

# A SHOP WITHOUT NAME: A CRITICAL ANALYSIS OF THE STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) ACT, 2014

<sup>1</sup> Taneyaa Manucha and <sup>2</sup> Kuljit Singh

<sup>1</sup> Student, 5 th year, Law College Dehradun, Uttarakhand University, Dehradun (U.K.), India

<sup>2</sup> Assistant Professor, Law College Dehradun, Uttarakhand University, Dehradun (U.K.), India

**Abstract:** When we go back to the twentieth century, we find that there was agitation of the street vendors to fight for the protection of their rights across the country, after the struggle of a long period of sixty-seven years, it resulted in the enactment of Act, 2014. The rights of person having a shop without name (the street vendors) have been recognized, but, the question arises as to are their rights intact now? and is vending business is treated at par with the other trades and businesses? *Though, on May 1, 2014, the Street Vendors (Protection of Livelihood and Regulations of Street Vending Activities) Act, 2014 was enforced with the basic aim to safeguard the right to livelihood of the street vendors and to legalize the business of the street vending, but, it is to examine as to "whether the Act of 2014 is competent to protect the livelihood of street vendors and regulate the street vending activities" and if not, then, what all recommendations are necessary to make it competent for the interest of the street vendors.*

**Index Terms-** Street Vendors, Town Vending Committee, Dispute Resolution Committee, Article 21, Constitution of India.

*"A right is dominating relation of a man with the thing or object of his necessity."*

World is created by the untiring endeavor to live in and one tries to shape it to his inner ideal. Each man possesses an instrument to make his universe eutopia. From the time a man is born he carries objects, things and relations with himself, and, as such it is very difficult to disassociate man from his own attainments and belongings. These constitute the complex of his rights because he must claim them and against the whole world<sup>1</sup>.

## I. INTRODUCTION

Socrates informed Adeimatus that *"a State arose out of the association of human beings. No one is self-sufficing but all have many wants, and many persons are needed to supply them: one takes a helper for one purpose and another for another, and when these partners and helpers are gathered together in one habitation, the body of inhabitants is termed a State". Such partners "exchange with one another, one gives and another receives, under the idea that the exchange will be for their good."*<sup>2</sup>

As such due to these mutual relations the concept of rights develops. Rights are, therefore, as Hobhouse puts it, 'what we may expect from others, and others from us, and all' genuine rights are conditions of social welfare.<sup>3</sup>

Thus, the mutual dealings which take place among men become more complex with the growth and civilization of the society. As such "State comes into existence for the sake of life and continues to exist for the sake of good."<sup>4</sup>

<sup>1</sup> Chaudhari and Chaturvedi's, *Commentary on Law of Fundamental Rights* 2 (Delhi Law House, Delhi, 4<sup>th</sup> edn., 1995).

<sup>2</sup> Available at: <http://www.idph.net/conteudos/ebooks/republic.pdf> ( Last Visited on February 3,2019).

<sup>3</sup> Prof. S.N.Dhyani, *Jurisprudence and Indian Legal Theory* 224(Central Law Agency, Allahabad, 4<sup>th</sup> edn., 2002).

<sup>4</sup> *Ibid.*

### i. Article 21

The right to life and personal liberty in India has a constitutional status by virtue of the provision of Article 21 of the Constitution of India. The Article 21 of the Constitution of India reads as follows:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”<sup>5</sup>

Thus, Article 21 secures two rights of individuals:

- Right to Life, or
- Right to Personal Liberty.

Article 21 is trying to ensure all the core concepts of right to life, which are essential to make life meaningful, complete and worth living by providing inferred rights without which holistic development of human being is impossible. It includes right to live with dignity, to breathe in a pollution-free environment, right to work, right to shelter and much more.<sup>6</sup>

Right to livelihood springs from the right to life guaranteed under Article 21. The aim of Fundamental Rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make me available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than status without means. To the tillers of the soil, wage earners, laborers, wood cutters [sic], rickshaw pullers, scavengers and hut dwellers, the civil and political rights are 'mere cosmetic' rights.<sup>7</sup>

### ii. Right to Livelihood

According to William Shakespeare in Merchant of Venice ‘You take my life when you take the means whereby I live.’<sup>8</sup>

Right to livelihood is greater than a mere legal right. It is sine qua non for right to life under Article 21 although it has not been incorporated expressly in Part III by the framers of the Constitution.<sup>9</sup>

As right to life includes right to livelihood. The right to livelihood cannot remain at the mercy of the individuals in authority. Income is the basis of right to livelihood, which is directly proportional to work, and as such right to work also becomes fundamental.<sup>10</sup> Livelihood cannot be earned just anywhere: to provide the service that will yield them a livelihood, some have to be physically near the places at which the service is demanded- a hawker at a pavement, a washer man ironing clothes in the colony where his clients live. To push him away of his location is to deprive him of the means of livelihood and, therefore, of his life.<sup>11</sup> As such the protection of means of livelihood and right to work falls within the ambit of right to life.

