

## Street Vending in India---A Review of Existing Laws, Rights and Regulations

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### I. Introduction:

Street vendors are part of an extremely visible category of workers that has always existed, despite frequent efforts to repress them. Some observers argue that the number of street vendors worldwide is increasing, both because of the generalised rural exodus of low skilled workers towards cities, as well as global economic crisis and the lack of employment opportunities. Others, however, point out that there is very little data on street vendors, and argue that it is consequently difficult to ascertain if their numbers are growing faster than would be accounted for naturally by urban population growth.<sup>2</sup> In India, the total number of street vendors is estimated at around 10 million. This number is likely to increase even further. The number of street vendors in Indian cities has increased sharply during the past few years, especially after 1991 when the policies relating to structural adjustment and liberalisation were introduced. It is now estimated that around 2.5 per cent of the urban population is engaged in this occupation.<sup>3</sup>

Street vending varies in term of scale, timing, location, remuneration, workforce and types of goods sold and services provided. It can be a full-time occupation, a part-time occupation, seasonal, or occasional. It can be carried out by one person but can also be a franchise of a larger street business. It can be a survival strategy or part of a big business. The incomes of street vendors consequently vary widely. At the same time, street vendors often sell home-based manufactured products and agriculture products that would otherwise be difficult to market and are as such an essential to the economy. Moreover, because they sell cheaper products, street vendors often cater for the urban poor. Therefore, several sectors and types of labour are linked with the street vendors. Street vendors also support the urban rich as well as the urban poor. They support the urban rich by providing daily requirements right on their doorsteps. People from lower

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<sup>2</sup> The Regulatory Framework and the Informal Economy, The Informal Economy Resource Guide . International Labour Office, Geneva, p. 2. Full text available at [www.ilo.org/wcmsp5/groups/public/---ed.../wcms\\_210451.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed.../wcms_210451.pdf), last visited on 9.12.2013

<sup>3</sup> Sharit K Bhowmik, "Street Vendors in Asia: A Review", Vol. XL, Nos. 22-23 *Economic and Political Weekly* 2262 (2005)

income groups also benefit from, the vendors, spending a large portion of their income on purchases from street vendors because their goods are cheap and affordable.<sup>4</sup> There are no labour standards at the international level dealing directly with street vendors. The manner in which street vending is approached at the domestic level varies dramatically from one country to another. Many countries specifically regulate this activity, providing a clear legal framework and jurisdictional mandates, while others have overlapping jurisdictional mandates, which creates confusion and conflict, and in others still, street vending is simply considered illegal.<sup>5</sup> Street vending is closely connected with the availability of urban public space – pavements, roads, parks, beaches, etc. – and many of the difficulties associated to the activity, including the generally negative way it is perceived by wider society, are linked to the ways in which such spaces are managed by the authorities. As a result, street vendors face a “complex coexistence of persecution, regulation, tolerance and promotion”.<sup>6</sup>

This paper seeks to trace the role of street vendors in the economy and the legal rights available to them. It shall stress on the international developments and analyse the constitutional provisions to policy frameworks in India, as well as a critical appraisal of the proposed legislation. The object is to trace the course of legal provisions available to the street vendors to uphold their human right in India.

## II. Street Vending Particularly in Urban Areas and its Significance from the Socio-Economic Perspective:

From ancient times, hawking and vending have been an integral part of Indian trade, now understood as part of the urban informal economy. During the colonial period the British superimposed institutions and legal frameworks over Indian reality, and many of the laws and legal principles introduced at the time remain fundamentally unchanged after independence. Researchers have used different definitions to identify vendors in a given city or country. The National Classification of Occupation 1968 defines street vendors as hawker, peddler, street vendor, *pheriwala* sell articles of daily utility and general merchandise such as vegetables, sweets, cloth, utensils and toys, on footpaths or by going from door to door According to

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<sup>4</sup> Debdulal Saha, “Decent Work Deficit’ of Self-Employed Workers in the Urban Informal Sector: Evidence from Street Vending in Mumbai”, 1, 2. View full article at [http://www.global-labour\\_university.org/fileadmin/GLU\\_conference\\_2010/papers/35\\_Decent\\_Work\\_Deficit\\_of\\_self-employed\\_workers\\_in\\_the\\_urban.PDF](http://www.global-labour_university.org/fileadmin/GLU_conference_2010/papers/35_Decent_Work_Deficit_of_self-employed_workers_in_the_urban.PDF). last visited on 9/12/2013.

