

Rights of Hawkers: A Study under the Indian Legal Framework

*Dr. Sujit Kumar Biswas¹
Champa Mondal²*

Abstract

Hawkers form an integral part of the urban economy. Majority of the population depends on hawkers for affordable goods and services. Hawking constitutes a sizable proportion of the informal sector and creates opportunities for entrepreneurship and self-employment. It is not only considered as a source of self-employment to the poor in cities but also an 'affordable' as well as 'convenient' means of livelihood to majority of the urban population. According to the Periodic Labour Force Survey of 2017-2018, there were around 11.9 million hawkers in India of whom it is the women who constitute a larger portion of these hawkers. Despite such a massive population being engaged in such occupation, hawking is characterised by uncertainty, extortion, and low standards of regulation. Therefore, it is necessary to observe whether these hawkers have been granted with any rights under the Indian legal framework. The study, therefore, focuses on the rights granted to the hawkers under the Constitution of India and under various legislation of India. It also examines those remarkable judicial pronouncements which uphold the rights of the hawkers. Special significance is given to the national policies framed by the Government of India to protect the interest of the hawkers. The study analyses the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. At the last but not the least, the study also focuses on the recent issues and challenges faced by the Government to address Covid-19 impact on the hawkers and provide some suitable suggestion to this respect.

Keywords: Hawkers, Urban Street Vendors, Street Vendors Act, 2014, Hawkers during Covid-19 pandemic.

I. Introduction

Every social system must have the capacity to meet the needs of all its members and for that it must have effective means of allocating and distributing

¹ Associate Professor, Department of Law, University of North Bengal.

² B.A.LL.B.(Hons), LL.M., NET Qualified, Ph.D. Research Scholar, Department of Law, University of North Bengal.

resources. Hawking as a form of street vending incorporates a very important segment of unauthorized sector in our country³. A hawker or a street vendor, a term often used interchangeably, is a person who offers goods or services for sale to the public without having a permanent built up structure but with a temporary static structure or mobile stall⁴. They provide wide varieties of goods and commodities to the urban populace at a reasonable price and at a convenient location. It would be hard to find an urban Indian who does not purchase anything from a hawker. It has been a profession in existence since time immemorial, therefore, gradually forming an integral part of our urban history and culture.

Nevertheless, our city planners remain oblivious to the role of hawkers who are often victimised, harassed, marginalised and pushed from one area to another. After being pushed to the city in search of employment, they take to hawking as self employment. For them it is an easier option. These hawkers are erstwhile workers, who after the closure of mills and factories took to street vending. Sometime they are victim of displacement caused by development projects and sometime they are the survivors of natural disaster. These people do not require any educational qualification, special skills or training to carry on street vending. Around ten million people in India are engaged in street vending activities⁵.

The National Policy on Urban Street Vendors of 2004 and 2009, elaborates the important role of hawking both in Indian urban economies and as a source of

³DarshiniMahadevia et al., *Law, Rights and Regulation for Street Vending in Globalising Ahmadabad* 4 (Cardiff University Working Paper 1, 2012), https://cept.ac.in/UserFiles/File/CUE/Working%20Papers/16CUEWP16_Law_Regulations%20and%20Rights%20of%20Street%20Vendors%20Ahmedabad_Resize.pdf.

⁴*Overview of street vendors- A little history*, NASVINET.ORG, <https://nasvinet.org/overview-of-street-vendors-a-little-history/> (last visited March 24, 2021).

⁵Ayani Srivastava et al., *Formalising the Informal Streets: A legislative review of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012*, JILS 4: Monsoon, 1 (2012), <http://docs.manupatra.in/newline/articles/Upload/B2BF305B-4500-4D24-B87F-46F2AD083584.pdf>.

livelihoods for many poor urban workers⁶. It has now become one of the important means of livelihood especially for the urban poor as it requires a minor financial input and involved low skills. Though it requires low investment but the income generated by this profession is too low.

Despite it, the hawkers are regularly subjected to mental and physical harassment by city officials. While vending they have to deal with multiple authorities like the Municipal Corporation, police, regional development authorities, district administration, and local panchayat and so on. Instead of regulating, these officials treat the hawkers as a nuisance and irritant. Their valuable goods are often confiscated or destroyed by various executive authorities or by Municipalities whenever eviction drives are conducted. The police have the authority to remove them even where street vending is permitted by the Municipality. It is Section 34 of the Police Act, 1861 that empowers the police to provide punishment for certain offences occurred on the road etc. Section 34 reads as follows:

"Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this Section shall be specially extended by the State Government, exposes any good for sale and causes inconvenience to the passenger shall be liable to fine or to imprisonment"⁷.

