



## AN ANALYSIS OF LACUNAE IN STREET VENDORS ACT, 2014 AND OBSTACLES TO STREET VENDORS WITH SPECIAL REFERENCE TO DISTRICT, LUDHIANA

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**ABSTRACT** The National Policy on Urban Street Vendors (2004) estimates number of Street Vendors in city to be 2.5% of the urban population (All-India 17-25 lakhs). Instead of such massive population being engaged in occupation, street vending is characterized by uncertainty, extortion and low standards of regulation. The Street Vendors Act, 2014 aimed to solve these problems through comprehensive mechanism. To establish livelihood rights of Street Vendors enshrined under article 21, Right to Life. Govt. makes national policy for urban Street Vendors in 2004 and again with passage of time policy was revised in 2009. Through continuous struggle of this informal sector the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 enacted for effectively protect rights of urban Street Vendors along with to regulate Street vending activities. Even though legislation makes provision for protection of this sector against their exploitation but there are certain lacunas, which create obstruction for proper implementation of Act. Moreover, the local and police authorities misuse their powers for personal benefit resultantly caused exploitation to informal sector and this turns into violation of their rights. Present study conclusion based on quantitative study with the help of questionnaire on conditions in which they are living, working and their awareness regarding this present legislation catering to their rights and also results show that certain factors responsible for increased reports of harassment are lack of education, lack of awareness and migration from native states in district Ludhiana. This is followed by ethnographic evidence and recommendations to improve situation of Street Vendors.

**KEYWORDS :** Street Vendor, Informal sector, Livelihood, Hawker, Nasvi etc.

### INTRODUCTION

Occupation of Street Vending is a major contributor in unorganized sector in any urban set up. Globalization has led to large scale increase of jobs in unorganized sector. Another, migration of the rural population to the urban cities also leads to a large number of persons taking street vending as an occupation to secure to themselves a decent means to livelihood due to high cost living. This informal sector forms a very important segment of the country besides contributing towards urban poverty alleviation as a source of self-employment without major Government initiative. This Act mainly aims to balance three key objectives: livelihood rights of Street Vendors to be secured, secondly to ensure streets and public spaces congestion free and thirdly very important to provide convenience of vending services for consumers. Basic features of this legislation are to create uniform legal mechanism to establish periodically survey of existing vendors to avoid arbitrariness of govt. authorities, prevention of harassment by authorities, form an independent dispute redressal mechanism for Street Vendors, enacted penal provisions for violation of rules, schemes and conditions of vending formed by the govt. to promote plan for street vending, to registration of Street Vendors through issuance of certificate for vending activities.

### Meaning and Definition

National commission for enterprises in unorganised sector in its National Policy on urban Street Vendors in May, 2006 has widely defined the concept of Street Vendors as a person who offers goods or services for sale to public without any permanent build up structure in a street or on footpath and recognised that there are three categories of Street Vendors; Firstly, who carry out vending activities on regular basis with specific locations. Secondly, who do not vend on regular basis and without any permanent or specific locations and thirdly, who move from one place to another for vending. Therefore, stationary or regular vendors vends on roads or pavements or public places or private areas with consent. Some are carrying their wares on push carts/ bicycles in the bags/ baskets in hand or on head etc. Usually local/ regional specific terms used to such people as the hawkers, peddlers, pheriwalas, rehriwalas, footpath dukandars, side-walk traders.

**Aim of Study** to analyse lacunae and challenges faced by the Street Vendors in Ludhiana despite Street Vendors Act, 2014 and give suggestions to eradicate them.

**Methodology** quantitative method is used for analysis.

**Limitation** Analysis based on data of Ludhiana city.

### Review of Literature

Book "Developing National Street Vendor Legislation in India: A Comparative Study of Street Vending Regulation" analyses National and sub-national laws over twenty countries regulating Street

Vendors to identify key features and design choices for legislation in Indian context. It also mentions that India is a party to number of International human rights and labour treaties relevant to regulation of Street Vendors but these cannot be directly enforceable into the court without implementing effectively legislation. It also identifies five aspects of Street Vendors legislation (a) Relationship between licensing regimes of national and municipal regulatory systems (b) Licensing structures (c) Identification of vending sites (d) Environmental sanitation and safety regulations and (e) Enforcement and accountability mechanisms.