<sup>5</sup> Supra n. 1

<sup>6</sup> Supra Saha n. 3

the existing policy documents, the term urban vendor is inclusive of both traders and service providers, stationary as well as mobile vendors and incorporates all other 3 local/region specific terms used to describe them, such such as, hawker, *pheriwalla*, *rehri-patri walla*, footpath *dukandars*, sidewalk traders, etc. According to the *National Policy for Urban Street Vendors 2009*, there are three categories of street vendors:

1. Those Street Vendors who carry out vending on a regular basis with a specific location,
2. Those Street Vendors who carry out vending not on a regular basis and without a specific location, for example, vendors who sell goods in weekly bazaars during holidays and festivals and so on,
3. The Mobile Street Vendors.<sup>7</sup>

Street vending comprises a sizeable portion in Indian urban economies, and is also a source of livelihood for many poor urban workers. Besides these direct economic benefits, street vendors have many indirect roles, such as contributing to urban security. Their presence on the streets can reduce crime, and that enabling the livelihoods of the poor protects against violence of the subaltern. However, the current policy paradigm and legislative regime is extremely hostile to street vendors in many cities in India. At the same time, there has been increase in hostility against the street vendors, who are considered to be 'coming in the way' of infrastructure 'development' and 'modernisation' of Indian cities. Regulating street vending is a state government function in India and the national government can only prepare a 'model law' as guidance for states. Some states have evolved pro-street vendor policies and practices government. For example, in Bhubaneswar city in Orissa, one third of the pavement area is reserved for street vendors and another two thirds for pedestrians. In Delhi, street vendors are included in a Bus Rapid Transit (BRT) pilot corridor, and the Delhi government's Unified Traffic & Transportation Infrastructure (Planning & Engineering) Centre under the Delhi Development Authority (DDA) has developed design guidelines to include '*Hawkers Zones*' in *pavement design*.<sup>8</sup>

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<sup>7</sup> C. N. Ray, Assem Mishra, *Vendors and Informal Sector - A Case-Study of Street Vendors of Surat City*, 1,2, 3 (Centre for Urban Equity (An NRC for Ministry of Housing and Urban Poverty Alleviation, Government of India) CEPT University, 2011)

<sup>8</sup> Darshini Mahadevia, Suchita Vyas, *Law, Regulations and Rights of Street Vendors: Ahmedabad*, 4, 5 (Centre for Urban Equity (An NRC for Ministry of Housing and Urban Poverty Alleviation, Government of India) CEPT University, 2012)

### III. International Efforts to Protect the Rights of Street Vendors:

There are no labour standards at the international level dealing directly with street vendors. The manner in which street vending is approached at the domestic level varies dramatically from one country to another. Many countries specifically regulate this activity, providing a clear legal framework and jurisdictional mandates, while others have overlapping jurisdictional mandates, which creates confusion and conflict, and in others still, street vending is simply considered illegal.<sup>9</sup> Internationally, street vendors began to organize in the 1990s as globalization and urbanization exacerbated city-level conflicts between vendors and local authorities. 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 Declaration of Street Vendors*, signed by representatives at that meeting, called on governments to establish national street vending policies. The international declaration was a landmark development in the vendors' movement at the global level.<sup>10</sup> The Bellagio International Declaration of Street Vendors of November 1995 urged governments to develop national policies for hawkers and vendors by making them a part of the broader structural policies aimed at improving their standards of living by giving them legal status, issuing licenses and providing appropriate hawking zones in urban areas. The declaration further called on governments to integrate vendors into urban development plans. Since then, a number of global, regional and local associations have been established to protect the rights of street and informal traders. The global networks include the Women in Informal Employment Globalising and Organising (WIEGO) with a secretariat at the Harvard University, MA USA and StreetNet International with headquarters in Durban, South Africa. StreetNet has regional and local networks which have begun engaging urban authorities in policy dialogues, including issues relating to the right to trade in urban space. It should also be noted that India is a party to several international agreements relevant to the regulation of street vending including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), over forty two International Labour Organisation (ILO) Conventions that (should) influence executive and judicial interpretation and

