

DO STREET VENDORS HAVE A RIGHT TO THE CITY?

The result is informal governance: unofficial payments, merchandise confiscations and periodic evictions.

Officials operate on prejudices or without sufficient information on vendor identity, the area of operation, services offered or even spatial segmentation.

Vendors are accused of encroaching streets, crowding pavements or causing traffic jams.



The authors of the report, Prashant Narang and Vidushi Sabharwal, are researchers at Centre for Civil Society.¹ Centre for Civil Society is a market liberal think tank that advances social change through public policy. CCS has led research and advocacy campaigns to advance the livelihood freedom for street vendors for over a decade. To read about the status of implementation of the Street Vendors Act in India, click here: <https://ccs.in/research/progress-report-implementing-street-vendors-act-2014>

Five years after the enactment of the Street Vendors Act 2014, India's street vendors continue to be labeled as encroachers and face evictions.

Everyone depends on hawkers for affordable goods and services. About 2.5 percent of India's urban population is engaged in street vending.² Street vending is a part of the informal economy in India. By definition, informal would mean an activity that is not registered or protected by the state. For six decades following independence in India, most vendors were unregistered and therefore, faced harassment, extortion and evictions at the hands of police and government officials until the Parliament enacted the Street Vendors Act in 2014. Before the federal law, the local government had its own laws to register and regulate street vendors. Despite the regulatory provisions in the municipal acts, municipal officials register very few street vendors. Informality survived and sustained itself for two reasons: one, the inherent incentives for rent-seeking on part of bureaucracy, and two, convenience and flexibility on the part of the migrant vendors.

The report argues that street vendors who are expressly recognised and protected by the new law continue to be stigmatized as “encroachers” and face the usual official and unofficial consequences including extortion, harassment and evictions. State apparatus has not fully implemented the law in most states. Moreover, by evicting the vendors and creating no-vending zones before enumeration, state authorities as well as local administrations have been in clear conflict with the law. Unfortunately, the courts have mostly sided with the government and upheld evictions.

BACKGROUND: FROM GRIEVANCE TO GOVERNANCE

Supreme Court cases of 1980-90s inform about the issue with the street vendors. Vendors' applications for licenses or renewal of licenses would get no response from the administration. License status (applied for/pending) did not save them from extortion. Failure to pay bribe meant harassment, seizure of goods or eviction. Many of them approached courts against arbitrary delay and abuse of administrative discretion.

Courts were not too sympathetic to hawkers. In 1985, the High Court of Bombay accused hawkers of holding society 'to ransom by squatting on the centre of busy thoroughfares, thereby paralysing all civic life'.³ Instead of reviewing the administrative discretion, the Supreme Court digressed and got into the constitutionality of the right to vend on the streets. It upheld the constitutional right to engage in street vending but it started framing regulations and constituting committees to regulate street vending in Delhi and Bombay. In 2003, the Bombay High Court banned cooking on streets and vending within 150 m around train stations.⁴ The Supreme Court, in 2004, suggested that hawking must be subject to factors such as the narrowness of the road, the free flow of traffic or movement of pedestrians and proximity to institutions like hospitals and places of worship.

After years of advocacy efforts by vendor unions, associations and NGOs such as National Association of Street Vendors of India (NASVI) and Self-Employed Women's Association

History of the STREET VENDORS ACT

1995

India signed the Bellagio International Declaration of Street Vendors.

2001

The Government of India announced a task force to draft and adopt a National Policy on Street Vending..

2004

The 2009 version of the policy was a first, where street vendors were “officially described as contributors to the urban economy and not as encroachers.” The policy was, however, not legally binding.

2009

The Policy was revised and accompanied by a model law on street vending which could be adopted by state governments.

2012

The Union Cabinet approved the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill.

2014

Street Vendors Act, 2014 came into force.

(SEWA), the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill got enacted in 2014. It was notified on 1 May 2014 with the objective of regulating vendors in public spaces and protecting their right to vend.

STREET VENDORS ACT: DESIGN AND IMPLEMENTATION

The Street Vendors Act mandates that the state government formulate rules and schemes (Section 36 and 38), and assigns local authorities the responsibility of constituting town vending committees (TVCs)(Section 22).⁵ TVCs are the primary body at the local level that oversee implementation of the Act.

The Act explicitly mandates three institutional checks to protect and regulate vendors’ use and right over urban public spaces. One, the participatory mechanism of TVCs decentralises decision-making from municipal bodies to a committee of all stakeholders including vendors, government officials and resident associations. The provision of 40 per cent mandatory vendor representatives in the committee aims to ensure that their interests are accommodated and they are party to their own governance. Two, until the survey and issuance of certificate of vending to all existing vendors

is complete, no vendor can be evicted. TVCs are required to enumerate vendors every five years. Through safeguards and processes, the law creates a permitting framework instead of a licensing regime. Three, the Act provides for an independent redressal committees to hear vendor grievances.

