

‘SMART STREETS’ IN THE MAKING - STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) ACT, 2014 - A CRITIQUE

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Abstract

Street vending has never been equated with business success which gets defined in terms of survival, growth in income, and movement into the formal economy. The wake of globalization adds on to the challenges faced by this class of impoverished lot by focusing on the dire necessity for bringing in legality to their occupation. The impact of multinational retail chain and foreign direct investment on the traditional retail sector of India, the need for right to livelihood of the street vendors and moreover the right to be viewed as human beings and not as a nuisance are the issues with which the movement on street vendors is grappled with. The paper outlines the critical analysis of the legislation enacted in favour of street vendors in the year 2014 and dissects the legal framework from a beneficial perspective.

Street vendors- A Socio-economic profile

Street vending is a microcosm of larger entrepreneurship, with all of its potential and its problems. An estimated ten million people live in India by street vending. Ranging from small or big city, rural or urban areas India experiences the presence of street vendors/hawkers involved in selling goods including cooked food, fruit and vegetables, clothing, toys, books, cottage products, household utilities and decorations to the public at low rates outside schools, colleges, government buildings, historical monuments, subways, bus stops and even malls and are generally identified with no permanent built up structures or infrastructure while engaging themselves in their occupation. According to the Government of India, there are three basic categories of street vendors: stationary, peripatetic and mobile. Stationary vendors are those who

carry out vending on a regular basis at a specific location, with implicit or explicit consent of the authorities. Peripatetic vendors are those who carry out vending on foot. Mobile street vendors are those who move from place to place vending their goods or services on bicycles or motorized vehicles¹.

Street vending is an economically viable way of selling such goods for several reasons. The street vendors need not be literate and requires less skills and small financial inputs. They can manage more hours of working and are close to the customers and can gauge the shift in the interest of the consumers and the stock of inventories becomes less problematic. Street vendors can choose convenient sites, charge less than fixed-location merchants because the vendors do not pay rent, utilities, wages, taxes, or other overhead costs, nor do they extend warranties. This makes the vendors' merchandise more affordable to poorer customers. As opposed to the contentions of the city authorities concerns on taxes, congestion, sanitation, aesthetics, and property values the street vendors concern is the need for a decent living and livelihood upholding their human rights. The street vendors when intrigued with their illegal status maintain the contention that vending is an "honest living" and that they should be allowed to pursue legally² the avocation that they are into.

Street vendors across the country belongs to the informal or the unorganized economy class devoid of the so called employment benefits popular in the organised economy and are categorized as the vulnerable and marginalized when viewed through the prism of cultural and sociological lens. The lack of employer-employee relationship and the contract of employment keep this class comfortably aloof from the mandatory labour standards compliances like licenses and registration. Their composition consists of women, children, the aged citizens, the migrant workers etc. They are invisible to the labour legislations relating to social security benefits. They lack voice and reflect the highly ignored and the highly overlooked chunk of population lacking collective representation. High gender pay gaps exist between men and women vendors. There is no protection from the rigors of climate, any health services or social security. They languish in poverty and remain least represented in their lifetime in any of the so called governance issues.

¹See for more details Draft Report On The Implementation Status Of Street Vendors (Protection of Livelihood and Regulation of Street Vending) ACT 2014, <http://www.yuvaindia.org/Street%20Vendors%20Report..pdf> Last visited on 26/9/2016

² Regina Austin- Symposium: The Informal Economy "An Honest Living": Street Vendors, Municipal Regulation, and the Black Public Sphere, 103 Yale L.J. 2119 1993-1994

The growing insecurity in villages on account of the tyranny of parochialism and casteism also may be attributed for increasing rise in squatter settlements by street hawkers. It is rightly stated poverty poses a threat to prosperity everywhere and this becomes true in the case of street vendors³. The greatest stress and insecurity of this vocation is created by a hostile state. Street vendors are condemned to fight daily undeclared – and unequal – battles against the police and municipal authorities⁴. They are often prone to face criminal charges filed against them in the context of police harassments for being into illegal and wrongful activities outlined by the black letters of law.

Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country. The Principles contained in Articles 39 (a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights⁵. The maldistribution and free mobility of capital and wealth ought to be set right by the Welfare State. The real plight of the street vendors is not about earning profits and expanding the business but staying in. The debates on right to work and livelihood and the development of globalisation and the concomitant discourses on the decent work agenda remains a mirage for these group. "Life", as observed by Field, J. means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed⁶. The eviction of pavement and slum dweller will lead, in a vicious circle, to the

³Mat'sfpo Sfhai'l Kuifhiif- Freedom of Association and Social Dialogue with Informal Economy Workers in Lesotho- A Study of Unwaged Street Vendors, 33 pt. 2 Indus. L.J. Juta 2288 2012

⁴http://www.thehindu.com/opinion/columns/Harsh_Mander/reclaiming-the-city-for-street-vendors/article4058121.ece Last visited on 26/9/2016

⁵ *Olga Tellis & Ors v. Bombay Municipal Corporation* 1986 AIR 180, 1985 SCR Supl. (2) 51

⁶ *Munn v. Illinois*, (1877) 94 U.S. 113. This observation was quoted with approval by this Court in *Kharak Singh v. The State of U.P.*, [1964] 1 S.C.R. 332.

deprivation of their employment, their livelihood and, therefore, to the right to life⁷. So unimpeachable is the evidence of the nexus between life and the means of livelihood. The accessibility, availability and the affordability issues of good governance least gets percolated to the ground level realities of the life of these population.

The Law Vis-a vis The Real Life situations

Just because an enterprise is small, informal, and illegal does not mean that it is not valuable or that it should be disparaged. Making a law on behalf of the street vendors, is the most challenging task since the law must take cognizance of the real life grievances and human rights violations and the much needed structures and institutions in place to make the law working. The call for a reinvigorated understanding that a law is required to be brought in, is the result of a growing realization among the law makers that problems of street vendors who thrives on the bottom of the socio-economic ladder do not result totally from disparities in income and impediments to consumption instead it can be solved by allowing workers to recapture the much wanted public space in the wake of globalisation when the whole system gets titled in favor of the market forces.

The plight of the pavement dwellers was taken cognizance upon in the famous Olga Tellis case. The right to carrying on business in the context of street vendors was upheld subject to reasonable restrictions under Art.19 clause 6 of Constitution of India by the apex court⁸. In spite of recognizing the economic compulsions behind such informal economy there was felt a vacuum in the field of legislation to this effect. The Government of India adopted the National Policy on urban street vendors,2004 which reflected a landmark change in the perception of street vendors from moving towards regulation rather than prohibition and realized the serious need of the hour to free them from the perception that they are unlawful entities and took cognizance of the matter of continuous harassment meted out to these chunk of population by the civic authorities⁹.

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is the prominent legislation addressing a regulatory and protective framework for the street

⁷ Supra note 5

⁸ *Sodan Singh v. New Delhi Municipal Committee*; 1989 AIR 1988, 1989 SCR (3)1038

⁹ http://wiego.org/informal_economy_law/street-vendors-india last visited on 28/9/2016

vendors in India. The law envisages a regulatory framework in the first instance, then moves on to a protective framework for the street vendors and also envisages a dispute resolution mechanism within its paraphernalia. The law through its preamble clearly reflects the ideology behind the legislation by stating that the law is protective in nature as to the rights of the urban street vendors and also regulatory in nature with regard to the street vending activities. The law defines different categories of vendors like mobile vendors¹⁰, stationary vendors¹¹ and street vendors¹². These definitions give sufficient space and varied understandings to the different categories of vendors that could be possibly identified with the present system which helps in the goal towards inclusive policy.

