

**Note to
National Advisory Council**

on

**Central Law for Protection of Livelihoods
of Street Vendors:**

Submitted by NASVI & SEWA

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1. Law for Protection of Livelihoods of Street Vendors

Street vending as a profession has been in existence in our country since time immemorial. However the numbers of street vendors have increased manifold in the recent years. Today they have a presence in every urban area from the smallest town to the largest metropolis. According to the National Policy on Street Vendors GOI approximately 2% of the population is dependent on street vending. The total number of street vendors in the country is estimated at around 1 crore. Urban vending is not only a source of employment but provide 'affordable' services to the majority of urban population. The role played by vendors in the economy as also in the society needs to be given due credit but they are considered as unlawful entities and are subjected to continuous harassment by civic authorities and police

In recent times with increasing investment in cities and rising values of urban land there is a drive to harass and evict them, in the name of encroachment and traffic. Although there is a National Policy on Street Vendors, and this has provided some relief, still it is rarely implemented by the cities because it lacks legal enforceability. Hence it is proposed that the National Policy be converted into a National Law. Another reason for needing a Law is because the existing laws such as, State Municipal Laws¹, Police Acts and the IPC is not recognizing street vendors as a legal entity and some of the provisions are actionable against them.

Additionally, the Supreme Court in *Gainda Ram vs MCD*² has highlighted the need for law and has directed the appropriate Government to enact a legislation for regulation of fundamental rights of street vendors by June 30th 2011.

The Government of India, Ministry of Housing and Urban Poverty Alleviation (HUPA) has agreed to the need for a Law and has proposed a Model Bill (2009). However the proposed

¹ These laws were enacted during colonial times and have seen very little change thereafter.

² *Gainda Ram vs MCD* [2010(10)SCALE 36]: “45. It is, therefore, clear that reasonable restrictions on the fundamental right under Article 19(1)(g) can be imposed either by existing law or by a law which may be made by a State in the interest of general public. 46. Therefore, nothing short of law can impose reasonable restrictions on a citizen's fundamental right to carry on hawking under Article 19(1)(g) of the Constitution.”

66. Certain broad facts cannot be lost sight of. Whatever power this Court may have had, it possibly cannot, in the absence of a proper statutory framework, control the ever increasing population of this country. Similarly this Court cannot control the influx of people to different metro cities and towns in search of livelihood in the background of the huge unemployment problem in this country. While there is a burning unemployment on one hand, on the other hand there is a section of our people, that, having regard to its ever increasing wealth and financial strength, is buying any number of cars, scooters and three wheelers. No restriction has apparently been imposed by any law on such purchase of cars, three wheelers, scooters and cycles. There is very little scope for expanding the narrowing road spaces in the metropolitan cities and towns in India. Therefore, the problem is acute. On the one hand there is an exodus of fleeing population to metro cities and towns in search of employment and on the other hand with the ever increasing population of cars and other vehicles in the same cities, the roads are choked to the brim posing great hazards to the interest of general public. In the midst of such near chaos the hawkers want to sell their goods to make a living. Most of the hawkers are very poor, a few of them may have a marginally better financial position. But by and large they constitute an unorganized poor sector in our society. Therefore, structured regulation and legislation is urgently necessary to control and regulate fundamental right of hawking of these vendors and hawkers”

Bill has serious shortcomings, which we feel will lead to further harassment and alienation of street vendors and which has already started to create unrest among urban poor.

2. Need for a Central Law

We propose a Central Law which will both promote and secure livelihoods of the urban poor. The HUPA has proposed a Model Bill, instead of a Central Law, and argues that since the subject matter relates to Municipal laws and other entries pertaining to state list so should be enacted by States. It says Centre responsibility is confined to Model Bill. However, we feel that it is not a matter of Municipal regulation, but of livelihood, employment and social security of the urban poor. In our view such a law would be covered by entry 20, 23 and/ or 24 of the concurrent list³. This law is being contemplated essentially as a measure for social security and employment for street vendors and would also be covered under economic and social planning. The mere fact that street vending takes places in municipalities/local authorities which are covered by entries in the state list is not determinative. Since the proposed law deals with "workers" particularly unorganised workers (who include self employed)⁴, this is also a "labour matter" which also falls in the concurrent list. Therefore, both Parliament and States would be competent to legislate in the said matter. Therefore it should be a Central law like NREGA or Unorganised workers Social Security Act.