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<sup>9</sup> Supra n.1 p.2

<sup>10</sup> Shalini Sinha and Sally Roever, "Women in Informal Employment: Globalizing and Organizing", No. 2 *WIEGO Policy Brief* (Urban Policies), 2 (April 2011)

have an enforceable effect when there is a lacuna in the domestic law on the point.<sup>11</sup>

#### IV. Street Vending in India:

The institutional framework for informal activities including street vending has generally been hostile in the country. Local authorities in India are a major obstacle to the development of informal sector activities. Most of them use out-dated restrictive policies and byelaws and regulations originally intended to control and regulate the growth of indigenous enterprises, and the restrictions make vending principally illegal.<sup>12</sup> The municipal and police laws that impose restrictions on street vending in most cases do not directly prohibit street vending as a profession, but impose restrictions on the use of public urban space for street vending. The acts are archaic and fail to meet the challenges posed by the current situation particularly relating to migration, unemployment, and saturation of the formal sector.<sup>13</sup> The absence of a clear legal framework to accommodate street vendors in urban planning exposes them to legal actions as well as humiliation, both of which have increased with the rise of neoliberal regimes and efforts to establish so-called world-class cities. Under these circumstances it is necessary for them to have their own organization or advocacy group, which would not only include the street vendors, but also sympathetic state actors, interest groups, researchers, and journalists. One such group is the National Alliance for Street Vendors (NASVI) in India, founded in 1998. NASVI successfully made the Government of India adopt the first national policy on street vendors, The National Urban Street Vendors Policy, which is regarded as a “paradigm shift” with regard to street vending in India.<sup>14</sup>

#### V. Constitution:

The *Constitution of India* is the social document to which all the legislation in the country, at the national level or at the local level, have to confer. Majority of its provisions are aimed at promoting equality, justice, fraternity and liberty by establishing favourable conditions required for its

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<sup>11</sup> Abhayraj Naik, Contextualising Urban Livelihoods: Street Vending in India. Full article available at <http://azimpremjiuniversity.edu.in/lgdi/wp-content/uploads/2013/03/Contextualising-Urban-Livelihoods.pdf>, last visited on 8.12.2013

<sup>12</sup> Supra Bhowmik n. 2 at 7

<sup>13</sup> *Ibid*

<sup>14</sup> Kanchan Sarker, “Book Review of Bhowmik, Sharit, ed. 2010. Street Vendors in the Global Urban Economy, New Delhi: Routledge”, 19 *Just Labour: A Canadian Journal of Work and Society* 75 (Autumn 2012).

achievement. The important Fundamental Rights in matters related to the rights of the street vendors are:

*Article 14: Equality before law*

*Article 19 (1) (g): Protection of certain rights regarding freedom to practice any profession, or to carry on any occupation, trade or business*

*Article 21: Protection of life and personal liberty*

*Article 32: Remedies for enforcement of rights conferred by this Part*

*Article 226: Power of High Courts to issue certain writs*

*Article 37: Application of the principles contained in this Part*

*Article 38: State to secure a social order for the promotion of welfare of the people*

*Article 39: Certain principles of policy to be followed by the State*

*Article 41: Right to work, to education and to public assistance in certain cases*

Article 21 states that, 'No person shall be deprived of his life or personal liberty except according to procedure established by law', and has been important in establishing rights for street vendors. For street vending an ambiguity within the *Constitution* lies in the fact that Article 19(1) (g) relating to freedom to practice professions and trades, does not clarify whether the occupation of hawkers and vendors falls within its scope. Furthermore, while interpreting the term 'public interest' in Article 19, it is difficult to argue that the activities of the hawkers are in the public interest. On the other hand, number of legislation, namely the *Police Act* and the *Town Planning Act* consider trading on the road as obstruction and hence a nuisance that needs to be removed in the 'public interest'. Thus, while the street vendors have public interest, it is hard to prove that their activities are in public interest, making their definition as 'obstruction on the roads' hold. Thus, although, the *Constitution* guarantees freedom of trade and right to livelihood, other legislation, consider them to be obstruction to be removed. The most lenient view grants them right to trade and livelihood but not to be exercised on the roads in a way that obstructs other public interests and that they had right to rehabilitation. Hence, the street vendors are constantly under the threat of displacement and at best offered alternate sites for vending.<sup>15</sup>