The prominent regulators under the law are the local authority¹³ which includes the planning authority¹⁴ and the Appropriate Government¹⁵ under whose scheme and jurisdiction these stakeholders' together works. The appropriate Government under this legislation is empowered to frame a scheme, within six months from the date of commencement of this Act, after due consultations with the local authority and the Town Vending Committee, by notification, which may specify all or any of the matters provided in the Second Schedule¹⁶. There is a plan for street vending envisaged under the legislation which is the starting point of understanding as to how the law works and to what extent it is beneficial to the street vendors. The appropriate government by its rules will provide for the manner of constitution of a Town Vending Committee in each local authority¹⁷. The Town Vending Committee consists of members represented by appropriate government, those representing the local authority, medical officer of the local authority, the planning authority, traffic police, police, association of street vendors, market associations, traders associations, non-governmental organisations, community based organisations, resident welfare associations, banks and such other interests¹⁸ with due representation shall be given to the Scheduled Castes, the Scheduled Tribes, Other Backward

¹⁰ S.2(d) Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

¹¹ Ibid, S.2(k)

¹² Ibid, S.2(l)

¹³ Ibid S.2(c)

¹⁴ Ibid S.2(g)

¹⁵ Ibid S.2(a)

¹⁶ Ibid S.38(1)

¹⁷ Ibid S.22(1)

¹⁸ Ibid S.22(2) (b)

Classes, minorities and persons with disabilities from amongst the members representing street vendors. The number of members representing the street vendors shall not be less than forty per cent who shall be elected by the street vendors themselves and also one-third of members representing the street vendors shall be from amongst women vendors¹⁹. The local authority shall provide the Town Vending Committee with appropriate office space and such employees as may be prescribed²⁰. Every decision of the Town Vending Committee shall be notified along with the reasons for taking such decision²¹. The Town Vending Committee is empowered by the law to publish street vendor's charter and data-base and carrying out of social audit²². This Town Vending Committee acts as the bridge between the local authority and the appropriate government. Every local authority, whether be the Municipal Corporation or Nagar panchayat in consultation with Town planning authority and also on the basis of Town Vending Committee is to prepare a plan to promote the vocation of street vendors covering the matters specified in the First schedule of the Act²³. The plan thus prepared is to be submitted to the appropriate government for approval and the government determines the norms applicable to street vendors²⁴. The appropriate Government is empowered to undertake promotional measures of making available credit, insurance and other welfare schemes of social security for the street vendors in consultation with the Town Vending Committee, local authority, planning authority and street vendors associations or unions²⁵. This is a much applaud able provision which goes in tandem with the *Durbalasya Baloh Rajah* principle of Dharma and the Welfare State concept enshrined under the Constitution of India. This provision if beneficially interpreted and implemented in its full spirit can go a long way forward for the protection and safeguard to be made realized for the street vendors who does not have any welfare measures or social security measures tailored for them.

Vending Zones²⁶ are created through this legislation which means the area designated by the local authority on the recommendation of Town Vending Committee²⁷ which is constituted

¹⁹ Ibid S.22(2) (d) and proviso

²⁰ Ibid S.25

²¹ Ibid S.23(2)

²² Ibid S.26

²³ Ibid S.21(1)

²⁴ Ibid S.20(2)

²⁵ Ibid S.31

²⁶ Ibid S.2(n)

by the Appropriate Government for the specific purpose by street vendors in carrying on their vending activities. Along with designating vending zones, local authority may on the recommendation of Town Vending Committee has the authority to declare certain zones /parts of street as no-vending zones for any public purpose and has been empowered to relocate the street vendors as prescribed by the scheme²⁸. Street vendors are prohibited from going on with their vending activities in such zones earmarked as no-vending zones²⁹. The relocation of street vendors from a no- vending zone will be done by the local authority in consonance with the recommendation of Town Vending Committee³⁰. The eviction of street vendors who does not possess the necessary certificate of vending or for occupying the no-vending zones also falls under the domain of local authority on the basis of Town Vending Committee's recommendations³¹. All of these powers of relocating the street vendors or evicting them require the mandatory thirty days' notice keeping in tune with the judgment rendered by the famous case of *Olga Tellis v. Bombay Municipal Corporation and others*. These powers of declaration to the positive impact and negative impact done by the local authority based on the Town Vending Committee's recommendations under the scheme formulated by the appropriate government reflects the synergy of the work potential required from these three prominent stakeholders.