The National policies on Urban Street Vending 2004⁵ and 2009⁶ recognize that each State has its own Municipal and Police laws with clauses which breach the fundamental rights of street vendors. National law will prevail over all inconsistent state municipal laws to the extent they

³ Entry 20- Economic and social planning, Entry 23- Social security and social insurance; employment and unemployment, Entry 24- Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits

⁴ Unorganised Workers Social Security Act, 2008

⁵ National Policy on Urban Street Vendors (HUPA), 2004-

“6.2 The policy recommends that all States should amend the Police Act Rules/Regulations thereunder and add a rider as follows:

“Except in case of street vendors / hawkers and service providers with certain reasonable regulations ”

6.3 The Central Government should also amend the Section 283 and Section 431 of IPC and include the rider as mentioned above.

6.4 The state government should also remove the restrictive provisions in the Municipal Acts to make street vendors inclusive in the city plan/ cityscape.

⁶ National Policy on Urban Street Vendors(HUPA),2009:

“7(ii) It shall be the responsibility of the Government of India to take steps to ensure that street vending activities are carried out in accordance with street vending laws and the same are not actionable under the Indian Penal Code and the Police Act. In this regard, the Government may initiate amendment in these laws if necessary.

7 (ii) It shall be the responsibility of State Governments/ UT administrations to ensure that institutional designs, legislative frameworks are put in place in conformity with the National Policy on Urban Street Vendors.

are inconsistent with the law for street vendors.⁷ Hence, it will not be required to amend municipal and police laws by each and every State.

If the protection of Street vending is left to the goodwill of States it is unlikely that States will enact legislation. Under the National Street Vendors policy- 2004 and then 2009 it was the responsibility of the States to give institutional design and legislative frame work through legislation as well as to implement the policy. Unfortunately, the powerful urban interests ensure that Bills and Policies remain in draft form and even when policy is accepted it is rarely implemented. It has been seven years since we saw the first policy on Street Vendors but in all urban areas—big and small—street vendors are being harassed and evicted mercilessly. The National law can give the policy a logical conclusion which has to be implemented at the ground level.

The Model Bill- 2009 which has been recommended by HUPA to States for enacting legislation falls short of the aspirations of the street vendors. It does not even reflect the principles set out in the National Policies. Several issues which need to be addressed through law has been discussed below. A comprehensive law which would set out necessary principles is possible only through a national legislation.

3. Natural Markets

Rationale

The National Policy on Urban Street Vendors (2009) (“National Policy”) defines the term “natural market” as “a market where sellers and buyers have traditionally congregated for more than a specified period for the sale and purchase of a given set of products or services as assessed by the local authority.”⁸ Similarly, NASVI’s proposed Bill defines a natural market as “a market cluster where vendors gather spontaneously in big or small numbers in response to the market demand.”⁹ As defined, the concept of natural markets implicitly relies on two separate ideas: (1) street vendors tend to congregate in areas where customer demand is the highest; and (2) this customer demand often varies widely according to the particular types of goods that are sold by various vendors. This is the law of supply and demand, well known in economics.

The phenomenon of natural markets occurs throughout the world and is “natural” in that vendors logically choose sites where demand for their goods is high. The Supreme Court of India has also agreed in principle to the idea of accommodating natural markets. In *Sudhir Madan v. M.C.D.* (2007), the Supreme Court stated:

It was further submitted before us that the authorities must have due regard to the concept of a natural market. We agree. In implementing such schemes, the authorities cannot ignore the concept of a natural market, but many interests have to be balanced so as to cause least inconvenience to the public at large.

⁷ Art 254 of the Constitution of India

⁸ National Policy on Urban Street Vendors (2009), § 2.5.

⁹ See *The Street Vendors (Protection and Promotion of Livelihood Bill* (Draft) 2011, § I(2)(1)(f)

Empirical evidence suggests that urban planning that attempts to ignore natural markets ultimately fails to protect *either* the right of street vendors to do their business *or* the right of commuters to move freely through public space. This is because the failure to accommodate natural markets in the regulatory framework does not effectively prevent these markets from forming and the situation becomes one where the vendors remain illegal and the consumers are inconvenienced.