The constitutional position in India, briefly summarised, seems to be that street vending is an enforceable fundamental right under Article 19(1)(g); this right is however subject to existing or new laws that impose "in the interests of the general public, reasonable restrictions on the exercise of the right" or that specify "the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or

<sup>15</sup> *Supra* Naik n. 10

*business.*” While a detailed analysis is not possible here, further constitutional guidance relevant to informality, street vending and the operation of the economic system may be sourced in provisions including the Preamble, Articles 14, 19, 21, 38, 39, 39-A, 41, 42, 43, 43-A, 47, 48-A, 243-P to 243-ZG (read with the 12th Schedule), 265, 276, 301, 302; entries 1,2, 5, 6, 8, 26, 27, 28, 49, 52, 56, 60 of List-II (State List); and entries 2, 3, 15, 18, 20, 21, 22, 23, 24, 26, 33, 33-A, 34, and 43 of List-III (Concurrent List) of the Constitution of India.<sup>16</sup>

❖ ***The Indian Penal Code, 1860***

s.283. Danger or obstruction in public way or line of navigation- s.283 of the code allows a fine for anyone who causes danger, obstruction or injury in a public way.

❖ ***Criminal Procedure Code, 1973***

Section 151. Arrest to prevent the commission of cognizable offences- s.151, allows a police officer to arrest anyone about to commit any cognizable offence without orders from a Magistrate and without a warrant, however, the person cannot be detained in the police custody for more than 24 hours from the time of his/ her arrest.

❖ ***National Policy on Urban Street Vendors of India 2009***

The *National Policy on Urban Street Vendors of India* (NPUSV) was first drafted in 2004, with changes in 2006 and in 2009. The policy aims to reflect the spirit of the *Constitution* on the rights of citizens to equal protection before the law. The central point of the policy is that it recognises street vending as an integral and legitimate part of the urban retail trade and distribution system. The 2009 policy also recognises the existence of *natural markets*, and has made recommendations with regards to planning of the natural markets. The centrepiece of the policy is the formation of the City /Town Vending Committees (TVC) and if required ward level committees for large cities to supervise the planning, organizing and regulating of street vending. TVCs include representatives of street vendors with members from RWAs (Resident Welfare Associations), Market Associations, Traders' Associations, police and municipal and planning authorities. These committees are required to allocate and manage space, monitor street vending and address any grievances and complaints. The policy recommended that municipal authorities provide a range of services for street vendors, such as water, electricity, solid waste disposal, public toilets, and storage facilities. The other important aspect of the policy was recognition that about 2 per cent to 2.5 per cent of the city's population is in vending activity and that any city planning should make space provisions for the same number of vendors. It also suggested that the area norms provided

<sup>16</sup> *Ibid*

in the Delhi Master Plan could be taken for planning purposes. This policy had special emphasis on planning for the street vendors and stated to recognise the locational dynamics of street market. It stated that the street vendors have a natural propensity to locate in certain places. These places were then articulated as 'natural markets'. The policy emphasised that "No hawkker/street vendor should be arbitrarily evicted in the name of 'beautification' of the city space. The beautification and clean-up programmes undertaken by the states or towns should act actively involve street vendors in a positive way as a part of the beautification programme."<sup>17</sup>

The policy addresses the need for spatial planning norms to be inclusive and calls for demarcation of areas on the following basis: Restricted free vending, Restricted vending and No Vending Zones. The policy also sets no limits on the number of vendors allowed to trade, but suggests a time-sharing model to allow maximum number of vendors to be accommodated. The 2009 policy clarifies the three different types of street vendors (stationary, peripatetic, and mobile), and provides much needed detail and clarity as regards policy imperatives pertaining to peripatetic and mobile vendors. It introduces much-needed clarity on the principles for determining quantitative norms for street vendors through the introduction of "holding capacity" terminology as well as clarifies that licensing pertains to site/space allotment for stationary vendors whereas registration applies to all kinds of vendors. The 2009 policy also lays definitely the composition, duties and functions of the Town Vending Committees. Finally, the 2009 policy clarifies the uncertainty relating to 'planning authority' terminology through the use of the carefully defined term 'local authorities'. Apart from these changes, the 2009 policy considerably improves upon the 2004 policy on a number of related other areas: provision of civic facilities, registration procedures, registration fees, collection of revenue, eviction, relocation, confiscation, organisation of vendors, participative processes, public health and hygiene, self-regulation, credit and insurance, rehabilitation of child vendors, education and skill development, housing, social security, monitoring and review, dispute settlement, and capacity building.<sup>18</sup>