The right to livelihood which springs out of right to life under Article 21 of the Constitution of India can also be claimed by the street vendors who are citizens as well as non-citizens of India.

### iii. Street Vendors

Before understanding the basic of the street vending one should understand the division of economy as- formal sector and informal sector.

- *Division of Economy*
- *Formal sector*

Formal sectors represent all jobs with specific working hours and regular wages and the worker’s job is assured. The workers are employed by the government, state or private sector enterprises. It is a licensed organization and is liable to pay taxes.

<sup>5</sup> The Constitution of India, 1950.

<sup>6</sup> *Narinderjit Singh Sahni v. Union of India*, (2002) 2 SCC 210.

<sup>7</sup> Arun Shourie, *Courts and Their Judgments* 153 (2018).

<sup>8</sup> Fredrick Turner, *Shakespeare’s Twenty-First Century Economics* 63 (Oxford University Press, New York, 1999).

<sup>9</sup> *Environment & Food security v. Union of India*, (2011) 5 SCC 676.

<sup>10</sup> *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress*, 1991 Supp (1) 600.

<sup>11</sup> *Supra* note 7 at p.169.

○ *Informal Sector*

Informal or unorganized sectors are the ones where the employees or the workers do not have regular working hours and wages and are exempted from taxes. It is mainly concerned with the primary production of goods and services with the primary aim of generating employment and income on a small scale. A street vendor selling his farm products on the street to generate and earn his daily bread is an example of informal economy.

The International Labour Organisation (ILO) in its Kenya Mission Report.<sup>[7]</sup> It defined informality as a “way of doing things characterized by (a) ease of entry; (b) reliance on indigenous resources; (c) family ownership; (d) small scale operations; (e) labour intensive and adaptive technology skills acquired outside of the formal sector; (f) unregulated and competitive markets.”<sup>12</sup>

iv. *Meaning and Concept of Street Vendors*

Marketing played important role in development of human civilization. The major human civilizations developed near river basins. Purchase and selling are components of human, social and economic behavior. The process of purchase and sale covered long journey from barter system to currency system and finally to cashless system but only one thing remained constant in various forms i.e., street market.

Hawkers or street vendors are the lifeline of the Indian market they are found from metro cities to villages. In several cities the street vendors count more than 2.5% of the population of that city. It is not only source of self employment of poor but it is also helpful for majority of urban population as they provide affordable and convenient services. In times of liberalization the street vendors struggled a lot for their dignity and recognition.

A street vendor is someone who earns his livelihood by offering various goods and services to the public at large without owing any permanent structure and uses wholly public places like pavements, roads etc., The street vendors do not carry their business from permanent built due to which the venue of their business keeps on changing continuously and are subject to various hardships due to long working hours and even their working conditions are unfavorable. They are forced to work due to economic conditions as their conditions are akin to that of coolie.

There are three basic categories of the street vendors<sup>13</sup>

- Stationary Vendors: Who carry out vending on a regular basis at specific location, with implicit or explicit consent of the authorities.
- Peripatetic Vendors: Who carry vending activities on foot.
- Mobile Vendors: Who move from place to place vending their goods or services on bicycles or motorized vehicles.

v. *Constitutional Provisions*

As we all know that the Constitution of India does not talk about rights of street vendors specifically but we can very well make out from the Preamble of the Indian Constitution that our Constitution aims at promoting justice, liberty, equality and fraternity to all its citizens and for which favorable conditions are established to achieve the very objective. As such street vendors being the citizens of India are also eligible for the unenumerated rights. Such rights can be inferred from the following Articles of the Constitution of India which helps to build a welfare society and protects the street vendors from harassment and victimization:

- *Article 14-* the concept of ‘equality before law’ is enshrined under this Article, which provides that all are equal before law and no one is superior or inferior to the law that is to say, whether a person is Prime Minister or a street vendor both are equal before law<sup>14</sup>.

