

WORKING OF THE LAW RELATING TO STREET VENDING IN INDIA: AN EMPIRICAL STUDY OF KOLKATA MUNICIPAL CORPORATION

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ISSN 2277-7733
Volume 8 Issue 3,
December 2019

Abstract

In most Indian cities the urban poor survive by working in the informal sector. Street vending provides job opportunity and means of livelihood to the urban poor but Urban Local Bodies consider it as illegal activity so far. In 2004, first time, Government of India recognizes vendor's role in local economy after so many litigations and Supreme Court verdict in favour of vendors. National Policy on Urban Street Vendor, 2004 and 2009, Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 are some of the initiatives taken by the Government. Still their status has not been changes as it was prior to 2004.

Keywords: *Informal Sector, Street Vendors, Social Security, Legal Rights*

Informality is the last option for the urban poor to survive in the most Indian cities. Among the informal sector, street vending is the most popular means of earning a livelihood, as it requires minor financial input, low investment and low skills. These people take to street vending when they do not find other means of livelihood. Though street vending is the last option of livelihood to the urban poor but Municipal and Police authorities consider it as illegal activity. The informal sector has in fact expanded in all countries, including the developed countries and through the existence of street vendors the concept of an informal sector was developed. Street vendors are not only a significant part of the informal sector but also an integral part of urban economy. It is a fact that the presence of street vendors is quite useful for a large section of the urban poor as street vendors provide goods, including food, at low price.¹ At present though street vendors have legal status to conduct their business but they are constantly being harassed by the authorities.² However, in law much is to be achieved.

Rationale of the Study

In the year 1996, Operation of Sunshine took place in Kolkata, on which thousands of street vendors were evicted at that time. In those days one question revolved around in author's mind 'do street vendors have any legal rights to do business on the street?'. This question compelled the author to go ahead with this direction. In today's context, this topic has become a subject of extreme concern and no civilized society can overlook it. A society, which functions within the framework of welfare state as envisaged in new Indian polity aiming at ensuring a minimum desirable standard of living to each and every member, is obliged to come forward to understand the needs of the street vendors and to undertake various measures that should be helpful in the fullest development of their life.

¹Sharit Kumar Bhowmik, "Legal Protection for Street Vendors", Vol. XLV, Nos. 51, Economic and Political Weekly December 2010

² Source: opinion formed by the Author from the field survey.

Scope of the Study

The scope of this study is to deal with the Street Vending in India, specifically in the context of their legal rights. As street vending is practiced, more or less, throughout the country and the law relating to street vending has also nation-wide implications, the author tries to inquire into the existence and implementation of the law relating to street vending in India as a whole with special reference to Kolkata Municipal Corporation.

Research Methodology

This study will be mainly Empirical and partly Doctrinal. In Doctrinal part, two types of reference will be used i.e. primary sources and secondary sources. Primary sources consist of statute and legislations and secondary sources are books, journals, articles. In Empirical part, the primary data will be obtained by field survey at Kolkata Municipal Corporation. The sample of 80 persons were taken up and interviewed. For empirical study the researcher proposes to adopt field survey method for data collection from selected areas by means of interview through questionnaires. Basically the structured/close ended questionnaires were asked. Questionnaire method is helpful to collect data from large, diverse and widely scattered people. Accordingly 20 street vendors were interviewed through structured questionnaires; 20 NGO Workers/Member of the Street Vendors Association were interviewed through structured questionnaires; 20 common people were interviewed through structured questionnaires; 20 Government employees were interviewed through structured questionnaires from the study area. The information has been collected on stratified random sampling method. The data obtained through the field survey is processed and presented in appropriate tables for deriving conclusions. Simple statistical tools like percentages, is used for deriving inferences and conclusions.

Research Questions: The basic questions which the present study has raised for considerations are: What rights have been granted to street vendors under the domestic law? Is the existing law on street vending adequate to protect their rights? What is the present position of street vendors in India?

Hypothesis: The following Hypothesis related to the present study have been formulated: "The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is deficient to protect and secure their rights as well as is insufficient to cover their special need".

Literature Review: In any research, literature review plays an important role. It is not only important but also essential when the author writes about any research report. It is a required homework that ought to have been done carefully. It is a fact-finding task and initial step of any research. It depicts the pictures about what research has been done in the past of the topic chosen by the researcher. The main aspect of literature review is that it judges, sums up, compares and contrasts, connects various books, articles, other relevant sources that are very much related to the present research. It sharpens the focus of the researcher. A comprehensive review of relevant literature is essential as it place the research study in its proper perspective by narrating the amount of work already done in the related area. To build clarity of thought literature review plays a pivotal role. By identifying gaps in the existing literature, the researcher can justify the originality of the proposed research. The analytical features of a literature review might trace the intellectual progression of the

field; identify the gaps exist till date. A good number of studies relevant for the present research have been studied.

