

## Property Rights of Street Vendors

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. Street vendors who operate outside the legal system are often treated with much contempt; however we must not lose sight of the fact that even those who are apparently within the system—due to their registration with the municipal bodies, also do not escape the harsh treatment. Municipal bodies and police officials exercised wide powers under various laws to remove obstructions on road and areas of public thoroughfare. It cannot be gainsaid that these removal of obstruction drives are used as an excuse to harass and extort money from street vendors. These powers were often exercised to harass these street vendors and extort money from them. The economic implications though have not been properly documented are still estimated to be quite huge.

This scenario raises an important question, as to what is the kind of property rights enjoyed by these street vendors. In this context, property rights can be broadly envisaged as either a right to vend from a particular spot or area or their right in the movables that they use for carrying on their trade. So far as their right to vend from a spot is concerned, no right is vested in them. However, vendors may associate a virtual claim in the spot due to a substantial period of time elapsing in uninterrupted possession. This may be seen as somewhat parallel to the concept of adverse possession where a period of 12 years will give rise to occupier's right in the land due to uninterrupted occupation, where such possession was within the knowledge of the owner and no coercive steps were taken to oust such occupier. So far as the right in the vendor's cart, saleable goods and equipments like weights and measures are concerned their rights have often been violated by rampant confiscations and unscrupulous official action.

A study was undertaken to analyse this aspect and answer some key questions pertaining to the gradual changes that occurred in the overall concept of property rights in India.

The phrase "property rights" has been recognised in the sense of land or immovable property. As originally enshrined in the Constitution of India, Article 19(1)(f) defined property right as the ability to acquire, hold and dispose of the property. The inclusion of property rights in the fundamental rights as guaranteed to the citizens of India had created a number of barriers to the government's free will of executing policies like land consolidation etc. and created ripples in the political arena. This necessary protection which entailed property rights gave rise to a number of litigations challenging the government's action with respect to "eminent domain". The gradual changes which the government undertook to erode the protection provided in the

law witnessed taking property right out of the ambit of fundamental right and creation of Ninth Schedule in the Constitution which practically insulated various legislations from judicial review.

Street vending is a historical occupation and has always operated on the fringes of the economy and society—in the extra legal system. Studies suggest that it is not only poverty and lack of skills for other types of jobs, but also factors like retrenchment from other occupations which lead people to start street vending activities for livelihood. Further, the daily income remains quite low and a Mumbai study which can be taken as suggestive of the broader scenario shows that 90 percent of the street vendors earned less than INR 500 a day.

The following are the top 5 findings of the study:

1. In the case of *Bombay Hawkers' Union vs. Bombay Municipal Corporation and Ors.*<sup>1</sup>the Supreme Court, for the first time in 1985, upheld the right to livelihood of the street vendors and went on to observe that unreasonable restriction and conditions can't be imposed on street vendors.
2. Until the passing of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) act, 2014, there was no central law operating in the field which would recognise street vendor's rights. The National Policies which were framed from time to time though tried to curtail the discretionary powers of the police and municipal officials barely turned out to be effective.
3. The 2014 Act has various dimensions some of which are as follows:
  - a. The Act provides for keeping in mind the need to maintain a rational correlation between the number of street vendors and total area of the city/state and/or total population
  - b. The Act further 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;
  - c. 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. Section 10 provides for a situation wherein 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.
  - d. Under the Act, it can be seen that in so far as the vendors who manage to obtain a vending certificate and are operating from a location but are being relocated under

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<sup>1</sup>[1985(3)SCC528]

- the Act can assert a temporary right which vests 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.
- e. Section 19 authorises 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. The section also provides for release of goods on payment of fine prescribed. However, the said section does not specify as to what is 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 goods is used in the sense of the 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.
  4. Therefore, the above analysis would show that the scope of property rights incorporated in the Act is very limited in scope and is conferred only to the extent that it protects any irrational taking away of the right to vend or confiscation of their 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 tyrant rule making power of the executive.
  5. From the study it is apparent that the Act vests a lot of discretion in the Town Vending Committee which is supposed to provide a more detailed framework under the Act. Till the provisions of the Act are implemented in *toto*, all eviction drives should be put on hold. Further, the scheme should also provide some guidelines which regulate the mechanism for compensating the vendors where loss of goods is caused due to the action of the civic authorities or upon confiscation etc. Not only this, but 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 only such specific items. The rule or scheme to be framed under the Act should have specific provision for punishing non-observance of pro-vendor guidelines. While the Act should have provided for imposition of such penalty, the void should now at least be filled up by making a provision for it in the scheme/rules. The Act should have provided for the same, like the RTI Act, 2005 provides for imposition of penalty on the erring PIO. This is an important lacuna of the Act.

The Act seems to be a weak attempt to address the property rights issue of the street vendors. It does not give any recognition to property rights of street vendors per se but gives protection only to the extent that a provision for giving notice and hearing is provided for. The biggest drawback of the Act remains that it makes any street vending activity without a certificate of vending illegal and takes away the freedom of movement into the trade by fresh entrants. The

formalisation of law with respect to street vending improves the ability of street vendors to assert their right to livelihood and trade, it ignores their property rights even in their goods meant for sale, carts and weights and measures etc. Moreover, the mammoth task lying ahead in terms of formation of a sound scheme and its implementation through the TVC remains a matter of concern.