<sup>12</sup> Available at: [http://www.ilo.org/public/libdoc/ilo/1972/72B09\\_608\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/1972/72B09_608_engl.pdf) (last visited on May 7, 2019).

<sup>13</sup> Available at: <https://www.ritimo.org/The-Status-of-Street-Vendors-in-Delhi> (last visited on February 10, 2019).

<sup>14</sup> *Supra* note 5.

- *Article 19-* which talks about the Protection of certain rights regarding freedom of speech, etc. This Article guarantees seven fundamental rights among which one such right is to ‘Freedom of Profession, Occupation, Trade and Business’ which is stated under Article 19(1)(g) of the Constitution<sup>15</sup>.

In *Sodan Singh and Ors. v. New Delhi Municipal Committee and Ors.*<sup>16</sup> it was held that right of street trading is the fundamental right but subject to reasonable restrictions. But it is the responsibility of state to provide rights to street vendors under Article 19.

Even in case of *Nayar Rice Mills v. Teekappa*<sup>17</sup> it was held that the citizens have right to choose the business but such right is available subject to reasonable restrictions imposed by the Executive in interest of public interests.

- *Article 21-* Protection of life and personal liberty includes within its ambit right to livelihood as well as held in the case of *Olga Telis & ors. v. Bombay Municipal Corporation.*<sup>18</sup>
- *Article 38-* This Article strive to promote welfare of the people by securing and making as effectively as it may be a social order in which social, economic and political justice shall inform all the institutions of the national life and to minimize inequalities in income and endeavor to eliminate inequalities in status, facilities, opportunities amongst individuals and group of people residing in different areas and engage in different avocations. This Article reaffirms what has been declared in the Preamble of the Indian Constitution<sup>19</sup>.
- *Article 39-* Article 38 is supplemented by the Article 39 which lays stress upon certain aspects of economic justice. Article 39 (A) obligates the State to secure to all men and women equally the right to adequate means of livelihood<sup>20</sup>.
- *Article 41-* This Article provides for right to work. The right to work is an obligation on the welfare state to create the necessary quantum of work for all its citizens.
- *Seventh Schedule of the Constitution-* There is no specific Entry in the Schedule Seventh of the Constitution of India which directs the Union or State or to both to deal with the street vendor subject matter. But Entry 23, List III impliedly includes within its ambit street vendors which reads as : “Social security and social insurance; employment and unemployment.”<sup>21</sup>

Though Section 33 of the Act, 2014 states where the State has enacted law with regard to protection of livelihood of the street vendors and in case it is inconsistent with the Central Act wholly or partially in such a case Central Act will prevail over the State Act.

But there is need felt to incorporate the Entry within the Concurrent List of the Indian Constitution which exclusively mentions ‘for relief of street vendors or hawkers’.

#### vi. Position of Street Vendors in India

As street vending is not a new concept it is in existence since ancient times. In ancient and medieval civilizations street vendors traded in neighboring countries as well. But in modern times they are not treated with the same measure of dignity and tolerance.

Even the hard knocks faced by the street vendors are depicted in 1961 in the bollywood movie ‘*Tel Malish Boot Polish*’ in its song ‘*Ek ana boot polish do ana tel malish*’, wherein, it was shown that a street vendor on streets of Mumbai charged an ana for polishing shoes and two for a hair massage. The song portrayed how that street vendor worked hard to earn a living but still his life was in jeopardy<sup>22</sup>.

The position of street vendors at present in India is as:

<sup>15</sup> *Ibid.*

<sup>16</sup> MANU/SC/0521/1989.

<sup>17</sup> AIR 1971 SC 246.

<sup>18</sup> (1985) 3 SCC 545.

<sup>19</sup> *Supra* note 15.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> ‘*Tel Malish Boot Polish*’ - an Indian movie which is directed by Romney Dey and was released in 1961. It deals with low-caste impoverished boot polisher who faced hardships to earn his livings.