Therefore, those hawkers who is registered and licensed can also be evicted under this law. Apart from it, Section 283 of the Indian Penal Code 1860⁸ and Section 201 of the Motor Vehicles Act, 1988⁹ also restricted the hawkers from carrying on vending on street pavement.

⁶DarshiniMahadevia et al., *Law, Rights and Regulation for Street Vending in Globalising Ahmadabad* 4 (Cardiff University Working Paper 1, 2012), https://cept.ac.in/UserFiles/File/CUE/Working%20Papers/16CUEWP16_Law_Regulations%20and%20Rights%20of%20Street%20Vendors%20Ahmedabad_Resize.pdf.

⁷ The Police Act, No. 5 of 1861.

⁸ Section 283 of The Indian Penal Code, 1860 which provides for punishment in case of creating danger or obstruction in public way or line of navigation. It allows a fine for anyone who causes danger, obstruction or injury in a public way.

⁹ Section 201 of The Motor Vehicles Act, 1988 penalises a person who obstructs the free flow of traffic on the public highway. It provides penalty for causing obstruction to

II. Rights of the Hawkers under the Constitution of India

The Constitution of India is a social document and the majority of the provisions of the Constitution of India are aimed at promoting equality, justice, fraternity and liberty by establishing the favorable conditions required for its achievement¹⁰. In this same line, hawkers or the street vendors in India are entitled with following rights under Part III as well as under Part IV of the Constitution of India.

A. Under Part III of the Constitution of India

The Fundamental Rights as are contained under Part III of the Constitution of India are the non-negotiable, basic principles in the functioning of the Indian State¹¹. All the other laws of the State have to abide by the principles of the Fundamental Rights¹². The important fundamental rights, which have been used for litigation in order to protect the rights of the hawkers or the street vendors, are as follows¹³;

Right to Equality

The Constitution of India guarantees **right to equality under Article 14** and it is stated therein that the State shall not deny to any person whether citizen or non citizen the 'equality before law' and 'equal protection of law'¹⁴. However, at the same time, it ensures that the same law should not be applicable to all person equally as all person are not by very nature, attainment or circumstances

free flow of traffic. It is essentially designed to prohibit parking offences, specifying that whoever keeps a disabled (parked) vehicle in a place where it impedes the free flow of traffic will be liable to penalties. The wording can be applied to both motorised and non-motorised vehicles such as hand carts.

¹⁰Preamble of The Constitution of India

¹¹ V.N. SHUKLA, CONSTITUTION OF INDIA 24 (Mahendra P. Singh ed., 13th ed. 2019).

¹² *Id.*

¹³ SEWA, *Street Vendor's Laws and Legal Issues in India*, WIEGO Law and Informality Resources 2 (2014) <https://www.wiego.org/sites/default/files/resources/files/Street%20Vendors%E2%80%99Laws%20and%20Legal%20Issues%20in%20India.pdf>.

¹⁴ Art. 14 of The Constitution of India

is in the same position¹⁵. The varying needs of different classes of person often require different treatment and the government by applying reasonable classification gives special protection to any special class of citizen¹⁶. Hawkers also need special protection as they are a class in the society in respect to their profession.

As it was held in the case of *Bombay Hawker's Union v. Bombay Municipal Corporation*,¹⁷ that

“the public street are not only by their very nomenclature but also by their definition are exclusively meant for the use of the general public in our Country. It is important to note that they are not laid to facilitate the carrying on of private business but it is equally important that if hawkers were to be conceded the right claimed by them they could hold the society to ransom by squatting on the busy thoroughfares, thereby paralysing all civic life. This is the one side of the picture where on the other hand if proper regulations are made according to the exigency of the circumstances, the small traders on the side walk of the pavement can considerably add to the comfort and convenience to the general public by making available ordinary articles of everyday use for a comparatively lesser price. Thus an ordinary person who is not very affluent and hurrying towards his home after day's work can pick up these day to day articles without going out of his way to find a regular market. Thus it can be safely concluded that if the circumstances are appropriate then a small trader can do some business for personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to the others, there shall be no objection for carrying on the business”.

Right to Practice any Profession or to Carry on any Occupation, Trade or Business

¹⁵ V.N. SHUKLA, CONSTITUTION OF INDIA 50 (Mahendra P. Singh ed., 13th ed. 2019).

¹⁶ *Id.*

¹⁷ (1985) 3 SCC 528.

In *Sodan Singh v. New Delhi Municipal Committee*¹⁸ the court held that the hawkers have a fundamental right to carry on business on the public street, but the same should be regulated. Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads to facilitate traffic may be defeated¹⁹ and thus **the right to practice any profession or to carry on any occupation, trade or business as mentioned in Article 19(1)(g)** of the Constitution of India cannot be denied to the hawkers on the ground that the streets are meant exclusively for passing or re-passing and no other use can be made²⁰. Allowing the right to freedom to practice any profession or to carry on any occupation, trade or business²¹, without providing appropriate control is likely to lead to unhealthy competition and quarrel between hawkers and pedestrians and sometimes amongst the traders themselves resulting in chaos. The right is subject to reasonable restrictions under clause (6) or Article 19 of the Constitution of India²².