Street Vending: Historical Outlook

a. Position in Ancient Period: We do not find any direct reference of street vending in the Vedic period. But in vedic literature we find existence of trade and commerce. People of the early Vedic period was financially independent. Every family created the basis requirements of their life. The excess item was reserved for future utilization.³

b. Position in Medieval Period: In the medieval period there was control of the marketing system both in local as well as long-distance trade by the Muslim rulers.⁴Allauddin Khilji (1290-1320 AD) was the first Sultan who seriously controlled the market system in an organized manner. The main features of this period was growth of markets in the shape of fairs and weekly markets in various places in the country. The Muslim rulers not only controlled the market system but also fixed the prices of the goods. Banjaras was mainly mobile/movable traders at that time.

c. In British period street vending was considered as illegal activity.

d. Position in independent India: In Indian towns during the past few years the number of street vendors has increased sharply, particularly after 1991 when the policies relating to structural change and liberalization were introduced. The only solution seemed to be that the common problems of street vendors can be tackled only at the national level and not through temporary local initiatives. The need of the hour was forming a national organization that could help to harmonize and manage activities of the associations of street vendors and project these at a national level.⁵ In November 1995, representatives of street vendors from 11 cities across five continents held the inaugural meeting of the International Alliance of Street Vendors in Bellagio, Italy. The Bellagio International of Street Vendors, signed by representatives at that meeting, called on governments to establish national street vending policies. This was a landmark development in the vendors' movement at the global level.⁶Thereafter Government of India in 2004 launched the National Policy on Urban Street Vendors and in the Policy of 2004, there was no provision of penalties on the police and Municipal authorities, who attempt to evict any registered vendor. So the Ministry of Housing and Urban Poverty Alleviation, Government of India issued a revised policy in 2009.

Origin of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014: Maharashtra Ekta Hawkers Union & Another vs Municipal Corporation, Greater Mumbai & others⁷ case has been decided on 9th September 2013 by the Hon'ble Supreme Court by observing that Street Vending Policy of 2009 shall remain operative till an appropriate legislation is enacted by Parliament. Once the

³<http://www.historydiscussion.net/history-of-india/vedic-period/trade-and-commerce-during-the-vedic-period-india-history/7060> visited on 25.07.2018 at 4 pm.

⁴Miss. Mubeen S. Belgau, "Application of GIS in periodic markets Analysis: A case study of Haveri District" under Karnatak University. Also available at <http://hdl.handle.net/10603/21352>.

⁵Sharit K. Bhowmik, "Hawkers And the Urban Informal Sector: A Study of Street Vending in Seven Cities", Prepared for NASVI. Full text available at [wiego.org>files>publications>files.pdf](http://wiego.org/files/publications/files.pdf), last visited on 08.09.2016.

⁶Shalini Sinha and Sally Roever, "Women in Informal Employment: Globalizing and Organizing", No. 2 WIEGO Policy Brief(Urban Policies), 2 (April 2011)

⁷ (2014) 1 SCC 490

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 becomes law, the livelihood of millions would be saved and they will get protection against constant harassment and victimization which has so far been an order of the day. However, till the needful is done, it will be appropriate that the 2009 Policy should be implemented throughout the country.⁸ Thus, the proposed 'the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012', is aimed at protecting the livelihood rights and social security of street vendors and regulation of urban street vending in the country and ensuring uniformity in the legal framework for street vending across States and Union territories.⁹ The Bill moved on the Lok Sabha, by the Ministry of Housing and Urban Poverty Alleviation, which passed on 06.09.2013 and passed on Rajya Sabha on 19.02.2014 in the name of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2014 and date of assent by the Hon'ble President of India was obtained on 04.03.2014 and came into force from 01.05.2014.¹⁰

International aspect: Internationally there is no specific labour standards relating to street vendors and it varies dramatically from one country to another. Many countries control this activity by providing a clear legal framework, while others have overlapping jurisdiction, which creates confusion and conflict, and in others still, street vending is simply considered illegal.¹¹