- Street vendors in India have negative public image as they are thought to be responsible for the accidents, congestion and etc., and yet they are the biggest service sector in India. They get supply from the cottage and home based industries, and they also cater to needs of poor consumers.
- These street vendors contribute significantly to the urban distribution system, but in return face humiliation, harassment and, confiscation threats from the police officers and inspectors from local governing bodies such as Urban Local Bodies and Municipal Corporation.
- Municipal authorities frequently demand bribes from vendors.
- Even the street vendors have little access to welfare schemes run by the government.
- They are even vulnerable to different types of diseases like migraine, tuberculosis, high blood pressure, high acidity, kidney and UTIs.
- The most pressing and ongoing risk for many street vendors is the possibility that the local government authorities, and Municipal Corporation forcibly evict them from the streets or confiscate their merchandise.
- This risk of displacement often increases in the context of elections, mega-events or efforts to beautify city centers; the eviction and displacement of street vendors in Delhi during the 2010 Commonwealth Games is a testament to this harsh reality.
- They are also accused of depriving the pedestrians of their space, causing traffic jams, having links with criminal activities.
- Street vendors are increasingly regarded as a public nuisance by middle- and upper- middle –class people who aggressively demand restoration of pavements as public space when street vendors ‘encroach’ them.
- Government officials and urban vehicle owners also consider street vendors to be a hindrance, claiming that they clutter the urban space and prevent the smooth flow of traffic.

As to enable the street vendors to pursue their livelihood in a congenial and harassment free atmosphere, the Supreme Court has recognized their interest and has passed various judgments to prevent the harassment and abuse of the vendors by state enforcement agencies. Finally, in 2014, the *Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014* (in short “the Act”) was passed. The Act aims to regulate and protect street vendors in India, at multiple levels.<sup>23</sup>

## II. THE STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) ACT, 2014

### *i. Background of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014*

There is old age relation between street vendors and roads. For the first time in the case of *Saghir Ahmad v. State of U.P. and ors*<sup>24</sup> the Supreme Court held that the state is mere trustee of the road and has no power to prohibit plying private buses on public roads for which an Act was also passed by the U.P. government. The court went ahead and also said state cannot prohibit use of public road for private gain only it can impose reasonable restrictions for the purpose of regulation of traffic and other things.

Surprisingly, then in the year of 1967 the same court departed from its earlier view in *Saghir Ahmad's case*<sup>25</sup> and held that the state is not a trustee of the roads but a sole governor as held in *Pyare Lal etc. v. NDMC*<sup>26</sup> and the apex court even objected to do any business involving cooking on the road as it creates permanent unhygienic conditions.

In 1985, the Supreme Court in *Bombay Hawker Union ors v. Bombay Municipal Corporations & ors*<sup>27</sup> held for subsistence of living of street vendors the Supreme Court quashed a scheme proposed by the Municipal Corporation for prohibiting street vendors from selling cut fruits food items. Court further

<sup>23</sup>Prashant Narang and Dr Yugank Goyal, “Report on Street Vendors Act 2014 State Compliance Index”, 2017 (2017).

<sup>24</sup> AIR 1968 SC133.

<sup>25</sup> *Ibid.*

<sup>26</sup> AIR 1968 SC133.

<sup>27</sup> 1985(3)SCC528.

held there can be a check on practice of adulteration and further overruled what was happened in *Saghir Ahmad's case*<sup>28</sup> and held public roads are meant to be used by general public only and not by private trader or for private business. But however they can use the roads for putting 'cover' for protection of their stalls against sun wind and they are permitted to hawk only till ten at night.

In 1985, it was held in *Olga Telis & ors. v. Bombay Municipal Corporation*<sup>29</sup> held right to life includes right to livelihood and further stated though pavement dwellers are encroachers they should be evicted with a fair manner and procedure and should also provided alternative accommodations.

Municipal Corporation of *Delhi v. Gurnam Kaur*<sup>30</sup> held there is no right to do business on the street which leads to nuisance and the states are under no obligation to construct the alternative accommodation or rehabilitate the street vendors who are evicted.

Again in 1998 a constitution bench in *Sodan Singh v. NDMC*<sup>31</sup> held street vendors are resorted to the Article 19(1)(g) of the Constitution of India with reasonable restrictions as provided under Article 19(6) and the state is trustee of the public and members of public are the beneficiary and they have right to use public roads subject to certain restrictions. The Supreme Court also indulged in the tedious exercise of giving models guidelines to be followed by the civic authorities till proper legislation comes into force. However, the implementation of these guidelines became a subject of much litigation before various high courts and thereafter, the Supreme Court itself.