Forcing street vendors out of natural markets, by contrast, would block efficient economic transactions and leads to economic waste. Allowing for natural markets not only maximizes the productivity of street vendors themselves, but also of their consumers. The individual consumer benefits greatly from the presence of street vendors in natural markets. But in addition, the convenience that natural markets provide to individual consumers translates, in the aggregate, to greater overall efficiency from the macroeconomic standpoint.

National Policy- 2009 includes the principles of Natural Market-

Definition of Natural Market- *“2.5- Natural markets means a market where sellers and buyers have traditionally congregated for more than a specified period for the sale and purchase of a given set of products or services as assessed by the local authority.*

4.2-Following guidelines would need to be adhered to

Spatial planning should take into account the natural propensity of street vendors to locate in certain places and certain times in response to the patterns of demand for their goods and services.

4.3 ... Principles of “natural market” should be followed in designating areas as Vending Zones and their maximum holding capacity should be determined based on these principles.

Model Street Vendors (Protection of livelihood and regulation of street vending) Bill- 2009 proposed by HUPA has excluded “Natural Markets”.

We propose that the principles of natural markets should central to determining the vending zones, weekly market, and the holding capacity.

NASVI Model Bill- 2011- Definition of Natural market- *“2 (f) natural market” means a market cluster where vendors gather spontaneously in big or small numbers in response to the market demand;5.1(a)- the demarcation of vending zone shall be based on the principles enumerated under the scheme which shall include following factors:...(v)Principles of Natural markets,;(vi)The total area to be demarcated as vending zones shall be sufficient to accommodate all existing Street Vendors,. 5.3 The criteria for weekly markets- (vi) principles of natural market*

4. The Law should prescribe minimum quantitative norms i.e, Numbers of Street vendors to be accommodated and percentage of public land which should be allocated for street vending.

Rationale:

The issue of Minimum numbers is extremely important. The problems around vending arise because of the rising value of land and the multiple uses of public space. The inclination of most city authorities is towards “Law and order” and towards favouring the more powerful interests. So they prefer to evict existing vendors and limit the numbers who can be legally allowed to vend. International experience shows that when the numbers are decided under the aegis of the city authorities they use the argument of “not enough space” to reduce street vendors to ridiculously low numbers. The City of New York for example, with a population of 14 million people has issued only 6000 licences. Similarly plans drawn up by various Indian cities accommodate only a few thousand vendors.

Without the protection of minimum quantitative norms, the City authorities will have a free hand and legal sanction to evict street vendors. The lakhs of vendors displaced will lose their livelihoods and incomes. It is worth noting that whereas New York City issues only 6000 street vendor licenses it has about 4.8 lakh people who have passed through the New York penal system!

The aim of this Act should be to preserve existing employment and livelihoods and providing opportunities for the future growth of employment in the growing cities, while protecting the interests of the general public. The principle of Natural markets combined with Minimum quantitative norms shows us the way to do this through the following steps:

1. Identify the existing vendors through surveys, including photo-identification, and self-registration of street vendors.
2. Identify the existing natural markets—big and small.
3. Regularize the existing markets in a planned way
4. Include 2% spaces for vendors in all urban plans.

National Policy- 2004- *“Quantitative Norms refer to the norms on amount of space to be provided for vendors' markets. At the town /city level enough space should be designated for vendors' markets atleast to the extent of 2% to 2.5% of the total city population.*

National Policy- 2009- *“Street vendor form a very important segment of the unorganized sector in the country. It is estimated that in several cities street vendors count for about 2 percent of population.*

4.3 There is a need to fix state norms at both city/zonal development plan and local layout plan levels. Each city/town may, however evolve its own quantitative norms but only after conducting proper surveys and evaluating actual needs and taking the help of professional institutions/agencies. The principles of natural markets should be followed in designating areas

as vending zones and their maximum holding capacity should be determined based on this principle.”

HUPA Proposed Model Bill- 2009, excludes mention of quantitative norms.

The Model bill does not set out any principle in this regard. It does not even reflect the recommendations of the National policies. It reads *“The norms for spatial planning, principles for determination of vending zones/ no vending zones, the principles for determining holding capacity shall be notified in a scheme to be notified by appropriate government. [sec 3 (1) g-j]”*

We propose that there should be quantitative norms for numbers of street vendors accommodated (2% of population) and guidelines for earmarking norms of spatial planning in the lines of National policy, 2004. Public place should be defined under the law in the lines of Municipal Acts.

