



Implementation of the Street Vendors (Protection of Livelihood & Regulation of Street Vending) Act 2014: Case of Vadodara

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ABSTRACT: Street Vending provides opportunities like goods and services at convenient location, at affordable prices & is an important segment of urban informal sector. It provides livelihoods to those who are unable to get into formal sector. Initiatives like National Policy on Urban Street Vendors 2004 and 2009 & Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2014 by the government of India recognize the importance of street vendors & support them to earn their livelihood with dignity. The paper studies how the state of Gujarat has interpreted and given life to different provisions of the national act. The study attempts to examine the legislative framework of street vending along with the various effort done to organize street vending at Vadodara. The study evaluates the extent and depth of implementation of the national level act at the Vadodara Municipal Corporation level. The study finds the gap between the spirit of the national act and the ground realities of street vending in the Vadodara city after six years of enactment of the act. The study argues that reform & greater transparency is needed to achieve the purpose of the national level law of street vendors.

Keywords: Street Vending, Vadodara, Street Vendors Act 2014

Abbreviations: FSI: Floor Space Index; GULM: Gujarat Urban Livelihood Mission; GPMC: Gujarat Provincial Municipal Corporation; NASVI: National Association of Street Vendors in India; NPUSV: National Policy for Urban Street Vendors; SEWA: Self Employed Women's Association; TVC: Town Vending Committee; VMC: Vadodara Municipal Corporation

I. INTRODUCTION

Street vending provides vibrancy & color to streets, keep streets busy & safe and creates an interesting city environment. It is an important segment of informal sector and plays a vital role in urban economy. It provides jobs to those who are unable to get into formal sector to earn livelihood. Street vendors have not been recognized and respected for the services they provide rather are seen as unlawful, unsightly, unhygienic and as reasons for encroachment. Trade has always been in what is now called the informal economy in our country. The Bombay Provincial Municipal Corporation Act (1949), the Bombay Police Act (1951), the Motor Vehicles Act, 1988, and the Improvement Trust Acts (under which city planning was done) were formulated during the British Rule and are fundamentally retained in the same form by the Indian Government. Most of them are out-dated restrictive policies, by-laws and regulations originally intended to control and regulate the growth of indigenous enterprises. These restrictions make vending principally illegal [1].

Vendors are a low priority for state governments, and governance and management of vendors is left to those at the bottom of the administrative hierarchy, including police inspectors and officials of the municipal corporation.

Although the Constitution of India aims to build a democratic & welfare society by promoting equality, justice, and liberty. The important Fundamental Rights namely Article 14 – Equality before law, Article 19 (1) (g) – Protection of certain rights regarding freedom to practice any profession, or to carry on any occupation, trade or business and Article 21 – Protection of life and personal liberty have been used by street vendors to take protection from harassment from the administration [2]. However, there are limitations in the use of Constitutional provisions in getting justice for the street vendors and therefore the scene of exploitation of street vendors by various administrative departments are very common in all Indian cities. Hence the need for the umbrella legislation at national level which can protect the street vendors in an integrated manner from all the governing bodies was felt by street vendors organizations at various levels.

While many researches explore the reasons of eviction, harassment, confiscation of the goods of street vendors and the impacts on the mental & physical well being in the absence of any umbrella legislation to protect the right of street vendors to earn the livelihood with dignity & respect.

This paper focuses to find the reasons that why the ground realities of street vending are not improving for street vendors even after six year of enactment of the national level act for protection & regulation of street vendors.

The paper aims to find the gaps in the implementation of then Street Vendors (Protection & Regulation of Street Vending) Act 2014 with the ground conditions of the street vending in the city of Vadodara. To achieve the aim of the research study of the secondary sources of information through the reports published by various government departments has been relied upon. The literature published by various national & international institutes & non-profit organizations like WEIGO, SEWA, NASVI & TISS has been referred. The existing scenario of the street vending in the Vadodara city is studied to find out the issues & hurdles coming against the regularization of the street vending through the discussions with the officials of VMC along with the group discussions with the street vendors of Vadodara.