Right to Livelihood

At the same time, in any organised society, right to life as a human being is not ensured by meeting only the animal needs of man²³. It is secured only when he is assured of all facilities to develop himself and is free from restriction which inhibits his growth²⁴. The word “life” employed by Article 21 of the Constitution of India takes in its sweep not only the concept of mere physical existence but also all finer values of life including the right to work and **right to livelihood**²⁵. This right is not reduced to a mere paper platitude but is kept alive, vibrant and pulsating so that the country can effectively march towards the avowed goal of establishment of an egalitarian society as envisaged by the founding father while enacting the Constitution of India along with its

¹⁸ (1989) 4 SCC 155

¹⁹ V.P. SASTRI, THE RIGHT TO LIFE AND PERSONAL LIBERTY 149 (M.N. Venkatachaliah ed., 1st ed. 2005).

²⁰ *Id.*

²¹ Article 19(1)(g) of The Constitution of India

²² *Id.*

²³ V.N. SHUKLA, CONSTITUTION OF INDIA 215 (Mahendra P. Singh ed., 13th ed. 2019).

²⁴ *Id.*

²⁵ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

preamble²⁶. Forcible eviction of hawkers without prior notice is infringement of hawker's right guaranteed under Article 21 of the Constitution of India²⁷.

B. Under Part IV of the Constitution of India

Further **Article 39(a) and (b)** of the Directive Principle of the State Policy clearly states that the State shall in particular direct its policy so that-

- (a) The citizens, men and women equally, have the right to an adequate means of livelihood.
- (b) The ownership and the control of the material resources of the Community are so distributed as best to sub serve the common good²⁸.

III. Judicial Pronouncement on the Rights of the Hawkers in India

The main controversy regarding whether any right actually vests upon hawkers to carry out their trade in order to earn a livelihood has been adjudicated upon a number of times by the Apex Court of India.

In *Bombay Hawkers Union v. Bombay Municipal Corporation*²⁹ case, the Supreme Court has for the first time upheld the right to livelihood of the Street vendors and also held that unreasonable restriction and conditions cannot be imposed on hawkers. However, in the case of *Municipal Corporation of Delhi v. Gurnam Kaur*³⁰, the Supreme Court, adjudicating on the same line, held that street vendors has a right to carry on their business and the same can't be compromised on the alteration of the people's superficial right to use streets and that such right of livelihood should be upheld with reasonable restrictions. Another reason for which this case is important is the recognition of the factors which force people to resort to street vending and the lack of proper employment opportunities.

²⁶PALOKBASU, LAWRELATINGTOPROTECTIONOFHUMANRIGHTSUNDERTHE INDIANCONSTITUTIONAND ALLIED LAWS 724 (2nd ed. 2007).

²⁷*Id.*

²⁸Art. 39 of The Constitution of India

²⁹ AIR 1985 SC 1206

³⁰ (1989) 1 SCC 101

Another landmark case is *Sodan Singh v. New Delhi Municipal Corprration*.³¹ This case is decided by a constitutional bench of the Supreme Court and significantly contributed to the jurisprudence of hawker's rights. It was decided that there is a right in hawkers to carry on their trade on public streets but the same should be subjected to regulations by the municipal authorities. 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.

It may be relevant to cite the following extract from the decision:-

“Street trading being a fundamental right has to be made available to the citizens subject to Article 19(6) of the Constitution of India. It is within the domain of the State to make any law imposing reasonable restrictions in the interest of general public. This can be done by an enactment, on the same lines as in England or by any other law permissible, under Article 19(6) of the Constitution of India. In spite of repeated suggestions by the Apex Court nothing has been done in pursuant to this. Since a citizen has no right to choose a particular place in any street for trading, it is for the State to designate the streets and earmark the places from where street trading can be done. In action on the part of the State would result in negating the fundamental right of the citizens. It is expected that the State will do the needful in this respect within a reasonable time failing which it would be left to the courts to protect the rights of the citizens.”

The court further dealt with the issue of the nature of trade that could be undertaken by hawkers and held that grant of hawking or squatting right is not meant for luxurious items or smuggled goods.

In *Saudan Singh v. New Delhi Municipal Corporation*,³² questions were raised regarding the functioning of the Municipal Corporation of Delhi (MCD) scheme

³¹(1989) 4 SCC 155

³² (1992) 2 SCC 458

which was to look into the issue of identifying hawking zones, identifying vendors entitled to relocation and space in vending zones etc. It was alleged that the manner in which the scheme was being implemented was fraught with arbitrariness. However, the court did not entertain such apprehensions and held that the MCD scheme should be popularised in order that more and more people can be benefitted by it and can submit their objections, if any.