However some of the significant omissions are:

- I) No recommendation regarding amendment of Ss. 283 and 431 of *Indian Penal Code 1860* and s.34 of the *Police Act*, to include an exception for street vendors, which penalises anyone who obstructs the public line of navigation. These two provisions create the contradiction between a legal 'licensed' vendor and an

<sup>17</sup> Supra n. 7 at 20

<sup>18</sup> Supra Naik n. 10

- 'illegal' obstruction which can result in eviction of even licensed vendors.
- II) No mention of the protection of vendors in city 'beautification' schemes. The beautification and clean-up programmes undertaken by states or towns should actively involve street vendors as a part of the beautification programme.
  - III) The 2009 draft also omits comment on the amount of space to be allocated for street vending.
  - IV) The 2009 policy ensures that TVCs should contain more than 40% of members from street vendors associations but does not address the fact that large number of vendors are not members of associations.<sup>19</sup>

❖ **Street Vendors (Livelihood Protection and Regulation of Street Vending) Bill, 2012:**

Considering the significant contribution made by street vendors to the urban society, and to enable them to earn a decent livelihood through creation of conditions for decent work, without causing obstruction to the public and to reflect the spirit of the Constitution of India on the right of citizens to equal protection before the law as well as their right to practice any profession, occupation, trade or business, a new legislation namely 'Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012' was drafted, under entries 20 (economic and social planning), 23 (social security and social insurance; employment and unemployment), and 24 (welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits) of List III of the Constitution. The Bill provides for protection of livelihoods rights, social security of street vendors, regulation of urban street vending in the country and for matters connected therewith or incidental thereto. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 aims at creating a conducive atmosphere where street vendors, are able to carry out their business in a fair and transparent manner, without the fear of harassment and eviction. Some of the provisions are:

- (i) The Bill provides for constitution, powers and functions of a Town Vending Authority in each Local Authority, which is the fulcrum of the Bill, for implementing the provisions of the Bill.
- (ii) To avoid arbitrariness of authorities, the Bill provides for a survey of all existing street vendors, and subsequent survey at-least once in every five years, and issue of certificate of vending to all the street

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<sup>19</sup> Supra n. 7 at 21, 22

- vendors identified in the survey, with preference to SC, ST, OBC, women, persons with disabilities, minorities etc.
- (iii) All existing street vendors, identified in the survey, will be accommodated in the vending zones subject to a norm conforming to 2.5% of the population of the ward or zone or town or city.
  - (iv) Where the number of street vendors identified are more than the holding capacity of the vending zone, the Town Vending Committee (TVC) is required to carry out a draw of lots for issuing the certificate of vending for that vending zone and the remaining persons will be accommodated in any adjoining vending zone to avoid relocation.
  - (v) Those street vendors who have been issued a certificate of vending/license etc. before the commencement of this Act, they will be deemed to be a street vendor for that category and for the period for which he/she has been issued such certificate of vending/license.
  - (vi) It has been provided that no street vendor will be evicted until the survey has been completed and certificate of vending issued to the street vendors.
  - (x) Procedure for relocation, eviction and confiscation of goods has been specified and made street vendor friendly. It is proposed to provide for recommendation of the TVC, as a necessary condition for relocation being carried out by the local authority.
  - (xii) The Local authority is required to make out a plan once in every 5 years, on the recommendation of TVC, to promote a supportive environment and adequate space for urban street vendors to carry out their vocation. The Bill provides for enough safeguards to protect street vendors interests.
  - (xiii) The thrust of the Bill is on "natural market", which has been defined under the Bill.
  - (xiv) There is a provision for establishment of an independent dispute redressal mechanism.
  - (xv) The Bill provides for time period for release of seized goods, for both perishable and non-perishable goods.
  - (xvi) The Bill also provides for promotional measures to be undertaken by the Government, towards availability of credit, insurance and other welfare schemes of social security, capacity building programmes, research, education and training programme etc. for street vendors.
  - (xvii) Protection of street vendors from harassment by police and other authorities and provides for an overriding clause to ensure they carry on their business without the fear of harassment by the authorities under any other law.
  - (xviii) The Bill specifically provides that the Rules under the Bill have to be notified within one year of its commencement, and Scheme has to