II. STREET VENDORS (PROTECTION OF LIVELIHOOD & REGULATION OF STREET VENDING) ACT 2014

Even after the formulation of the national level policies NPUSV2004 & NPUSV2009 for the recognition of the street vendors, the ground realities of street vendors were not improving as the street vendors has to come under various other laws like ss 283 and 431 of Indian penal code & ss34 of the Police Act. SEWA & NASVI advocated for the National law 'The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2013' to supersede the restrictions imposed by other laws of Indian constitution. SEWA also made a presentation before the parliamentary standing committee regarding the contents of the law and did lots of lobbying and advocacy. As a result, on 6th September 2013, The Street vendors Bill (Protection of Livelihood & Regulation of street Vending) Bill 2013, was passed by Lok Sabha & 19th February 2014 by Rajya Sabha. The assent of President was received on 1st May 2014 after which notification was sent to all state governments [3].

The Act seeks to protect the rights of urban street vendors and to regulate street vending activities and for matters connected therewith or incidental there to. The Act aims to provide the environment to street vendors in which they can carry on their trade without having fear of getting harassed & evicted and also regulates the street vending activity for better management of traffic and public spaces [4].

The Act protects street vendors against evictions and grants the right to vend on streets after obtaining the certification of vending. The act also gives right to vendors for their goods & assets by providing a mechanism for claiming the seized goods. (s-19). The act also mentions without giving a notice period of 30 days, no vendor can be evicted from its place of vending as mentioned in the certificate of vending by any official of the local authority. The aim of this section is to reduce reduces the scope for unofficial payments by administrative officials.

The Act mandates about the formation of separate committee for the enactment of this act to have a decentralised governance. It empowers the members of the TVC for all the decisions regarding street vendors

like conducting the survey, identify and allocate space to the existing vendors.

To create a mechanism of participatory governance and to reduce the exclusionary practices like harassment & eviction of vendors from one place to another, the Act mandates that TVC must have representations from street vendors, markets associations, resident welfare associations, N.G.Os along with the members of the local authority & Police.

A TVC is required to conduct periodic survey once every five years of local street vendors (S3 & S4). All the existing vendors are to be accommodated in vending zones according to the holding capacity of the ward/ city & If the number exceeds the holding capacity of the ward, the extra number of the vendor are to be accommodated in the adjoining ward. The Act prohibits the eviction or the relocation of any vendor prior to the survey. [4]

The act mandates State Govt. to establish an independent committee for grievance redressal for complaints by street vendors. (S-20) The Act excludes any employ of the government or the urban local body from the committee to ensure impartial decisions. Hence the Act reduces the chance of harassment of the street vendors by Urban Local Body.

III. IMPLEMENTATION OF STREET VENDING ACT IN GUJARAT

Notifying rules and schemes are the first two steps towards implementing the Act. They provide the framework for actualising all other steps. As per Section 36 of the The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, every state government has the powers to make rules for regulation of street vending. Ministry of Urban Development & Urban Housing Department has formulated the rules known as 'Gujarat Street Vendors (Protection of Livelihood & Regulation of Street Vending) Rules 2016' published on 21.12.2016 vide notification No. GH/H/224 of 2016/NLM/102016/302/H and are effective from December 2016 in the state of Gujarat. The rule fulfils all the mandates of the central act like fixing the minimum age for street vendors as 18 year, formation of a dispute redressal committee. The rules mention the constitution of a TVC by the municipal commissioner which will be constituted of 5 Official members & 14 non-official members for municipal corporations and 5 official members & 10 non official member for municipal corporations. The rules also fix the manner of elections among street vendors and the manner of maintaining up to date record of all street vendors. It also mandates the scheme to be published on Website of TVC & two local news paper. It also recommends the duties of the TVC [5].

The major shortcoming of this state level legislation of Gujarat is that Judicial members should head the Appellate Committee instead of the Mayor as currently prescribed in the rules. Rule 21 prescribes constituting an Appellate Committee chaired by the Mayor to hear appeals against the decisions of the Grievance Redressal Committee. The Appellate Committee should have a judicial member as the head because this committee is required to follow the judicial procedure for dispute resolution & hears appeals against the decisions of the Grievance Redressal Committee, which has a judicial member and adjudicates disputes by following a judicial procedure [6].

Section 38 of the Act requires state governments to frame and notify a scheme within 6 months from May 2014, with due consultation from the local authority and the TVC. Gujarat has notified The Gujarat Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2018 dated 10.12.2018 published vide notification No. GH/H/177 of 2018/NLM/102016/308/H but after the due period within six months. The scheme is to provide the TVC with guidelines to conduct the survey of vendors and defines the manner and process for issuing identity cards and its content. TVCs have to follow the processes specified in the scheme to issue licences, mark vending zones, evict or relocate vendors and determine vending fees. The scheme provides vendors with legal protection against informal governance practices—hafta collection, seizure of goods and sudden eviction [7].