In *South Calcutta Hawkers Association v. Government of West Bengal*,³³ the petitioners contention was that the concerned authorities tried to evict hawkers from the Howrah area without giving them prior notice which is extremely arbitrary and contrary to the principles of natural justice. The court said that the very fact that they have been hawking there for several years clubbed with the fact that a committee was constituted to look into the issue of the hawkers germinated in their minds a legitimate expectation that they would be evicted only after being afforded a reasonable opportunity. Interestingly, taking support from the *Sodan Singh*³⁴, the High Court of Calcutta told the government that the State had a duty to formalise and regulate hawking. Inaction on the part of the State would lead to violation of fundamental rights of the hawkers. It added that if the government refused to act, then the court would have to take up the duty. Therefore the government was duty bound to frame a policy delineating hawking and non-hawking zones as well as laying down guidelines for the user of these zones.

In *Gainda Ram v. Municipal Corporation of Delhi*³⁵, the court took into account the previous decisions and the fact that a law by the name of National Capital Territory of Delhi Laws (Special Provisions) Second Act 2009 has been enacted as a temporary legislation and the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 is pending approval. However, 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.”

³³ AIR 1997 Cal 234

³⁴ (1989) 4 SCC 155

³⁵ (2010) 10 SCC 715

In *Maharashtra Ekta Hawkers Union v. Municipal Corporation, Greater Mumbai*³⁶, the court largely concerned itself with the implementation of the National Policy on Urban Street Vendors, 2009 and issued directions thereof, till enactment of appropriate legislation. This was in view of the fact that in absence of legislation the hawkers continued to face several problems including harassment from municipal authorities.

IV. Government Policies on the Rights of the Hawkers in India

Keeping in mind the interest of the hawkers and the order issued by the Court in its various judgments the Government of India issued National Policy on Urban Street Vendors³⁷. Although national policy is essentially a statement of intent by the Government and does not have the legal “teeth” that a law has for which it need to be ratified at the level of states and give effect to the cities still the Supreme Court judgment reinforced the need for State and local governments to implement binding laws based on the National Policy³⁸.

A. National Policy on Urban Street Vendors, 2004

India is one of the few countries to have developed a national framework for street vending³⁹. The National Policy on Urban Street Vendors was first published by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) of Government of India in 2004⁴⁰ and it was developed in response to the campaign made by the National Association of Street Vendors (NASVI) in India⁴¹. Article 14, 19(1)(g), 38(2), 39(a) and (b), and 41 of the Constitution

³⁶ (2014) 1 SCC 490

³⁷ MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION, NATIONAL POLICY ON URBAN STREET VENDORS (2004).

³⁸ Shalini Sinha & Sally Roever, *Women in Informal Employment: Globalizing and Organizing*, WIEGO POLICY BRIEF 1 (2011), https://www.wiego.org/sites/default/files/publications/files/Sinha_WIEGO_PB2.pdf.

³⁹ *Id.*

⁴⁰ MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION, NATIONAL POLICY ON URBAN STREET VENDORS (2004).

⁴¹ NASVI is an organisation working for the protection of the livelihood rights of thousands of street vendors across the Country and it was registered in 2003 under the Societies Registration Act of 1860. NASVI, <http://nasvinet.org>. (last visited Mar. 24, 2021).

of India form the legal basis for the formation of National Policy on Urban Street Vendors 2004⁴².

The National policy on Urban Street Vendors intends to provide and promote a supportive environment for street vendors to earn their livelihoods and also aims at reducing congestion and maintaining sanitary condition in public spaces and street⁴³. The overarching objectives of this policy⁴⁴ can be summarised as follows:

- a) To give hawkers legal status by amending, enacting, repealing and implementing appropriate laws and providing legitimate hawking zones in urban development plans.
- b) To provide facilities for appropriate use of identified space including the creation of hawking zones in the urban development plans.
- c) To make Street vendors a special component of the urban development plans by treating them as an integral and legitimate part of the urban distribution system.
- d) To promote self-compliance among street vendors and to set up participatory mechanism with representation by urban vendor's organisation, voluntary organisations, local authorities, the police and other to ensure orderly conduct of street vending.
- e) To take measures for promoting a better future for child vendors by making appropriate interventions for their rehabilitation and schooling.
- f) To facilitate or promote social security i.e. pension, insurance, etc. and access to credit for Street vendors through promotion of Self Help Groups, cooperatives, Federations etc.

⁴²MINISTRYOFHOUSINGAND URBAN POVERTY ALLEVIATION, NATIONAL POLICYON URBAN STREET VENDORS (2004).

