

National Advisory Council

Note on Recommendations for a Central Law for Protection of Livelihood Rights and Social Security of Street Vendors

1. Need for a Central Law

1.1 The Government of India, Ministry of Housing and Urban Poverty Alleviation (HUPA) has proposed the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill-2009, [Model Bill]. The proposed Model Bill, however, has serious shortcomings. It fails to adequately protect the livelihood rights of street vendors. The Model Bill has been recommended to State Governments to adopt. The rationale behind the Model Bill is that since the subject matter relates to Municipal laws and other entries pertaining to the State List of the Constitution, the Law on street vendors should be enacted by the States. The Centre's responsibility is confined to recommending a Model Bill.

1.2 The National Advisory Council (NAC) proposes a central law. The justification for a central law stems from treating the issue as not one of mere municipal regulation but rather of livelihoods, employment and social security of a significant number of urban poor households. Such a central law would be covered by entry 20, 23 and/ or 24 of the Concurrent List¹ of the Constitution. As a measure for social security and employment for street vendors, this law would also be covered under economic and social planning. The National Policies on Urban Street Vending 2004² and 2009³ themselves recognize that each State has its own Municipal and Police laws, with clauses which breach the fundamental rights of street vendors. A central law will prevail over all state municipal laws to the extent that they are inconsistent with the law for street vendors.⁴ Hence, it will not be required to amend municipal and police laws by each and every state.

¹ 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

² National Policy on Urban Street Vendors , 2004-

'6.2 The policy recommends that all States should amend the Police Act Rules/Regulations there-under 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.

³ National Policy on Urban Street Vendors,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.

⁴ Art 254 of the Constitution of India

1.3 If the protection of street vending is left to the goodwill of States, it is unlikely that many 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 framework through legislation, as well as to implement the policy. Powerful urban interests, however, have ensured that Bills and Policies remain in draft form and even when policy is accepted it is rarely implemented. It has been seven years since the first policy on Street Vendors was announced, but in all urban areas—big and small—street vendors continue to be harassed and evicted mercilessly.

1.4 A central law is required to address the needs and aspirations of street vendors. The law must give legal shape and enforceability to principles which are already accepted by government in its policies announced in 2004 and 2009. It is only legally enforceable rights which can provide hope and justice to this vulnerable and productive section of the urban poor.

2. Principles of ‘Natural Markets’ to determine vending zones, weekly markets and holding capacity.

2.1 The National Policy 2009 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.’⁵ This concept is founded on the principle of ‘market demand’, recognising that street vendors tend to congregate in areas where customer demand is the highest; and the centrality of location for viable street vending. Throughout the world, vendors logically choose sites where demand for their goods is high, such as near residential sites, offices and places of worship.

2.2 Forcing street vendors out of natural markets blocks efficient economic transactions and leads to economic waste. Regulatory regimes which ignore natural markets render the vendors illegal, and the consumers are inconvenienced.

2.3 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 held: “*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*”.

2.4 The National Policy- 2009 also lays down: 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... 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’.

2.5 The Model Bill, however, has excluded reference to or accommodation of the idea of ‘natural markets’.

2.6 Principles of natural markets should be incorporated in the law as central to determining vending zones, weekly markets, and holding capacity. The demarcation of vending zones shall be based on the principles of natural markets, and the total area to be demarcated as vending zones shall be sufficient to accommodate all existing street vendors, and their natural growth in proportion to growth of urban populations.

⁵ National Policy on Urban Street Vendors (2009), § 2.5.

3. Minimum quantitative norms for numbers of street vendors to be accommodated and percentage of public land to be allocated for street vending while protecting the interests of the consumer, pedestrian and traffic.

3.1 The problems around vending arise because of the rising value of urban land, the multiple competing uses of public space, and the low bargaining power of street vendors. The powerlessness of street vendors leads many city governments to reduce numbers of licenses for street vendors to ridiculously low numbers. To take just one example, Ahmedabad Municipal Corporation has recently finalized a scheme for Ahmedabad. It is estimated that there are about 1.5 lakh street vendors in Ahmedabad. Of these in the new scheme, 22500 will definitely be evicted, 7000 will not be evicted and presumably be given some kind of legal registration or licence, and the fate of the rest is uncertain.