This state level act of Gujarat empowers the local authority to decide on the application of the certificate of vending & to identify new sites for vendors which is against the parent act which says that TVC should decide the applications of vending during the intervening period of two surveys & allocate place of vending. Form I survey questionnaire is long and intrusive. It seeks more information than what is legally required under the Act. For example, the survey questionnaire asks information on procurement sources and frequency, seed capital, daily sales, profit, loan, insurance, and previous vocation. The purpose of directing the local authority to report additional categories to the state government is also not clear. Clause 12 directs the local authority to report to the state government if there are any categories of vendors other than 'stationary' and 'mobile' vendors. A local authority may simply register other categories instead of reporting them to the state government. Section 18(3) of the Act mandates a 30-day notice period before relocation. However, Clause 14 of the scheme does not mention any notice period for relocation [6].

IV. EFFORTS DONE TO REGULARIZE STREET VENDING IN VADODARA

The attempt to organize the street vendors in Vadodara by the VMC had started in 1987. Since then in the last 33 years, VMC has been trying to organize street vendors through various schemes and rules according to the national and state level legislations.

In the year 1987, The Supreme Court of India passed an order (writ petition filed by Baroda Hawkers association against VMC) directing Municipal Corporation of Baroda to formulate a scheme for 'Hawking & Non-Hawking Zone Scheme' in each ward of the city of Baroda. Though the preparation of this scheme was a participative process including the suggestions & objections of the vendors association, non-vendor people & judges' perspective upon the ward officers' proposals. The review of the final report revealed that all the areas which hold good potential for selling wares, are marked off as non-hawking zones. [8] For example, the area around "R.C. Dutt road" which faces the biggest market complexes in the city is marked as a non-hawking zone as vendors 'obstruct traffic and cause vehicular accidents'. An inventory of vendors on major roads (>18 m) of Vadodara in 2004 shows that the major concentration of vendors is on the same roads demarcated as non-hawking zones reflects

that flat policy declaration can not be successful in any Indian city [9].

In the year 2011, on the guidelines of NPUSV 2009 VMC has drafted The Urban Street Vendors Scheme 2011 for maintaining the roads of the city in such a way so as to achieve the purpose of the upliftment of street vendors, maintaining dynamism in city economy, for smooth flow of vehicular traffic, the safe movement of pedestrian by using footpaths and for better public health and wellbeing of all the citizens. According to this scheme, the standing committee constituted under GPMC Act was proposed to act as Monitoring committee. This scheme suggested three types of vending zones (No Vending zones, restricted vending zones & restriction free vending zones) in a ward and which were to be decided on the basis of traffic condition & width of the road. This scheme suggested about the maximum density of vendors in any area and vending on the timesharing basis on the busy streets [10].

In the year 2016, in the absence of any state level scheme for the street vendors by Gujarat state, VMC has drafted The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme 2016 according to the section 38 of The Street Vendors Act 2014. This scheme suggested on finding new sites of vendors to accommodate increasing number of vendors along with utilizing private land for street vending through instruments like additional FSI and Transferrable development of rights. It discusses the principles of vending on a local level specific to the city of Vadodara like there shall be no totally restriction free vending zone in the city. Vending in the restricted vending zones should be linked up with the road width for example there shall not be any stationary street vending on a road having width between 3.5 meters to 9 meters. However, street vending can be allowed if such a road is declared as no vehicular road. There shall be only one side stationary street vending on a road having width between 12 meters and 24 meters, while both side stationary street vending can be allowed on a road having width of 30 meters and above. The scheme 2016 also discusses about the space occupancy norms specific to the city of Vadodara both for on street vending as well as vending from the open plots [11].

In the year 2017, the survey of the existing street vendors in Vadodara was conducted by Atharva Planning and Research Centre, Gandhi Nagar, which is a selected agency under Gujarat Urban Livelihood Mission (GULM) for the conduct of surveys as a part of the process of implementation of the in the state of Gujarat Street Vendors Rules 2016. The survey covered all the 12 wards of Vadodara. The total number of existing street vendors in Vadodara is 11,379 [12]. The survey covers some 34 typologies of street vendors. These 34 typologies have been classified into six categories which the study is taking into consideration. The six categories are processed food, non-processed food, household items, Clothes, Flowers and service providers. 42% Vendors are selling non-processed food like fruits & vegetables. 71% Vendors are food vendors (Processed and non-processed food). Majority of the vendors (72%) are selling perishable items i.e., food and flowers. A very big percentage of the vendors (95%) are stationary. According to this survey, only 724 Vendors are licensed which is only 6% of total vendors in Vadodara city. It suggests that the licensed vendors

are more in old city area whereas the newly developed locality has very low number of licensed vendors. This also reflects that new licenses have not been issued since last so many years. Number of street vendors per 10,000 of the population in Vadodara city is 69. The average density of vendors in Vadodara is 71.