The regulatory framework under the legislation requires the Town Vending Committee to conduct survey at periodic intervals (with a mandatory provision of holding periodic surveys once in five year period) within its jurisdiction with the noble purpose of identifying the street vendors and accommodating them in the vending zones demarcated. For this purpose, a holding capacity³² is prescribed by the local authority on the recommendations of Town Vending Committee. Every identified street vendor who has completed the age of fourteen on paying the due vending fees³³ shall be issued a certificate of vending by the Town Vending Committee³⁴ along with an identity card³⁵ under the category of a stationary vendor, a mobile vendor or any

²⁷ Ibid S.2(m)

²⁸ Ibid S.18(1)

²⁹ Ibid S.12(2)

³⁰ Ibid S.18(1)

³¹ Ibid S.18(2)

³² Ibid S.2(b)

³³ Ibid S.8

³⁴ Ibid S.4(1)

³⁵ Ibid S.6(3)

other category as the case may be³⁶. The criteria for issuance of certificates followed by the Town Vending Committee takes due account of preference to be allotted to the Scheduled castes, the Scheduled Tribes, other backward classes, women, person with disabilities, minorities or such other specified groups to be prescribed accordingly³⁷. The certificate issued thereby is renewable for such period of time by payment of prescribed fees³⁸ and once issued it stands valid for such period as prescribed by the scheme prepared by the appropriate government³⁹.

Prior to the issuance of the vending certificate, each street vendor is under a statutory obligation to give an undertaking to the Town Vending Committee to the effect that he would carry out the street vending business either through himself or his family members; that he has no other means of livelihood and that he shall not alienate/transfer including the rent, the vending certificate or the place demarcated therein to him for the specified purpose⁴⁰. The breach of any of the conditions specified would entail fine and the cancellation or suspension of the certificate of vending as the case may be upon satisfaction by the Town Vending Committee⁴¹. This process of adverse civil consequences to the street vendor calls for the applicability of fair hearing under the principles of natural justice which is well ingrained into the legislation⁴². The inclusion of family members within the street vending business and an undertaking to this effect is likely to perpetuate the menace of child labour. In cases of his death /illness /invalidity of the certificate holder any of his family members in the order of priority is allowed to carry over the vending in his place until the validity of the certificate expires⁴³. An appeal provision is also envisaged under the law to the local authority who is aggrieved by non-issuance of certificate of vending or the suspension/cancellation of the same⁴⁴.

Provisions of this Act are not to be construed as conferring ownership rights upon the street vendors with regard to their vending zone or areas⁴⁵. The rights and obligations of the

³⁶ Ibid S.6(1)

³⁷ Ibid S.7

³⁸ Ibid 9(2)

³⁹ Ibid S.9(1)

⁴⁰ Ibid S.5(1)

⁴¹ Ibid S.10.

⁴² Ibid S.10, Proviso

⁴³ Ibid S.5(2)

⁴⁴ Ibid S.11(1)