3.2 The aim of the proposed central law should be to preserve existing employment and livelihoods through street vending, and provide opportunities for the future growth of employment in the growing cities, while protecting the interests of the consumer, pedestrian and traffic. The principles of natural markets combined with minimum quantitative norms show us the way to do this through the following steps:

- i. Identify the existing vendors through surveys, including photo-identification, and self-registration of street vendors.
- ii. Identify the existing natural markets—big and small.
- iii. Regularize the existing markets in a planned way
- iv. Include 2% spaces for vendors in all future urban plans, and plan the locations of these in conformity with the principles of natural markets.

3.3 The National Policies 2004 and 2009 recommended that at least 2 to 2.5% urban land should be designated for street vending. But the Model Bill excludes mention of quantitative norms, and does not set out any principle in this regard. There should be quantitative norms for numbers of street vendors accommodated (2% of population) and guidelines for earmarking norms of spatial planning.

4. Dispute Redressal Mechanism

4.1 The Model Bill contemplates that the disputes among the street vendors will be resolved by the Zonal Vending Committee (ZVC), and appeals will be made to the Local Authority to resolve the dispute relating to registration. But the experience of street vendors is that they can hope for just and prompt resolution of their grievances only by an independent quasi-judicial agency. This is also supported by 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 over by a retired High Court Judge to hear appeals arising from decisions of ZVC.

4.2 There should be a Town Vending Dispute Redressal Forum for each Town Vending Committee (TVC). The forum will be a three member body, which will be headed by a Judicial officer, and include one member each from the ULB and the street vendors. A state level appellate authority is also contemplated, presided over by a retired Judge of the High Court.

5. Transparency Provisions

Although the Model Bill is silent about this, there is need for strong and mandatory transparency provisions regarding the detailed procedure of deciding the holding capacity and the vending/no vending zones; identifying natural markets; and also detailed provisions for eligibility of vendors' representation in the ZVC and Dispute Redressal Forum.

6. Procedure for confiscation of goods and eviction of Street Vendors

No procedure for eviction and confiscation of goods of Street Vendors is prescribed under the Model Bill. Most existing Municipal Laws authorize confiscation and evacuation of unauthorized street vendors, but none of them prescribe any procedure for such confiscation and evacuation. As a result, street vendors face relentless harassment by police and local body officials, and even extortion. Shops and markets have been demolished without serving any notice. The National Policy- 2004 suggests appropriate procedure. These procedures prescribed in the National Policy-2004 and 2009 should be incorporated in the proposed law for street vendors.

7. Registration and allocation of spaces for street vendors

7.1 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. Mobile hawkers also get harassed and have to pay bribes to police and municipal authorities. But stationary hawkers, seen as encroachers rather than natural marketers, face the most brutal forms of eviction from the municipalities and the police.

7.2 Both mobile and stationary vendors require a transparent and liberal system of registration, along with allocation of space for the stationary vendors, according to principles already addressed. The National Policy 2009 has a well laid-out system of registration of street vendors and allocation of spaces. This system has been accepted in principle by many state governments—MP, Rajasthan, Delhi, UP, AP, Kerala West Bengal; but very few states have actually implemented it. The Model Bill contains procedures for registration, but not as comprehensive as the National Policy.

8 Summary – key features of the proposed central law

The proposed Central Law should stipulate all Urban Local Bodies to follow a transparent and participatory process to:

- i. Identify all natural markets in the city
- ii. Identify vendors by the process detailed in the National Policy
- iii. Allocate spaces by the process detailed in the National Policy balancing it with the interests of consumers, pedestrians and traffic.
- iv. Plan for future spaces in new areas, around principles of natural markets and expected growth of populations
- v. Provide for registration of new entrants as suggested in the National Policy 2009