V. GAPS IN THE IMPLEMENTATION OF STREET VENDORS (Protection of Livelihood & Regulation of Street Vending) ACT 2014 IN VADODRA

The national level act is an attempt to systematically fill the regulatory gaps, regularise street vendors, open channels for negotiation between stakeholders and minimise harassment of street vendors. The Act identifies general principles and leaves the application of these principles to ULBs given that regulating and managing vending requires localised solutions and consensus. This section evaluates the depth of the implementation of the act in the city of Vadodara. The implementation can be Judged in the following steps:

1. Formation of the Rules of the Street Vending by the State Government
2. Formation of the Scheme of the Street Vending by the State Government
3. Formation of the Town Vending Committee with Vendor Representation
4. Formation of Grievance Redressal Committee
5. Survey of the Existing Street Vendors in the City
6. Issuance of Identity Cards & Certificate of Vending to the Enumerated Vendors
7. Street Vending Plan (Finding Spaces (Public/private) to accommodate the Street Vendors)
8. Detailed Implementation Plan

VMC has drafted the scheme for the street vending at the city level. Next step of formation of TVC can only be completed if the process of the election to have vendor's representation is also completed. The main hurdle in the formation of the TVC is the absence of representation from the vendors and their organizations, as it is mandatory to have a 25% to 40 % representation of vendors representatives. According to the act, it is the duty of the TVC to conduct elections of the vendors. Hence the act is creating a chicken egg condition. VMC has tried to come out of this bottleneck condition by forming a provisional TVC. Under the guidance of the provisional TVC, VMC has completed the survey of the existing street vendors in the city [13]. The formation of the final TVC is pending in the city of Vadodara. Due to the absence of the final TVC, Street vending Plan which includes demarcation of the vending zones, finding of the new places for vending activity and allocation of the vending spaces for street vendors can not be completed. In the absence of the Street vending Plan, street Vendors are still located on streets in an unorganized and haphazard manner & are bound to work as illegal entities. Hence the scenes of confiscation of goods & eviction of vendors are common on the streets of Vadodara. According to the Status report of the street vending from the VMC, Tender for the 'Detailed Implementation Plan' of street vending has been floated and checking of the technical expertise of the agencies is under process.

VI. CONCLUSIONS

Despite the establishment of a comprehensive legal framework in the act, implementation in Vadodara city is

very slow. The major challenge is that how the provisional TVC will be changed to final TVC [13]. In the absence of the final TVC if the Street Vending Plan & The Detailed Implementation Plan are finalized; they will just be the formalities because they will not be representing the voice of Street vendors in the absence of the vendor's representation.

In 2012, Standing Committee on the Street Vendor's Bill recommended that states must be given six months period to comply with the provisions of the Act [6]. In the city of Vadodara even after the passing of the six years, full implementation of the act is far behind.

As per the act, it should be the time to have a second level of enumeration in Gujarat state (s3: survey in every 5 years) since the enactment of the state level rules in 2016 [5].

Survey of the vendors completed in the year 2017 but state level scheme got notified in the year 2018. This is a clear example which shows progress in the implementation of the parent act but without the constitution of the authority responsible for it. The total number of the vendors identified in the survey conducted in the year 2017 by VMC is 11379 whereas the as the number of street vendors as per the report of 'Hawking & non-Hawking Zone Scheme 1987' is 10,000. This reflects the Possibility of underestimation in the increase in the total number of street vendors in thirty-three years given the increase in the population of Vadodara city.

Merely putting up the act is not sufficient as it is silent on the accountability of the government officials and there is no provision for the check on the delays in the implementation. The study argues that the ineffective role played by the local government and implementation by the states, makes the Act fall short of fulfilling its intended objective, that is protecting the rights of urban street vendors. We are yet to see that a new democratic and vendor led governance when implemented will lead to new ways of thinking about a place for vendors.

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