Street Vending and Indian Constitution: The Constitution of India always tries to provide equality, liberty, dignity, social justice and human rights. The Preamble, fundamental rights and the Directive Principles of State Policy of the Constitution is an indication to the commitment of the State to its people. These provisions give strength to the State for the upliftment of the status of poor. Our founding father made no discrimination amongst people. The important Fundamental Rights in matters related to the rights of the street vendors are (a) Article 14: Equality before law; (b) Article 19 (1) (g): Protection of certain rights regarding freedom to practice any profession, or to carry on any occupation, trade or business; (c) Article 21: Protection of life and personal liberty; (d) Article 32: Remedies for enforcement of rights conferred under part III of the Constitution; (e) Article 37: Application of the principle contained in this Part; (f) Article 38: State to secure a social order for the promotion of welfare of the people; (g) Article 39: Certain principles of policy to be followed by the State; (h) Article 41; Right to work, to education and to public assistance in certain cases; (i) Article 226: power of High Courts to issue certain Writs. There is no direct provision in the Constitution dealing with the street vending. The Constitution may be amended to address the needs of street vendors. It is unfortunate that after seventy two years of independence, there is not a single provision which judicially aims at securing the human rights of street vendors.

Judicial Response to Street Vending in India: In the case of *Bombay Hawkers' Union vs. Bombay Municipal Corporation and Ors.*¹², the Supreme Court, for the first time, upheld

⁸ Paragraph 15 of Maharashtra Ekta Hawkers Union & another [(2014) 1 SCC 490]

⁹ <https://indiankanoon.org/doc/142949467/> visited on 04/08/2018 at 8.50pm.

¹⁰ <http://pib.nic.in/newsite/printrelease.aspx?relid=103949> visited on 09.09.18 at 1.40pm.

¹¹ The Regulatory Framework and the Informal Economy, International Labour Office, Geneva, p. 3. Full text available at www.ilo.org/publication/wcms_201454.pdf, last visited on 08.09.2016.

¹² 1985(3)SCC528

the right to livelihood of the street vendors and went on to observe that unreasonable restrictions cannot be imposed on street vendors. Adjudicating on the similar lines in the case of *MCD vs. Gurnam Kaur*¹³ and *Sodan Singh vs. NDMC*¹⁴ the Supreme Court again held that street vendors have 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, 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. UOI*¹⁵, the Hon'ble Supreme Court instructed 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 Mumbai*¹⁶, the Supreme Court was forced to revisit and revise the guidelines issued earlier. In *Gainda Ram vs. MCD*¹⁷, 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'. 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 enforcing the same by issuing guidelines and directions.¹⁸

Analysis of the Street Vending Act: The Street Vendors Act of 2014 was enacted with an object to give some ray of hope in the life of Street vendors. But unfortunately this Act has remained in paper not in work. The present legal framework is full of lacuna. There are many contradictory provisions in this Act. The main institutional mechanism namely the Town Vending Committee has not been formed in almost all municipalities. Survey has also not been completed by the municipalities. Their human rights are constantly being violated by the authorities¹⁹. The status of the street vendors has not been changed as it was before 2004. Public awareness about the Street Vending law is very poor. Civic facilities like water, toiler has not been provided to the street vendors. Street vendors have no property rights over the immovable property and only licence has been given. This licence (certificate of vending) is not transferable.

¹³ 1989(1)SCC101

¹⁴ 1989(4)SCC155

¹⁵ 1998(2)SCC727

¹⁶ 2004(1)SCC625

¹⁷ 2010(10)SCC715

¹⁸ Amit Chandra and Rajul Jain, "Property Rights of Street Vendors", Centre for Civil Society, June 2015, full text available on ccs.in/sites/default/files/research.pdf, last visited on 10.09.2016

¹⁹Source: Author

Findings of the Empirical Study²⁰:**Table 1 : Opinion given by the Common People at Kolkata Municipal Corporation**

Question Number	Questions put to the Respondents (Total No. of Respondents: 20)	Answers in %	
		YES	NO
1.	Do you know that there are Specific Laws to protect the interest of Street Vendors?	65	35
2.	Do you know about the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014?	30	70
3.	Do you know that Space i.e. Vending Zone are allotted for street vending?	65	35
4.	Do you know about the Town Vending Committee?	40	60
5.	Do you know that there is a Dispute Redressal Committee to look into the dispute/grievance made by the street vendors?	50	50
6.	Do you think that street vendors play an important role on the life of the people?	100	0

Table 2 : Opinion given by the Government Employees at Kolkata Municipal Corporation