The Act delegates the rule-making exercises to states to fill the details. For instance, the rules entail the constitution of TVCs and the manner of electing vendor representatives while the scheme provides for the methodology adopted for conducting survey and registration of vendors.

PROGRESS ON IMPLEMENTATION: A TALE OF APATHY

Five years since the enactment of the law, Centre for Civil Society (CCS) found that state-level implementation remains sluggish. As per the law, each urban local body should have at least one TVC. Currently, only a third of India's 7,263 Urban Local Bodies have set up TVCs. 42 percent of these TVCs do not have elected vendor representatives, defeating the purpose of a 'participatory mechanism'. Only four out of twenty-eight states and two Union Territories, that responded to our request for data, have a grievance redressal committee.⁶

In our report, we also looked at the judicial interpretation of the Act by various high courts and the Supreme Court. In January 2015, there was a public interest litigation jointly filed by CCS and a local vendor association seeking protection against undue eviction. The High Court of Rajasthan decided that the federal law was not applicable to Rajasthan. A member of Parliament (MP) from Rajasthan raised a question in the Parliament about the applicability of the Act. The concerned minister confirmed that the Act was indeed applicable to the whole of India. Faced with an appeal, the Supreme Court kept the matter pending for almost a year. Instead of passing a clear order setting aside the High Court judgment, the Supreme Court passed a weak order merely recording an undertaking of the government counsel that the state government and the concerned local authority would implement the law.

Between January 2017 and September 2018, the Supreme Court of India and various high courts passed 57 judgements and orders on disputes relating to the Street Vendors Act 2014. Our analysis found that eviction was the single most contested issue before the courts. Despite the express prohibition on vendor evictions before survey in the law, municipal authorities continue to uproot vendors from their vending spots arbitrarily. The High Court of Delhi refused to protect vendors not enumerated under any previous surveys conducted in 1992, 1996 or 2007 and labeled them as "encroachers". Judicial decisions are against the 2014 federal law as it prescribes: 'no street vendor shall be evicted or, as the case may be, relocated till the survey...has been completed and the certificate of vending has been issued to all street vendors'. The federal law does not define street vendors as someone enumerated by previous surveys; instead it defines a street vendor who sells goods or services in public streets or footpaths through a temporary structure or while on the move.

Zoning is another issue. The law does not allow zoning demarcation before vendor enumeration, constitution of vendor committees and formulation of vending plan. Despite the clear statutory provision, the High Court of Delhi upheld evictions based on old zoning demarcation. The High Court of Delhi reasoned that old zoning continued until the federal law 'merely prohibits any further declaration of no-vending zones and does not nullify the existing demarcation by the municipal authorities'. After the law came into force, zoning demarcations should not have been governed by the previous court directions, schemes or



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the 2009 policy. The Supreme Court, in 2013, had directed that the Court's directions were interim and effective only until a legislation is enacted.⁷

DELHI: A CASE STUDY OF EXCLUSIONARY INSTITUTIONAL PRACTICES

The National Capital Region is one of the richest areas in the country. Yet, 17 lakh people in the city live below the poverty line.⁸ In Delhi, the center of the National Capital Region, there are close to 3 lakh street vendors, but official (and outdated) lists only recognize half of these.

In September 2019, amidst the election gung ho, the Chief Minister of Delhi - Arvind Kejriwal claimed Delhi to be a pioneer in the implementation of the Street Vendors Act 2014. The claim was based on a decision to set up TVCs and conduct surveys of vendors within 30 days. Many other states have already done both. Delhi's street vendors are still struggling to find their place amidst the central government's Smart Cities mission and pedestrianisation projects.

A year before, in September 2018, the Delhi government had formed 27 provisional TVCs under an immediate directive by the Supreme Court.⁹ Our case study found that, of the 27, meeting minutes and notices are available for only 8 TVCs. The federal law and the Delhi rules provide for a minimum of 40 per cent vendor representation in TVCs, i.e a 30-member TVC should have 11 to 12 vendors. Of the 27 TVCs formed in Delhi, only 5 TVCs have 11 to 12 vendor representatives. 11 TVCs have less than 6 vendors. One TVC in North Delhi has no elected vendors. The Act also requires one-third representation by women vendors. Of the 27 TVCs, 9 have no women vendors (CCS Report, 2019).

Election of vendors to a TVC requires a voter list. Given that vending has historically been regulated arbitrarily, there are no 'voter lists'. The provisional TVCs that were formed in the city, had insufficient vendor representation. According to the Delhi rules of 2016, provisional TVCs were to have nominated vendor representatives. However, there was ambiguity as to how those vendors would be nominated. Vendor associations challenged this in the courts and argued that, even for the first TVC, the elections should be conducted on the basis of existing vendor records. The Delhi government, then, notified the new 2017 Rules.