⁴³Shalini Sinha & Sally Roever, *Women in Informal Employment: Globalizing and Organizing*, WIEGO POLICY BRIEF 1 (2011), https://www.wiego.org/sites/default/files/publications/files/Sinha_WIEGO_PB2.pdf.

⁴⁴MINISTRYOFHOUSINGAND URBAN POVERTY ALLEVIATION, NATIONAL POLICYON URBAN STREET VENDORS (2004).

- g) To promote organisations of Street vendors e.g. Unions, Cooperatives, Association and other forms of organisation to facilitate their empowerment.

Apart from it, the centerpiece of the policy is the formation of the City or Town Vending Committees (TVC) at City or Town level and delegation of authority by collaborating with Ward Vending Committees⁴⁵. However, the policy recommended that there are certain Sections of the Police Act, 1861 and Indian Penal Code, 1860 which are inconsistent to the profession of street vending⁴⁶. The policy recommended that Central Government and all State Government should make a suitable amendment to the Police Act and in its Rules or Regulations⁴⁷. The Policy recommended that besides the monitoring of the situation by the external authorities, it is extremely important for the street vendors to practice self regulation especially with respect to the maintenance of hygiene and qualitycontrol and keep the environments clean⁴⁸.

In the same year when the policy was launched, the Government set up a National Commission for Enterprises in the Unorganised Sector (NCEUS) to examine the problems of small enterprises and suggest measure to overcome those problems⁴⁹. The Prime Minister's Office asked the NCEUS to review the new National Policy on Urban Street Vendors as part of its work⁵⁰. The NCEUS consulted with NASVI and other organization of Street Vendors who expressed a concern that Street Vendors continued to face harassment and insecurity despite the Supreme Court Judgments recognising their rights⁵¹. Based on its conversations, the NCEUS published a report in the year 2006 offering recommendation for revising the policy to make the most important aspects of

⁴⁵ *Id* at 5.

⁴⁶ *Id* at 9.

⁴⁷ *Id*.

⁴⁸ *Id*. at 4.

⁴⁹ Shalini Sinha & Sally Roever, *Women in Informal Employment: Globalizing and Organizing*, WIEGO POLICY BRIEF 4 (2011), https://www.wiego.org/sites/default/files/publications/files/Sinha_WIEGO_PB2.pdf.

⁵⁰ *Id*.

⁵¹ *Id*.

policy implementation more specific⁵². Informed by the report of 2006, the Government of India issued a revised policy in 2009⁵³.

B. National Policy on Urban Street Vendors, 2009

The 2009 policy recognises that street vendors constitute an integral and legitimate part of the urban retail trade and distribution system for daily necessities of the general public⁵⁴. As the street vendors assist the Government in combating unemployment and poverty, it is the duty of the state to protect the right of these micro-entrepreneurs to earn an honest living. Accordingly the policy aims to ensure that this important occupational group of the urban population finds due recognition to National, State and local levels for its contribution to the society⁵⁵.

This policy is organised around seven specific objectives. These are as follows;

a) to give street vendors a **legal status** by formulating an appropriate law and thereby providing for legitimate vending or hawking Zones in city or town master or development plans, including Zonal, local and lay out plans and ensuring their enforcement⁵⁶.

b) to provide **civic facilities** for appropriate use of identified spaces as hawking zones, vendor's market or vending areas in accordance with city or town master or development plans, including Zonal, local and lay out plans⁵⁷.

c) to eschew imposing numerical limits on access to public spaces by discretionary licenses and instead moving to nominal fee-based **transparent regulation** of access, where previous occupancy of spaces by the street vendors determines the allocation of spaces or creating new informal sector markets where spaces access is on a temporary turn-by-turn basis. All allotments of spaces, whether permanent or temporary, should be based on payment of

⁵²*Id.*

⁵³*Id.*

⁵⁴*Id.* at 5.

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.*

prescribed fee fixed by the local authority on the recommendations of the Town Vending Committee to be constituted under the policy⁵⁸.

d) to promote, wherever necessary, **organisation of street vendors** to facilitate their collective empowerment⁵⁹.

e) to set up **participatory processes** that involved firstly; local authority, planning authority and police, secondly; association of street vendors, thirdly; resident welfare associations and fourthly; other civil society organizations such as NGOs, representatives of professional groups, representatives of trade and commerce, representatives of schedule banks and eminent citizens⁶⁰.

f) to promote norm of civic disciplines by institutionalising mechanisms of self management and **self regulation** in matters relating to hygiene, including waste disposal etc. among street vendors, both in the individually allotted areas as well as hawking zones with collective responsibility for the entire hawking zone⁶¹.

g) to promote access of street vendors to such services as credit, skill development, housing, social security and capacity building. For such **promotion** the service of Self Help Groups or Co-operatives or federation, Training Institute should be encouraged⁶².