Further in *Navi Mumbai Hawkers & Workers Union and ors. v. the State of Maharashtra & ors*<sup>32</sup> the question was raised about the rights available to the street vendors whether comes under the purview of Article 19(1)(g) of the Constitution of India. The court upheld that the street vendors are entitled to fundamental rights available to them under Article 19(1)(g) of Constitution of India.

Again in case of *Maharashtra Ekta Hawkers Union & Municipal Corpn Greater Mumbai*<sup>33</sup> the Supreme Court was forced to revisit and revise the guidelines issued earlier and observed though the street vendors are allowed to use the public roads for private trade or business but certain factors are to be kept in mind before allotting them space for carrying on vending operations as narrowness of road easy movement of pedestrians no chaos created or they do not use road near hospital or place of worship.

Lastly, in *Gainda Ram v. MCD*<sup>34</sup> the court went on to observe the fundamental right of the hawkers to vend and gave directions to the municipalities to regulate the street vending and further observed just because vendors are poor and weak their fundamental rights cannot be left in demilitarized zones.

Upon perusal of the above judgments it can be seen that the apex court played an active role in recognizing the rights of the street vendors and also enforced the same by issuing guidelines and norms.

On the other hand solidarity movement was also prevalent for the recognition of rights of the street vendors.

SEWA (Self Employed Women Association) is a Trade Union registered in 1972 for which Ela Bhatt took the initiative. It is not only a Trade Union but a movement supporting informal women workers. SEWA categorized women into four groups according to their work:

- Home based work;
- Vendors/ hawkers;
- Those who provide services ;
- Marginal farmers and producers.

While helping out the women street vendors the SEWA realized the street vendors do not have any space in the municipal laws. They also took steps to legalize the street vendors. For which in 1981, they approached the Supreme Court. In 1998, SEWA also called for the meeting of all the association of the street vendors throughout the country and as such National Alliance of Street Vendors of India came into

<sup>28</sup> *Supra* note 17.

<sup>29</sup> *Supra* note 18.

<sup>30</sup> (1989)1 SCC 101.

<sup>31</sup> (1989) 4 SCC 155.

<sup>32</sup> 1998 (3) BomCR 458.

<sup>33</sup> 2004(1)SCC 625.

<sup>34</sup> AIR 1998 SC 2363.

existence. Also the various organizations working for street vendors, the trade union of the street vendors and labor group came together on the common platform i.e., National Association of Street Vendors of India (NASVI). In 2001, the SEWA and National Ministry of Urban Development organized conference with Ministry of Street Vending as a consequence of National Policy on Street Vendors announced by the minister for the purpose of setting up guidelines for street vendors and finally in 2004 it came into existence. This policy was revised twice in 2006 and 2009. However, these guidelines were only directive and mandatory for the States to follow.

Other organization as Centre for Civil Society in Rajasthan and Bihar started state level campaign 'Jeevika', 'Manushi' in Delhi, YUVA Urban, National Hawker Federation also played an active role for the social security rights of the street vendors.

In 2009, the Ministry of Human & Urban Poverty Alleviation prepared the model legislation i.e., Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009. In 2010 SEWA asked strongly for the Central Act for protection of street vendors as ministers accepted this and approved the changes in 2012.

To which Elaben Bhatt quoted "The insecurity of livelihood necessitates street vendors to return to their place of vending. During this long battle there was a point where I felt that no one in the country stands up for the poor. But today, as the bill is passed, I say that it is heartening that poor are not forgotten and I thank all the political parties for making this happen."<sup>35</sup>

As such Bill was approved by the House of Commons in 2013 and in 2014 people went on hunger strike and SEWA also campaigned the rights of street vendors consequently the Upper House of the Parliament passed this Bill, and the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 was enforced on May 1, 2014.

