

Street Vendors Act 2014

Survey of Vendors and Allocation of Certificates of Vending in India

A Policy Guidance Document

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New Delhi, India
2019



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Introduction: What would formalising vendors take?

At the heart of the street vending debate, there lie several complex issues. Vendors' right to livelihood conflicts with other rightful claimants of public space including pedestrians, vehicle owners and local residents. The issue of competing claims is worsened by governance challenges such as archaic and ambiguous laws and the absence of checks on state power. These complexities result in problems of rent-seeking and harassment of street vendors (Roever 2018). Even when the rights of street vendors to public space are clearly established, against the rights of other claimants, achieving equilibrium in the distribution of allocated space between members of the street vendor community is non trivial.

This paper primarily deals with the questions of enumerating vendors, and licensing and space allocation, in the context of Street Vendors Act 2014.

Street vending is typically self-regulated by an informal but codified norm of space allocation within a vending site. Street vendors typically allocate/occupy spots in a vending area based on the rule of first possession. Kettles (2006) argues that such a system brings efficiency in the running of informal markets and reduces conflicts in the following ways:

1. It encourages the identification of “valuable” vending sites, that are likely to generate more revenue than other spots.
2. Early birds are likely to value the property more than latecomers.
3. Vendors learn and benefit from special knowledge acquired about the vending spot - what products sell best, at what prices, and at what times of the day or week.
4. Goodwill and customer loyalty grows and gets associated with vending spots.
5. Administratively, the rule is fairly simple to enforce and does not need a third party for enforcement.

Formalising street vending implicitly involves the formalisation and allocation of usufructuary rights to public spaces. A formal system of allocation needs to tackle the questions of allocating space and time to vendors. It includes identification and carding of vendors, identification and determination of vending spots as well as vending sites, and choosing and implementing a method of resource allocation among vendors, defined in terms of space and time.

The central problem to solve is allocation of vending rights

The Street Vendors Act 2014 seeks to formalise the existing allocation to a great extent instead of allocating de novo. First, it attempts to formalise all existing vendors. Second, it prohibits declaring existing natural markets into no-vending zones. This is why the 2014 Act, under Section 3, mandates a survey of existing vendors to identify and protect them through issuance of certificates of vending. It also prohibits any eviction or reloca-

tion before completion of this exercise.

Section 3 (Survey of street vendors and protection from eviction or relocation):

(1) The Town Vending Committee shall, within such period and in such manner as may be specified in the scheme, conduct a survey of all existing street vendors, within the area under its jurisdiction, and subsequent survey shall be carried out at least once in every five years.

(2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.

(3) No street vendor shall be evicted or, as the case may be, relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors.

The Street Vendors Act 2014 necessitates the formation of a local governance body, called the Town Vending Committee (TVC), responsible for the regulation of vendors. At least 40% of any TVC must comprise of elected vendor representatives. The Committee is mandated to survey all vendors and issue certificates of vending (CoV) to all identified vendors. It must accommodate all, preferably in the same vending zone or in adjoining vending zones, subject to the holding capacity of the vending zone.

The central problem and the responsibility of any TVC is ultimately determining a method to madness around the use of public spaces such that interests of all parties, especially vendors, are met.

Public places with high footfall, in particular, attract a large number of vendors. The vendors are of various kinds—some stationary, some mobile, some weekly, some who have been vending at a specific spot or in a specific site for years, others rather new.¹

A site may be a larger market place, but a spot is specific to a stationary vendor. A stationary street vendor may have two rights: first, a right to *vend* in a public space, and second, a right to occupy a *particular spot* to vend. The second right also implies “right to exclude”. The first right is available to mobile vendors as well, but the second right is not.

Resource allocation in such a physically dynamic market is no easy task.

¹The Street Vendors Act 2014 defines these as follows: Stationary vendors per Section 2(k) are those who carry out vending activities on a regular basis at a specific location; Mobile vendors per Section 2(d) are who carry out vending activities in designated area by moving from one place to another place vending their goods and services.

Formalising vendors will require formalising usufructuary vending rights

The Act approaches the question of assigning property rights to vendors, particularly user rights to a particular spot, tenuously and often in conflicting terms. While, the Act does not use the word spot anywhere, it is ambiguous on whether or not to confer rights to a vending spot.

On the one hand, Section 29(1) expressly declares that the Act confers no “temporary, permanent or perpetual right of carrying out vending activities in the vending zones allotted to him or in respect of any place on which he carries on such vending activity”. On the other hand, the disclaimers in the section recognise that vendors operate from particular ‘places’, presumably vending spots.