V. Steps towards Enacting a Central Legislation for Hawkers or Street Vendors

After reviewing periodically the rights and entitlements of Street vendors over three decades, the Supreme Court of India consistently argued that a right based approach need to be adopted towards street vendors. Then the Central Government enacted two National Policy on Street Vendors 2004 and 2009 but both this policy failed to achieve main objective because of lack of implementation by the various local authority and State Government.

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.*

In *Gainda Ram v. Municipal Corporation of Delhi*⁶³ case, following the decision of the *Municipal Corporation of Delhi v. Gurnam Kaur*⁶⁴, the Apex Court highlighted the importance of framing regulation to regulate hawking business by creating hawking and non hawking zones. The learned judge in his concurring judgment made a very pertinent observation after comparing the position of street trading in India with that prevailing in other Countries and noted that even in England where there is complete social security and the citizen are not driven to the street to make out a living out of poverty and sheer unemployment, street trading is recognised. After considering that an alarming proportion of population lives below poverty line, the learned judge held that when the citizen by gathering meager resources tries to employ themselves as hawkers and street traders, they cannot be subjected to deprivation on the pretext that they have no rights.

After the mandate came from *Gainda Ram v. Municipal Corporation of Delhi*⁶⁵, decision and recommendation from National Advisory Council, it becomes bound to make law for the protection of street vendors by the Central Government. Although municipal zoning and regulation of vending falls under the State List, the Standing Committee on Street Vendors Bill recognised that Parliament may legislate on the rights and obligation of street vendors under entries 20, 23 and 24 of the Concurrent List of the Constitution of India⁶⁶. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is enacted, thereafter, with the aim to protect the rights of urban street vendors and to regulate street vending activities⁶⁷.

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

⁶³ (2010) 10 SCC 715

⁶⁴ (1989) 1 SCC 101

⁶⁵ (2010) 10 SCC 715 (India).

⁶⁶ Bedi & others, *Progress Report 2020: Implementing the Street Vendors Act*, CENTREFOR CIVIL SOCIETY 4 <https://ccs.in/sites/default/files/progress-report-2020-implementing-the-street-vendors-act.pdf>.

⁶⁷ The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, No. 7 of 2014, the *Gazette of India*, <http://www.egazette.nic.in>.

Street Vendor's Act, 2014 defines a 'Street vendor' as "a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public work or any other public place or private area from a temporary built up structure or by moving from place to place and includes hawkers, peddlers, squatter and all other synonymous terms which may be local or region specific"⁶⁸.

A. Main Features of the Act

Right to vend

Section 12-16 of Chapter III of this Act highlight that the Street Vendors have complete right to carry on the business of street vending⁶⁹. It emphasizes the legality and legitimacy of street vending as a profession. A certificate of vending will be binding documental proof of the same. It also makes provisions for renewal of this certificate and for suspension and cancellation of certificate.

Town Vending Committee

The Town Vending Committees (TVC) is the important element of this Act mentioned in Section 22-26 of Chapter VII⁷⁰. It is comprehensive committee of government officials, municipal officers, street vendors, bankers, traffic police, NGOs, etc. to take into consideration the opinion of all stakeholders within the ambit of street vending. The Town Vending Committee has to hold regular meeting and carry out functions relevant to vendors.

Plan for Street Vending

According to the Second Schedule of the Act, this plan is meant to be prepared by local authorities in consultation with the TVC⁷¹. It involves laying down vending zones, non-vending zones for various markets. Civic amenities have to be created and regulated. The Act also ensures to every street vendors who possesses a valid certificate of vending, the right to be entitled for a new site or

⁶⁸ See *id.* § 2.1.

⁶⁹ *Id.* at 5-7.

⁷⁰ *Id.* at 7-8.

⁷¹ *Id.* at 13-14.

area for carrying out his vending activities after determined by local authority, after consultation with the Town Vending Committee.

Redressal Mechanism

The Act in Chapter V, prescribes a governmental redressal committee which will consider the application of the street vendor and take steps for redressal on the basis of the rules set⁷². It also allows vendors to appeal to a local authority if preferred. The Act regulates street vending by issuing certificate of vending upon payment of vending fees on the street vendors.

Prevention of Harassment

Chapter VIII of the Act clearly pronounces that vendors following the terms and conditions of the certificate of vending cannot be prevented from carrying out their right to vend by any police or local authority in any manner⁷³. This is possibly the most relevant provision of the Act since harassment is the biggest problem that street vendors face.

B. Limitation under the Act

The Act is meant to focus on the rights of street vendors in order to empower them with the local authorities. Chapter III talks about the rights and obligations of street vendors but the Act only specifies that the vendors have the right to vend and not rights of street vendors. It talks nothing of the protection of the fundamental rights of street vendors that are currently being exploited.