#### *ii. Salient Features of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014*

- The Act of 2014 basic object is to protect livelihood and social security of the street vendors as such they can pursue their livelihood in a harassment free environment. This Act also seeks to regulate the street vending activities.
- This Act came into force on 1<sup>st</sup> May, 2014 and accommodates 10 chapters consisting of 39 Sections and 2 Schedules. This Act extends to whole of India except the State of Jammu and Kashmir. The provisions of this Act of 2014 is inapplicable to any land, premises and trains owned and controlled by the Railways under the Railway Act, 1989.
- The Act, 2014 seeks to provide for:
  - Constitution of the Town Vending Committee
  - Plan for street vending, which states that a plan to promote vocation of street vendors be prepared once in every five years.
  - The Act, 2014 mandates the Town Vending Committee to conduct survey of all the street vendors exists in the area falls within the jurisdiction of the committee.
  - Compulsory registration of every street vendor and to issue them the Certificate of Vending which is categorized in three categories.
  - Certain rights and obligations of the street vendors.
  - Obligation on the local authority to notify street vendors thirty days prior for the purpose of relocating or evicting them.
  - Plan for street vending, which states that a plan to promote vocation of street vendors be prepared once in every five years.
  - The promotional measures for the street vendors like availability of credit, insurance, and other welfare schemes.
  - Aggrieved street vendor may resort for the Grievance Redressal for Dispute Resolution Committee.

<sup>35</sup> Available at: <http://www.sewa.org/glorious-victory.asp> (last visited on February 12, 2019).

- No street vendor who carries on activities as per the terms and conditions and having possession of the certificate of vending shall be prevented from carrying on street vending activities by any person or police or any other authority exercising power under any law for the time being in force.<sup>36</sup>

### *iii. Critical Analysis of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014*

#### *a. Property Rights*

Though the street vendors have the fundamental right to trade under Article 19(1)(g) of the Constitution of India but this right cannot be enforceable. Under the Act, 2014 as there is little bit emphasis on the property rights of the street vendors which can be detected under Sections 5(2), 10, 13, 18, 19 and 29(1)<sup>37</sup>.

Even the question is not clear as to what constitute the property rights under this Act, is it the immovable place where the street vendor vends i.e., the merely possessing rights or the movable articles of which he trades.

#### *b. Working Conditions*

There is nowhere provision laid down under the Act, 2014 which talks about the working conditions, safety and hygiene of the street vendors, and as a result they live a life of toil. Act, 2014 does not deals with the sanitation facilities available to them, even about the light facilities there isn't any legal clause and to manage all this is again a strenuous job for them.

#### *c. Wages*

The average daily wages earned by the street vendors is below 100 and substantial income of theirs goes by way of bribes or hafta. Moreover, this Act, 2014<sup>38</sup> do not bar such illegal act of goons and other people having authority and misusing it, due to which no stringent action is taken against them.

#### *d. Exclusion of Railways*

As we all are aware that the Indian Railway s the biggest employer and symbolic proportion of street vendors are engaged in railways. Yet, this Act of 2014 is inapplicable on railways<sup>39</sup>.

#### *e. Lack of Regular Survey*

Section 3 of the Act, 2014 requires that the Town Vending Committee shall conduct survey of street vendors regularly in the area falling within its jurisdiction<sup>40</sup>. But the Town Vending Committees are not performing their duties seriously. As, in Chandigarh last year the Town Vending Committee was made obliged to conduct survey of the street vendors and to provide appropriate place to vend to keep intact the beauty of the city. But no such work is carried by the Town Vending Committee of Chandigarh.

The basic reason behind carrying out the survey of street vendor is to regulate the place and to check there is no overcrowding in the area but again in North Delhi failure on the part of the Town Vending Committee to conduct survey resulted in blockade in the area by the newcomers' as a result commercial place to vend lessened.

#### *f. No Identity Cards provided to the Street Vendors*

<sup>36</sup> The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid*

<sup>40</sup> *Ibid*

A section 4 state for the issuance certificate of vending to the street vendors after the survey is conducted by the Town Vending Committee. This certificate of vending is a sort of recognition that such vendor is allowed to carry on the vending activities legally<sup>41</sup>.

But at present, in many States and Union Territories still the Certificate of Vending is not issued by the Town Vending Committee to the street vendors.

In Bangalore, street vendors were evicted illegally in 2018, and they couldn't take any legal action just because they are not in possession of the Certificate of Vending. As such they are demanding for such certificate from the Bruhat Bengaluru Mahanagara Palike (BBMP)<sup>42</sup>.

Further, this Section binds the street vendors to vend. They shall be at liberty to vend as stationary vendor or mobile vendor as per their will and convenience.

However, sub-section 3 of the Section 4 talks positively that if number of persons accommodating in vending zone exceeds in such case they shall not be relocated rather than given a place to vend in adjoining area.