NASVI proposed Bill 2011-

2(i) “public place” means any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not and it includes public streets vested in the Local Authority or any other authority so empowered under the law.

“3.1 State Government shall frame a scheme which will provide for (a) the norms of spatial planning to be adopted by the planning authority for earmarking adequate space for street vendors in the master plan, zonal development plan, layout plans and other plans.

*provided that the amount of space so allocated shall be sufficient to accommodate all existing street vendors and it shall not be less than 2.5% of the **public place**.*

5. Dispute Redressal Mechanism

Rationale:

The Model bill of GOI contemplates that the disputes among the street vendors will be resolved by the Zonal vending Committee (ZVC). It provides for appeal to Local authority to resolve the dispute relating to registration. There is a need to establish two tier Dispute Redressal Mechanism (in the line of Consumer Protection Act) to resolve the dispute arising out the decisions of the TVC or Urban local Bodies (ULBs) with respect to Street Vending. There should be a judicial body (separated from administrative function) which can decide the disputes and look into the implementation of the schemes and other provisions of the Act. It will also supervise and check inaction and non implementation of the schemes. The vendors will have no remedy otherwise, in case the provisions are not implemented properly. This is also in the line of the direction of the Supreme Court of India which directed that the ZVC in Delhi (formed under the schemes of MCD and NDMC) will be presided by a Judicial officer. It had also been directed to establish an Appellate Authority presided by a Retd. High Court Judge to hear appeal arising out the decisions of the TVC. Experiences with street vendors have found that a separate Judicial body provides quick and satisfactory resolution of disputes. Very often the cost of litigation exceeds the loss suffered by them. They being marginalized and poor they can not approach good lawyers. In absence of a separate judicial mechanism to resolve the disputes street

vendors usually approach High Courts and the Supreme Court. These writs courts have time and again expressed their limitation in resolving these micro disputes.¹⁰

National Policy- 2009- “ 9. *Dispute resolution- The TVC shall be primarily responsible for the redressal of grievances and resolution of any dispute arising amongst the street vendors or between the street vendors and third parties including municipal officials and the Police in the implementation of this Policy. It shall closely work with planning, municipal, police and other authorities and vendor associations and other organizations to ensure that National Policy on Urban Street Vendors is implemented effectively at the local level.*”

We Propose

NASVI Bill- 2011 proposes that there should be a town vending dispute redressal forum for each town vending committee. The forum will be a 3 members body which will be headed by a Judicial officer. A state level appellate authority has also been contemplated which shall be presided over by a ret'd. Judge of the High Court.¹¹

6. Transparency Provisions:

Rationale:

Certain transparency provisions need to be incorporated which would set out the procedure for:

- a) Appointment of the members (representing street vendors) of TVC;
- b) Procedure for deciding holding capacity;
- c) Procedure for demarcating vending zones and no vending zones;

These provisions are required to ensure actual representation of street vendors in the TVCs. It also aims at preventing undue litigation which may arise out of decision on the holding capacity and vending/no vending zones. These provisions are required to check corrupt practices.

No such provision has been referred in the **Model Bill- 2009** neither there has been any discussion on the issue in the **National Policies**.

We Propose: There is a need of detailed provisions for eligibility of vendors' representation in the ZVC. Detailed procedure of deciding the holding capacity and the vending/no vending zones have also been prescribed. (See chapter V of NASVI's Bill)

¹⁰ *Gainda Ram vs MCD* (67). This Court finds that innumerable IAS have been filed in this Court along with various objections by the hawkers, most of the time collectively, complaining about steps taken by municipal authorities, namely, NDMC and MCD to prevent them from hawking and vending. This Court has tried its best to somehow deal with the situation. But it is difficult for this Court to tackle this huge problem in the absence of a valid law. The nature of the problem defies a proper solution by this Court by any judicially manageable standards.

¹¹ Sec 6 and 7 of The Street Vendors (Protection and Promotion of Livelihood Bill, 2011(NASVI Bill).