It may be precisely noted that where under the Street Vendors Act 2014, only the holders of the certificate of vending are allowed to engage in street vending, necessarily carries the implication that each person willing to engage in street vending might not be able to receive the certificate of vending, owing to the fact that the holding capacity of each vending zone is to be determined before the certificate of vending is distributed. This suggests that if the number of street vendors is greater than the total holding capacity of all the vending zones, many street vendors might be unsuccessful in securing vending certificate. Besides that vending without possessing a certificate of vending would mean that such street vendors are denied protection given under the Act. Another problem with

⁷²*Id.* at 6.

⁷³*Id.* at 8.

the Act is sub-section 1 of Section 5 of chapter II where it is mentioned that a street vendor has to ensure that he has no other means of livelihood except street vending. Street vending is not a highly paying profession and many street vendors take up alternate jobs in order to support their families. This provision could act as a hindrance in incentivising vendors to apply for certificate of vending.

Beside this, a child above the age of 14 is eligible for acquiring vending certificate as per the provision of the Act. Thus the Act in other way permitting the child labours denying the welfare role imposed by the Constitution of India. The Act makes no distinction between the different types of breach committed by the street vendors and imposes same penalties for different kind of breach which is a major limitation of the Act. The Act has opened the door for the corrupt officials to extort bribes from street vendors, since it is the official alone who decides if the street vendor is in compliant with the terms of the certificate of the vending.

VII. Indian Government Initiatives for Hawkers during Covid-19 Pandemic

The impact of the Covid-19 pandemic on the livelihoods of the hawkers has been the worst⁷⁴. During the lockdown period of the Covid-19 pandemic, enforced social distancing and stay at home conditions not only restricted the employment opportunities of the hawkers but also increased the cost of doing business significantly.

In order to support the hawkers to regain their livelihoods during the pandemic, the Ministry of Housing and Urban Affairs of the Government of India announced the Pradhan Mantri Street Vendor's AtmaNirbharNidhi (PM SVANidhi) scheme⁷⁵. It is a part of government's economic package to address

⁷⁴Shiney Chakraborty & Gayatri Ahuja, *Emerging from the Lockdown: Insights from Women Street Vendors Lives in Delhi*, ISST 1 (2020) https://www.isstindia.org/publications/1591186006_pub_compressed_ISST_-_Final_Impact_of_Covid_19_Lockdown_on_Women_Informal_Workers_Delhi.pdf

⁷⁵ Ministry of Housing and Urban Affairs, *Scheme Guidelines for PM Street Vendors AtmaNirbhar Nidhi* (2020)

the Covid-19 related crisis. The major objective of the scheme is to provide easily repayable loans of up to Rs. 10,000 with the Government hoping that it would benefit over 50 lakh hawkers in India⁷⁶.

According to the data released by the Press Information Bureau, Ministry of Housing and Urban Affairs of Government of India on 18th November 2020, nearly 30 lakh applications were received and more than 7.5 lakh loans were disbursed as November, 2020⁷⁷. At the same time it launched a programme for socio-economic profiling of PM SVANidhi beneficiaries⁷⁸.

This is undoubtedly a welcome step as it could enable to rebuild the livelihood of the displaced hawkers but the key question is whether a microcredit facility like this would be effective in the current scenario. As per the study conducted by the Institute of Social Studies Trust (ISST) and Janapahal, Street vending activities has been most severely impacted by the pandemic which creates long-term impacts on their livelihoods⁷⁹. It is because of the nature of their work which requires excessive mobility and access to consumers, goods and markets. Street vending particularly food vending is largely a household-level activity, wherein all members of a household are involved in some or other stage of production process and therefore the loss of earnings for the vendor amounts to loss of livelihood for the family. These vendors being majorly migrant daily earners, has to leave the places of work and to return to their native villages when the pandemic induced lockdown. Due to the deep impact of the pandemic

http://mohua.gov.in/upload/uploadfiles/files/Scheme_guidelines_%20PMSAVnidhi%20_%20English.pdf

⁷⁶*Id.*

⁷⁷ Press Information Bureau, 27, 33,497 applications received under PM-SVANidhi Scheme, Government of India (2020) <http://www.pib.gov.in>.