#### *g. Street Vending is not Highly Paid*

Section 5 of the Act, 2014 states for conditions of vending one such is that if a person has other means of livelihood in such a case no Certificate of Vending shall be given to him. But as we all are aware of the fact those only engage in the street vending who doesn't have substantial amount to earn their livelihood and street vending is not highly paid activity and sometimes street vendors' trade for seasonal goods in such a case it is necessary for them to take any alternative job.

But this Section just obstructs the street vendor from getting the Certificate of Vending if they are engaged in any other means of earning livelihood.

Section 5(2) of the Act, 2014 allows the spouse or dependent child of the street vendor to use such certificate which is one of the main features of the property right i.e. enjoyment of the property by the close ones.<sup>43</sup>

#### *h. Vending Fees and Maintenance Cost*

Section 8 of the Act, 2014 states that the vendors to whom Certificate of Vending is issued are liable to pay vending fees and Section 17 of the Act, 2014 on the other hand creates more burdens on them by asking them to pay maintenance charges. In this Act there is no upper limit set for the payment of charges<sup>44</sup>.

#### *i. Cancellation or Suspension of the Certificate of Vending in all Cases*

Section 10 of the Act, 2018 states that if any of the conditions of the Act, 2014 is breach, then this will lead to cancellation or suspension of the Certificate of Vending. This means that this Section focuses more on how to punish the vendors rather than ameliorate their conditions. Moreover, this section contemplates that in all the breaches whether major or minor the Certificate of Vending is cancelled or suspended. However, there is one positive aspect in this Section which allows opportunity of being heard before cancelling or suspending Certificate of Vending<sup>45</sup>.

#### *j. Minimal Rights of Street Vendors*

Chapter III of the Act, 2014 accommodating Sections 11-17 states for rights and obligations of the street vendors. This Chapter only deals with the right to vend but does not deals with right of street vendors.

Section 13 falling within the ambit of Chapter III of the Act, 2014 in some way is related to the notion of property rights. As this Section talks about that in case of relocation of the street

<sup>41</sup> *Ibid.*

<sup>42</sup> Available at: <https://www.newsclick.in/street-vendors-bengaluru-demand-id-card-and-certificate-vending> (last visited on March 3, 2019).

<sup>43</sup> *Supra* note 41.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

vendors they shall be allowed to carry on the vending activities from other place as determined by the local authority.

*k. What are 'Goods'?*

Section 19 of the Act, 2014 provides for seizure and reclaiming of goods. But however, this Section does not specify as to what constitutes 'goods'. But we can only assume that the items used by the street vendor in trade may be 'goods'. Even the Section shall also provide what articles are not liable to confiscated as it may safeguard property rights of the street vendors<sup>46</sup>.

*l. Non Awareness about the Town Vending Committee*

Section 22 of the Act, 2014 mandates for constitution of the Town Vending Committee. The Town Vending Committee is bound to discharge functions as required to be performed under this Act or under the rules framed by different States. But in several parts of the country the street vendors are not aware with the Town Vending Committee and the street vendors in case of disputes today also turn to Pradhan rather than the Dispute Resolution Mechanism<sup>47</sup>.

*m. Prevention of the Disputes by police and other authorities*

Section 27 of the Act, 2014 provides that in case of disputes the final decision will be of the police and other authorities. This section is not less than any irony as if we look in the past the street vendors are exploited and harassed badly by these authorities only. As such these authorities are bestowed carte-blanche and they may exercise the power conferred on them arbitrarily<sup>48</sup>.

*n. Penal Provisions are Deemed to be Unconstitutional*

Section 28 of the Act, 2014 deals with the penalty in case of contravention of the Act but does not specify the authority that will look in this matter and adjudicate. As such this provision is in contravention of the Constitution of India<sup>49</sup>. In the Supreme Court Case of *Ram Jawaya Kapur v. State of Punjab*<sup>50</sup>, Chief Justice Mukherjee elaborated 'Our Constitution does not contemplate assumption, by one organ or part of the State, of functions essentially belonging to the other'<sup>51</sup>.

*o. Eviction without Due Process*

At lot of places in the country the street vendors are evicted merely on the ground that they are responsible for causing traffic and obstruction for which also a provision shall be made in the Act itself. Even a provision in this regard is given under section 201 of Motor Vehicles Act, 1988 which is discussed aforesaid. Further, this Act also clarifies that in case of eviction prior notice of 7 days shall be given to the vendor and shall be given alternate place to vend. But even this provision is overlooked and vendors are constantly evicted on the whims and fancies of the police and other authorities.

