

Editor's Note: The authors published a much more extensive report on the Street Vendors Act of 2014 titled "Progress Report: Implementing the Street Vendors Act 2014" available on Centre for Civil Society's website at <https://tinyurl.com/y4bywn6o>. For more information about Centre for Civil Society, please visit their main website at <https://www.ccs.in/>.

The Ease of Doing Business on the Streets of India

By Bhuvana Anand, Prashant Narang, Ritika Shah, Vidushi Sabharwal

Street vending is a source of livelihood for many urban poor, and of affordable and essential goods to the public. In India, stories of vendor harassment by the local administration as well as the police are ubiquitous. It appears to be less about vendor rights and more about the power that different actors exercise over public spaces.

One must look at the process whereby a new hawker enters the trade . . . Then starts the bargain with the local policeman, the municipal recovery inspector, the influential (known) hawker-cum-leader and even the local goon for permission to engage in hawking activity at a particular location . . . A similar negotiation takes place for erecting a hut in a slum locality...payment to be made to the slumlord (a volunteer of some political party)...expected to be a part of the vote bank of the concerned political party. Subsequent hafta payments continue unless the hawker becomes politically active, or joins the local mafia . . .¹

There are several issues at the heart of the street vending debate and assigning rights over the use of public space is the most contentious. A vendor's right to occupation, for example, conflicts with commuters' rights to move freely. The central policy problem is managing such conflicting and competing interests of vendors, pavement users, local residents, vehicular traffic and urban space managers.

To curb such illegal practices of harassment and grant vendors their right to livelihood, the Parliament of India enacted the Street Vendors Act in 2014. After seventy years of judicial and regulatory clashes, the act finally legitimized the rights of street vendors and mandated that states create rules, schemes (government programs), and local governance structures. The act attempts to decentralize governance and balance the interests of different stakeholders through the structure of Town Vending Committees. This committee includes representation from local authorities, residents, non-profits, and market and vendor associations. With this enactment, have the rights of vendors prevailed?

Centre for Civil Society, where the authors are researchers, systematically tracked the implementation of the Act through analyzing court judgements, Right to Information filings, and field studies in two large urban centers.² The judgments passed by various high courts (the equivalent of State Supreme Courts in the US) reflect the judiciary's failure to establish necessary checks on municipal authorities and instead penalize the very street vendors the act seeks to protect. Where the act prioritizes the concept of inclusion in vendor governance, municipal officials continue to exclude vendors—from streets, from meetings, and from decisions. Local administrators, for instance, often ignore vendors' contribution to economic activity and see it solely as a question of space management—how many vendors should sit where and what should be the size of their vending carts.

Five years after the Street Vendors Act was passed by the Parliament of India, vendors' fight for their access to public space continues with little respite. We are yet to see whether the new democratic and vendor-led governance, when implemented, will lead to new ways of thinking about a place for vendors in Indian cities.

Vendors In India: A Harassed Lot

Per the International Labor Organization's definition of informal sector statistics, independent street vendors, taxi drivers, and home-based workers, are all considered to be enterprises. About 50 percent of India's gross national product is accounted for by this informal economy.³

Sociologist Sharit Bhowmik, known for his expertise on the informal economy, estimates that about 2.5 percent of India's urban population is engaged in street vending.⁴ Per the last census, street vending as a primary occupation has grown to engaging approximately 1.61 million people in 2012. Calculations under the Street Vendors Act and the preceding National Policy exceed these estimates by at least 50 percent.⁵ Studies find that in Delhi, one of the largest urban metropolitan areas in India, there are close to 3 million street vendors, but official (and outdated) lists only recognize half of these.

Whether in official data or on the streets, vendors are ignored and hold weak bargaining power against more privileged sectors of society. Vendors are considered “antisocial, anti-developmental, dirty, un-aesthetic and unhygienic,” despite being integral to the urban economy.⁶ They are frequently targeted, harassed and evicted by government officials and police. The power imbalance between impoverished, and often migrant street entrepreneurs, and local authorities has created alarming channels for corruption and bribery.