⁷⁸ Ministry of Housing and Urban Affairs, *Scheme Guidelines for PM Street Vendors AtmaNirbharNidhi* (2020)

http://mohua.gov.in/upload/uploadfiles/files/Scheme_guidelines_%20PMSAVnidhi%20_%20English.pdf

⁷⁹Shiney Chakraborty & Gayatri Ahuja, *Emerging from the Lockdown: Insights from Women Street Vendors Lives in Delhi*, ISST 13 (2020) https://www.isstindia.org/publications/1591186006_pub_compressed_ISST_-_Final_Impact_of_Covid_19_Lockdown_on_Women_Informal_Workers_Delhi.pdf

followed by the nationwide lockdown, the task of rebuilding their livelihood will not be an easy one. In such a situation this announcements to improve access to micro-credit may not be a sufficient one to give relief from the distress of the pandemic.

VIII. Conclusion

Upon a perusal of the various judgments of the Supreme Court, the national policies and the recent Act, it can be safely concluded that little regard has been given to recognise the right to livelihood of the hawkers.

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 helps, to some extent, in recognising the right of the hawkers who were initially called as 'encroachers' to one where their interest plays a pivotal role while organising urban street policy. It not only delegates the rule making and decision making power upon the State authorities but also prioritises local governance in order to ensure its proper implementation. Urban Local Bodies are urged to introduce participatory decision making committees with hawker's representation in the Town Vending Committees. It, therefore, helps in building such mechanism which could enumerate all existing hawkers, ensure allocation of vending spots with least possible disruption to pedestrian movements and constitute forums to redress vendor disputes.

Now the problem is with regard to the implementation of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. All the States and Union Territories of India are required to implement the said Act properly so that hawkers could get some benefit, being out of fears of threats of eviction. An impartial powerful regulatory mechanism is needed to protect the interest of the hawkers. An impartial Town Vending Committee is required to be established in each local authority of a State. However, while implementing the provisions of the Act, the prior concern should be with respect to the rights of pedestrian also so that a harmonious system could be evolved where both the right to livelihood of the hawkers and the right of pedestrians can be upheld.

In 2012, the Standing Committee on the Street Vendor's Bill recommended that states must be given six months to comply with the provisions of the Act⁸⁰. The study conducted by the Centre for Civil Society reveals that after six years since the passing of the Act, the State apparatus is yet to fully implement the law⁸¹. There analysis in the Urban Local Bodies level data, and the rules and schemes of 35 States and Union Territories also reveals that States still have considerable ground to cover in formulating subordinate legislation and introducing institutional mechanism and processes⁸². As per the provisions of the Act, it is time for States to do a second round of hawker's surveys in all the Urban Local Bodies but the reality is that many States such as Assam and Uttarakhand have not completed the preceding steps i.e. notifying rules and schemes by the respective State Governments, constitution of Town Vending Committees and the first round of vendor surveys in all Urban Local Bodies⁸³. Even those States which have substantially made progress on most of the parameters like the State of Mizoram and Punjab did not strictly adhere to the procedure laid down in the Act⁸⁴. While some made progress by skipping the prerequisites, others have executed processes without constituting the authority responsible for execution⁸⁵. Surveys are completed before notifying schemes, identity cards are distributed before issuing vending certificates, demarcation is done before publishing vending plans and in some cases all of this is done without constituting Town Vending Committees⁸⁶. As per the Study, a close assessment of the quality of all rules and schemes of those States reveals that these too go beyond the main objectives of the parent Act⁸⁷. Most states have introduced

⁸⁰ Bedi et al., *Progress Report 2020: Implementing the Street Vendors Act*, CENTREFOR CIVIL SOCIETY 75 (2020) <https://ccs.in/sites/default/files/progress-report-2020-implementing-the-street-vendors-act.pdf>

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

provisions that either explicitly contravene the Act or are ambiguous, vague and unclear⁸⁸.

It shows that merely putting the Act in place may not be enough. The law remains silent on the accountability of public officials and places inadequate checks on delays in implementation. Hawkers, that have a history of being harassed and evicted by local authorities, require a law that places stronger institutional safeguards against administrative excesses to protect their livelihoods.

Apart from it the deep impact of Covid-19 pandemic, has been very harsh on informal workers who have exhausted their capital and earnings in trying to feed themselves during the extended lockdown period. Hawkers need to be able to resume their vending for survival and in order to do that Government must provide direct benefit transfer to the hawkers. At the same time, it has to look after the health, hygiene and social distancing of the hawkers while conducting vending. In order to support their rebuilding of livelihood the Government must have to give direct support which must be de-linked from the existing registration requirement because very few hawkers are registered in India.

It would be better if the Government consider the current PM SVANidhi scheme to some kind of a “conditional cash transfer” scheme because in that way it can includes some conditions to fulfil in exchange of cash receive. These conditionalities could, for instance, be linked to the utilisation of the grant to re-start their street vending activities or towards maintaining hygiene and basic sanitation in their street vending activities. While it may be difficult in allocating some amount from the budget towards facilitating a cash scheme for street vendors, it will surely go a long way in alleviating pandemic-induced distress.

⁸⁸ *Id.*