Article "Policy Issues on Street Vending: An Overview of Studies in Thailand, Cambodia and Mangolia" divided into four parts – First part looks into economy of Street Vending and examining how this occupation is an important source of income for urban poor households along with how it provides efficient services for urban poor and how such income contributes to women's economic autonomy, second part expands political perspective by examination of meaning of Street Vending and an analysis of Vending as an expression of motherhood, third part highlights rights of Street Vendors and the harassment they face as well as their lack of organization, fourth part examine the relationship between Street Vending and the used urban space and looks at how Street vending and the use of urban space can revitalize urban spaces and brings life to human activities.

### Constitutional Mandate

#### Right to Life and Personal Liberty:

"No person shall be deprived of his life and personal liberty except according to procedure established by law" under Article 21 of Indian constitution. Therefore, it is also applicable to informal sector to earn their livelihood and thereby the State is always bound to protect them from unjust destruction and harassment at the hands of local and police authorities.

#### Equality Before Law Equal Protection of Law:

"The state shall not deny to any person equality before law and equal protection of law within the territory of India" under Article 14 of Indian constitution. Apex court in **State of West Bengal v. Anwar Ali Sarkar** held that it is difficult to consider a situation in which violation of the equal protection of provisions will not be violation of equality before law. Therefore, Street Vendors are at equal footing with other persons of the society to enforce their right to livelihood.

#### Freedom of Profession, Occupation, Trade or Business:

Through Article 19(1)(g) right of citizens to practise any profession or to carry on any occupation, trade or business is preserved and protected and thereby hawkers, and other categories have right to livelihood is guaranteed with certainty.

#### Universal Declaration of Human Rights Right to Work:

According to Article 23 of universal declaration of human Rights provides right to work and free to choice of employment under just and favourable conditions of work along with protection from unemployment to every person includes Street Vendor also.

### **Provisions Under Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**

#### **Prohibition of Employment of Children in Occupations and Processes:**

Section 3 of this Act prohibits child work in occupations part A of the schedule in point three includes Street Vending also which restrains the child to work in a catering establishment at a railway station involving the movement of vendor or any other employee of the establishment from one platform to another or into or out of a moving train.

### **Provisions Under Unorganised Worker Social Security Act, 2008 Social Security Schemes by Central and State Govt.:**

Sec. 3 and Sec.3(4) of the Act provides social security in the form of schemes are life and disability cover, health and maternity benefits, old age protection, Indira Gandhi national old age pension scheme, national family benefit scheme, Janani suraksha yojana, provident fund, housing, educational schemes, old age homes and funeral expenses to informal sector.

### **Judicial Approach**

#### **Legislature of State entitled to frame scheme independent of court verdict**

Apex court in **Maharashtra Ekta Hawkers Union v. Municipal Corporation Greater Mumbai** held that legislature have supreme power to make scheme for informal sector independent of court verdict but must be consonance with the national policy for Street Vendors.

### **Entitlement to carry on trade, occupation or business on pavement**

Supreme court in **Bombay Hawkers union and others v. Bombay Municipal Corporation and others** held that if circumstances are appropriate small Street Vendors can carry their occupation on pavement for advantage to general public but without causing any annoyance to others.

### **Lacunae in Street Vendors Act, 2014**

- (i) Sec. 28 of the Act makes unconstitutional through imposing penalty by the municipal authority to vendors without vending certificate due to violation of separation of powers enshrined in Indian Constitution because municipal is purely executive body.
- (ii) Sec. 5 Street Vendor applying to hold a certificate of vending must have to ensure only this occupation but this is not highly paying and majority of this sector compelled to accept other alternate job to support their families.
- (iii) This Act exempts its applicability to any land, premises and trains owned and controlled by the railways.
- (iv) The definition of Street Vendor in Sec. 2 of sub clause (l) of the Act does not precisely confines the place where this occupation is permissible to maintain balance between livelihood rights of Street Vendors and rights of the pedestrians to walk on the roads without inconvenience.
- (v) This Act provides license of street vending to a person who completes the age of fourteen, but actually on attaining such age person is actually in care of need and protection according to Juvenile Justice (Care and Protection of Children) Act, 2015 consequently, creates conflict between these two enactments.
- (vii) Sec.27 prohibits unlawful interference into occupation of registered Street Vendors by local/police authorities but does not prescribe procedure and remedy against the interference.