While a disclaimer against permanent or perpetual vesting of rights is reasonable, the inclusion of the word ‘temporary’ in the disclaimer appears to be overzealous. For example, while Sections 3 and 4 on the issuance of a certificate of vending do not mention the vending spot, they implicitly vest temporary vending rights with holders of the Certificate of Vending.

Several other provisions of the Act support vesting of the temporary right in respect of a particular spot:

- Section 2(k) of the Act defines stationary vendors as “street vendors who carry out vending activities on a regular basis at a specific location”. Section 6 categorises certificate of vending based on whether the licensee is a stationary vending or mobile vending.
- Section 5(1)(c) mentions a condition of non-transferability for issuance of CoV. This condition prohibits transfer of CoV, rent or even the *place specified in the CoV* to any other person. It implies, place of vending is ‘specific’ and it is to be specified in the CoV.
- Section 14 of the Act expressly mentions vending on the time-sharing basis: “Where a street vendor occupies space on a time-sharing basis, he shall remove his goods and wares every day at the end of the time-sharing period allowed to him”. To enforce this section, the certificate of vending must record the specific spot of vending.

Besides various municipal authorities have been issuing licenses for vending in respect of specific spots. Mumbai authorities call the spots as pitches and allocate those pitches. Section 29(2) of the Act expressly acknowledges this practice. While the Act does not clearly state the allocation of specific vending spots to vendors, is it not somewhat implicit in the Act? For example, the possibility of time-sharing rights as referenced in the Act would not be feasible without allocation of user rights in respect of a specified spot.

What should a vendor survey entail?

Drawing from the mandates of the Act, we identify five steps to facilitate such resource allocation:

1. Identification of all existing vendors including current place of vending;
2. Determination of the number of vendors to be accommodated in a vending zone;
3. Issuance of CoVs to vendors;
4. Relocation of remaining vendors to adjoining zones; and
5. Repeat steps 3 and 4.

This cannot be a one time exercise. There may be a continuous influx and exit of vendors, requiring the TVC to continuously engage in the steps listed above.

Census surveys preferable over registration

The Street Vendors Act 2014 suggests a census-like survey of vendors over registration or application-based licensing. This diverges from the approach of municipal laws of Delhi and Bombay used historically. Application-based processed heightened opportunities for rent-seeking worsened by the lack of statutory checks in the law. As a result, most vendors continued to operate informally without licensing. The Act corrects this historical wrong by requiring officials to go to vendors to register them and to document geospatial data. A census-like survey of street vendors serves four functions:

1. A survey generates the list of street vendors that also act as a voter list for the TVC elections.
2. The survey of vendors includes documentation of existing property rights as well as other available and potential vending sites for allocation. Survey matches vendors to sites and helps in formalising as well as allocating new vending sites to vendors.
3. Surveys aid in planning street space and traffic management.
4. The survey formalises vendors. Once identified and licensed, vendors are no longer encroachers.

Survey must also document existing and potential vending spots at the vending sites

But merely collecting information about vendors may not help with the broader challenge of accommodating vendors at sites. Allocation of vending sites would require information of vending sites - both existing and potential. A survey of street vendors includes a survey of the vending sites as well. Registration would not work unless the TVC already has a record of vending sites.

Enlisting existing vendors is not sufficient to demarcate space and to issue licenses. A survey of vendors must include several other data points to ensure that the actions that follow the survey are facilitated by this exercise. Some of these data points include:

1. **Existing vendor claimants to the sites:** Collection of information on existing, even though informal, distribution of vending sites amongst vendors will allow the authorities to minimise relocation and increase compliance with its plan.
2. **Documentation of existing vending sites and potential vending sites:** These data points will allow the authorities to determine the total holding capacity for existing and new vendors.
3. **Documentation of existing vending spots and potential vending spots:** These data points will allow the authorities to plan the layout as well as allocation.
4. **Size of vending sites:** Besides the location of the vending site, the dimensions of the street are essential to allocate vending sites, manage traffic, and to issue guidelines on the size of a cart—typically a controversial concern.

How to allocate certificates of vending following a survey?

A Certificate of Vending (CoV) is essentially a vending license. Section 3 prohibits eviction as well as relocation of vendors before a survey and issuance of CoV. Section 5(1)(c) indicates that a CoV would also indicate a vending spot allocated to a stationary vendor.

