orders of allotment on that basis. As and when the above said authorities inform the NDMC that the places earmarked for kiosks/stalls are not acceptable for that purpose, the NDMC shall inform the Chaturvedi Committee about the said decision. (We have already observed that pending construction of kiosk/stall the claimant tentatively allotted the place or other person authorized using the place for vending on Tehbazari; shall continue. We also said unauthorised persons vending at these places be evicted by the NDMC forthwith.)

For the purpose of obtaining clearance for the said authority, the NDMC is granted time upto 30.6.1998 and for construction of the Kiosks/stalls upto 31.10.1998.

8. In regard to eviction of unauthorised squatters or other persons using the places identified by the Thareja Committee the NDMC has undertaken to have them evicted forthwith and in case this is not done, it will be open to the Chaturvedi Committee to bring it to the notice of this Court for appropriate orders, as stated earlier.

9. *The NDMC in general and the Director of Estates and the Director of Enforcement in particular will help and implement the decisions, directions or orders of Sri V.C. Chaturvedi. The NDMC shall also provide the other infrastructure to Sri Chaturvedi as stated in the main body of this order and pay his remuneration (in regard to which we are passing separate orders in this SLP).*

10. *The decisions of the Chaturvedi Committee both on the question of allotment of the kiosk/stall or the sites for tehbazari and also as to quantum of arrears of tehbazari shall be final as indicted in the body of this order and shall not be questioned either by the claimants or the NDMC before any authority. Tribunal, a Court of Law, the High Court or in this Court. No petition shall be registered in this behalf by the above bodies. We have only permitted the Chaturvedi Committee to file IAs in the appeal seeking any direction or clarification and none others. So far as orders of NDMC in regard to change of trade, it is open to the affected parties to resort to all appropriate remedies. We have so permitted Sri Chaturvedi to move this court in certain respects."*

h. Maharashtra Ekta Hawkers Union vs. Municipal Corporation Greater Mumbai [2004(1)SCC 625]

The court in the present case after considering the various decisions went to formulate a committee to look into the issue of allotting sites to hawkers and resolving other ancillary issues, for Bombay. It further gave a set of consolidated guidelines, which are as under:

"(1) an area of 1 mtr x 1 mtr on one side of the footpath wherever they exist or on an extreme side of the carriage way, In such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked. We further clarify that even where hawking is permitted, it can only be on one side of the footpath or road and under no circumstances on both sides of the footpaths or roads. We however clarify that Aarey/Sarita stalls and sugar cane vendors would require and may be permitted an area of more than 1 Mt. by 1 Mt. but not more than 2 Mt. by 1 Mt;

(2) Hawkers must not put up stalls or place any tables, stand or such other thing or erect any type of structure. They should also not use handcarts. However they may protect their goods from the sun, rain or wind. Obviously this condition would not apply to Aarey/sarita stalls;

(3) *There should be no hawking within 100 meters from any place of worship, holy shrine, educational institutions and hospitals or within 150 meters from any municipal or other markets or from any railway station. There should be no hawking on foot-bridges and over-bridges. Further certain areas may be required to be kept free of hawkers for security reasons. However outside places of worship hawkers can be permitted to sell items required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candies, agarbattis, coconuts etc.;*

(4) *The hawkers must not create any noise or play any instrument or music for attracting the public or the customers;*

(5) *They can only sell cooked foods, cut fruits juices and the like. We are unable to accept submission that cooking should be permitted. We direct that no cooking of any nature whatsoever shall be permitted. Even where cooked food or cut fruits or the like are sold, the food must not be adulterated or unhygienic. All municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act must be complied with;*

(6) *Hawking must be only between 7.00 am and 10.00 pm;*

(7) *Hawking will be on the basis of payment of a prescribed fee to be fixed by BMC. However the payment of prescribed fee shall not be deemed to authorize the hawker to do his business beyond prescribed hours and would not confer on the hawker the right to do business at any particular place;*

(8) *The hawkers must extend full cooperation to the municipal conservancy staff for cleaning the streets and footpaths and also to the other municipal staff for carrying on any municipal work. They must also cooperate with the other government and public agencies such as BEST undertaking, Bombay Telephones, BSES Ltd. etc. if they require to lay any cable or any development work.;*

(9) *No hawking would be permitted on any street which is less than 8 meters in width. Further the hawkers also have to comply with Development Control Rules thus there can be no hawking in areas which are exclusively residential and where trading and commercial activity is prohibited. Thus hawking cannot be permitted on roads and pavements which do not have a shopping line.;*

(10) BMC shall grant licences which will have photos of the hawkers on them. The licence must be displayed, at all times, by the hawkers on their person by clipping it on to their shirt or coat;

(11) Not more than one member of a family must be given a licence to hawk. For this purpose BMC will have to computerize its records;

(12) Vending of costly items e.g. electrical appliances, video and audio tapes and cassettes, cameras, phones etc are to be prohibited. In the event of any hawker found to be selling such items his licence must be cancelled forthwith.