be notified within six months of its commencement to prevent delay in implementation.<sup>20</sup>

It is pertinent to note here that despite much deliberations and the Bill having been passed in the Lok Sabha in September 2013, is not flawless. The major drawbacks are:

- 1) So far as the procedure of issuing licences is concerned, the Bill lays that where number of street vendors identified are more than the holding capacity of the vending zone, the TVC is required to carry out a draw of lots, which is consequent in breeding corruption.
- 2) The Bill proposes that there will be no eviction till survey is completed. But how survey will be completed and by adopting what method, is a question mark.
- 3) Most of the vendors being illiterate, what mechanism shall be adopted for bringing them under a single umbrella.
- 4) If TVCs are not consulted in fixing the vending zones, the discretion of the local authorities could lead to harassment of the vendors.
- 5) Instances of forcefully removing street vendors for beautification have taken place without relocation, the Bill is silent regarding the remedy of such already displaced street vendors.

## VI. Judicial Response to Street Vending in India:

Since 1985, the Supreme Court had ruled that street vending was a constitutionally protected practice, subject to reasonable restrictions. The Court's judgment in the 1985 case of *Bombay Hawkers' Union v. Bombay Municipal Corporation*,<sup>21</sup> for example, outlined a scheme for regulating licenses to be issued to street vendors (hawkers) and for creating hawking and no-hawking zones. In the 1989 case of *Sodan Singh v. New Delhi Municipal Committee (NDMC)*<sup>22</sup>, the Court again ruled that "the right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution, on street pavements, if properly regulated, cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and for no other use." This judgment is significant because it recognizes the conditions of poverty in India that drive people to engage in street trading as a livelihood, and states bluntly that "there is no justification to deny the citizens of their right to earn livelihood by using the public streets for the

<sup>20</sup> <http://pib.gov.in/newsite/erelease.aspx?relid=99161>, last visited on 8.12.2013

<sup>21</sup> (1985) 3 SCC 528, 1985 AIR 1206, 1985 SCR Supl. (1) 849

<sup>22</sup> [1989] 4 SCC 155

purpose of trade and business.” Crucially, the Court also recognized in *Singh v. NDMC* that street traders “can considerably add to the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price.” The Court’s recognition of the positive contributions of street trade came at a time when issues related to the informal economy were gaining centre stage in the national policy arena. The recognition of the need to allow people to earn their livelihoods as street vendors created a supportive environment for the national policy.<sup>23</sup>

The increased momentum behind a national street vendor legislation traces back to October 2010 when a Division bench of the Supreme Court of India (Justice G.S. Singhvi and Justice A.K. Ganguly) in *Gainda Ram v. MCD*<sup>24</sup> reiterated that the right to street vending was a fundamental right protected under Article 19(1)(g) of the Constitution of India. Significantly, the Supreme Court in *Gainda Ram v. MCD* also held that this right could be reasonably restricted only through a law (and not through governmental/municipal schemes), and therefore mandated that legislation be enacted by the appropriate Government by 30th June, 2011. It should be noted that in a long series of judicial pronouncements spanning over five decades where the Supreme Court had considered the legal status of street vending and the precise contours of the rights implicated in the phenomenon of street vending and its governmental regulation. As long back as 1954 in *Saghir Ahmad v. State of U.P.*<sup>25</sup>, the Supreme Court of India had held that though all public streets and roads in India vest with the State, the State holds them as trustees on behalf of the public. The decision of the Madras High Court in *M. A. Pal Mohammed v. R. K. Sadarangani*<sup>26</sup> represents a singularly sophisticated judicial treatment of the rights of street vendors in cities when balanced with the rights of other citizens and users of public streets. The Supreme Court on 9<sup>th</sup> September 2013 in *Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and others* directed all State Governments and the Union Territory administrators to ensure formation of Town Vending Committee within two months and registration of all street vendors within four months. The direction would be binding till the enactment of the central law to protect the livelihood of street vendors.