### **Challenges to Street Vendors in District, Ludhiana and suggestions for removal**

#### **Lack of Education –**

It is observed that majority 67% of this informal sector remains uneducated or educated below the standard level, resultantly are easily exploited by authorities is a major challenge for them to continue with this occupation. The Centre govt. should take effective steps to impart education to this sector to save them from exploitation during exercising their right to livelihood.

### **Evictions, Penalties and Raids -**

it is observed that majority 50% face harassment by evictions and 30% by raids and least majority 9.5% by penalties through authorities.

realise them with their fault and prohibit it in future and avoid above coercive measures.

### **Awareness of Act–**

Survey proved that majority 80% are completely unaware and only 10% are aware and in the same way 10% are partly aware also very serious challenge to this sector. The State govt. should conduct awareness rallies through NGO's regarding this Act.

### **Allotment of Vending Place–**

Data proved that majority 85% of this category have not allotted vending places and only 15% have allotted to carry their occupation. The authority should ensure to provide proper vending places in every locality.

### **Restart Occupation After Eviction –**

Due to economically instability majority 52% of this sector return back to this occupation after some days, 30% next day and least majority on the same day after eviction by local authorities is also a very serious challenge to resettle their livelihood. The govt. should make lenient policies for easily, immediately and economically release confiscated goods to vendors.

### **Higher Penalty to Reclaim Confiscated Goods –**

Majority 50% informal sector have to pay fine two thousand or more irrespective of their income to reclaim confiscated is also a challenge faced by this sector due to compellable reasons. The govt. should frame minor penalty provisions for them.

### **Compelled to Pay Bribe –**

Majority 73% Street Vendors given their response in affirmative to give bribe periodically in various forms such as cash, goods or services to authorities to avoid harassment before confiscation is also a major challenge to this sector. This menace can be prevented by making and enforcing stringent provision by the govt.

### **Assistance from Town Vending Committee:**

Majority 70% of this informal sector given their response as not, means that they have not provided with any kind of aid in any vending activity and least 30% given their response in affirmative is also a serious challenge. The State govt. should pass strict directions to vending committee to take effective steps to aid this sector in vending activity.

### **REFERENCES**

1. Bhatt, G.M., & Nengroo, A.H. (2013). Urban informal sector- A case study of urban street vendor in Kashmir. *International Journal of Management and Business Study*, 3(1), 112-115. [www.ijmbs.com](http://www.ijmbs.com)
2. Standing Committee of Lok Sabha. (2013). 23rd Report of the street vendors (protection of livelihood and regulation of street vending) bill 2012. <https://prsindia.org>
3. Press Information Bureau Ministry Govt. of India. (2010). Housing and urban poverty alleviation (Press release). <https://www.pib.gov.in/newsite/press.release.aspx>
4. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Act 7 of 2014), s. 28. <https://legislative.gov.in>
5. Kala, Mandira. (2013, June 20). Legislative brief on street vendors (protection of livelihood and regulation of Street vending) bill, 2012. PRS Legislative Research. Retrieved February 10, 2022 from <http://www.prsindia.org>
6. National Commission Enterprises Unorganized Sector. (2006). National policy on urban street vendors. <https://dcmsme.gov.in>
7. Frank, Jerome. N. (2011). Developing street vendor legislation in India: A comparative study of street vending Regulation. Legal Services Organization. <https://law.yale.edu>
8. Retrieved February 17, 2022 from <http://www.ilo.org/dym/infocean/iebrowse.home>
9. Bakshi, P.M. (2017). *The Constitution of India*. Universal Law Publishing.
10. All India Reporter. (1952). Supreme Court Reports. 284.
11. Retrieved October 20, 2021 from <https://www.humanrights.gov.in>
12. Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986), s.3. <https://labour.gov.in>
13. The Unorganized Workers Social Security Act, 2008 (Act 33 of 2008), s. 3. <https://legislative.gov.in>
14. Asian Legal Education. (2007). Supreme Court. (3) 24.
15. All India Reporter. (1985). Supreme Court. 1206.
16. Malik, Saurabh. (2018, November 23). No space for pedestrians. *The Tribune*. <https://www.tribuneindia.com>
17. The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No.2 of 2016), s. 2. <https://cara.nic.in>
18. Supra note 4, s. 27. <https://legislative.gov.in>

The Govt. should make other suitable stringent provisions only to