Determining a formula for total number of Certificates of Vending available

There is no one-size-fits-all to this question of how many vendors should be granted a certificate to vend in a zone. It may depend on multiple factors such as the total population, total space, distribution of commercial and residential zones and street width, among others.

Constraints imposed by the Act: 2.5% of local population, holding capacity of vending site

The Act sets an upper limit for the number of licenses available for allocation using two reference points:

1. A norm of 2.5% of the local population: This norm is to be entrenched in the plan for street vending, to be drafted by the local authority. However, this norm is only applicable to existing vendors. Considering the number of vendors estimated to be

2% of the population by the National Policy on Urban Street Vendors 2009, this norm of 2.5% is fairly generous.

2. Holding capacity of a vending zone: The local authority, on the recommendations of the TVC, is to determine the maximum number of vendors who can vend in any vending zone.² This prescription is applicable to new vendors only.

Practical implications of these constraints: existing vendors get accommodated generously, new vendors get in queue

A close reading of the Act indicates that the norm of 2.5% of the local population only in the context of *existing* street vendors.³ The plan for street vending, to be drafted by the local body, must ensure the accommodation of all existing vendors until the limit of 2.5% of the local population is not reached. However, this norm does not find a mention in Section 4(2) that deals with new applicants. Section 4(2) instead mentions holding capacity.

The upper limit for new applications depends on the ‘holding capacity’ as determined by the local authority. The Act does not clarify whether holding capacity should be lower or higher than the norm of 2.5%. It merely formulates a procedure: State government decides the principles for calculation of holding capacity => TVC recommends holding capacity => Local authority takes the final decision.

The reason the Act specifies a rigid norm for existing vendors seems to be its distrust of municipal authorities. Going by the history of street vending in last five decades, it is quite unlikely that municipal authorities would be reasonable and fair in formalising the natural markets. Wisely, the Act added a 2.5% norm as a safeguard in case a municipal authority calculate the holding capacity to be really low to evict vendors.

Separately, while the holding capacity constraint only applies to vending zones and not wards, towns or cities, the norm of 2.5% may be applicable to ward, zone, town or city, as specified in the Plan for Street Vending. While the holding capacity may be determined by any formula, overall, in a city, town or ward, 2.5% norm must be adhered to.

For example, a town with a population of 100,000 and 10 vending zones may accommodate up to 2,500 existing vendors. However, the holding capacity of one of the vending zones is particularly low. It can accommodate upto 80 vendors only. Assuming the number of existing vendors was 280 and they were not part of any natural market, the authorities would have to shift and accommodate the remaining 200 existing vendors in adjacent vending zones. Overall, in that town, the authority cannot make excuses to not accommodate less than 2,500 vendors.

²Section 2(b): The local authority is bound by “the principles of determination of holding capacity of vending zones” as specified by the State government in the scheme, and procedural constraints such as a TVC’s recommendations.

³Section 3(2) and 1(a) of the First Schedule- Plan for Street Vending.

Principles of allocation—To whom and basis what?

One of the primary objectives of the Act is to protect vendors from undue evictions and relocation. Instead of labeling erstwhile unlicensed street vendors as encroachers, it views them as victims of informality. The Act is inclusive in its approach and not exclusive; it seeks to accommodate all existing street vendors in the vending zone.

There are various methods that may be used for allocation of sites such as random allocation, first-come-first-serve, or an auction. Any authority must keep in mind the policy objectives as it chooses the method. Below we provide a ready reckoner based on constraints the Act imposes, that may be used to guide allocation:

Table 1: Allocation of Certificate of Vending to existing vendors and new applicants

Who is the applicant?	How do we allocate Certificates of Vending?
Existing vendors	<ul style="list-style-type: none">• If existing vendors $< 2.5\%$ of the local population; then status quo• If existing vendors $> 2.5\%$ of the local population, then draw-of-lots
New Applicants	<ul style="list-style-type: none">• If CoVs are available, and applicants $<$ available slots; then new applicants are to be accommodated• If CoVs are available, but applicants $>$ available slots; then draw-of-lots among new applicants

Existing Vendors first

Case I: If existing vendors $< 2.5\%$ of the local population, then preserve status quo.

The Act prioritises existing vendors at a site in allocating certificates of vending. In doing so it attempts to formalise the status quo with minimum relocation. Section 3 of the Act, titled “Survey of street vendors and protection from eviction or relocation”, for example, repeats the phrase “all existing street vendors” twice: first in sub-section (1) in the context of survey and second in sub-section (2) in the context of accommodating them in the vending zones.