A study on street vendors found that they pay between 10 to 20 percent of their earnings in bribes.⁷ In Mumbai, for example, the collections of penalties, redemption charges or license fees at Mumbai Municipal Corporation is approximately INR ₹120 million (US \$1.5 million). While the collection of “hafta,” informal payments from vendors, amounts to a staggering INR ₹1200 million (US \$17 million) annually.⁸ Manushi, a civil society organization, found that INR ₹500 million (US \$7 million) is collected monthly as bribes or protection money from the street vendors and rickshaw pullers operating in Delhi alone.⁹

The Long Fight For Inclusion And Recognition

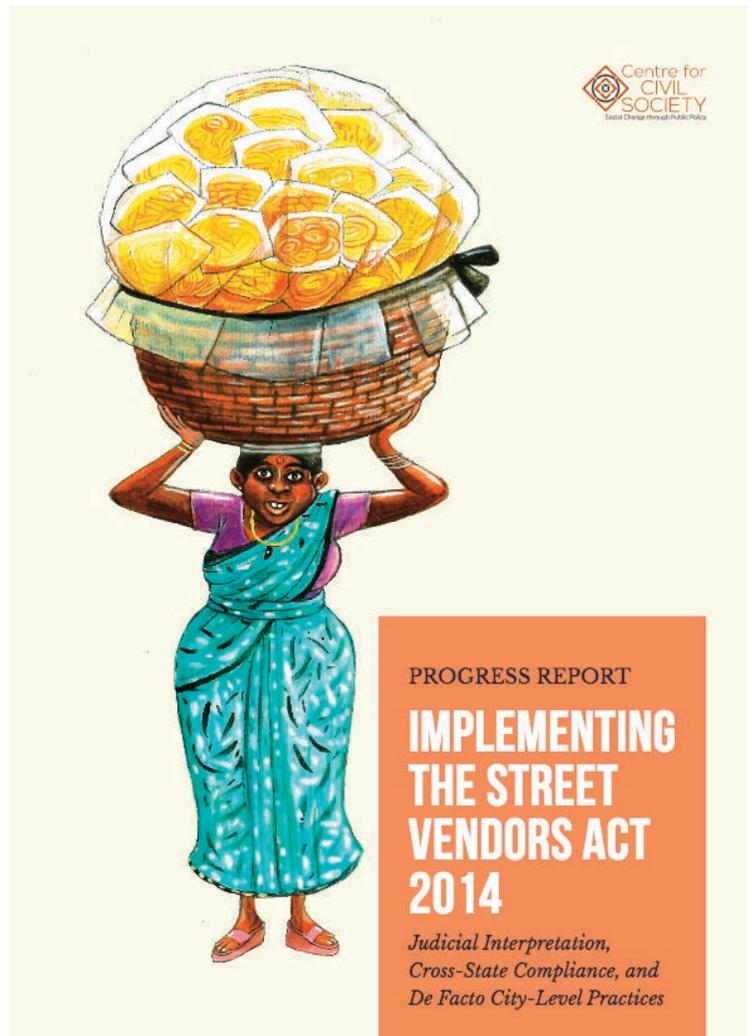
Street vendors of India have fought and continue to fight for their rights through all possible avenues—judiciary, pressure groups, and the government. The struggle began when there were conflicts in the judicial interpretation of the government’s role over public spaces.