Question Number	Questions put to the Respondents (Total No. of Respondents: 20)	Answers in %	
		YES	NO
1.	Do you know that there are Specific Laws to protect the interest of Street Vendors?	40	60
2.	Do you know about the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014?	35	65
3.	Do you know that Space i.e. Vending Zone are allotted for street vending?	55	45
4.	Do you know about the Town Vending Committee?	20	80
5.	Do you know that there is a Dispute Redressal Committee to look into the dispute/grievance made by the street vendors?	35	65
6.	Do you think that street vendors play an important role on the life of the people?	100	0

Table 3 : Opinion given by NGO Workers & Member of the Street Vendors Association at Kolkata Municipal Corporation

Question Number	Questions put to the Respondents (Total No. of Respondents: 20)	Answers in %	
		YES	NO
1.	(i) Do you know that there are Specific Laws to protect the interest of Street Vendors?	60	40
	(ii) Can you name any one?	15	85
2.	(i) Have you heard about the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014?	25	75
	(ii) Have you heard Street Vending Rules & Scheme as provided in this Act?	15	85
3.	(i) Do you know about the various rights incorporated in the Act of 2014?	20	80
	(ii) Do you think that the rights provided in the Act are satisfactory?	20	80
4.	Do you know whether your Association/Organisation receives sufficient funds from the Government for making available credit to the street vendors?	30	70
5.	Do you know whether your Association/Organisation has received any benefit from the Government for working for the street vendors?	20	80
6.	Has the Local Authority extended the necessary help to your Association/Organisation?	40	60
7.	(i) Do you know about the Capacity Building Programme?	55	45
	(ii) Have you seen the Capacity Building Programme organized by the State Government?	25	75
	(iii) Is Capacity Building Programmes or Training Programmes to understand the role of street vendors more desirable for street vendors?		
	(a) Capacity Building Programmes (b) Training Programmes (c) Both	(a) 30 (b) 25 (c) 45	
8.	Have you made any efforts on your part to enrol the eligible street vendors with the Local Authority?	55	45
9.	Do you think that self-employment is the best method of assuring livelihood with dignity?	70	30
10.	Is your Association/Organisation free from interference?	50	50

²⁰Source: Author

Table 4: Opinion given by the Street Vendors at Kolkata Municipal Corporation

Question Number	Questions put to the Respondents (Total No. of Respondents: 20)	Answers in %	
		YES	NO
1.	(i) Do you know that there are Specific Laws to protect the interest of Street Vendors?	30	70
	(ii) Can you name any one?	20	80
2.	(i) Do you know about the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014?	25	75
	(ii) Do you know about the various rights provided by this Act?	25	75
3.	(i) Do you know that Space i.e. Vending Zone are allotted for street vending?	45	55
	(ii) Do you think allotted space should be increased?	75	25
	(iii) Do you think that Holding Capacity should be increased?	60	40
	(iv) Should space be allotted in No Vending Zone?	45	55
4.	Do you know about the Town Vending Committee?	50	50
5.	Have you ever been discriminated because of being a street vendor?	50	50
6.	(i) Have you obtained a Certificate/Licence of Vending?	15	85
	(ii) Is it an easy process to obtain the certificate?	15	85
7.	(i) Do you know that there is a Dispute Redressal Committee?	30	70
	(ii) Have you ever sought help from the Committee?	0	100
8.	Do you receive any insurance or other social security from the Government?	5	95
9.	What is the immense inequity you have faced being as a street vendor? (a) Lack of interest of the Government (b) Negative societal attitude (c) Poor employment prospect (d) Non-cooperation from the Municipal Authorities (e) Non-cooperation from the Police Authorities (f) Non-cooperation from the citizens of the locality	(a) 10 (b) 10 (c) 25 (d) 5 (e) 30 (f) 20	
10.	Is Capacity Building Programmes or Training Programmes to understand the role of street vendors more desirable for street vendors? (a) Capacity Building Programmes (b) Training Programmes (c) Both	(a) 30 (b) 25 (c) 45	

Interpretation: After the analysis, the scenario in Kolkata Municipal Corporation may be concluded in this way: (i) Though all categories seem to know about the existence of specific laws, but, it is disappointing that smaller response has come from the street vendors themselves. (ii) So far as knowing about the Street Vending Act of 2014 is concerned, the response from street vendors was very low, only 25%. (iii) Majority of the street vendors did not know that space are allotted for street vending. (iv) 50% of the street vendors did not know about the existence of Town vending committee and only 5% received benefit of social security from the government. (v) Nearly fifty percent street vendors are discriminated because of being a street vendor by the authorities. (vi) Due to harassment and procedural formalities, nearly 85% street vendors did not obtained certificate/license of vending from the Municipal authority. (vii) 70% of the street vendors do not know about the Dispute Redressal Committee and none has ever gone to seek help from this committee.

