

Street Vendors' Laws and Legal Issues in India

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WIEGO LAW & INFORMALITY PROJECT



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Women in Informal Employment: Globalizing and Organizing is a global network focused on securing livelihoods for the working poor, especially women, in the informal economy. We believe all workers should have equal economic opportunities and rights. WIEGO creates change by building capacity among informal worker organizations, expanding the knowledge base about the informal economy and influencing local, national and international policies.

WIEGO's Law & Informality project analyzes how informal workers' demands for rights and protections can be transformed into law.

The **Self-Employed Women's Association (SEWA)** is an Indian trade union of poor self-employed women workers. SEWA's main goal is to organize women workers for full employment. Full employment means employment whereby workers obtain work security, income security, food security and social security (at least health care, child care and shelter). SEWA organizes women to ensure that every family obtains full employment.

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WIEGO Secretariat

Harvard Kennedy School
79 John F. Kennedy Street
Cambridge, MA 02138, USA

www.wiego.org

WIEGO Limited

521 Royal Exchange
Manchester, M2 7EN
United Kingdom

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“Street vendors 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 per cent of the population. Women constitute a large segment of these street vendors in almost every city. Street vending is not only a source of self-employment to the poor in cities and towns but also a means to provide ‘affordable’ as well as ‘convenient’ services to majority of the urban population”. Street trading is an entry-level profession due to ease of entry and exit, low initial and working capital requirements, flexible work hours, etc. Because of its characteristics, women are predominantly found in this sector. The current policy paradigm and legislative regime is extremely hostile to this segment of the urban population in general but also particularly in the locale of our research: Ahmedabad City. We say this because of the dynamics of change observed in the city and playing out of the legal systems in the city’s space.

From ancient times, hawking and vending have been an integral part of Indian trade and shopping. In other words, trade has always been in what is now called the informal economy. 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.

In Ahmedabad the street trade is governed by various laws and acts, namely the Gujarat Town Planning and Urban Development Act, Bombay Police Act, Motor Vehicle Act, Indian Penal Code, Criminal Procedure Code and Bombay Provincial and Municipal Corporation Act. In all these legislations, vendors are viewed as a problem that has to be controlled rather than as production units that contribute to the urban economy. They are often viewed as a nuisance or obstruction to other commerce and the free flow of traffic. Since they typically lack legal status and recognition, they frequently experience harassment and evictions from their selling place by local authorities or competing shopkeepers. Despite the fact that the sector provides employment, the perception of the sector still tends to be that it is antisocial, anti-developmental, dirty, un-aesthetic and unhygienic. In fact, the eateries among these face additional checks by the food and drug administration given the task of monitoring the food quality in the state. This negative attitude and consequent neglect has meant that this sector is ignored by conventional town planning and treated as unplanned urban growth. The reality, however, is that this sector comprises self-employed persons who are trying to earn their living with dignity and honesty and are an integral part of the city’s economy who only ask from the city “*do tokri ki jagah*”, a life of dignity.

The Indian Constitution is a social document and the majority of its provisions are aimed at promoting equality, justice, fraternity and liberty by establishing the favourable conditions required for its achievement. The important Fundamental Rights, which have been used for litigation in matters related to the rights of the street vendors, are as follows:

- 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
- Article 21 – Protection of life and personal liberty

These provisions in the Constitution aim to build a welfare society and a democratic social order in the country. Hawkers and street vendors, being a deprived and harassed section of our society, take protection and find justice under these ideals enshrined in our constitution. These provisions have time and again come to the rescue of the helpless vendors when victimized by the law enforcement agencies like the police or municipal officers who frequently carry out anti-encroachment drives. However, as argued earlier, there are limitations in the use of Constitutional provisions in getting justice for the street vendors.