In the second decade of independent India, the nation’s highest court, the Supreme Court of India, upgraded the state’s right over public roads and streets from being a trustee to the sole governor.¹⁰ Vendor unions in India fought long legal battles against the sole governor of public spaces. After violent evictions in the late 1970s and 1980s, they challenged these nuisance laws and social stigmatization. Eventually, the Supreme Court in 1989 highlighted that Article 19(1)(g) of the Constitution of India, which upholds the right to practice any occupation, also applies to street vendors.¹¹

Despite the court ruling, regulatory setbacks for vendors followed. In 2003, for instance, the High Court of Bombay banned cooking on streets, and vending within 150 meters around train stations. In 2004, the Supreme Court of India suggested that the permissions for hawking must consider factors like the narrowness of the road, the free flow of traffic or movement of pedestrians, areas like hospitals, and places of worship.¹²

Municipal laws regulate the use of pavements, while the police regulate the use of roads. These laws reflect strong biases against street vending. For instance, the Calcutta Municipal Corporation Act states that “it has been decided to declare any such encroachment by the hawkers, stall holders . . . as cognizable and non-bailable offence”. Section 34 of the Bihar Police Act states that the police can punish anyone under two actions: slaughtering of animals in public and displaying goods for sale.¹³ Such bizarre restrictions on street commerce abound across India.

The debate on protecting vendor rights in the chambers of bureaucrats began when India signed the Bellagio International Declaration of Street Vendors in 1995. In 2001, courtesy the efforts of vendor associations like the National Association of Street Vendors of India (NASVI) and the Self-Employed Women’s Association (SEWA), the Government of India announced a task force to draft and adopt a National Policy on Street Vending. The 2009 version of the policy was a



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first, where street vendors were “officially described as contributors to the urban economy and not as encroachers into public space.”¹⁴ The policy was, however, not legally binding and made little progress on the matter of street vendors. The disappointment of vendors over poor implementation by states ignited the fight for a central law across the country. After years of struggle, the Protection of Livelihoods and Regulation of Street Vending Bill was signed into law in 2014. The Street Vendors Act came into force on May 1st, 2014 intending to regulate street vendors in public spaces and protect their rights.

Street Vendors Act 2014: Essential Features And Progress On Implementation

The Street Vendors Act 2014 is legally binding on all state and local governments and now governs all matters in regards to the rights and duties of the street vendors in India. The act was set apart from the previous policy on urban street entrepreneurship in two ways: first, in its recognition of vending as any other legitimate livelihood source protected under the Constitution of India, and second, through a mandate that decisions over the use of urban public spaces be made through participatory mechanisms.

The “What” of the Act

Explicit Recognition For Street Vending and Cover From Arbitrary Evictions

Under the act, central and state governments would, for the first time, explicitly recognize vending as a legitimate livelihood source, and not just dismiss vendors as urban “nuisance.” *The first protection afforded to vendors under the Act is through constraints on eviction.*

The Act establishes a street entrepreneur’s right to vend once she has been “certified” and has paid vending fees. Until enumeration has been conducted and certificates issued, vendors can not be evicted. Even where re-zoning may become necessary, certified vendors are protected by mandatory notice-periods, and due process requirements stipulated in the Act. This reduces the scope for unofficial payments, eviction and confiscation of goods by state officials.

Participatory Mechanisms and Institutional Measures to Protect Vendors

The act mandates that state and municipal governments put in place three institutional checks on spatial regulation and rights of use over urban public spaces.

The act establishes Town Vending Committees as the channel for negotiation between vendors, local interests and the state. It redistributes powers exclusively held by municipal bodies and the police between street vendors, market associations and local residential associations. This way the act creates mechanisms for participatory decision making, and reducing the scope for exclusionary practices such as harassment or relocation to non-commercial locations.

The act provides unambiguous directions that all vendors be certified without caps on the number of “licences.” Town Vending Committees are required to enumerate vendors every five years. Through safeguards and processes, the law creates a permitting framework instead of a licensing regime.

The act mandates that independent redressal committees hear all grievances. The act recognizes the need to place checks on administrative decisions and curb harassment by municipal authorities and to put an end to informal governance practices.

The “How” of the Act

The act is an attempt to systematically regularize street vendors, open channels for negotiation between stakeholders, and minimize extractive opportunities.

How Far Have States Progressed on Implementation of the Act?

Five years since the enactment of the law, we found that state-level progress remains sluggish and implementation disregards several provisions of the act. The act states that each Urban Local Body should have at least one Town Vending Committee.