⁴⁵ Ibid S.29(1) and (2)

street vendors are outlined under chapter three of the legislation which includes right to carry on the business in accordance with the terms and conditions mentioned in the certificate. The right co- exists with the duty not to vend in no- vending zones. On relocation of the site he is entitled to a new site or area as may be determined by the local authority in consultation with the Town Vending Committee. On the expiry of time sharing period allotted to a vendor he is to vacate the space allotted to him on time sharing basis to other vendors. There is the obligation instilled on the part of the street vendors to maintain cleanliness and public hygiene, civic amenities and public property in good condition and they are restricted from causing any damage or destruction to the same in the vending and adjoining areas⁴⁶.The street vendors are obliged to bear periodic maintenance charges determined by local authority. In default of vacating the premises as per the orders or failing to relocate as per the direction of the local authority a meagre amount is taken as penalty from the defaulters⁴⁷.The local authority is authorized to seizure of goods in addition to evicting them after the expiry of notice period⁴⁸.After paying the stipulated fees as per the scheme the goods seized could be reclaimed by the street vendor and necessary mandates are provided in the legislation as to the time stipulations for releasing the goods concerned from the police custody depending on the nature of goods seized, ie., perishable good and non- perishable goods⁴⁹. These provisions go a long way forward in ensuring that police harassments meted out to the street vendors in cases of seizure of goods are genuinely dealt with. Very often in practical reality, the goods once seized by the police are rarely returned and the vendors had to undergo the suffering of losing the profits to be earned by selling them to the public. The law specifically enshrines the much needed want of the hour for the street vendors the freedom from harassment at the hands of police and other authorities ie., no street vendor who carries on the street vending activities in accordance with the terms and conditions of his certificate of vending shall be prevented from exercising such rights by any person or police or any other authority exercising powers under any other law for the time being in force⁵⁰.Penalty is also attached to the street

⁴⁶ Ibid Ss.15 and 16

⁴⁷ Ibid S.18(5)

⁴⁸ Ibid S.19(1)

⁴⁹ Ibid s.19 Proviso.

⁵⁰ Ibid S.27

vendor for violating the terms and conditions of the certificate or in violation of vending activities allowed to the extent under this Act⁵¹.

The law envisages a dispute resolution mechanism at its core level to address the disputes or grievances of the street vendors. The process is set into motion by an aggrieved vendor making an application to a committee consisting of a Chairperson who has been a civil judge or a judicial magistrate and two other professionals having such experience as may be prescribed by the appropriate government⁵² with the mandate that no employee of the appropriate government or the local authority are prevented from being made the members of the committee. An appeal is envisaged from the decisions of the committee to the local authority⁵³ which takes care of the principles of audi alteram partem⁵⁴.

Conclusion

Street markets are in many ways invaluable spokes in the wheels of the urban economy. They also enrich the distinct cultural life of every city. They need the protection of an ethic that discourages exploitation in commercial and personal relationships. The impact of multinational retail chain and foreign direct investment on the traditional retail sector of India, the need for right to livelihood of the street vendors and moreover the right to be viewed as human beings and not as a nuisance are the issues with which the movement on street vendors is grappled with. Laudably the law affirms that its purpose is not just to regulate street vending, but also to protect the livelihood rights of street vendors. The law demonstrates once again how difficult it is to free the livelihoods of poor people from the stranglehold of the bureaucracy. In effect, all the law does is to give the right to a vendor to vend if she or he has a certificate of registration; and this certificate depends on the scheme prepared by the local body, prescribing where vendors may run their businesses, and in what numbers.

The working of appropriate government, the local authority and the Town Vending Committee to achieve the pursued goals in tune with the objectives of the Act is critically challenging. The transparency in the formulation of the scheme with all its technical nitty gritty, the need for inclusive policies within the scheme, the attitude of the local authorities

⁵¹ Ibid S.28

⁵² Ibid S.20(1) and (2)

⁵³ Ibid S.20(4)

⁵⁴ Ibid S. 20(5) Proviso.

towards the issue of the poor masses, the synergy required in keeping the process in motion by the Town Vending Committee with the Town planning Committee etc., plays a crucial role in the realization of the noble mission to be accomplished. In the end, what the law entails is an entirely new imagination of the city with smart streets, which includes the masses of urban poor people as legitimate and legal partners. And, indeed, it entails a new imagination of economic growth, powered not just by the profits of large transnational companies, but the enterprise of millions of the working poor.

The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little

— Franklin D. Roosevelt