*p. Criteria for Zoning and No-Zoning of an Area*

The Act, 2014 also does not provide for the criteria to be followed while denoting any area as the vending zone or no- vending zone. There are no any set criteria that how to declare any area following under the jurisdiction of the Town Vending Committee as vending zone or no-vending zone.

*q. Overrule State Acts as lead to Friction*

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> AIR 1955 SC 549.

<sup>51</sup> Available at: [https://ccs.in/internship\\_papers/2015/341\\_street-vendors-act-2014-forgotten-promise\\_pariroo-rattan.pdf](https://ccs.in/internship_papers/2015/341_street-vendors-act-2014-forgotten-promise_pariroo-rattan.pdf)(last visited on May 2, 2019).

This Act also overrules the Acts framed by the States dealing with the street vendors as such a lot many States are not following this Act and it ultimately leads to friction between States and the Union.

*r. No Provision as to Consult with the Town Vending Committee*

The Act does not provide that the States while formulating the rules for street vending plan shall consult the Town Vending Committee. As such question of doubt arises whether the plan is effective, whether the vending zones are decided unprejudicially.

*s. Unbalanced Check on the Power of the Legislature*

This Central Act has entrusted on the State to make rules regarding issues having substantial importance as this Act defeats the very purpose of delegated legislation.

### III.CONCLUSION AND SUGGESTIONS

Recent research has provided a more complete understanding as to "Whether the Act of 2014 is sufficient to protect likelihood of Street Vendors and regulate Street Vending Activities?" As this Act is first legislative measure taken for the purpose of empowering the street vendors, to some extent it is proved to be a savior for the street vendors. But upon perusal and after critically analyzing the Act we can safely draw a conclusion that there are lacunae in the Act. Apart from that still this Act failed to protect the street vendors from mental and physical exploitation in totality.

Even at present blatant corruption is prevalent, not all but most of the authorities are involved in the murky dealings. These authorities by way of coercion still extort money from these helpless people regularly.

Even the States are not very much keen in enacting this Act. If they were, they would have formulated the scheme before the deadline under the Section 38 of the Act, 2014. Even there are many street vendors who are oblivious to the Act. If this Act would have perfectly drafted, then practice of street vendors would have been run smoothly and won't create annoyance, hurdles to public. As such, this will act as a catalyst in beautification of the urban city.

*Suggestions:*

Seeing the rampant problem of street vendors all over the country, even after coming into existence of the Act, 2014 there is a dire need to make appropriate changes in the Act and also there's need of checking the carte blanche of the authorities. From the above mentioned discussion following amendments which should be made in the Act, 2014 are as followed:

- Right of property of street vendors shall be recognized.
- Either charges shall be borne for maintenance by the street vendors or vending fees shall be given by the street vendors and both shall be construed alternative and not together.
- The criteria for determining any zone as vending or non-vending, shall be formulated in expressed manner.
- The Certificate of Vending shall not have limited scope but there shall be a single Certificate and which can be used by the street vendor according to his convenience i.e., mobile vending, stationary vending or other.
- Even the provisions protecting street vendors from the harassment faced by them from the authorities shall be included which shall also provide punishment for the offenders.
- Vast powers are delegated to the State Government, which destroys very purpose of the delegation. It needs to be amended to the Act, 2014.

Apart from the above-mentioned changes there is also need felt like:

- The most demanding thing is to create awareness among the street vendors regarding this Act, 2014. This can be done by interacting with street vendors one-on-one or by carrying out awareness programs with the aid of NGOs.
- Another thing which can be done is that the parking place is auctioned to a particular party and who makes twenty cars park in the place of ten and in a systematic manner to save the place of land in order to provide more space to the hawkers. Similar thing can be done for hawking zones.
- The vendors shall be allotted a place according to their convenience i.e. where they can carry out business properly. The open space near the hospitals, terminals, government offices and other public places, shall be allotted for the purpose of street vending. As it will serve two-fold purpose and will be beneficial for street vendors as well as general public.
- Moreover, under the Constitution of India the street vendors does not form part of any of the three lists of the Schedule VII directly but at present, the need is felt to mention it under the concurrent list with the term 'street vendors' fall.