7. Procedure for confiscation of goods and evacuation of Street Vendors:

Rationale:

No procedure for evacuation and confiscation of goods of Street Vendors is prescribed under the Model Bill, 2009. Provisions are needed for notice and procedure of evacuation of Street Vendors in case they violate the provisions of the law. Most of the existing Municipal Laws authorizes confiscation and evacuation of unauthorized street vendors but none of them prescribe any procedure for such confiscation and evacuation. Shops and markets have been seen being demolished without serving any notice. Generally, due to unavailability of due procedure the street vendors face tremendous harassment by Police and Local body officials. The absence of such procedure facilitates extortion and threatening by authorities. Street vendors suffer heavy loss due to such irregularities.

National Policy- 2004- The policy suggests appropriate procedure.

“4.Relocation and Rehabilitation- Street vendors are most vulnerable to forced eviction and denial of basic right to livelihood. It causes severe long-term hardship, impoverishment and other damage including loss of dignity. Therefore, no street vendor should be forcefully evicted. They would be relocated with adequate rehabilitation only where the land is needed for a public purpose of urgent need. Therefore

- a) Eviction should be avoided wherever feasible unless there is clear and urgent public need in the land in question.*
- b) Where relocation is absolutely necessary, notice of minimum 30 days should be served to the concerned vendors.*
- c) Affected vendors/ representative's involvement in planning and implementation of the rehabilitation project.*
- d) Affected vendors should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms to pre-evicted levels.*
- e) Loss of assets should also be necessarily compensated.*
- f) State machinery must take comprehensive measures to check and control the practice of forced evictions.*

No hawker/street vendor should be arbitrarily evicted in the name of 'beautification' of the cityspace. The beautification and clean up programmes undertaken by the states or towns should actively involve street vendors in a positive way as a part of the beautification programme.”

National Policy- 2009

5.1- There should be a mechanism of due notice to the street vendors. The vendors should be informed/warned by way of notice as the first step before starting the clearing up or relocation process. In the second step, if the space is not cleared even after the notice and imposition of fine, physical eviction may be resorted to. In the case of vending in a no vending zone a notice of at least a few hours should be given to a street vendor in order to enable him or her clear the space occupied. In case of relocation adequate

compensation or reservation in allotment of new vending site should be provided to the registered vendors.

5.2 – With regard to confiscation of goods (which should happen only as a last resort rather than routinely), the street vendors shall be entitled to get their goods back within a reasonable time on payment of prescribed fee, determined by TVC.

Model Bill- 2009 of HUPA excludes procedure for confiscation.

Unfortunately, there is no provision of notice of evacuation and procedure of confiscation of goods in the Model Bill of HUPA.

We Propose: Procedures prescribed in the National Policy-2009 and 2004 need to be incorporated in the proposed law for street vendors.

NASVI Bill- Section 23 prescribes detailed procedure for confiscation of goods.

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8. Registration and allocation of spaces for street vendors

Rationale-

The two most common types of street vendors are mobile hawkers and street vendors sitting in a market or alongside roads or in designated places. Mobile hawkers earn much less than the stationary ones and aspire to getting a spot of their own. However, mobile hawkers also get harassed and have to pay bribes to police and municipal authorities. Stationary hawkers are seen as encroachers rather than natural marketers. They face the most brutal forms of eviction from the Municipalities and the Police.

So, for both mobile and stationary vendors there is need of a system of registration for all. Beyond that, allocation of space for the stationary vendors. This system should be started immediately, as it is already mandated by the National Policy, and should be an on-going system to be endorsed as a continuous system in the Act.

National Policy 2009

The Policy has a well laid-out system of registration of street vendors and allocation of spaces (see attached 4.5.2 and 4.5.4). This system has been accepted by many State Governments—MP, Rajasthan, Delhi, UP, AP, Kerala West Bengal. However, few States have implemented it.

HUPA Bill-

Procedure for registration has been recommended but it is not comprehensive enough as the National Policy is.

Our Position

We prefer the following system:

1. Identify all natural markets in the city
2. Identify vendors by the process detailed in National Policy

3. Allocate spaces by process detailed in National Policy.
4. Plan for future spaces in new areas. There should be scope of registration of new entrants as suggested in the National Policy- 2009

ⁱ Appendices

Appendix 1: Suicides of Street vendors: Despair in cities across the country

Appendix 2: The Street Vendors (Protection and Promotion of Livelihood Bill, 2011 (NASVI Bill)).