Currently, only a third of India’s 7,263 Urban Local Bodies have set up Town Vending Committees. Only four out of twenty-eight states and two Union Territories have a grievance redressal committee. While the Government of India is focussed on meeting the legal mandate, the quality of rule-making and its implementation by states vary widely. For instance, 42 percent of these Town Vending Committees do not have vendor representatives, defeating the purpose of a “participatory committee.”

What Interim Protection Has the Judiciary, Then, Provided to Vendors?

The role of the Court in ensuring implementation and correction of anti-vendor biases cannot be stressed enough. The Supreme Court of India and various high courts passed sixty-four judgements and orders between January 2017 and September 2018 on disputes relating to the Street Vendors Act 2014.

Eviction is the single most contested issue before the courts. Despite the act's prohibition on vendor evictions, municipal authorities continue to uproot vendors from their place of livelihood. These evictions contravene the letter and the spirit of the act. The first question before a court is to determine whether the petitioner is, in fact, a street vendor and therefore entitled to protection under the law. A strict interpretation of the act would suggest that until participatory governance is up and running and vendor enumeration is complete, all vendors are to be allowed to ply their wares.

Courts have based their anti-vendor decisions on faulty or partial historical records (e.g., a vendor name not being listed in pre-2014 records) or excluded many from legal protection (e.g. using thin son-of-the-soil criteria to determine who is a vendor). Only one high court in the country, Kerala, has taken a progressive stance arguing that act extends protection to all vendors, irrespective of their current or prior legal status.

Instead of pulling up states for tardy implementation of the act, the courts are penalizing vendors who struggle to earn their livelihood.

In Towns Where the Act Has Been Implemented, What Story Emerges?

The Town Vending Committee creates a platform for stakeholders with competing and conflicting interests to contribute to critical decisions. However, stakeholder participation does not automatically translate into democratic or just decisions. If ineffective, new institutions can result in perpetuating vendor harassment and exploitation.

Hence, we applied a case study approach to study this critical unit of governance. We studied Town Vending Committees in Gurugram and New Delhi, two connected urban areas of the National Capital Region (NCR). We highlight two facets of the functioning of these Town Vending Committees: vendor representation in Town Vending Committees in Gurugram, and restrictions on vendor operations in Delhi (Our full report presents more such findings and challenges.). *How representative are Town Vending Committees?* Gurugram, known as India's Millenium City, has identified 18,670 vendors.¹⁵ Until the early part of 2019, vendors accounted for only 14 percent of the total Town Vending Committee strength in Gurugram, as opposed to the statutory requirement of 40 percent vendor representation. Instead of being elected, as mandated by the Act and the Haryana Street Vendor Rules 2017, vendor representatives on the Town Vending Committee were nominated.

When we reviewed the meeting minutes of the Town Vending Committee, in our 2019 report, we observed zero representation from vendors. Even where the Town Vending Committee meeting agenda was concerned with forced relocation of members, vendors were either absent or their views not included in meeting minutes. We also reached out to members who had signed off on meeting minutes to verify their presence at the meeting. Several members denied even being part of the Town Vending Committee.

An example may serve to explain why these details are important. In August 2018, the Town Vending Committee was called to meet to "take fair decision . . . regarding shifting of vending zones after hearing arguments of all concerned parties/stakeholders." This was after vendors filed multiple complaints and petitions to authorities asking them to reconsider eviction and relocation from certain sites. Out of the seventeen members who voted on the decision, only three opposed. All three members were representatives of vendors. The minutes conclude by referring to the "democratically expressed views of the majority" and issued an order to shift vendors with "immediate effect." How might this decision be different if vendors were to be represented in the Town Vending Committee to the full mandated strength?