Conclusion & Suggestions:

The Street Vendors Act of 2014 has failed to achieve the desired goal for which the Act was enacted. It can be no gainsaying that the Act has remained in paper not in work. The hypothesis which the author has framed has been justified. There are many contradictory provisions in this Act. The statutory mandate i.e. the Town Vending Committee and Survey has not been formed or completed in almost all municipalities.

The status of the street vendors has not been changed as it was before 2004. Public awareness about the Street Vending law is very poor.

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

The human rights approach in favour of the street vendors must be adopted across the globe. Public awareness with respect to Street Vending Act, 2014 must be increased as early as possible. The Government should strictly implement the Street Vending Act.

The Municipalities should provide civic facilities to the street vendors. Implementing officials need to be sensitized about the various legal provisions relating to street vendors' fundamental right to carry on trade and business and their right to livelihood. In countries, where street vendors is increasing, the solution is unlikely to lie in simply creating new law or even ensuring the implementation of the existing law. The adoption and implementation of law needs to be supplemented by social and economic measures with adequate awareness in the masses. Thus, besides legislative measures, there is an urgent need to give importance to the supportive measures.

References

BOOKS

Pandey Dr. J.N, (2007) *Constitutional Law of India*, central law Agency.

Jain Prof. M.P,(2008) *Indian Constitutional law*, Nagpur.

Kumar Prof.Narendra, (2007),*Constitutional Law of India*, Allahabad Law Agency.

Basu, Durga Das,(2002) Introduction to the Constitution of India, Washwa and Company law Publishers.

Bakshi,P.M,(2002) The Constitution of India, Universal law Publishing

Misra S.N, (2006) *Labour and Industrial laws*, Central Law Publications.

Padhi, P.K, (2009), *Labour And Industrial Laws*, PHI Learning Private Limited, Third Edition, ,Delhi

Kapoor Dr.S.K, (2005), *Human Rights*, Central Law Agency.

Tripathi Dr. B.N.Mani , *Jurisprudence*, Allahbad Law Agency

Singh, Mahendra. P, Goerlich Helmut, Hauff, Michael Von, (2008), *Human Rights and Basic Needs: Theory and Practice*, universal law publishing co.

The International Covenant on Civil and Political Rights, 1966.

The International Covenant on Economic, Social and Cultural Rights,1966.

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

The Convention on the Rights of the Child, 1989.

The Indian Constitution.

The Indian Penal Code, 1860.

The Police Act, 1861.

The Motor Vehicle Act, 1988.

The Code of Criminal Procedure, 1973.

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

National Policy on Urban Street Vendors of India 2004 & 2009.

ARTICLES

- Ahmed, I (2003). "Decent Work and Human Development", *International Labour Review*, Vol. 142, No. 2.
- Bescond, D; Chataignier, A and Mehran, F (2003). "Seven Indicators to Measure Decent Work: An International Comparison", *International Labour Review*, Vol. 142 (2003), No. 2.
- Bhowmik, S. K. (2001). "Hawkers in the Urban Informal Sector: A Study of Street vendors in Seven Cities". *National alliance of street Vendors in India (NASVI)*. www.streetnet.org.za/English/page10.htm
- Bhowmik, S. K. (2007). "Street Vendors in Urban India: The Struggle for Recognition", in A Morales and J. Cross (Eds.), *Entrepreneurs: People, Place and Politics*, pp 92-107, New York, Routledge.
- Bhowmik, S.K.(2005)Street Street Vendors in Asia: A Review.*
- Ginneken, W.V. (2008). "Extending Social Security: Policies for Developing Countries", *International Labour Review*, Vol.142, No. 3.
- Guhan S. (1994). "Social Security Options for Developing", Countries *International Labour Review*, Vol. 133, No. 1.LO
- ILO (1999) *Decent Work*, Report of the Director-General, International Labour Conference, 87th Session, ILO: Geneva.
- Uzzi, B. (1997). "Social Structure and Competition in Interfirm Networks: The Paradox of Embeddedness", *Administrative Science Quarterly*, Vol. 42, No. 1 (Mar.,1997), pp. 35-67.

E-REFERENCE

- <http://labour.nic.in/>
- <http://www.sacw.net/article1125.html>
- <http://www.mainstreamweekly.net/article1111.html>
- <http://www.streetnet.org.za/English/page10>
- www.ilo.org
- <http://www.nceuis.nic.in>
- www.nidan.in
- www.msme.gov.in
- www.vikaspedia.in
- www.ccs.in