(13) In areas other than the Non-Hawking Zones, licences must be granted to the hawkers to do their business on payment of the prescribed fee. The licences must be for a period of 1 year. That will be without prejudice to the right of the Committee to extend the limits of the Non-Hawking Zones in the interests of public health, sanitation, safety, public convenience and the like. Hawking licences should not be refused in the Hawking Zones except for good reasons. The discretion not to grant a hawking licence in the Hawking Zone should be exercised reasonably and in public interest.

(14) In future, before making any alteration in the scheme, the Commissioner should place the matter before the Committee who shall take a decision after considering views of all concerned including the hawkers, the Commissioner of Police and members of the public or an association representing the public.

(15) It is expected that citizens and shopkeepers shall participate in keeping non hawking zones/areas free from hawkers. They shall do so by bringing to the notice of the concerned ward officer the presence of a hawker in a non hawking zone/area. The concerned ward officer shall take immediate steps to remove such a hawker. In case the ward officer takes no action a written complaint may be filed by the citizen/shopkeeper to the Committee. The Committee shall look into the complaint and if found correct the Committee will with the help of police remove the hawker. The officer in charge of the concerned police station is directed to give prompt and immediate assistance to the Committee. In the event of the Committee finding the complaint to be correct it shall so record. On the Committee so recording an adverse remark re failure to perform his duty will be entered in the confidential record of the concerned ward officer. If more than three such entries are found in the record of an officer it would be a ground for withholding promotion. If more than 6 such entries are found in the records of an officer it shall be a ground for termination of service. For the

work of attending to such complaints BMC shall pay to the Chairman a fixed honorarium of Rs. 10,000/- p.m.

(16) The scheme framed by us will have a binding effect on all concerned. Thus apart from those to whom licenses will now be issued, no other person/body will have any right to squat or carry on any hawking or other business on the roads/streets. We direct the BMC shall bring this Judgment to the notice of all Courts in which matters are now pending. We are quite sure that the concerned Court/s shall then suitably vacate/modify its injunction/stay order."

i. Maharashtra Ekta Hawkers Union and Anr. Vs. Municipal Corporation, Greater Mumbai and Ors. [2009(17)SCC151]

In this case the court after recording the developments under various judgments observed and commended the effort of various state governments in implementing the National Policy on Urban street Vendors. It also observed that the schemes and directions issued by the court were of temporary nature and subject to regulations framed by the State Government in terms of the National policy.

j. Patri Vyapar Mandal Delhi (Regd.) vs. MCD Town hall and Ors. [2009(12)SCC475]

In the matter at hand the Supreme Court was called upon to once again look into the aspect of management of street vendors in the metro cities. This particular matter pertained to the city of Delhi and the court observed that pursuant to the National policy on Urban Street Vendors, ward vending committees had been constituted in all the 134 wards of the MCD, in addition to Zonal Vending Committees had also been constituted in all the 12 zones. Further the petitioners asserted that special provisions should be made for Women Street vendors, which aspect the court held should be taken into account by the MCD.

The court also observed that in several cases street vendors could not be allocated spaces as the said sites were in occupation of unauthorized persons. To resolve this issue the court accepted the suggestion that a photo census should be conducted of all squatters. The court further made photo census compulsory for all future allotment also.

k. Gainda Ram vs. MCD [2010(10)SCC715]

The court took into account the previous decisions and the fact that a law by the name of National Capital Territory of Delhi Laws(Special Provisions) Second Act 2009 has been enacted as a temporary legislation and the Model Street Vendors

(Protection of Livelihood and Regulation of Street Vending) Bill, 2009 was pending approval. However, the court went on to observe that, *“the fundamental right of the hawkers, just because they are poor and unorganized, cannot be left in a state of limbo nor can it left to be decided by the varying standards of a scheme which changes from time to time under the orders of the Court.”*

I. Maharashtra Ekta Hawkers Union and Anr. Vs. Municipal Corporation, Greater Mumbai and Ors. [2014(1)SCC490]

The court largely concerned itself with the implementation of the National Policy on Urban Street Vendors, 2009 and issued directions thereof, till enactment of appropriate legislation. This was in view of the fact that in absence of legislation the hawkers continued to face several problems including harassment from municipal authorities.