Case II: If existing vendors $> 2.5\%$ of the local population, conduct a draw of lots + Allocate licenses to remaining vendors in adjoining zones.

As per section 4(3) of the Act, if the existing and new vendors exceed the holding capacity of zone, a TVC should carry out a draw of lots. It is, however, counter-intuitive to assume parity between existing vendors and new applicants for conducting draw-of-lots

for two reasons. First, the Act seeks to avoid eviction and relocation of existing vendors as far as possible. Second, the Act prescribes a stringent safeguard in form of 2.5% norm for accommodation of existing street vendors. New applicants are not subject to this number. For them, holding capacity is applicable. TVC may first prefer to accommodate the existing vendors through draw of lots and then deal with new applicants separately, subject to availability.

Example: It is possible that the number of identified vendors may exceed 2.5% of the population. In such a case, unless the holding capacity is higher than 2.5% of the population, there is no question of entertaining new vendors. The concern here would be to, first, accommodate all the existing vendors. Here, draw of lots among the existing vendors would make sense.

Let's say Hauz Khas has a population of 100,000. As per the 2.5% norm, TVC can accommodate up to 2,500 existing vendors. Existing vendors are 2,750. Given that the number of existing vendors exceed the 2.5% norm, the TVC should carry out a draw of lots among 2,750 existing vendors and pick 2,500 vendors. Remaining vendors (250) should be accommodated in the adjoining vending zones.

New Vendors next

Case III: If new applicants < holding capacity, accommodate.

Section 4(2) of the Act states that “Where, in the intervening period between the two surveys, any person seeks to vend, the Town Vending Committee may grant a certificate of vending to such person, subject to the scheme, the plan for street vending and the holding capacity of the vending zones”.

If the number of new applicants does not exceed the holding capacity and the licenses are available, TVC may grant certificate of vending to new applicants.

Case IV: If new applicants > holding capacity, conduct draw of lots.

If, however, the number of new applicants exceeds the holding capacity, TVC may grant certificate of vending to new applicants through draw of lots.

Example: Let's say, in the above example, norm of 2.5% of local population allows for accommodating upto 2500 existing vendors. The number of existing vendors in the whole town is 1950. 450 persons have applied afresh for certificate of vending. Does it mean that 550 ($2500-1950=550$) CoVs are available for allocation to new applicants? No, because license allocation to new vendors is subject to holding capacity and not 2.5% norm. Until the local authority decides the holding capacity for the zone, the question of number of CoVs available to new applicants cannot be decided.

If the local authority determines the holding capacity for the zone as 2100, it implies that 150 CoVs ($2100-1950=150$) are available. TVC may carry out a draw of lots among

these applicants and grant 150 CoVs.

What happens in the next round of counting?

The Act expressly envisages the survey to be a periodic once-in-every five years exercise. The question is: if the first survey formalised the vendors existing then, what is the next survey aiming for?

One, it is quite possible for new market congregations to evolve during the five-year period. Two, a dynamic sector such street vendor may witness high rate of entry and exit of entrepreneurs. The Act does not favour the tag of encroachers and illegal hawkers and no where the Act uses or defines these terms. Subsequent round of surveys would gather the empirical reality and formalise the informal if any.

Concluding remarks

The article unpacks the process of allocating vending certificates per the 2014 Act.

The 2014 Act emphasises a survey of street vendors instead of application-based licensing. The TVC or a third party hired by it must reach out to vendors, count them, gather their data and issue identity cards to them. Post registration of vendors, the TVC ought to determine the total number of CoVs subject to the holding capacity for new applications and the norm of 2.5% applicable to existing vendors.

Our work highlights three aspects of implementation requiring careful consideration:

First, while the Act protects existing vendors by requiring local governments to accommodate them until the upper limit of 2.5% of the local population is reached, it leaves determination of holding capacity, applicable to new vendors, to the local authority. The principles the state government lays out in determining the formula for calculating holding capacity will determine how inclusive or accommodative the local government will be of vendors.

Second, if the demand for Certificates of Vending from existing vendors and new applicants exceeds the holding capacity, the Act suggests carrying out a draw of lots. While section 4(3) of the Act seems to equate existing and new vendors, we recommend prioritising existing vendors over new applicants. The manner in which state governments balance the demands of existing and new applicants, especially when it exceeds holding capacity and 2.5% of the population, have implications on vendor livelihoods and urban space management.