How inclusive is the implementation of the act? In Delhi, the center of the National Capital Region and one of the richest urban centers in the country, there are close to 300,000 street vendors but official (and outdated) lists only recognize half of these.¹⁶

Under the Act, states are mandated to form a scheme that specifies the manner of conducting the survey and the form and manner of issuing ID cards. The Government of the National Capital Territory (NCT) of Delhi notified the Delhi Street Vendors Scheme in January 2016. Vendor interest groups contested the scheme.¹⁷ The initial version of the scheme had several provisions that were excessive and against the mandate of the act. For example, although the Act prohibits overcrowding and sanitary concerns as a basis for demarcating no-vending zones, the Delhi scheme included "traffic congestion" and "cleanliness." Moreover, the scheme introduced requirements for no-objection certificates from the Resident Welfare Associations and Market Associations to demarcate vending zones. This defeats the purpose of participatory governance with vendor representation because the zones could then be demarcated solely with the approval of residents and shop owners.

Further, Delhi's scheme had bright-line rules such as "space for vending shall be 6×8 feet," "height shall not be more than three feet," and "vendors shall not make any noise for attracting the public or customers." The scheme also prohibited cooking and vending around places of worship, educational institutions, hospitals or railway stations. The vending time was restricted from "sunrise to sunset."

What do these case studies tell us? To put these findings from Gurugram and Delhi in perspective, 756 Town Vending Committees from fourteen states, accounting for 30 percent of all Town Vending Committees formed, have zero vendor representatives. Out of these states, six have already created a scheme. The Act mandates the formation of the scheme in consultation with the local authority and the Town Vending Committees. Only in Delhi, the scheme formed before the constitution of a Town Vending Committee was challenged in the Court. We do not know if this is a sign of consensus or a lack of vigilance.

Confronted with the challenge of electing vendors to the Town Vending Committee without any official census of vendors, some states have created provisional Town Vending Committees with nomination or elections based on outdated official lists. We are not clear how many of the reported Town Vending Committees are provisional and how states will transition from provisional to final.

The survival of the novel idea of representative Town Vending Committees and inclusion of vendors in decision-making depends on how this challenge is met. What are the checks and balances to ensure that laws made by any in the administrative hierarchy do not violate the letter and intent of the Act? Details such as who is invited to the meetings, whether minutes are published and in which language, have far-reaching consequences, perhaps more than the size of the cart, demarcation of zones or the number of vendors. The former creates the structure for the latter to evolve with the demands of those governed.

Accommodating Street Vendors In The Modern Indian City: Are We There Yet?

"On its streets, India eats, works, sleeps, moves, celebrates and worships. The street is a stage that rarely sleeps," wrote Arjun Appadurai, a renowned socio-cultural anthropologist.¹⁸

The management of public spaces is a pressing problem in most cities. India is no exception. Vendors are often accused of encroaching on streets, depriving pedestrians of their walking space, or for causing traffic jams. The moot questions are: From who are public spaces being safeguarded and who is safeguarded?¹⁹

Despite the passing of the landmark Street Vendors Act 2014, regulatory accountability remains suspect. For instance, even though the Act clearly prohibits evictions under section 3(3) until complete enumeration of vendors, evictions continue across urban centers. The implementation of two provisions of the Act, more than others, worries us. First, the central Act introduces decentralized and participatory governance mechanisms. Decentralization means many different ways of doing things. For decentralization to lead to pro-poor decisions and investments, effective participation and community empowerment are necessary conditions. Our research in Delhi and Gurugram show that these minimum conditions are often not met. Vendor representation in Town Vending Committees has not been taken seriously enough.

Second, a necessary condition for effective implementation of the Act is to know the demography of street vendors. The Town Vending Committee is responsible for enumeration of all vendors in its jurisdiction. It can issue a certificate of vending and allocate vending space only after enumeration is complete. This makes enumeration, or survey as the Act refers to it, a non-trivial challenge. How, for example, do you "survey" vendors, especially itinerant ones? The challenge is to determine the right channel for safeguarding the interests and incentives of all stakeholders. While we have begun the journey of formalization of vendors, we are far from the day where spatial conflicts between vendors, residents, and government officials are resolved constructively and respectfully.

NOTES

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