Ahmedabad Municipal Corporation regulates all trades in Ahmedabad as per the provisions of Bombay Provincial Municipal Corporation (BPMC) Act, 1949, which is now called Gujarat Provincial Municipal Corporation. The Act lists the municipal authorities, such as the Municipal Corporation, standing committee, Municipal Commissioner, etc., who are responsible for carrying out the provisions under this act. It also describes the duties, powers and responsibilities of the municipal authorities. The Act has entrusted the municipal corporations the responsibility for maintenance, operation and development of certain public utilities in the city. The municipal corporations have two types of functions: (i) obligatory and (ii) discretionary. The Act empowers the municipal authorities to acquire premises for the purpose of street improvement, such as widening, expanding, building a new street, etc., under Section 209. For instance, in KhodiyarNagar, the vendors had already faced displacement due to road widening, and now their livelihoods are again endangered due to development projects like BRTS (Bus Rapid Transport Systems) coming up. The vendors are not against any development, they just demand alternative space where they can earn their livelihoods. The provisions restricting the street vendors and their vending activities are:

- Section 209: Power to acquire premises for improvement of public streets, Section 226: Prohibition of projections upon streets.
- Section 229: Prohibition of structure or fixtures which cause obstruction in streets.

- Section 231: Commissioner may, without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of the Act.
- Section 234: Commissioner may permit booths, etc. to be erected on streets on festivals.
- Section 384: Licenses for sale in public places.
- Section 383: License required for dealing in dairy produce.
- Section 328: Provision of new municipal markets and slaughter-houses.
- Section 377: Prohibition of sale in municipal markets without license of Commissioner.
- Section 378: Private markets are not to be kept open without license.
- Section 379: Prohibition of sale in unauthorized private markets.
- Section 431: Complaint concerning nuisances.
- Section 466: Making of standing orders by Commissioner.

As seen above, the municipal laws do not directly prohibit vending and hawking as a profession but impose a gamut of restrictions on it. The municipal law basically regulates the use of pavements. In contrast, the Motor Vehicle Act, 1988 and the Bombay Police Act, 1951, regulate order on the streets and maintain the public order.

Hawkers are evicted mainly under Sections 67 and 102 of the Bombay Police Act. These Sections stipulate that anyone preventing smooth flow of traffic can be arrested and removed). Street vendors have to conduct their business amidst insecurity. Whenever eviction drives are conducted their goods are confiscated or destroyed. The authorities themselves are caught in the conflicts and have different perceptions of their respective roles. The street vendors suffer because of the differences existing between the roles of the municipal agencies and the police, as on one hand the municipality is responsible for issuing licenses to the hawkers and on the other the police are duty-bound to clear the obstructions being caused on the footpaths, streets and public lands. Hence, even if the municipal authorities demarcate areas as street vending zones, the police have the right to evict street vendors from these zones. Both the municipal authorities as well as the police are under constant pressure to act. In such situations even licensed street vendors can be evicted under the laws. The law enforcement agency is not expected to be gentle, even at very senior levels, whatever the consequences to the business and livelihood of the vendors. According to the laws even a senior police officer cannot permit anyone to carry out vending on the streets.

SEWA drafted and advocated for the National law *The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2013* to supersede the restrictions imposed. SEWA also made a presentation before the parliamentary standing committee regarding the contents of the law. The organization also held a hunger strike and did lots of lobbying and Advocacy. As a result, on 5 March 2014 a central law for vendors was unanimously passed by both the houses of parliament.

In the law, Natural Markets are stressed upon. These natural markets have organically evolved over time. The concept of natural market is defined in the Act as “a market where buyers and sellers have traditionally congregated for the sale and purchase of products or services.”

Secondly the participatory process in the vendor’s community is stressed upon and hence the Town Vending Committee will be constituted in the Act with 50 per cent of the representatives of the vendors and their organizations.

The Main duties and responsibilities of the Town Vending Committee are:

- None of the Vendors will be evicted without providing alternative vending space.
- Surveys will be conducted for all existing vendors and accommodated in the vending zone subject to the norm of 2 to 2.5 per cent of the population of the ward.
- A certificate of vending will be issued to every vendor.
- Vendors representatives will constitute 40 per cent of the total members in the Town Vending committee of which 1/3 will be women.
- 30 days notice will be given to vendors in case the need arises to evict them.
- A survey will be conducted every 5 years until such a time as when none of the vendors are being evicted.
- Vendors will have to pay fees to the Municipal Corporation. Vending Licences will be renewed periodically.
- The police of Municipal authorities can confiscate the wares (perishable/stationery) of vendors only after following the due procedure.
- A Dispute Redressal Committee will be constituted which will be presided over by a Civil Judge or Magistrate.
- Vendors’ duties will consist of maintaining cleanliness, conducting vending activities in allotted vending spaces and will not damage the public property.