Third, the Act is ambiguous on whether or not to assign property rights to a specific spot to a vendor. There may be different ways to approach this: allocation of exclusive rights to a site to the vendor, allocation on the time-sharing basis (in a day, month, or season) or allocation of an area without specifying the vending site. Each of these policy choices has pros and cons, and has a bearing on the degree of vendor formalisation,

compliance with the mandates of the local authority and the quality of enforcement of the Act.

Appendices

Appendix 1: Legal provisions dealing with the specific place of vending

Section 5	Conditions for issue of certificate of vending.—(1) Every street vendor shall give an undertaking to the Town Vending Committee prior to the issue of a certificate of vending under section 4, that— (a)[...]; (b) [...]; (c) he shall not transfer in any manner whatsoever, including rent, the certificate of vending or the place specified therein to any other person.
Section 13	Right of street vendor for a new site or area on relocation.—Every street vendor, who possesses a certificate of vending, shall, in case of his relocation under section 18, be entitled for new site or area, as the case may be, for carrying out his vending activities as may be determined by the local authority, in consultation with the Town Vending Committee.
Section 18	Relocation or eviction of street vendors.— (1) [...]; (2) [...]; (3) No street vendor shall be relocated or evicted by the local authority from the place specified in the certificate of vending unless he has been given thirty days' notice for the same in such manner as may be specified in the scheme. (4) A street vendor shall be relocated or evicted by the local authority physically in such manner as may be specified in the scheme only after he had failed to vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice. (5) Every street vendor who fails to relocate or vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice, shall be liable [...].
Section 19	Seizure and reclaiming of goods.—(1) If the street vendor fails to vacate the place specified in the certificate of vending, after the lapse of the period specified in the notice given under sub-section (3) of section 18, the local authority, in addition to evicting the street vendor under section 18, may, if it deems necessary, seize the goods of such street vendor [...].

Section 29	<p>Provisions of this Act, not to be construed as conferring ownership rights, etc.—(1) Nothing contained in this Act shall be construed as conferring upon a street vendor any temporary, permanent or perpetual right of carrying out vending activities in the vending zones allotted to him or in respect of any place on which he carries on such vending activity.</p> <p>(2) Nothing contained in sub-section (1) shall apply to any stationery vendor, if a temporary leasehold or ownership right has been conferred on him by a lease deed or otherwise, in respect of a place at specific location where he carries on such vending activity in accordance with the provisions of any law for the time being in force for carrying out such vending activity.</p>
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Appendix 2: Legal provisions relevant for determination of number of licenses and vending spots

Provision	Norm of 2.5%	Holding Capacity
Section 2(b): Definitions	Not mentioned	“ ...maximum number of street vendors who can be accommodated in any vending zone and has been determined as such by the local authority on the recommendations of Town Vending Committee;”
Section 3(2): Accommodation of existing street vendors	TVC to “ensure that all existing street vendors, identified in the survey, are 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, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.”	
Section 4(2): licensing for new applicants	Not mentioned	“Where in the intervening period between two surveys, any person seeks to vend, the Town Vending Committee may grant a certificate of vending to such person, subject to the scheme, the plan for street vending, and the holding capacity of the vending zones.”

Provision	Norm of 2.5%	Holding Capacity
Section 4(3):	Not mentioned	“(3) Where the number of street vendors identified under sub-section (1) or the number of persons seeking to vend under sub-section (2) are more than the holding capacity of the vending zone and exceeds the number of persons to be accommodated in that vending zone, the Town Vending Committee shall carry out a draw of lots for issuing the Certificate of vending for that vending zone, the town Vending Committee shall carry out a draw of lots for issuing the certificate of vending for that vending zone and the remaining persons shall be accommodated in any adjoining vending zone to avoid relocation.”
1(a), THE FIRST SCHEDULE - The Plan for Street Vending	“(1) The plan for street vending shall,— (a) ensure that all existing street vendors identified in the survey, subject to a norm conforming to 2.5% of the population of the ward, zone, town or city, as the case may be, are accommodated in the plan for street vending;”	Not mentioned
(za) THE SECOND SCHEDULE	Not mentioned	“Matters to be provided in the Scheme for Street Vendors framed by the appropriate Government:- [...] (za) the principles for determining holding capacity of vending zones and the manner of undertaking