## VII. The Challenges:

It has been pointed in the early paragraphs that in India there exists a national policy as well as a proposed legislation to deal with the rights of the

<sup>23</sup> *Supra* Sinha n. 9 at 2, 3

<sup>24</sup> (2010) 10 SCC 715

<sup>25</sup> AIR1954 SC 728

<sup>26</sup> AIR 1985 Mad 33

street vendors. But unfortunately each have their own set of drawbacks. Therefore the greatest challenge now is to :

- 1) Ensure that fundamental rights are adequately and equally protected across the country even as context-specific, citizen driven and democratic urban functionality proliferates in shaping our cities.
- 2) Ensure that formalising street vending does not imply result in in greater surveillance, greater harassment, and increased bribe-seeking – all of which would simply encourage street vendors to transgress, evade and undermine the applicable (legal and spatial) regulatory frameworks.
- 3) Fair rationing and allocation of limited ‘high-value’ space, appropriately incentivising street vendors to genuinely formalise their livelihood practices, the norms for identification and *de facto* maintenance of no-vending and restricted-vending zones.
- 4) Competence and integrity of decentralised administrative mechanisms for implementation.
- 5) Harmonising street vending laws with other laws (relating to crime, public order, transport, city planning, etc.)
- 6) Integration of street vendors in improving urban environment.

### VIII. Combat Mode:

Street vendors can be assets to the urban system if they are given the opportunity to contribute to its development. Being a part of the marginalised urban poor, they are treated as trouble-makers whose sole purpose is to create chaos on the streets. This attitude is prevalent not only towards street vendors but also other sections of the marginalised. The civic authorities and the urban elite, in fact, seem to regard the majority of the urban population as obstacles to improving the urban environment. Whenever the question of citizens’ initiatives for improving cities arises, the reference is invariably to the middle and upper middle class. They need to be integrated into the planning process and in the campaigns for a better environment. Instead of victimising them for their activities, the civic authorities could instead incorporate them in keeping the city clean. Such moves are not only beneficial for the urban environment, they also try to restore citizenship to the marginalised. The other suggestions which may be considered here:

- 1) Quality control needs to be taken up by the street vendors.
- 2) Regulating public spaces in a judicious manner as to balance the right of access to public spaces and the need to move about in the city, on the one hand, and the right of street vendors to work and earn a living, on the other.

- 3) There is a need to legally secure street vendors' use of public spaces in order to facilitate their stability and reduce their uncertainty.
- 4) New legislation or regulations need to be publicised in a way that brings them to the attention of street vendors.
- 5) Efforts need to be made to promote the organisation of street vendors. As street vending employers are rare, strong street vendor organisations are needed in order to engage in negotiations with municipalities. This is the first step for the elaboration of good regulation adapted to the needs of street vendors. In some instances, area-based management may also be advisable in order to facilitate communication between street vendors and the local authorities.
- 6) There may be uncertainty as to the legal status of street vending: it might be considered illegal in one statute while another might specifically ask street vendors to pay taxes. The law must therefore have clearly defined terms, and all outdated regulations need to be repealed.<sup>27</sup>

#### **IX. The Parting Note:**

The human rights of the street vendors in India largely lies in the consequences passing of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012. Policy prescriptions and laws will need to effectively respond to the reality of a large urban street vending sector, in rapidly-expanding, high-population, economically heterogeneous, constitutionally competitive, urban centres with site-specific spatial, transport and cultural/aesthetic geographies, and where street vending has been long prevalent and is only likely to increase in frequency, distribution and scale of operation. Integrating street vending into city development planning and urban laws in India will certainly not be an easy task. However with the active role of the judiciary and a new legislation on way the path may be tough but not impossible. It may be hoped that the criticisms and suggestion put forth in this paper shall be contributory in securing the rights of urban street vendors in the country.

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<sup>27</sup> *Supra* n. 1 at 3