In 2018, the estimated number of vendors was 137,000. Yet, only 9,000 vendors were there in the final voter list when one of the municipal corporations, New Delhi Municipal Council (NDMC), conducted elections for vendors. Moreover, in place of the chairman of NDMC, the first two TVC meetings were chaired by the Enforcement Director, who is in charge of evicting vendors. In the second meeting, the Enforcement Director proposed to begin vendor survey and the exercise began the next day. In a retrieved note by the vendors to the NDMC Chairman, it clearly highlights how NDMC vans first evicted vendors and then conducted the enumeration exercise with remaining and diluted vendor presence in the area.

As per the central Act, no-vending zones can not be declared prior to the survey. Indira Unninar, advocate pointed out that the courts have been 'directing shifting or eviction of vendors and declaring long-term markets as no-vending zones'. One such case is of the Daryaganj Sunday Book Bazaar. The 50-year-old book market of 276 vendors, until July 2019, turned Netaji Subhash Marg into one big book fair on every Sunday morning. Based on an

inspection report submitted by the Traffic Police to the North Delhi Municipal Corporation, the Delhi High Court shut down weekly bazaars on Netaji Subhash Marg, explicitly declaring it a no-hawking zone. While this Court order was filed for a suitable relocation of another weekly market, the Sunday Book Bazaar fell into the trap by implication. The order read “if weekly Bazaar is allowed to continue on Netaji Subhash Marg... it will absolutely hinder the smooth flow of traffic...”. The vendors were registered as an association, paying a fee to the local body for tehbazari (hawking licence) since 2011. The High Court of Delhi asked the vendor petitioners to ‘approach the TVC as and when it is functional’.¹⁰ Jahanvi Worah, the advocate for the vendor petitioners, pointed out that there is still no operational TVC in the zone. The vendors also requested the Court to elevate the Book Bazaar to heritage status. The Second Schedule of the Act provides that natural markets, where vendors have conducted business for over fifty years, should be declared as heritage markets and the vendors should not be relocated.

WHAT DO WE RECOMMEND?

The law has no checks and balances against non-implementation or delayed implementation. Most states did not formulate and notify the rules and the schemes within the prescribed time. In several states, street vendors had to approach courts to push for implementation. Similarly, the law is also silent on the accountability of public officials, such as municipal officials and police, who continue to harass the vendors and evict them against the law.

National Urban Livelihood Mission (NULM), a department under the Federal Ministry of Housing and Urban Affairs, nudges states to comply with the Act. It has constituted a management information system measuring state-level compliance and this information is in the public domain. The results are encouraging and the initiative is commendable. States actually compete with each other to score higher. Or do they?

To become an effective catalyst, NULM should pursue a two-pronged strategy: one, a legal strategy to ensure compliance and correct legal interpretation and two, an economic strategy to ensure effective implementation. Legal strategy includes a legislative commentary on the Act to clarify what the federal government thinks is the right interpretation of the Act, and scrutiny of the rules and the schemes formulated by the states for regulatory quality. Economic strategy includes a comparative matrix based on value-for-money indicators, identification of best practices, and sharing local body level data on various indicators in the public domain.

Will ‘nudge’ make up for the absence of hard checks in the law? Time will tell.

Endnotes

1. The authors acknowledge the contribution of Saheb Singh Chadha for his assistance.
2. Bhowmik, Sharit K. 2005. "Street Vendors in Asia: A Review." *Economic and Political Weekly*. https://www.jstor.org/stable/4416705?seq=1#page_scan_tab_contents.
3. *Bombay Hawkers' Union And Ors vs Bombay Municipal Corporation*. 1985. 1985 AIR 1206, 1985 SCR Supl. (1) 849 (Supreme Court of India, July 3).
4. *Maharashtra Ekta Hawkers Union v. Municipal Corpn., Greater Mumbai*, 2003. 2003. Appeal (civil) 4156-4157 of 2002 (Supreme Court of India, December). <https://indiankanoon.org/doc/1240612/>.
5. 2014. "The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014." <http://legislative.gov.in/sites/default/files/A2014-7.pdf>, May 1.
6. Society, Centre for Civil. 2019. "Progress Report on Implementing the Street Vendors Act 2014." <https://ccs.in/sites/default/files/research/svac-report-2019.pdf>.
7. *Maharashtra Ekta Hawkers Union & ... vs Municipal Corporation, Greater Mumbai*. 2013. (Supreme Court of India, September 9).
8. Institute for Human Development, Academic Foundation. 2013. "Delhi Human Development Report 2013: Improving Lives, Promoting Inclusion." <http://www.indiaenvironmentportal.org.in/files/file/delhi%20human%20development%20report%202013.pdf>.
9. Delhi, Government of NCT of. 2018. "Notification of Town Vending Committees." September. <http://it.delhigovt.nic.in/writereaddata/egaz20188260.pdf>.
10. *Darya Ganj, Patri, Sunday Book Bazar Welfare Associates & Ors...vs. Govt of NCT of Delhi*. 2018. W.P.(C) 6584/2018 & C.M.25123/2018 (High Court of Delhi, September 25).



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